

SUPREME COURT OF QUEENSLAND

CITATION: *King & Ors v Gunthorpe & Ors (No 2)* [2018] QSC 5

PARTIES: **THOMAS KING AS EXECUTOR OF THE ESTATE OF
RODNEY KENNETH KING, DECEASED**
(first plaintiff)
and
EDITH PATRICIA KING
(second plaintiff)
and
JRB FINANCE PTY LTD
ACN 142 023 390
(third plaintiff)
v
DAVID STUART GUNTHORPE
(first defendant)
and
SRJ FINANCIAL PTY LTD
ACN 010 194 662
(second defendant)
and
SECURITOR FINANCIAL GROUP LTD
ACN 009 189 495
(third defendant)

FILE NO: BS No 4015 of 2015

DIVISION: Trial Division

PROCEEDING: Applications

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 25 January 2018

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers. Defendants' submissions on costs filed on 15 January 2018

JUDGE: Burns J

ORDER: **In lieu of paragraph 4 of the orders made on 8 January 2018, the costs of and incidental to the application shall be calculated on the standard basis and be each party's costs in the proceeding**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where the defendants filed applications to set aside the ex parte renewal of the plaintiffs’ claim – where the defendants’ applications were dismissed – where the defendants contend that it is appropriate to depart from the general rule that costs follow the event in circumstances where the plaintiffs sought and obtained the renewal of their claim on the basis of material that was significantly supplemented at the hearing of the defendants’ applications and where they had succeeded in an application to adduce further evidence – whether those circumstances warrant a departure from the general rule under r 681 of the *Uniform Civil Procedure Rules 1999* (Qld) that costs follow the event

Uniform Civil Procedure Rules 1999 (Qld), r 681

King & Ors v Gunthorpe & Ors [2018] QSC 1, cited
Major v Australian Sports Commission [2001] QSC 320, cited

COUNSEL: No submissions were made by the plaintiffs
 S J Webster for the defendants, the defendants’ submissions were heard on the papers

SOLICITORS: Holman Webb for the plaintiffs
 McInnes Wilson for the first and second defendants
 HWL Ebsworth for the third defendant

- [1] On 8 January 2018, applications that had been brought by the defendants to set aside the Registrar’s order for renewal of the claim were dismissed.¹ One of the orders made on the dismissal was this:

“The defendants pay the plaintiffs’ costs of and incidental to the applications calculated on the standard basis unless one or more of the parties, by submissions in writing filed and served within seven days, contend for the making of a different order.”

- [2] On 15 January 2018, the defendants filed and served written submissions on costs in which they contended for the making of a different order.

¹ *King & Ors v Gunthorpe & Ors* [2018] QSC 1.

- [3] The plaintiffs have not filed or served any submissions. Nor have they sought leave to reply to the defendants' submissions.
- [4] The defendants submit that the following features of this case warrant a departure from the general rule² that costs should follow the event:
- (a) *First*, that the plaintiffs sought and obtained a renewal of their claim from the Registrar on the back of material that needed to be significantly supplemented at the hearing of the defendants' applications³ and, further, failed to disclose a number of critical facts;⁴ and
 - (b) *Second*, that the defendants succeeded on their application for leave to adduce further evidence.⁵
- [5] Given these features, it was submitted by the defendants that the appropriate order is for the parties to bear their own costs of the applications or, alternatively, for the costs of the applications to be each party's costs in the proceeding.
- [6] Although there is considerable force in the defendants' submissions regarding the first of the two features to which they have pointed, it should not be overlooked that the expanded body of affidavit material had all been filed and served by 5 December 2016 but, despite that, the defendants chose to proceed with their applications. Of course, it might be said that it was necessary to do so because there was a need to cross-examine Mr Blurton on his affidavits but, equally, it was open to the defendants not to do so in light of what he had sworn.
- [7] As to the second feature, having succeeded in their application for leave to adduce further evidence, it would be wrong in my view for the defendants to bear those costs, but that will be the consequence if the order provisionally made on 8 January 2018 remains in place. On the other hand, I am unpersuaded that it would be appropriate for the plaintiffs (along with the defendants) to be ordered to bear their own costs with no prospect of ever recovering them from the unsuccessful defendants.
- [8] Instead, paragraph 4 of the orders made on 8 January 2018 will be set aside and, in lieu, it will be ordered that the costs of and incidental to the application be calculated on the standard basis and be each party's costs in the proceeding.

² *Uniform Civil Procedure Rules* 1999 (Qld), r 681.

³ Defendants' submissions on costs, par 3. The defendants cited *Major v Australian Sports Commission* [2001] QSC 320 in support of this submission.

⁴ *Ibid*, pars 5 – 8.

⁵ *King & Ors v Gunthorpe & Ors*, *ibid*, [7] – [11]; Defendants' submissions on costs, par 9.