SUPREME COURT OF QUEENSLAND

CITATION:	*Clift & Ors v Carter Capner Law* [2019] QSC 88
PARTIES:	**SEAN CLIFT** (first applicant) AND **GARY ERWIN** (second applicant) AND **STEVEN PATTEN** (third applicant) AND **SUZANNE RUSSELL** (fourth applicant) AND **LANA SCHEUBER** (fifth applicant) **v** **CARTER CAPNER LAW ABN 65 600 423 881** (respondent)
FILE NO/S:	SC No 8446 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	5 April 2019
DELIVERED AT:	Brisbane
HEARING DATE:	10 October 2018
JUDGE:	Bond J
ORDER:	**The orders of the Court are:** **1. Subject to order 2, the respondent should pay the applicants' costs of the proceeding, including reserved costs, to be assessed on the standard basis.**

2. **The amount which the applicants are entitled to recover for their costs of the application filed 3 October 2018 is limited to the amount to which they would have been entitled if the only relief sought by the application had been leave to amend and the application had been listed to be heard at the trial in the first place.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – PARTIAL SUCCESS – where the applicants were former clients of the respondent – where applicants entitled to costs order after successful claim for order for respondents to provide written report of legal costs incurred and declaration that costs agreement was void – where respondents claimed that costs should not follow the event as the applicant had not been successful in all claims – where the respondents claimed costs should be excepted for an application for leave to amend – whether an order that the respondents pay the applicants costs should be made *Legal Profession Act* 2007 (Qld) s 317

COUNSEL: N Ferrett for the applicants

K Wilson QC, with G Robinson, for the respondent

SOLICITORS: Compensation Partners Lawyers for the applicants Carter

Capner Law for the respondent

[1] The respondent (**CCL**) was an incorporated law practice under the *Legal Profession Act* 2007 (Qld) (**the Act**). Each of the five applicants was a former client of CCL who had engaged CCL to act in that applicant's personal injury claim.

[2] By an amended originating application each of the applicants advanced two claims against CCL.

[3] The first claim was for an order requiring CCL to comply with s 317 of the Act by providing a written report of the legal costs incurred by the applicant to the date of the applicant's request. Although not advanced in their amended originating application, at the hearing the applicants also sought to rely on the Court's inherent jurisdiction to justify an analogous order being made.

[4] By orders made on 29 March 2019 (see *Clift & Ors v Carter Capner Law* [2019] QSC 78) I rejected the claim that an order should be made under s 317. However I did make an order in the exercise of the Court's inherent jurisdiction that the respondent provide each applicant with an itemised bill.

[5] The second claim was for a declaration that the conditional costs agreement between the applicant and CCL was void because it was to be regarded as providing for an "uplift fee" within the meaning of the Act and because it contravened other requirements under the Act

governing conditional costs agreements which provide for an uplift fee. That claim succeeded and, as part of the orders made on 29 March 2019, I made the declaration sought.

[6] The applicants have sought an order that CCL pay the applicants costs of the proceeding to be assessed on the standard basis, relying on the general rule in that costs should follow the event unless the Court orders otherwise.

[7] CCL accepts that the applicants succeeded on the second claim. However, CCL submits that because the applicants were unsuccessful in relation to s 317(1), I would be justified in apportioning the cost payable having regard to that degree of lack of success in respect of the first claim. I do not think the circumstances warrant such a course. The substance of the position was that the applicants sought to force CCL to commit in an unqualified way to detail about how it justified the costs amounts which it claimed. That course was resisted by CCL. The applicants succeeded in their goal.

[8] The applicants are, prima facie, entitled to the costs order they seek.

[9] CCL next submits that:

> In respect of the reserved costs of the appearance on 16 August 2019, when the Applicants sought an adjournment due to the necessity to amend the Originating Application, those costs should be excepted from any order in favour of the Applicants for payment by the Respondent of their costs.

[10] The reference to 16 August 2019 is erroneous in three respects. First, it must be a reference to 2018 not 2019. Second, there was no appearance on 16 August 2018 at all. Third, there was an appearance in the applications list on 17 August 2018, but on that occasion Burns J ordered the application to proceed as if commenced by claim; set a timetable for pleadings; and listed the matter for hearing in the civil list on 10 October 2018.

[11] The reference seems to be to an occasion which the applicants described in this way:

> That interlocutory application had been set down for a hearing on 8 October (two days before the trial) because, at that stage, Counsel that had been briefed by the Applicants … was unable to appear at the trial. Ultimately, that application was adjourned on the papers and no appearance was necessary. It is unlikely that the parties were put to significant extra expense. For that reason, making a separate costs order with respect to that application is unlikely to be worth the expense that the differentiation would involve. More fundamentally, the Applicants enjoyed success on the application when it was eventually determined: the amendments for which leave was sought were ultimately allowed at the trial.

[12] The interlocutory application referred to was an application filed on 3 October 2018 which sought an abridgment of time; leave to amend the originating application; and adjournment of the trial listed for 10 October 2019 to a date to be fixed. On 8 October 2018 Boddice J made an order by consent which adjourned to the trial the issue of leave to amend; otherwise dismissed the application; and reserved the costs of the application to the trial. At the trial, it became plain that the application to amend was made solely so as to make the relief claimed in the originating application consistent with the relief which had been claimed in pleadings which had been delivered pursuant to the order by Burns J. Unsurprisingly, at the trial, that amendment was not opposed.

[13] Subject to one caveat, the costs the application for leave to amend should properly be regarded as part of the costs of the proceeding and subject to the costs order in favour of the applicants. The caveat is that, if, contrary to the applicants' expressed expectation, the adjournment of the application caused the applicants to incur any costs beyond those which

would have been incurred if the application for leave to amend had been originally listed to be heard at the trial, CCL should not have to pay those costs. On the other hand, the costs of the application to adjourn the trial should not be borne by CCL at all because it was dismissed.

[14] Accordingly, the orders I make are as follows:

1. Subject to order 2, the respondent should pay the applicants' costs of the proceeding, including reserved costs, to be assessed on the standard basis.
2. The amount which the applicants are entitled to recover for their costs of the application filed 3 October 2018 is limited to the amount to which they would have been entitled if the only relief sought by the application had been leave to amend and the application had been listed to be heard at the trial in the first place.