# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Coleman v Greenland & Ors* [2004] QCA 93 |
| PARTIES: | **PATRICK JOHN COLEMAN**<br>(plaintiff/appellant)<br>**v**<br>**BRADLEY MICHAEL GREENLAND**<br>(first defendant/respondent)<br>**PAUL GAYLEN DONALDSON**<br>(second defendant/respondent)<br>**BRENDAN JASON POWER**<br>(third defendant/respondent)<br>**CONSTABLE BRADLEY ADAM BARDELL**<br>(fourth defendant/respondent)<br>**STATE OF QUEENSLAND**<br>(fifth defendant/respondent) |
| FILE NO/S: | Appeal No 2619 of 2004<br>SC No 809 of 2001 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Application for security for costs |
| ORIGINATING COURT: | Supreme Court at Townsville |
| DELIVERED EX TEMPORE ON: | 1 April 2004 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | Heard on the papers |
| JUDGES: | McMurdo P, McPherson JA and Philippides J<br>Separate reasons for judgment of each member of the Court, each concurring as to the order made. |
| ORDER: | **Until security in the sum of $10,000 for the costs of this appeal is provided by the appellant in a form agreed by the parties or, in default, determined by the Registrar, proceedings in this appeal should be stayed; or until further order** |
| CATCHWORDS: | PROCEDURE – COSTS – SECURITY FOR COSTS – APPEALS<br><br>*Bell v Bay-Jespersen* [2004] QCA 68; Appeal No 9591 of 2003, 19 March 2004, referred to |
| COUNSEL: | No appearance by the appellant, the appellant's submissions were heard on the papers |

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| | No appearance by the respondents, the respondents' submissions were heard on the papers |
| SOLICITORS: | No appearance by the appellant, the appellant's submissions were heard on the papers<br>No appearance by the respondents, the respondents' submissions were heard on the papers |

McPHERSON JA: This is an application for security for the costs of an appeal against a judgment that was given against the appellant in the Supreme Court at Townsville, and also against the inadequacy of the damages awarded in his favour by a judgment on two causes of action in proceedings which he brought against the five defendants.

The first four defendants are police officers and the fifth is the State of Queensland. It has undertaken liability for or provided an indemnity in respect of the judgments given against the first two defendants and has had carriage of the defence of this litigation brought by the appellant against these and against other defendants similarly placed.

This application has, at the request of the parties, been heard by the Court on the written submissions presented by both sides without oral representation before us. It is not necessary for present purposes to condescend to much particularity in recounting the facts giving rise to the proceedings before the Court below. They are set out in

detail in the reasons for judgment which is sought to be appealed from.

In substance they are that the appellant, who is a university student with a particular interest in vindicating what he claims are his rights to free speech in the Townsville Mall, was arrested in the course of one of his protests. The Townsville City Council's bylaws or local laws, and some other legislation bearing on the matter, imposed restrictions on the use of the Mall by people wishing to speak on particular subjects or seeking to draw attention to particular causes which they wish to advance.

In thus pursuing his opposition to these restrictions on his freedom, the appellant on three occasions, namely 8th December 1998, 22nd January 1999 and 14th November 1999, was arrested or at any rate restrained by the police. In consequence he instituted proceedings against the defendants involved in each of those incidents for damages for assault and wrongful arrest.

He was successful in respect of his claims arising out of the first two occasions, and judgments were given against the defendants for damages in respect of those two matters. Against the first and fifth defendants the amount awarded was

a total of $7,188 including interest; and against the second defendant it was for an amount of $594.50 including interest.

His Honour ordered the first and fifth defendants to pay the appellant plaintiff's costs referrable to the action concerning the incident on 8th December 1988 to be assessed on the appropriate Magistrate Court scale, and he also ordered the first, second and fifth defendants to pay the appellant plaintiff's costs referrable to the action concerning the incident on 22nd January 1999, also to be assessed on that scale.

He dismissed the appellant plaintiff's claim and gave judgment in favour of the defendants involved in the third incident on 14th November 1999 and awarded costs against him in respect of those proceedings.

The issues involved in the determination of the third incident, in which judgment was given against the appellant plaintiff, were and are essentially questions of fact or of the application to facts found by the learned Judge of indisputable rules of law. That matter is not one in which anything has been shown that would persuade me that the appellant has any real prospect of success. The learned Judge thoroughly reviewed the evidence and made careful findings in

relation to the credit of each of the witnesses involved, both as regards this and, for that matter, the other two incidents that were the subject of the proceedings.

His Honour showed no disposition to disbelieve or find against the appellant on issues where he was persuaded that the evidence of the police officers was not reliable. On the contrary, as I have said, he believed the police officers in respect only of the last incident and found for the plaintiff as regards the other two.

In relation to the first two incidents, the only other matter to be considered on appeal is the question of the damages awarded to the plaintiff appellant. The appellant claims that it is far too low and that he should have been awarded amounts in the range, not of some $5,000 to $10,000, but of $30,000 to $70,000. This, in my opinion, is plainly a gross exaggeration of the seriousness of what happened. The police defendants were mistaken and may have acted peremptorily in claiming to enforce the law as they did. But there was nothing highhanded or contumelious in their actions in arresting the appellant; or, in one instance, holding the appellant in custody for about six hours. That is so, even having regard to the accompanying indignities of personal searches and the like which the plaintiff was inevitably forced to undergo in

accordance with standard procedures which the police are bound to follow.

The actions of the police, as I read the reasons for judgment, may or partly were borne out of a sense of undue impatience with the plaintiff, and to some extent also of a desire to ensure that no harm came to those members of the public who were in the Mall at the time. They may have overplayed their hands, but it can hardly be said that the conduct of the officers on that occasion merited awards higher than those made by his Honour in the judgment which he delivered.

The appellant is, after all, someone who has determined to make a cause, occupation or profession of pursuing his rights in the Mall in the way he has. He would no doubt, I am sure, be very disappointed if, in doing so he failed to elicit, a reaction from the police on duty there. His own statements attest to that. There is every reason to suppose that the trial Judge's assessment was correct and that it would not be interfered with on appeal, especially having regard to the principles that govern appeals against the amount of damages awarded in cases like this.

This leaves for consideration the discretion to be exercised to grant security for the costs of this appeal. On the appellant's own admission he is completely impecunious; he has no assets of any value; and is a student without, as may fairly be inferred, regular income of any real consequence. He already owes the State some $10,000 in taxed costs arising

from an unsuccessful earlier High Court application for special leave to appeal in a similar matter. And his solicitors in this or other matters of a similar kind have declared in correspondence that they were acting for the plaintiff pro bono and have no fees or assets on which it would be possible for the State to make a claim if costs were awarded in its favour on this appeal.

The appeal is therefore prima facie one in which security for costs should be provided by the appellant to cover the possibility, or probability as I see it, that his appeal will be unsuccessful and that he will be ordered to pay the costs of the respondents to it. The appellant in his written submissions relied on the New South Wales decision in *Bhattacharya v New South Wales* [2002] NSWSC 361, to say that security for costs should not be ordered in cases like this in which questions of the propriety of physical actions against the plaintiff are at issue. In doing so, however, the appellant has made the error common to lay litigants of confusing the attitude and principles on which Courts act in relation to actions at first instance with their attitude and their practice in relation to security for the cost of appeals. In the former case, security is rarely if ever ordered; in the latter, it not infrequently is, especially where as here the appellant's prospects of success are poor, and he has no assets and is already indebted to the respondent for the costs of earlier and similar proceedings.

The appellant's attitude to litigation is sufficiently summed up in his statements, which were exhibited in these proceedings, to the following effect:

> "They will take me to Court and I will be found not guilty and go on trial, when the Magistrate find me guilty I will appeal to a higher Court and then go out and do it again."

On another occasion he said, and one may fully accept this as the spirit in which these activities and actions are being undertaken, "I am having lots of fun - the time of my life"; and that he intends to continue doing so.

In my opinion, this is in the result, an appropriate case in which to order security for costs to be provided by the appellant in the sum of $10,000 as suggested by the respondent, compare *Bell v Bay-Jespersen* [2004] QCA 68.

There will, accordingly, or there ought in my view, to be an order that, until security in the sum of $10,000 for the costs of this appeal, is provided by the appellant in a form agreed by the parties or, in default, determined by the Registrar, proceedings in this appeal should be stayed; or until further order.

THE PRESIDENT: I agree.

This Court has a wide discretion in determining whether or not to grant an application for security for costs. As Justice McPherson has demonstrated the appellant's prospects of success in the appeal are not promising; they concern

discretionary awards for damages and findings of fact which are not lightly overturned on appeal in the main. He is, he admits, impecunious and he has failed to pay other costs orders in other matters made against him in favour of the applicant. The application for security for costs has been made in a timely fashion before the expenditure of further costs and efforts in the preparation of the appeal. All these factors favour the granting of the application for security for costs. I agree with the order proposed by Mr Justice McPherson.

PHILIPPIDES J: I also agree that this is an appropriate case for the granting of an order for security for costs and I agree with the order proposed by Mr Justice McPherson.

THE PRESIDENT: The order is as set out by Mr Justice McPherson.

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