

SUPREME COURT OF QUEENSLAND

CITATION: *Colless v Gayler Cleland Towne & Ors* [2004] QSC 246

PARTIES: **WILLIAM COLLESS**
(Plaintiff)
v
GAYLER CLELAND TOWNE
(First Defendant)
MACDONNELLS
(Second Defendant)
FARRELLYS
(Third Defendant)

FILE NO/S: 39 of 1995

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court, Cairns

DELIVERED ON: 1 July 2004

DELIVERED AT: Cairns

HEARING DATE: 20 June 2004

JUDGE: Jones J

ORDER: **Susan Gail Colless, as Executor and Trustee of the Estate of William Colless be substituted as plaintiff in these proceedings.**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE
QUEENSLAND – PRACTICE UNDER RULES OF COURT
PARTIES– where application filed pursuant to UCPR r 72
(2) for the substitution of the plaintiff party- where
substitution made necessary due to plaintiff’s death – whether
trustee personal representative of a deceased party may be
substituted as the plaintiff in the proceedings

COUNSEL: **Application heard without oral argument**

SOLICITORS: Murphy Schmidt Solicitors for the plaintiff
Lindsay Duffy & Co for the first, second and third defendants

- [1] This is an application pursuant to r 72(2) of the *Uniform Civil Procedure Rules* (“UCPR”) for the substitution of the plaintiff in these proceedings.
- [2] The application is made necessary because of the plaintiff’s death by drowning on 6 February 2004 as appears from the copy Death Certificate (Ex MJTC-01). By his will dated 18 June 2002, the plaintiff appointed his wife Susan Gail Colless to be trustee of his estate.
- [3] Rule 72(2) of UCPR provides expressly that a trustee or personal representative of a deceased party may be substituted as a party in the action.
- [4] I am satisfied in all the circumstances that it is appropriate that the deceased plaintiff’s personal representative be appointed in the circumstances of this case and I so order.

Order:

1. Susan Gail Colless, as Executor and Trustee of the Estate of William Colless be substituted as plaintiff in these proceedings.