

# SUPREME COURT OF QUEENSLAND

CITATION: *Sloane v Yuruga Nursery Pty Ltd & Ors* [2004] QSC 425

PARTIES:

**GEOFFREY WAYNE SLOANE**

(Plaintiff)

v

**YURUGA NURSERY PTY LTD (ACN 10 827 595)**

(Defendant)

**TOLL NORTH PTY LTD (ACN 009 683 452)**

(First Third Party)

**VICKI DIANNA TAYLOR and JONATHAN LIND TAYLOR**

(Second Third Party)

**GARRY DAVID McCLYMONT**

(Third Third Party)

**SUNCORP METWAY INSURANCE LIMITED (ABN 83 075 695 966)**

(Fourth Party)

FILE NO/S: 5123 of 2001

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court in Cairns

DELIVERED ON: 1 December 2004

DELIVERED AT: Cairns

HEARING DATE: 15 July 2003

JUDGE: Jones J

ORDER: **(1) The order for costs made on 23 February 2004 that the first third party pay the costs of and incidental to the fourth party on a standard basis be deleted and in lieu the following order be substituted -**

**“(2) The first third party pay to the fourth party the costs of and incidental to the application for summary judgment up to and including the entering of judgment to be assessed on an indemnity basis and all other costs of and incidental to the fourth party proceedings to be assessed on a standard basis.”**

CATCHWORDS: PROCEDURE – QUEENSLAND – COSTS –DEPARTING FROM THE GENERAL RULE – ORDER FOR COSTS ON INDEMNITY BASIS – Where refusal of an offer of

settlement – where failure to accept offer necessitated the application

COUNSEL: Houston G for the first third party  
Holyoak K for the fourth party

SOLICITORS: K.M Splatt & Associates for the plaintiff  
MacDonnells for the defendant  
McInnes Wilson for the first third party  
Kennedy Spanner for the second third parties  
Ross Mangano for the third third party  
Walsh Halligan Douglas for the fourth party

- [1] In delivering judgment in favour of the fourth party on 23 February 2004, I ordered that the first third party pay the fourth party's costs on the standard basis unless any party submitted that a different order was more appropriate.
- [2] The fourth party has submitted that the order should be varied so that it receives costs on an indemnity basis or, in the alternative, indemnity costs with respect to the application for summary judgment and the balance costs on a standard basis.
- [3] The first third party, despite having been served with the fourth party's submissions, has made no response to them nor has it proposed that the original order should be maintained.
- [4] The plaintiff who appeared on the application but made no submissions seeks an order that costs of the other parties be costs in the cause. As the application did not affect their interests and in circumstances where neither he nor the other third parties made any contribution to the proceedings I am not prepared to make any such general order for costs of other parties.
- [5] The basis upon which the fourth party seeks the variation is that it made a written offer to the first third party on 13 December 2002 to discontinue the fourth party proceedings on the basis of a payment to it of costs on a standard basis. The first third party's refusal to accept this offer led to the making of the application and to the outcome as predicted by the fourth party. The fourth party contends that the fourth party proceedings were doomed to fail in the light of Court of Appeal decisions of which the first third party ought to have been aware.
- [6] Accepting the fact that the offer referred to above was made I find that it ought to have been accepted in the circumstances and that the failure to do so made necessary the application. In these circumstances the costs of making the application ought to be assessed on an indemnity basis with the other costs in the dismissed fourth party proceedings being assessed on a standard basis.

### **Orders**

- [7] (1) I order that the order for costs made on 23 February 2004 that the first third party pay the costs of and incidental to the fourth party on a standard basis be deleted and in lieu the following order be substituted -

“(2) The first third party pay to the fourth party the costs of and incidental to the application for summary judgment up to and

including the entering of judgment to be assessed on an indemnity basis and all other costs of and incidental to the fourth party proceedings to be assessed on a standard basis.”