

SUPREME COURT OF QUEENSLAND

CITATION: *Sanders v Lowrey & Anor* [2006] QSC 264

PARTIES: **DAVID JAMES SANDERS**
(Plaintiff)
v
SEAN LOWREY
(First Defendant)
ALLIANZ AUSTRALIA INSURANCE LIMITED
(ABN 15 000 122 850)

FILE NO/S: 9 of 2006

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court Cairns

DELIVERED ON: 25 August 2006

DELIVERED AT: Cairns

HEARING DATE: 26 May 2006

JUDGE: Jones J

ORDER: **1. The conditional order for costs made on 31 July 2006 is vacated.**
2. The costs of and incidental to the furtherance of the plaintiff's claim in the Supreme Court be costs in the cause.
3. The plaintiff pay the second defendant's costs of and incidental to the application for remitter of the claim to the District Court to be assessed on the standard basis.

CATCHWORDS:

COUNSEL: Mr G Crow for the respondent/plaintiff
Mr M Glen for the applicant/defendant

SOLICITORS:

[1] Having received submissions from both Counsel on the question of costs it is necessary for me to review the conditional order I made on 31 July 2006.

[2] The conditional order was in terms to reflect my view that the plaintiff's claim ought to have been commenced in the District Court in the first instance. Had this been done the application for the remitter from the Supreme Court would have been

unnecessary. I intended the conditional order to apply only to the application to remit the claim to the District Court but its juxtaposition with the primary order has resulted in the order being misleading. I shall state my reasons anew.

- [3] The second defendant has admitted liability for the plaintiff's damages and so the costs orders which will ultimately be made will depend on whether s 55F of the *Motor Accident Insurance Act* 1994 applies and whether the award is more favourable than one or other of the mandatory final offers which the parties are obliged to make under that Act.
- [4] Mr Crow of Counsel for the plaintiff submits that predicting the ultimate order for costs depends on a number of unknown facts and as a consequence any order for costs now should be reserved to the trial judge until the final position is known. He submits further that events may yet result in the plaintiff receiving an award higher than the existing monetary limit of the District Court. Whether there will be an application for a transfer back to the Supreme Court may depend on any change in the District court's jurisdiction or whether the second defendant is prepared to consent to an increase in that monetary jurisdiction. At the other end of the scale if the amount of the damages is \$30,000 or less or indeed, between \$30,000 and \$50,000, then s 57F provides for a very specific approach to the order for costs.
- [5] It is incumbent upon me to deal with the costs which arise in this Court. The costs which advance the plaintiff's claim might sensibly be characterised as costs in the cause. The liability for the payment of such costs will depend on the impacts of the statutory provisions and the comparison of the award of damages to the mandatory final offers. The costs associated with the application for the remitter of the action to the District court is of a different character and it seems to me ought to be disposed of in accordance with the ordinary exercise of my discretion. In this instance that will have the result of costs following the event, namely that the second defendant is entitled to the costs of and incidental to the application for remitter to be assessed on the standard basis.

Orders

- [6] I therefore make the following orders:-

1. The conditional order for costs made on 31 July 2006 is vacated.
2. The costs of and incidental to the furtherance of the plaintiff's claim in the Supreme Court be costs in the cause.
3. The plaintiff pay the second defendant's costs of and incidental to the application for remitter of the claim to the District Court to be assessed on the standard basis.