

SUPREME COURT OF QUEENSLAND

CITATION: *Nu-Log Pty Ltd v Coghlan (No. 2)* [2010] QSC 20

PARTIES: **NU-LOG PTY LTD (ACN 001 420 515)**
Plaintiff
v
SONYA COGHLAN
First Defendant
**THE TRUSTEE OF THE PROPERTY OF
SONYA COGHLAN, A BANKRUPT**
Second Defendant

FILE NO/S: BS 3506 of 2007

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 5 February 2010

DELIVERED AT: Brisbane

HEARING DATE: 27 November 2009

JUDGE: McMurdo J

ORDER: **It will be ordered that the first defendant pay to the plaintiff its costs of and incidental to the proceeding, including reserved costs, if any.**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where plaintiff proved its case and was given judgment – whether plaintiff entitled to costs on the indemnity basis
Nu-Log Pty Ltd v Coghlan [2009] QSC 385

COUNSEL: Mr SC Russell (solicitor) for the plaintiff
No appearance for the defendants

SOLICITORS: Russell and Company for the plaintiff

- [1] The defendants did not appear at the trial of this case. The plaintiff proved its case and was given judgment.¹ I then said that the plaintiff should have its costs, including reserved costs. But costs were sought on the indemnity basis and I reserved that question.
- [2] The submission for the plaintiff was that the first defendant's defence of the proceedings was dishonest, being based on knowingly false pleas and forged documents. It was unnecessary for me to consider those allegations by the plaintiff for the purpose of deciding the case. This was because the defendants did not appear and seek to prove that the first defendant had purchased the items in dispute from the company TIY Manufacturing Pty Ltd. I held that absent proof of that purchase, it should be inferred that the items remained the property of that company until they were sold by it under a contract between the company and the plaintiff made in 2006. Now I am asked to determine whether the first defendant forged documents to endeavour to prove that the company had sold the items to her.
- [3] This is hardly the ideal context in which to consider a case of fraud. I have heard but one side of the story. Of course that is not the fault of the plaintiff. But I am not confident that I have such a complete picture of the facts and circumstances as to be confident of making a public finding of fraud. Moreover, to fully assess the truth of the matters pleaded by the defendant would seem to revisit the conclusion within the judgment, which is that the goods at all times remained the property of the company.
- [4] The plaintiff, like any successful litigant, would prefer to have its costs assessed on the higher basis. But the practical utility of that in the present case is far from apparent, because the first defendant is a bankrupt. For these reasons I am not persuaded to embark upon the factual enquiry which would be necessary for the costs order sought by the plaintiff.
- [5] It will be ordered that the first defendant pay to the plaintiff its costs of and incidental to the proceeding, including reserved costs, if any. It follows that they will be assessed upon the standard basis.

¹ *Nu-Log Pty Ltd v Coghlan* [2009] QSC 385.