SUPREME COURT OF QUEENSLAND

CITATION:	*Peterson v Broadbent & Anor [No 2]* [2011] QSC 149
PARTIES:	**PETERSON, Natalie Isobel** (applicant/plaintiff) **v** **BROADBENT, Michael Russell Mark** (first respondent/first defendant) **ALLAMANDA PRIVATE HOSPITAL PTY LTD** ACN 098 641 564 (second respondent/second defendant)
FILE NO/S:	SC No 10079 of 2008
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	3 June 2011
DELIVERED AT:	Brisbane
HEARING DATES:	9 December 2010 28 January 2011
JUDGE:	Atkinson J
ORDER:	**The applicant pay the second respondent's costs of and incidental to the application to be assessed on a standard basis.**
CATCHWORDS:	PROCEDURE – COSTS – RECOVERY OF COSTS – where the applicant was successful in an application to extend the time to commence proceedings to recover damages for personal injuries against the first respondent but not the second respondent – where the second respondent sought an order for costs against the applicant – whether the applicant should be ordered to pay the second respondent's costs *Limitations of Actions Act* 1974 (Qld), s 31(2) *Uniform Civil Procedure Rules* 1999 (Qld), r 681(1) *Australian Securities Commission v Aust-Home Investments Ltd & Ors* (1993) 116 ALR 523, cited *Baillieu Knight Frank (NSW) Pty Ltd v Ted Manny Real Estate Pty Ltd* (1992) 30 NSWLR 359, cited *Bullock v London General Omnibus Company* [1907] 1 KB 264, cited *Donald Campbell & Co v Pollak* [1927] AC 732, cited *Gould v Vaggelas* (1985) 157 CLR 215, cited
COUNSEL:	G Mullins and B Wessling-Smith for the applicant

SOLICITORS: Maurice Blackburn Lawyers for the applicant
Minter Ellison Lawyers for the second respondent

[1] The applicant, Natalie Isobel Peterson, was successful in an application to extend the time for the commencement of proceedings claiming damages for personal injuries against the first respondent pursuant to s 31(2) of the *Limitations of Actions Act* 1974 (Qld) ("the Act") but unsuccessful in her application against the second respondent.

[2] The judgment was delivered on 18 November 2010 and the parties were invited to make submissions as to costs. The applicant did not seek her costs against the first respondent. The first respondent consented to the order sought by the applicant before hearing on the basis that there would be no order as to costs against him and that should be given effect to by the court.

[3] The second respondent sought an order for costs against the applicant on a standard basis. The applicant submitted that there should be no order for costs in favour of the second respondent. In the alternative she submitted that if costs were awarded in favour of the second respondent, then there should be a "Bullock" order requiring those costs to be paid by the first respondent.

[4] The general rule as to costs in the *Uniform Civil Procedure Rules* 1999 (Qld) ("UCPR") is found in r 681(1) which provides:

> "Costs of a proceeding, including an application in a proceeding, are in the discretion of the court but follow the event, unless the court orders otherwise."

[5] Whilst the discretion to grant costs is unlimited except to the extent set out in the UCPR, it must be exercised judicially: see *Donald Campbell & Co v Pollak* [1927] AC 732 at 811-812; *Australian Securities Commission v Aust-Home Investments Ltd & Ors* (1993) 116 ALR 523 at 528; *Baillieu Knight Frank (NSW) Pty Ltd v Ted Manny Real Estate Pty Ltd* (1992) 30 NSWLR 359 at 362.

[6] The general rule is that costs are ordered on the standard basis:

> "Costs are of course a matter which lies in the discretion of the court. However, that discretion, being a judicial, rather than an unfettered one, must be exercised in accordance with established principle. The usual principle to be applied in inter partes litigation is that costs follow the event, those costs being taxed on a party and party basis."[1]

[7] Notwithstanding the detailed submissions of the applicant as to why that usual order should not apply in this case, I am not satisfied that there is any good reason to depart from the usual rule that the unsuccessful party, the applicant, should pay the costs of the application of the successful party, the second respondent, on a standard basis. Nor am I satisfied that the first respondent should have to bear those costs by way of a "Bullock" order.[2]

[8] The second respondent also applied in the concluding paragraph of its submissions and almost in passing, for the action to be dismissed and for it to have its costs of

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1 *Baillieu Knight Frank (NSW) Pty Ltd v Ted Manny Real Estate Pty Ltd* at 362 per Powell J.

2 See *Bullock v London General Omnibus Company* [1907] 1 KB 264 at 269; *Gould v Vaggelas* (1985) 157 CLR 215 at 247.

the action. This was not an appropriate way to apply for such an order. The applicant will not be able to succeed in her action against the second respondent, not because her case lacks merit, but because the second respondent will be able to plead a limitation defence. In those circumstances, I would give leave to the applicant to file a notice of discontinuance against the second respondent without any further costs order being made against her so that the litigation against the second respondent can be finalised.

Conclusion

[9] I order the applicant to pay the second respondent's costs of and incidental to the application to be assessed on a standard basis.