

SUPREME COURT OF QUEENSLAND

CITATION: *Julia Creek Town and Country Club Inc v Littlejohn* [2012] QCA 46

PARTIES: **JULIA CREEK TOWN AND COUNTRY CLUB INC**
(appellant)
v
SONIA IVY LITTLEJOHN
(respondent)

FILE NO/S: Appeal No 6303 of 2011
DC No 237 of 2011

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Orders

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: 13 March 2012

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Chief Justice, Muir JA and Atkinson J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

FURTHER ORDERS:

- 1. That the appeal be dismissed;**
- 2. That the determination of the District Court at Townsville be accepted in whole;**
- 3. That there be judgment for the respondent against the appellant in the amount of \$169,479.57;**
- 4. That the appellant pay to the respondent:**
 - (a) her costs of the proceeding at first instance, including the costs of and incidental to the trial in the Supreme Court at Townsville, to be assessed as if the proceeding had been commenced in the District Court;**
 - (b) her costs of the determination in the District Court at Townsville, to be assessed as if the proceeding had been commenced in the District Court; and**
 - (c) her costs of the appeal to this court, including the costs reserved by Margaret Wilson AJA on 27 September 2011;**

all such costs to be assessed on the indemnity basis;

5. **That the monies paid into court by the appellant as security for costs pursuant to the order of Margaret Wilson AJA made on 27 September 2011, together with accretions if any, be paid out to the solicitors for the respondent.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where first trial determined in favour of respondent – where first determination set aside on appeal and remitted – where second trial determined in favour of respondent – where second determination upheld on appeal – where offers to settle made to respondent, including one to pay indemnity costs for second trial – whether appellant should pay indemnity costs for the trials – whether appellant should pay indemnity costs for second appeal

APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – ASSESSMENT OF DAMAGES – where first trial determined in favour of respondent – where first determination set aside on appeal and remitted – where second trial determined in favour of respondent – where second determination upheld on appeal – whether damages awarded should be increased to reflect loss of interest between first determination in respondent’s favour and the final determination in the respondent’s favour

Supreme Court Act 1995 (Qld), s 48(1)

Uniform Civil Procedure Rules 1999 (Qld), r 360

COUNSEL: No appearance by the appellant, the appellant’s submissions were heard on the papers
No appearance by the respondent, the respondent’s submissions were heard on the papers

SOLICITORS: Connolly Suthers for the appellant
Turner Freeman for the respondent

- [1] **CHIEF JUSTICE:** These reasons concern the orders which should be made in consequence of the reasons for judgment published in the proceeding on 21 February 2012.

Amount of judgment

- [2] The amount of the judgment given in the Supreme Court proceeding on 29 June 2010 was on 23 July 2010 amended under the “slip rule” from \$160,705.68 to \$171,249.45.
- [3] The judgment of the Court of Appeal in the first appeal operated to set aside all of the judgment given in the Supreme Court at the first trial: that is common ground between the parties. The operative judgment must now be entered in this proceeding (*Rogers v Brambles Australia Ltd* [1998] 1 Qd R 212) with interest

under s 48(1) of the *Supreme Court Act* 1995 calculable only from the date of that judgment.

- [4] The amount of the judgment should however be increased to account for the period which has elapsed since the date of the original trial judgment. The calculation of that interest is regulated by the *Civil Liability Act* 2003, in its terms then applying, in relation to the components of gratuitous services, past care and assistance and special damages in particular.
- [5] Accepting the calculation advanced for the respondent in Counsel's outline dated 6 March 2012, leads to judgment to be entered now in the amount of \$169,479.57. The appellant agrees with judgment in that amount.

Costs of first instance judgments

- [6] The disposition of these costs is influenced by three offers served by the respondent after the first trial, and not accepted by the appellant: on 23 December 2010, to accept \$135,000 plus costs; on 24 May 2011, to accept \$120,000 plus costs; and on 27 June 2011, in relation to costs, to accept a position where the appellant would pay the respondent's costs of the first trial on the standard basis on the District Court scale with allowance for one counsel, and pay the respondent's costs of the second trial on an indemnity basis.
- [7] The respondent invokes Rule 360 of the *Uniform Civil Procedure Rules*. There is no reason to depart from the primary intent underlying that rule.
- [8] The appellant contends that the costs awarded in relation to the first trial should be assessed on the standard basis (for the reasons expressed by Cullinane J on 23 July 2010), and limited to 50 per cent (because of wastage, where the findings as to liability was overturned).
- [9] The appellant was protected in relation to the latter aspect by the order as to costs made on the appeal. As to the former, the terrain changed with the respondent's offer to settle of 27 June 2011, which covered all questions of costs. The appellants not having accepted that offer, there is no reason why the respondent should not now be fully indemnified.
- [10] There should therefore be an order that the appellant pay the respondent's costs of the proceeding (including the costs of the trial before the Supreme Court at Townsville and of the determination of the District Court at Townsville, though exclusive of costs incurred on appeal), to be assessed on the indemnity basis.

Costs of appeals

- [11] The costs of the first appeal have already been the subject of orders.
- [12] The costs of this unsuccessful second appeal should, in light of the overall history of the proceeding, be paid on the indemnity basis. The appellant accepts the appropriateness of such an order.

Orders

- [13] There should be orders:

1. that the appeal be dismissed;
2. that the determination of the District Court at Townsville be accepted in whole;
3. that there be judgment for the respondent against the appellant in the amount of \$169,479.57;
4. that the appellant pay to the respondent:
 - (a) her costs of the proceeding at first instance, including the costs of and incidental to the trial in the Supreme Court at Townsville, to be assessed as if the proceeding had been commenced in the District Court;
 - (b) her costs of the determination in the District Court at Townsville, to be assessed as if the proceeding had been commenced in the District Court; and
 - (c) her costs of the appeal to this court, including the costs reserved by Margaret Wilson AJA on 27 September 2011;all such costs to be assessed on the indemnity basis;
5. that the monies paid into court by the appellant as security for costs pursuant to the order of Margaret Wilson AJA made on 27 September 2011, together with accretions if any, be paid out to the solicitors for the respondent.

[14] **MUIR JA:** I agree with the orders proposed by the Chief Justice.

[15] **ATKINSON J:** I agree with the orders proposed by and the reasons of the Chief Justice.