

SUPREME COURT OF QUEENSLAND

CITATION: *Kidd v Toll North Pty Ltd* [2012] QSC 220

PARTIES: **COLIN MUIR KIDD**
(applicant)
v
TOLL NORTH PTY LTD (ACN 009 683 452)
(respondent)

FILE NO: 6709 of 2012

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Brisbane

DELIVERED ON: 16 August 2012

DELIVERED AT: Brisbane

HEARING DATE: 7 August 2012

JUDGE: Peter Lyons J

ORDER: **1. The respondent pay one-half of the applicant's costs of the application.**

CATCHWORDS: COSTS – Power to Award – claim for damages for industrial accident – pre-litigation procedure – application to enforce obligations – whether restriction on costs applicable

Workers' Compensation and Rehabilitation Act 2003 (Qld), s 279, 315, 316, 318A, 318C

Woolworths Limited v Rodionov [2011] QDC 169, considered

COUNSEL: G Cross for the applicant
R Morton for the respondent

SOLICITORS: Col Patino Lawyers for the applicant
MVM for the respondent

- [1] In an application which came before me on 7 August 2012, I held that the respondent was required by s 279 of the *Workers' Compensation and Rehabilitation Act 2003 (Qld)* (WCRA) to answer a number of requests for information; but that in respect of others, the application was premature. I indicated that I was minded to make an order that the respondent pay one-half of the applicant's costs of the application. A question was then raised about limitations on the court's powers to order costs in such circumstances.

- [2] It was common ground that the relevant provisions of the WCRA were those found in Reprint No 6A. It is convenient to set out the following provisions from Division 2 of Part 12 of Chapter 5:

“315 Application of div 2

This division applies if the claimant is a worker who has a WRI of less than 20% or no WRI.”

“316 Principles about orders as to costs

- (1) No order about costs, other than an order allowed under this section, is to be made by the court in the claimant’s proceeding.
- (2) If a claimant or an insurer makes a written final offer of settlement that is refused, the court must, in the following circumstances, make the order about costs provided for—
 - (a) if the court later awards an amount of damages to the worker that is equal to or more than the worker’s written final offer—an order that the insurer pay the worker’s costs on the standard basis from the day of the written final offer;
 - (b) if the court later dismisses the worker’s claim, makes no award of damages or awards an amount of damages that is equal to or less than the insurer’s written final offer—an order that the worker pay the insurer’s costs on the standard basis from the day of the final offer.
- (3) If an award of damages is less than the claimant’s written final offer but more than the insurer’s written final offer, each party bears the party’s own costs.”

- [3] The following provisions from Division 3 of Part 12 of Chapter 5 are also relevant:

“318A General application of costs provisions in part

- (1) A court may make no order about costs to which division 1, 2 or 2A applies except the orders for costs provided for in the division.
- (2) Subsection (1) applies subject to this division.”

“318C Costs order under div 2 for an interlocutory application

An order about costs for an interlocutory application may be made under division 2 only if the court is satisfied that the application has been brought because of unreasonable delay by 1 of the parties.”

- [4] The applicant has made a claim for compensation under the WCRA. His WRI is less than 20 per cent. He has not yet commenced an action in a court to recover damages. Rather, pre-court procedures prescribed by the Act are under way.

- [5] For the respondent, it was submitted that the court has power to award costs in a case like the present case, only where the application has been brought because of unreasonable delay, by virtue of s 318C. The submission proceeds on the basis that the application is interlocutory. The applicant submits that s 318C does not apply to the present application.
- [6] In my view, s 318C is a further qualification on the power of the court to make an order for costs under Division 2 of Part 12 of Chapter 5. Effectively, therefore it is a qualification on the power of the court to make an order for costs, otherwise controlled by s 316 of the WCRA. Section 316 is concerned with an order for costs “in the claimant’s proceeding”; and specifies in what circumstances an order for costs may be made in favour of the claimant, the insurer, or neither. Because s 318C is a qualification of the court’s power to order costs in the claimant’s proceedings, in my view, it applies only to an interlocutory application in such proceedings. There being no such proceedings on foot, the qualification does not apply.
- [7] The question which I have had to determine was also considered by McGill DCJ in *Woolworths Limited v Rodionov*.¹ I understand his Honour’s reasoning to be to similar to that set out above.
- [8] Accordingly, I am of the view that the power to make an order for costs in the present application is not constrained by s 318C of the WCRA and I propose to make the order for costs previously indicated.

¹ [2011] QDC 169.