

SUPREME COURT OF QUEENSLAND

CITATION: *Meridien AB Pty Ltd & Anor v Jackson & Ors* [2013] QCA 170

PARTIES: **MERIDIEN AB PTY LTD**
ACN 101 370 772
(first appellant)
MERIDIEN AIRLIE BEACH PTY LTD
ACN 101 370 763
(second appellant)
v
RAYMOND JOHN JACKSON as trustee for the
JACKSON FAMILY TRUST
(first respondent)
HORSESHOE (WA) PTY LTD as trustee for the **SAD TRUST**
(second respondent)
RAYMOND JOHN JACKSON
(third respondent)
SUZANNE LOUISE TEDESCO
(fourth respondent)
DARRYL ADRIAN TEDESCO
(fifth respondent)

FILE NO/S: Appeal No 8766 of 2012
SC No 5714 of 2011

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 24 June 2013

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Margaret McMurdo P and Muir JA and Atkinson J
Judgment of the Court

ORDER: **The applicants be granted an indemnity certificate under s 15 of the *Appeal Costs Fund Act 1973 (Qld)* with respect to the costs ordered to be paid by the applicants and with respect to their own costs of the appeal.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN GRANTED – where the appellants’ appeal was allowed with costs – where the applicants (who were the

respondents on appeal) acted reasonably in seeking to uphold the carefully reasoned decision of the primary judge – where the applicants seek an indemnity certificate under the *Appeal Costs Fund Act 1973 (Qld)* – whether the applicants should be granted an indemnity certificate

Appeal Costs Fund Act 1973 (Qld), s 15

Lauchlan v Hartley [1980] Qd R 149, cited

COUNSEL: No appearance by the appellants
No appearance by the respondents, the respondents' submissions were heard on the papers

SOLICITORS: HopgoodGanim for the appellants
Macrossan & Amiet Solicitors for the respondents

- [1] **THE COURT:** The applicants were the unsuccessful respondents to an appeal from the decision of a judge of the trial division of this Court dismissing the appellants' claim. In the claim the appellants sought, *inter alia*, specific performance of a contract of sale of an apartment, payment of the balance purchase price and damages for breach of contract. The central issues for determination on the trial, and on appeal, were:
1. whether, on the proper construction of s 27 of the *Land Sales Act 1984* (the Act), a purchaser who wrongfully refuses to attend settlement and receive a registrable instrument of transfer obtains a right to avoid the contract; and
 2. whether the applicants, by their conduct, waived any right to avoid the contract or are estopped from relying on any such right.
- [2] The primary judge answered these questions in favour of the applicants. This Court answered the first question in favour of the appellants and found it unnecessary to answer the second question. This Court found that s 27 of the Act was ambiguously worded and that, despite its relatively plain language, it could not be read literally. The answer to the construction question was by no means obvious. The applicants acted reasonably in seeking to uphold the carefully reasoned decision of the primary judge. Although s 27 has now been amended in order to provide greater certainty of meaning, the decision of this Court may well provide greater certainty to a number of other unit purchases.
- [3] In the circumstances, the exercise of the discretion under s 15 of the *Appeal Costs Fund Act 1973* is enlivened¹ and this is an appropriate case in which to grant a certificate.
- [4] Accordingly, it is ordered that the applicants be granted an indemnity certificate under s 15 of the *Appeal Costs Fund Act 1973* with respect to the costs ordered to be paid by the applicants and with respect to their own costs of the appeal.

¹ *Lauchlan v Hartley* [1980] Qd R 149.