

SUPREME COURT OF QUEENSLAND

CITATION: *Endeavour Foundation v Weaver* [2014] QCA 6

PARTIES: **ENDEAVOUR FOUNDATION**
ACN 009 670 704
(appellant)
v
CHRISTINE ANNE WEAVER
(respondent)

FILE NO/S: Appeal No 4239 of 2013
SC No 552 of 2012

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Rockhampton

DELIVERED ON: 7 February 2014

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Holmes and Fraser JJA and Margaret Wilson J
Judgment of the Court

ORDER: **The application for an indemnity certificate is refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where applicant unsuccessful respondent on appeal against judgment for damages for personal injuries – where applicant sought an indemnity certificate on the basis that the appellant succeeded on a question of law – where applicant at first instance sought the findings found to be erroneous on appeal – whether appellant succeeded on a question of law – whether discretion was enlivened – whether there were in any event grounds for a favourable exercise of discretion
Appeal Costs Fund Act 1973 (Qld), s 15

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

SOLICITORS: MVM Legal for the appellant
Macrossan & Amiet Solicitors for the respondent

- [1] **THE COURT:** On 10 December 2013, this court set aside a judgment for damages for personal injuries given in favour of the respondent, Mrs Weaver. She now applies for an indemnity certificate pursuant to s 15 of the *Appeal Costs Fund Act 1973* (Qld), which provides:

“15 Grant of indemnity certificate

(1) Where an appeal against the decision of a court—

(a) to the Supreme Court;

...

on a question of law succeeds, the Supreme Court may, upon application made in that behalf, grant to any respondent to the appeal an indemnity certificate in respect of the appeal...”

It may be seen that the appeal’s success on a question of law is a statutory pre-condition to the exercise of any discretion; but fact of the appeal’s success on a question of law will not necessarily result in a favourable exercise of discretion.

- [2] Mrs Weaver was an employee of the appellant Endeavour Foundation, and had been injured when demonstrating a particular physical manoeuvre which staff were taught as a means of avoiding workplace attack by clients. The trial judge found the Endeavour Foundation liable on the basis that it had instructed Mrs Weaver to perform the manoeuvre quickly. The appeal was allowed on the grounds that his Honour had made findings not supported by the evidence as to the nature of the instruction given, its advantages, and the intention that it be practised by employees, resulting in an erroneous conclusion that it was unreasonable.
- [3] This Court’s conclusions on those issues did not depend on the determination of any question of law. The pre-condition for the exercise of the discretion under s 15(1) has thus not been established. In any event, the findings his Honour made were sought by Mrs Weaver at first instance, so it is not obvious that, had the discretion been enlivened, there would be any basis for its exercise in her favour.
- [4] The application for an indemnity certificate is refused.