

SUPREME COURT OF QUEENSLAND

CITATION: *Yolla Holdings Pty Ltd v Aion Corporation Pty Ltd & Anor*
[2014] QCA 156

PARTIES: **YOLLA HOLDINGS PTY LTD**
ACN 138 802 829
(appellant)
v
AION CORPORATION PTY LTD
ACN 136 497 731
(first respondent)
**HOPE ISLAND RESORT PRIMARY
THOROUGHFARE BODY CORPORATE**
(second respondent)

FILE NO/S: Appeal No 8047 of 2013
SC No 6834 of 2012

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 27 June 2014

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Chief Justice and Fraser and Gotterson JJA
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **The first respondent be granted an indemnity certificate in respect of the appeal pursuant to s 15(1) of the *Appeal Costs Fund Act 1973 (Qld)*.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN GRANTED – where the appellant’s appeal was allowed with costs – where the appeal turned on a statutory construction issue and the Court found that views about the proper construction of the relevant provision might reasonably differ – whether the first respondent should be granted an indemnity certificate

Appeal Costs Fund Act 1973 (Qld), s 15
Lauchlan v Hartley [1980] Qd R 149, cited
Meridien AB Pty Ltd & Anor v Jackson & Ors [\[2013\] QCA 170](#), cited

COUNSEL: No appearance for the appellant
 No appearance for the first respondent, the first respondent's submissions were heard on the papers
 No appearance for the second respondent

SOLICITORS: Baxters Solicitors for the appellant
 H W Litigation for the first respondent
 No appearance for the second respondent

- [1] **CHIEF JUSTICE:** I have read the reasons for judgment of Fraser JA. I agree with the proposed order, and those reasons.
- [2] **FRASER JA:** Earlier this month, the Court allowed an appeal against a declaration that certain land was “primary thoroughfare” within the meaning of s 33 of the *Integrated Resort Development Act 1987* (Qld) and the appellant was the registered proprietor of that land: *Yolla Holdings Pty Ltd v Aion Corporation Pty Ltd & Anor* [2014] QCA 137. The first respondent was ordered to pay the appellant's costs of the appeal. The first respondent has now applied for the grant of an indemnity certificate in respect of the appeal pursuant to s 15(1) of the *Appeal Costs Fund Act 1973* (Qld).
- [3] In allowing the appeal, the Court found that, whilst the construction preferred by the primary judge should not be accepted, views about the proper construction of the relevant provisions might reasonably differ: [2014] QCA 137 at [40]. It is evident from those reasons and the reasons of the primary judge that the proper construction of the relevant provisions called for a “nice balancing of competing considerations so that the opposing views may properly be regarded as fairly arguable”: *Lauchlan v Hartley* [1980] Qd R 149 at 151. In these circumstances, the discretion to grant an indemnity certificate is enlivened: see *Lauchlan v Hartley* and *Meridien AB Pty Ltd & Anor v Jackson & Ors* [2013] QCA 170 at [2].
- [4] I would order that the first respondent be granted an indemnity certificate in respect of the appeal pursuant to s 15(1) of the *Appeal Costs Fund Act 1973* (Qld).
- [5] **GOTTERSON JA:** I agree with the order proposed by Fraser JA and with the reasons given by his Honour.