

# SUPREME COURT OF QUEENSLAND

CITATION: *Kinsella v Gold Coast City Council (No 2)* [2014] QSC 181

PARTIES: **HELEN BARBARA and PETER LOUIS KINSELLA**  
(Plaintiffs)  
v  
**GOLD COAST CITY COUNCIL**  
(Defendant)

FILE NO/S: BS 5010 of 2013

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 11 August 2014

DELIVERED AT: Brisbane

HEARING DATE: Written submissions

JUDGE: Philip McMurdo J

ORDER: **It is ordered that the defendant pay 75 per cent of the plaintiffs' costs of the application decided by the judgment on 16 April 2014.**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE- COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where the plaintiffs were substantially successful in defending a strike out application – whether costs should follow the event, and if so, in what proportion should the defendant be ordered to pay the plaintiff's costs.

*Kinsella v Gold Coast City Council* [2014] QSC 65.

COUNSEL: D Kelly QC, with D P O'Brien QC, for the plaintiffs  
P Flanagan QC, with B T Porter, for the defendant

SOLICITORS: Shine Lawyers for the plaintiffs  
Clayton Utz for the defendant

[1] In an earlier judgment, I struck out some paragraphs of the amended statement of claim but declined to strike out the remainder.<sup>1</sup> This is my decision on the costs of that application.

[2] The substantial debate in this application was whether the proceeding was one which the plaintiffs were able to bring in a representative capacity pursuant to *Uniform Civil Procedure Rules* r 75. That was resolved in the plaintiffs' favour,

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<sup>1</sup> *Kinsella v Gold Coast City Council* [2014] QSC 65.

except in respect of their claim for damages for nuisance. The argument on that cause of action was relatively short. Overall, it must be concluded that the plaintiffs were much more successful and that must be reflected in the order for costs.

- [3] The plaintiffs concede that some allowance should be made for the outcome on the nuisance case. They submit that the defendant should pay 80 per cent of their costs. The defendant argues that the appropriate order should be that the costs be each party's costs in the proceedings, or alternatively, that they bear their own costs. A further possibility suggested by the defendant is that the costs be reserved. The defendant suggests that the outcome in relation to the nuisance claim is more significant than the plaintiffs' argument would suggest. It is said that the striking out of that cause of action will simplify the proceeding to "one focussing on the negligence claims". I accept that it will remove some of the complexity of the proceedings but not so as to simplify them.
- [4] The defendant further argues that not every submission for the plaintiffs was accepted in my reasoning that the negligence claims could be brought on a representative basis. That is a correct observation but it is relatively unimportant in the present context. What is important is that the plaintiffs did succeed in defending most of their case against an application for summary dismissal.
- [5] The defendant also submits that it was appropriate for it to bring the proceedings at an early stage but that there is a real prospect that the case will not continue as a representative proceeding, as I noted in the reasons.<sup>2</sup> On those submissions, it was suggested that the costs might be reserved.
- [6] In my conclusion, the question of costs can now be determined fairly. The plaintiffs' substantial success should result in some order for costs in their favour. The defendant will be ordered to pay 75 per cent of the plaintiffs' costs of the application decided by my judgment on 16 April 2014.

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<sup>2</sup> Ibid at [80].