

# SUPREME COURT OF QUEENSLAND

CITATION: *Byrne v People Resourcing (Qld) Pty Ltd & Ors* [2015] QSC 040

PARTIES: **NICHOLAS GORDON BYRNE**  
(plaintiff)  
v  
**PEOPLE RESOURCING (QLD) PTY LTD**  
**(ABN 78 131 732 888)**  
(first defendant)  
and  
**THIESS JOHN HOLLAND**  
**(ABN 17 438 477 568)**  
(second defendant)  
  
**THIESS JOHN HOLLAND**  
**(ABN 17 438 477 568)**  
(plaintiff by counterclaim)  
v  
**PEOPLE RESOURCING (QLD) PTY LTD**  
**(ABN 78 131 732 888)**  
(first defendant by counterclaim)  
and  
**WORKCOVER QUEENSLAND**  
(second defendant by counterclaim)  
and  
**NICHOLAS GORDON BYRNE**  
(third defendant by counterclaim)

FILE NO/S: 7001 of 2012

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 4 March 2015

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Carmody CJ

ORDER: **Orders as per the signed draft dated 8 January 2015.**

CATCHWORDS: PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – NATURE OF PROCEEDINGS – UNNECESSARY PROCEEDINGS – where parties failed to resolve issues prior to pre-trial hearings – where costs were unnecessarily incurred by underestimating the time required to resolve an application – where successful party claims

costs for the whole action

*Uniform Civil Procedure Rules 1999 (Qld)*, r 681

COUNSEL: R M Treston QC for the first defendant, first defendant by counterclaim.  
D Schneidewin for the second defendant, plaintiff by counterclaim.  
K Holyoak for the second defendant by counterclaim.

SOLICITORS: MacDonnells Lawyers for the first defendant, first defendant by counterclaim  
Barry Nilsson for the second defendant, plaintiff by counterclaim  
Kaden Borris for the second defendant by counterclaim.

- [1] The plaintiff by counterclaim (“TJH”) seeks orders that the second defendant by counterclaim (“WorkCover”) pay costs of the counterclaim, including all reserved pre-trial costs, to be assessed on the standard basis.
- [2] WorkCover opposes the proposed orders insofar as they relate to reserved costs, and asks for a no costs order in respect of the pretrial applications dismissed by Byrne SJA on 21 February 2014 and Applegarth J on 13 March 2014 on the basis of the assertion that they were both premature or unnecessary and, ultimately, time wasting. The application before Byrne SJA resulted in the indemnity issue being transferred from the applications list to the civil list due to TJH’s own late estimate that it would take more than two hours to argue. Liability for costs in the proceeding before Applegarth J on 11 March 2014 is contested because the questions submitted for preliminary determination depended on the resolution of certain assumed, but disputed, (and thus hypothetical) facts, making a separate trial procedure inappropriate.<sup>1</sup>
- [3] TJH asserts in its outline that WorkCover “sat on its hands” on the preliminary determination issue leading up to the hearing by Applegarth J,<sup>2</sup> and that the judgement of Applegarth J precipitated the resolution “of all issues in the proceeding” (excepting the contractual indemnity issue).<sup>3</sup> It contends that these factors justify the award of costs in relation to each of those proceedings. It asserts at [32] that the disputed costs were thrown away solely because of WorkCover’s refusal or failure to make relevant admissions about liability and indemnification.
- [4] The disputed costs appear to me to have been wasted for the reason WorkCover contends. The central issue raised by the counterclaim – the scope of WorkCover’s indemnity – was of general importance to workers and employers in Queensland. While all parties say they wanted that legal issue disposed of without a trial, they did not cooperate sufficiently to put the court in a position to do so. Regardless of

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<sup>1</sup> Submissions on behalf of WorkCover Queensland as to the form of order and costs (filed by leave on 4 March 2015) at [11] citing *Byrne v People Resourcing (Qld) Pty Ltd* [2014] QSC 039 at [3]-[8], [22]-[29].

<sup>2</sup> Outline of the plaintiff by counterclaim as to final orders and costs (filed by leave on 4 March 2015) at [24]-[26].

<sup>3</sup> *Ibid* at [27].

whose “fault” it was that the pre-trial proceedings proved not to be fully productive, the fact is that the admissions and amendments to the pleadings necessary for the court to proceed to determination without trial were not made when they could and should have been. They should have been abandoned if resolution was not possible. Pressing on regardless should not be rewarded.

- [5] Accordingly each party should bear its own costs of the applications before Byrne SJA and Applegarth J. The *Uniform Civil Procedure Rules* 1999 r 681 discretion to apportion costs is not exercised in respect of those proceedings.
- [6] Orders as per the signed draft dated 8 January 2015.