

# SUPREME COURT OF QUEENSLAND

CITATION: *Lee v Abedian & Ors (No 2)* [2016] QSC 114

PARTIES: **MARCUS RAMON LEE**  
(plaintiff)

v

**SOHEIL ABEDIAN**  
(first defendant)

**DAVID SCOTT BROWN**  
(second defendant)

**RONALD JOHN EAMES**  
(third defendant)

**PAUL EDWARD BAXTER, RODNEY GRAEME BESLEY, ANTHONY JAMES BUTLER, PHILIP JOHN BYRNES, DREW ANTHONY CASTLEY, ANTHONY JAMES CONAGHAN, BENTLEY SEAN COOGAN, JAMES BUCHANAN DANIEL, PHILIP BRIAN DOWLING, JAMES PATRICK FEEHELY, ANDREW ROBERTSON FORBES, EUGENE YUK-KWAN FUNG, ALISON BERESFORD HALY, ANDREW JAMES KELLY, MICHAEL FINDLAY MARSHALL, MARTIN DENNIS McENIERY, SAMANTHA JANE O'BRIEN, CHRISTOPHER JOHN O'SHEA, ROGER WILLIAM QUICK, SEAN ANTHONY SULLIVAN, LAWRENCE NEIL WARD**  
(fourth defendants)

**SUNLAND GROUP LIMITED**  
(fifth defendant)

FILE NO/S: SC No 982 of 2015

DIVISION: Trial Division

PROCEEDING: Application for Costs

DELIVERED ON: 30 May 2016

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: Bond J

ORDER: **The order of the Court is that the plaintiff pay the first, second, third and fifth defendants' costs of the amended application filed 4 June 2015.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – where first, second, third and fifth defendant's application for strike out was adjourned – where plaintiff subsequently filed amended pleadings – where first, second, third and fifth defendants successful in

application to strike out certain paragraphs of the amended pleadings – whether the plaintiff should pay the costs of the adjourned application

*Lee v Abedian & Ors* [2016] QSC 92, cited

COUNSEL: W Sofronoff QC, with M A Hoch, for the plaintiff  
S L Doyle QC, with S J Webster, for the first, second, third and fifth defendants

SOLICITORS: Shand Taylor Lawyers for the plaintiff  
Holding Redlich for the first, second, third and fifth defendants

- [1] My judgment delivered on 28 April 2016<sup>1</sup> dealt with strike out applications by –
- (a) the fourth defendants; and
  - (b) the first, second, third and fifth defendants.
- [2] On the application by the fourth defendants filed 26 October 2015, I ordered:
- (a) the claim against the fourth defendants is struck out; and
  - (b) the plaintiff pay the fourth defendants' costs of the proceeding.
- [3] The plaintiff has since delivered written submissions indicating that he accepts that the latter order included the costs of the application filed 26 October 2015.
- [4] On the application by the first, second, third and fifth defendants, I ordered:
- (a) the plaintiff's claim in negligence against the third defendant and paragraphs 86 to 93 of the statement of claim are struck out;
  - (b) the following paragraphs of the statement of claim are struck out, with leave to re-plead:
    - (i) paragraphs 80 to 85;
    - (ii) paragraphs 94 to 105;
    - (iii) paragraph 8(d); and
    - (iv) paragraphs 29 and 49;
  - (c) paragraphs 61 and 62 of the statement of claim are struck out;
  - (d) the plaintiff pay the first, second, third and fifth defendants' costs of the third amended application filed 28 October 2015.
- [5] I wrote that I would hear the parties on whether I should make, as the first, second, third and fifth defendants had sought, a specific order that the plaintiff pay their costs of the amended application filed 4 June 2015 which was set down for hearing on 11 June 2015.
- [6] I have received written submissions from both sides on that question. The parties agreed that I should determine it on the papers. I do so below.
- [7] The amended application filed 4 June 2015 was set down for hearing on 11 June 2015 with an estimate of 1.5 hours. It was to be heard with the fourth defendant's strike out application, which was listed for hearing on the same date, with an estimate of 2 hours. The plaintiff

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<sup>1</sup> *Lee v Abedian & Ors* [2016] QSC 92.

submitted (and this was not disputed by the first, second, third and fifth defendants) that the combined estimate was revised downwards at the callover of the applications list on 11 June 2015 to 3 hours.

- [8] On 11 June 2015, I received and reviewed written submissions from the parties. I formed the view that it could not be dealt with on the applications list that day and so informed the parties. I allocated a full day for the hearing and made directions for the delivery of any further amendments to the statement of claim and excusing the defendants from filing of a notice of intention to defend. The plaintiff subsequently made substantial amendments to the statement of claim on 4 August 2015.
- [9] Although the plaintiff acknowledged that subsequent to the amended application being filed, he delivered an amended pleading, he submitted that this was not the cause of the adjournment on 11 June 2015. He submitted that adjournment occurred because there was a full list and the time estimates were too low. He submitted that the costs of the amended application filed 4 June 2015 which was set down for hearing on 11 June 2015 should be the parties' costs in the proceeding.
- [10] For their part, the first, second, third and fifth defendants submitted that –
- (a) their costs of the amended application filed 4 June 2015 were incurred as a result of their having properly advanced a challenge to a defective pleading;
  - (b) the costs of the day on 11 June 2015 were incurred because the plaintiff elected to resist the strike out application up until the adjournment despite recognising that extensive amendments were necessary, which amendments ultimately did not cure many of the defects in the pleading; and
  - (c) they should have their costs.
- [11] I agree. The costs of the amended application should be regarded as having been occasioned by the delivery of a pleading which after the adjournment the plaintiff concluded he would not seek to support, but rather would replace with a pleading which was itself defective in the ways my earlier judgment found. Having at all times resisted the applications to strike out advanced by the first, second, third and fifth defendants, the plaintiff cannot now resist an order that he pay their costs.
- [12] The result is that the first, second, third and fifth defendants will have two costs orders in their favour. Of course, the plaintiff should not be required to pay twice for work which only reasonably should have been done once, but that is a matter for the costs assessment process.
- [13] I order the plaintiff pay the first, second, third and fifth defendants' costs of the amended application filed 4 June 2015 which was set down for hearing on 11 June 2015.