

SUPREME COURT OF QUEENSLAND

CITATION: *Campbell v Jones & Anor* [2002] QCA 375

PARTIES: **KELLY ANNE CAMPBELL**
(plaintiff/respondent)
v
DAVID SAMUEL JONES
(first defendant)
**AUSTRALIAN ASSOCIATED MOTOR INSURERS
LIMITED ACN 004 791 744**
(second defendant/appellant)

FILE NO/S: Appeal No 11496 of 2001
SC No 30 of 2001

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Mackay

DELIVERED ON: Judgment delivered 3 September 2002
Further Order delivered 24 September 2002

DELIVERED AT: Brisbane

HEARING DATE: 16 April 2002

JUDGES: McMurdo P, Fryberg and Mullins JJ
Judgment of the Court

ORDER: **No further order**

CATCHWORDS: PROCEDURE – QUEENSLAND – PRACTICE UNDER
RULES OF COURT – OTHER MATTERS - where
solicitors' firm representing respondent failed to comply with
Uniform Civil Procedure Rules 1999 relating to the provision
to the defendant of a supplementary statement of loss or
statements of witnesses – where failure to comply led to the
reduction of the respondent's damages by \$7,500 – where
solicitors' firm offered and respondent accepted payment of
\$7,500 and to meet the costs and outlays of both sides of the
appeal and to accept the standard costs recovered from the
defendant for the trial as full satisfaction of what is owing for
the trial – where firm undertook to court it would fully
comply with the offer – where no further order called for

In re Foster (1950) 67 WN(NSW) 122, considered

COUNSEL: J S Douglas QC, with M A Drew, for the appellant
D V C McMeekin SC for the respondent

SOLICITORS: S R Wallace & Wallace for the appellant
Macrossan & Amiet for the respondent

- [1] **THE COURT:** When the Court delivered judgment on the substantive issues in this appeal on 3 September 2002, it ordered that the solicitors for the respondent have leave to file submissions and/or affidavits as they might be advised, and adjourned the question of any order in relation to those solicitors for further consideration. Pursuant to that leave two affidavits have been filed, one sworn by Darren Ian Sekac, the member of the firm having the carriage of the matter, and the other by Gene Christopher Paterson, the managing partner of the firm. The respondent Ms Campbell has been referred to and engaged other solicitors to advise her. She has consented to the disclosure to the Court of confidential advice and other matters relating to her file.
- [2] The circumstances giving rise to that order are set out in the reasons for judgment of Fryberg and Mullins JJ. There is no need to repeat them. Both solicitors now acknowledge the firm's failure to comply with the rules relating to the provision to the defendant of a supplementary statement of loss and damage and statements of witnesses (or a memo of their evidence). Mr Paterson has counselled Mr Sekac about these matters. He has written to the Queensland Law Society and provided it with copies of the judgment and the affidavits. He has made arrangements to put into place procedures for the review of estimates and descriptions of work in Client Agreements. All of these are proper steps in the circumstances.
- [3] Most importantly, the firm has accepted that its failure to comply with the *Uniform Civil Procedure Rules* has led to the reduction of the respondent's damages by \$7,500. It has offered to pay that amount to her and to meet the costs and outlays of both sides in the appeal; and to accept in full satisfaction of what is owed to it for the trial the standard costs and outlays recovered from the defendant. That will be substantially less than it would ordinarily have been entitled to charge. After taking independent advice, Ms Campbell has accepted this offer.
- [4] By making this agreement the solicitors have placed their client's interest ahead of their own. They have recognised their error and ensured that their client has been in no way disadvantaged by it. On any view the outcome of the litigation has been very favourable, even generous, to her. The solicitors' approach reflects the high traditions of their profession:
 "A trade or business is an occupation or calling in which the primary object is the pursuit of pecuniary gain. Honesty and honourable dealing are, of course, expected from every man, whether he be engaged in professional practice or in any other gainful occupation. But in a profession pecuniary success is not the only goal. Service is the ideal, and the earning of remuneration must always be subservient to this main purpose."¹
- [5] Another distinguishing feature of the legal profession is the duty which its members owe to the Court and through it to the public interest. Lawyers must not allow their desire to promote their client's interests to cause them to lose sight of this duty. Exaggerated claims are not given credibility by being brought in a court of higher

¹ *In re Foster* (1950) 67 WN (NSW) 122 at p 124 (Full Court).

than appropriate jurisdiction; nor is “judge shopping” a practice which the courts will condone. The firm’s acknowledgment that its partners are mindful that any criticism of solicitors has an effect on the entire profession is to be commended.

- [6] The firm has offered an undertaking to the Court that each of the items in its offer to the respondent will be fully complied with. We would accept that undertaking and we are satisfied that no further order is called for.