

# SUPREME COURT OF QUEENSLAND

CITATION: *Clampett v Magistrate Cornack & Anor* [2013] QCA 30

PARTIES: **LEONARD WILLIAM CLAMPETT**  
(applicant)  
**v**  
**MAGISTRATE CORNACK**  
(first respondent)  
**THE COMMISSIONER OF THE QUEENSLAND  
POLICE SERVICE**  
(second respondent)

FILE NO/S: Appeal No 6353 of 2012  
SC No 8490 of 2011

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 March 2013

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Margaret McMurdo P and Fraser JA and Boddice J  
Judgment of the Court

ORDERS: **Applicant pay the second respondent’s costs of and incidental to the application for leave to appeal, and the application filed 21 November 2012, to be assessed on a standard basis.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where the applicant was refused leave to appeal and an application filed was also dismissed – where the second respondent seeks costs on an indemnity basis – where the applicant failed to exercise an available right of appeal – where the second respondent contends the applicant’s applications were without utility and had no chance of success – where the court found the applications lacked merit but were not pursued for an improper purpose – whether costs should be awarded and on what basis

*Colgate-Palmolive Company v Cussons Pty Ltd* (1993) 46 FCR 225; [1993] FCA 536, applied  
*Fountain Selected Meats (Sales) Pty Ltd v International Produce Merchants Pty Ltd* (1988) 81 ALR 397; [1988] FCA 202, applied  
*Johnston & Anor v Herrod & Ors* [\[2012\] QCA 361](#), applied

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

SOLICITORS: The applicant represents himself  
 Crown Law for the first respondent  
 Queensland Police Service Solicitors for the second respondent

- [1] **THE COURT:** On 1 February 2013, the applicant was refused leave to appeal an order dismissing his application for judicial review. An application, filed on 21 November 2012 by the applicant, was also dismissed.
- [2] By written submissions, filed on 13 February 2013, the second respondent seeks his costs of those applications, to be assessed on an indemnity basis.
- [3] The second respondent contends an order for indemnity costs is appropriate as the application for leave to appeal, and the subsequent application, were refused in circumstances where the applicant had failed to exercise an available right of appeal, despite knowledge of the availability of that process. As such, they are properly to be characterised as applications which were without utility, and had no chance of success. It is further submitted the applicant acted improperly and unreasonably in initiating and maintaining the applications, such as to enliven the court's discretion to award costs on an indemnity basis.<sup>1</sup>
- [4] The applications brought by the applicant were futile. However, their pursuit must be considered in the context of an applicant without legal representation. Whilst those applications were ultimately found to lack merit, the Court is not satisfied the applicant pursued them for an improper purpose, or in a way which amounted to conduct sufficiently reprehensible to warrant an indemnity costs order.
- [5] The second respondent is entitled to his costs of the application for leave to appeal and the application filed on 21 November 2012. However, the Court declines, in the exercise of its discretion, to order costs assessed on an indemnity basis.
- [6] The Court orders that the applicant pay the second respondent's costs of and incidental to the application for leave to appeal, and the application filed on 21 November 2012, to be assessed on a standard basis.

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<sup>1</sup> See *Colgate-Palmolive Company and Anor v Cussons Pty Ltd* (1993) 46 FCR 225; [1993] FCA 536 at 233-234; *Fountain Selected Meats (Sales) Pty Ltd v International Produce Merchants Pty Ltd* [1988] FCA 202; *Johnston and Anor v Herrod and Ors* [2012] QCA 361.