

# SUPREME COURT OF QUEENSLAND

CITATION: *Rosily v QBE Insurance (Australia) Limited* [2022] QCA 190

PARTIES: **GILA GOLDA ROSILY**  
(applicant)  
v  
**QBE INSURANCE (AUSTRALIA) LIMITED**  
ABN 78 003 191 035  
(respondent)

FILE NO/S: Appeal No 5286 of 2022  
DC No 3752 of 2019

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application – Civil

ORIGINATING COURT: Supreme Court at Brisbane – Unreported, 14 July 2022  
(Morrison JA)

DELIVERED ON: 30 September 2022

DELIVERED AT: Brisbane

HEARING DATE: 14 September 2022

JUDGE: Morrison JA

ORDERS: **1. The application to set aside or vary the order for security made on 14 July 2022 is dismissed.**

**2. Unless by 28 October 2022 the applicant provides security for costs for \$7,500 in accordance with the order of Morrison JA dated 14 July 2022, the appeal be dismissed without the need for any further order of the Court, with the applicant to pay the respondent’s costs of the appeal, including any reserved costs, to be assessed.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – SECURITY FOR COSTS – FACTORS RELEVANT TO EXERCISE OF DISCRETION – PLAINTIFF’S OR APPLICANT’S IMPECUNIOSITY – GENERAL – where orders were made for security for costs of the appeal – where the applicant was to provide security for costs in the sum of \$7,500 within 28 days – where the appeal be stayed pending payment of the security – where the parties had liberty to apply in respect of the orders – where the applicant applied to set aside or vary the orders – where the respondent simultaneously applied that the order for security be conditioned by a form of Guillotine order, specifically that unless by 12 October 2022 the security in the sum of \$7,500 is paid in accordance with the order made that the appeal be dismissed – whether the application to set aside or vary the order should be granted – whether the appeal should be

dismissed

COUNSEL: The applicant appeared on her own behalf  
M P Williams for the respondent

SOLICITORS: The applicant appeared on her own behalf  
McInnes Wilson Lawyers for the respondent

- [1] **MORRISON JA:** On 14 July 2022 I made orders in respect of an application by the respondent for security for the costs of the appeal. Those orders were (relevantly) that the applicant provide security for costs in the sum of \$7,500 in a form acceptable to the Registrar within 28 days, that the appeal be stayed pending payment of the security, and that there be liberty to apply in respect of the orders.
- [2] No appeal was brought in respect of that order, by either party.
- [3] Ms Rosily has now applied for an order setting aside or varying the order made on 14 July 2022. The respondent has also applied seeking that the order for security now be conditioned by a form of Guillotine Order, specifically that unless by 12 October 2022 the security in the sum of \$7,500 is paid in accordance with the order made by me on 14 July 2022, the appeal be dismissed without the need for any further order by the Court.
- [4] On the hearing of her application Ms Rosily advanced some evidence indicating that she had applied to a bank for a personal loan, and that had been declined. Apart from that there was little evidence of relevance. Ms Rosily referred to a dispute she had in relation to some superannuation funds, though it was difficult to discern the relevance of that dispute, or even the nature of it.
- [5] At the end of the submissions by Ms Rosily, her case for the application came down to this: that she was impecunious, had little cash, had injuries to her neck that prevented her working, and no realistic prospect of raising the \$7,500 the subject of the order made on 14 July 2022.
- [6] Notwithstanding the various matters raised by Ms Rosily concerning her impecunious state, nothing has changed in respect of the appropriateness of the order for security for costs since 14 July 2022. It is true that in the interim Ms Rosily has applied to a bank for a loan, which was declined. However, she said nothing about the prospects of obtaining assistance from her son, with whom she is a part-owner of two properties, one of which is rented. Nor did she say anything about the prospect that the mortgages on either of the properties might be increased and funds secured that way.
- [7] Ms Rosily explains that she is not in employment, has little cash and presently no prospect of meeting the order for security. But that was effectively the state of affairs when I made the order on 14 July 2022.
- [8] Ms Rosily contends that the order for security will effectively stifle the appeal because she cannot meet the order. That was an issue considered when I made the order on 14 July 2022. A significant factor in the consideration then was the provisional assessment of the merits of the appeal. The merits as I assessed them then, remain the same. The trial concerned Ms Rosily's case that a bus driver had collided with her vehicle, causing her injury. The findings below by the trial judge

were based on an assessment of the credibility and reliability of the witnesses who gave oral evidence. Ms Rosily's evidence was rejected and specific findings were made adverse to her credit. On the other hand, the evidence of the bus driver and an independent witness was accepted. Each of those witnesses said that there was no collision but that Ms Rosily's driving created the situation where the vehicles came close to doing so. On that basis the claim failed on the issue of liability.

- [9] As has been pointed out to Ms Rosily at the previous hearing, those circumstances mean that the appeal faces considerable hurdles in terms of succeeding. In my view, the chances of success on the appeal are poor. That is a view I have expressed before, when making the order for security.
- [10] Because of that, the issue of stifling the appeal is one that diminishes in importance when balancing the competing rights of both parties. An important factor is that Ms Rosily has had her day in court, and not succeeded, where the lack of success was the result of a trial judge rejecting her evidence on grounds involving an assessment of her credit and reliability.
- [11] In my view, there is no proper basis to vacate or vary the order for security.
- [12] The respondent seeks an order that will bring the appeal to an end if the security is not paid. That is often an aspect of an order for security, but one which I specifically declined to make on 14 July 2022.
- [13] However, no appeal was brought against the order for security. Further, it is now more than two months since that order was made and the security has not been provided. Rather than let the proceeding languish because of a mere stay, it seems to me appropriate that the form of order now be made in the way requested by the respondent.
- [14] The form of order sought by the respondent effectively gave Ms Rosily another month to find the security. That seems appropriate.
- [15] For these reasons I made the following orders:
1. The application to set aside or vary the order for security made on 14 July 2022 is dismissed.
  2. Unless by 28 October 2022 the applicant provides security for costs for \$7,500 in accordance with the order of Morrison JA dated 14 July 2022, the appeal be dismissed without the need for any further order of the Court, with the applicant to pay the respondent's costs of the appeal, including any reserved costs, to be assessed.