

# DISTRICT COURT OF QUEENSLAND

CITATION: *Seaman (as litigation guardian for Catherine Jennifer Seaman) v King & Ors* [2016] QDC 139

PARTIES: **PETER JAMES SEAMAN as litigation guardian for  
CATHERIE JENNIFER SEAMAN  
(Applicant)**

**V**

**ALAN KING and ARTHUR TREZISE  
(First Respondents)**

**And**

**TERRY STONE (trading as BOWEN PLAZA  
PHARMACY)  
(Second Respondent)**

FILE NO/S: No 2 of 2016

DIVISION: Civil

PROCEEDING: Application

ORIGINATING COURT: District Court Townsville

DELIVERED ON: 10 March 2016

DELIVERED AT: Brisbane

JUDGE: Durward SC DCJ

ORDERS: **1. Judgment for the Plaintiff in terms of the draft orders.**

**2. The draft orders are attached to and form part of this judgment.**

CATCHWORDS: CIVIL LAW – PROCEDURE - DISTRICT COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER RULES OF COURT – JUDGMENTS AND ORDERS – OTHER MATTERS – ORDER SANCTIONING COMPROMISE – where applicant’s claim for damages was mediated and settled – where applicant now suffers from paracetamol toxicity – where application brought to sanction claim – where settlement is just and reasonable – where order as per draft sanctioned.

LEGISLATION: s. 59 of the *Public Trustee Act* 1978; r. 98 of the *Uniform Civil Procedure Rules* 1999.

COUNSEL: By consent, dealt with on the papers.

SOLICITORS: Connolly Suthers Lawyers for the applicant  
K&L Gates Lawyers for the first respondents  
Meridian Lawyers for the second respondent

- [1] The applicant is the husband and litigation guardian of the claimant, Catherine Jennifer Seaman ('Ms Seaman'). The applicant makes an application for sanction of the offer of settlement of the claim, made by the first and second respondents on behalf of Ms Seaman.

### **Claim**

- [2] The claim is for damages for medical and pharmaceutical negligence arising from the prescribing of paracetamol by the first respondents and the dispensing of paracetamol by the second respondent in the period leading up to her hospitalisation on 25 June 2009. Ms Seaman suffered an episode of acute paracetamol toxicity from ingestion of prescription paracetamol arising from over-prescription and failure to warn Ms Seaman of the consequences of over consumption of the drug.
- [3] Ms Seaman's disability, fulminant liver failure (defined by the onset of impaired brain function as a consequence of acute liver injury) arising from an unintended acute paracetamol overdose, includes psychological and psychiatric impairment. She is aged 47 years (DOB 20 February 1969).

### **Proposed Settlement**

- [4] The proposed settlement is for the sum of \$600,000.00 inclusive of damages, interest, administration fees, charges and costs of the applicant.
- [5] Section 59 of the *Public Trustee Act* 1978 and rule 98 of the *Uniform Civil Procedure Rules* 1999 regulate the applicant's claim. These sections require that a settlement of a proceeding in which a party is a person under a legal incapacity be sanctioned by the court in order to be effective. A settlement not sanctioned by the court is ineffective.

### **Discussion**

- [6] I have read the opinion of Mr Moon of counsel. He has made an assessment of the settlement offer. Mr Moon considered various reports from experts in arriving at his opinion but was most helped by the report of Dr Steadman, a medical practitioner specialising in gastrointestinal and liver diseases.
- [7] There is a moderately significant difference between the settlement offer and the quantum assessment of counsel. When one takes into account the likelihood of success if the matter were to proceed to trial and the inevitable risks associated with liability in a case such as this, and the customary contingencies,

risks and costs of litigation, acceptance of the settlement offer is considered a reasonable way of resolving the applicant's claim.

- [8] The settlement sum provides that the first respondents, Drs Alan King and Arthur Trezise, are to pay \$400,000.00 and the second respondent, Terry Stone (trading as Bowen Plaza Pharmacy), is to pay \$200,000.00, of the total \$600,000.00 settlement sum. The following payments from the settlement sum are to be made by the applicants: \$5,049.80 to Medicare Australia, a sum to be advised by Centrelink, a sum to be advised by Queensland Health for hospital charges and the balance to the Public Trustee of Queensland.

### **Conclusion**

- [9] I am satisfied that the proposed settlement is just and reasonable and properly compensates Ms Seaman equitably, for the damage and loss suffered by her.

### **Determination**

- [10] The compromise of the proceeding in terms of the proposed settlement agreed between the parties is sanctioned by the court pursuant to section 59(2) of the *Public Trustee Act 1978*. The opinion of counsel has been sealed in an envelope and placed on the file.

### **Orders**

- 1. Judgment for the Plaintiff in terms of the draft orders.**
- 2. The draft orders are attached to and form part of this judgment.**