

# SUPREME COURT OF QUEENSLAND

CITATION: *Gideona v Suncorp Metway Insurance Ltd & Anor* [2005] QSC 309

PARTIES: **DANYELLE HANNA GIDEONA**  
(plaintiff/applicant)  
v  
**JARROD PAUL ATHERTON**  
(first defendant)  
**SUNCORP METWAY INSURANCE LIMITED (ABN 83 075 695 966)**  
(second defendant/respondent)

FILE NO/S: BS 2131 of 2005

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 25 October 2005

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: de Jersey CJ

ORDER: **Refuse plaintiff's application for costs of the application to be paid on an indemnity basis. Matter rests as ordered in *Gideona v Suncorp Metway Insurance Ltd & Anor* [2005] QSC 275 on 3 October 2005.**

CATCHWORDS: PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – ORDER FOR COSTS ON INDEMNITY BASIS – where two paragraphs of the second defendant's defence had been struck out as disclosing no reasonable defence – whether r 171(2) UCPR required the court to order the costs of the application to be paid by the second defendant calculated on an indemnity basis  
*Uniform Civil Procedure Rules 1999 (Qld), r 171(2)*

COUNSEL: M Pope for the plaintiff/applicant  
R Dickson for the second defendant/respondent

SOLICITORS: McInnes Wilson Lawyers for the plaintiff/applicant  
Jensen McConaghy Solicitors for the second defendant/respondent

- [1] Subsequently to the delivery of judgment on 3 October 2005, in which I reserved liberty to apply in relation to costs, the plaintiff applied for an order that they be assessed and paid on an indemnity basis. On 3 October I ordered that the second defendant pay the applicant plaintiff's costs to be assessed on the standard basis.
- [2] In his written submission, Mr Pope, for the plaintiff, refers especially to r 171(2) of the *Uniform Civil Procedure Rules 1999* (Qld), which provides:

“The court, at any stage of the proceedings, may strike out all or part of a pleading and order the costs of the application to be paid by a party calculated on an indemnity basis.”
- [3] My having struck out the relevant part of the defence, it follows – he submitted – from a conjunctive reading of the rule, that indemnity costs have to be paid. I read the rule rather as leaving the award of indemnity costs on a discretionary basis, that is, as if the word “may” appeared before the word “order”. In other words, the word “may” relates to both “strike out...” and “order the costs...”. Rule 171(2) is a condensed version of the former RSC Order 22 r 31, which explicitly provided that the award of indemnity costs in that situation depended on an independent exercise of discretion by the court. I cannot see why the intention behind r 171(2) would have been different.
- [4] Mr Pope then submitted that because the jurisdiction to strike out should be exercised only in “the clearest of cases”, “it is not surprising that the Rule provides specifically for indemnity costs”. That was in context of his contention that as a matter of construction, the rule dictates indemnity costs where a pleading is struck out. (An alternate argument could run that the defendant ought to have appreciated the vulnerability of his pleading and not defended it.) Mr Pope also sought to draw an analogy with the offer to settle regime.
- [5] Mr Dickson, for the defendant, opposed the plaintiff's application for indemnity costs.
- [6] Having considered the submissions of both parties, I remain of the view expressed in para 19 of my reasons for judgment delivered on 3 October (*Gideona v Suncorp Metway Insurance Ltd & Anor* [2005] QSC 275):

“Indemnity costs were sought. Notwithstanding my view as to the clarity of the position in law, I am not presently satisfied the case warranted such a costs order, in light of the novelty of the respondents' contention.”
- [7] The original application raised a potentially important, novel question of statutory construction which I considered should clearly be resolved one way, but only after having heard substantial argument (see para 5 reasons for judgment). I am not satisfied the case is sufficiently special to warrant the order sought.
- [8] The matter rests, therefore, as ordered on 3 October 2005.