

SUPREME COURT OF QUEENSLAND

CITATION: *Robertson v Graham & Ors (No. 2)* [2010] QSC 252

PARTIES: **GERALDINE FOOI-FONG ROBERTSON**
(Plaintiff/Respondent)

v

SUE GRAHAM
(First Defendant/Applicant)

DAVID GRAHAM
(Second Defendant/Applicant)

THE POODLE CLUB OF QUEENSLAND INC
(Third Defendant/Applicant)

FILE NO/S: BS 13009 of 2008

DIVISION: Trial Division

PROCEEDING: Hearing

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 13 July 2010

DELIVERED AT: Brisbane

HEARING DATE: Written submissions received from the plaintiff and the third defendant

JUDGE: White J

ORDER: **Orders 4 and 5 made on 21 June 2010 are confirmed.**

CATCHWORDS: PROCEDURE – COSTS – where costs ordered to follow the event in principal proceedings – where plaintiff given leave to make written submissions for different costs orders – where plaintiff submitted that application and hearing would not have been necessary if defendants had followed procedure in r 444 of the *Uniform Civil Procedure Rules* 1999 (Qld) – whether r 444 relevant in the circumstances

Uniform Civil Procedure Rules 1999 (Qld), r 386, r 444

Robertson v Graham & Ors [2010] QSC 215, related

[1] Judgment was given in the principal proceedings¹ on 21 June 2010, striking out the plaintiff's proceedings against the second defendant, David Graham, and entering judgment in his favour. Numerous paragraphs in the plaintiff's Amended Statement of Claim filed 15 February 2010 were struck out in respect of the first and

¹ *Robertson v Graham & Ors* [2010] QSC 215.

third defendants with no leave to re-plead being given. The plaintiff was otherwise given leave to file a Further Amended Statement of Claim against the first and third defendants.

- [2] On 21 June 2010 I proposed certain costs orders in favour of the defendants, with leave to the plaintiff to make written submissions if she wanted to submit that some different costs orders ought to be made. The plaintiff has done so. She contends that there should be no order for costs for the following reason:

“That the Application and hearing would not have been necessary if the Defendants/Applicants had followed the Rules as defined in the Uniform Procedure Rules (UCPR) Rule 444.”²

The plaintiff submits that had a r 444 letter been received by her dealing with the defendants’ “grievances” about her pleading then she would have noted those complaints and dealt with them.

- [3] The third defendant has responded and pointed out that its solicitors sent a letter to the plaintiff pursuant to r 444 on 16 November 2009, complaining about defects in the Statement of Claim filed on 15 December 2008. The third defendant did not receive any response to that letter, but the plaintiff filed further Statements of Claim on 14 January and 18 January 2010, neither of which remedied the defects complained of in the r 444 letter. The plaintiff filed a further document headed ‘Amended Statement of Claim’ on 15 February 2010. It was that pleading which was considered on the defendants’ applications before me.
- [4] The first and second defendants had filed a Defence to the Amended Statement of Claim filed on 18 January 2010. They did this on 15 February 2010. The third defendant filed its Amended Defence to the Amended Statement of Claim filed on 18 January 2010 on 29 January 2010.
- [5] The defendants’ applications to strike out the plaintiff’s proceedings were brought pursuant to orders made by Atkinson J on 18 December 2009 pursuant to a case-flow intervention notice. That order required the defendants to file applications for further and better particulars and/or to strike out and/or to seek summary judgment by 12 February 2010. Accordingly, those applications were filed prior to the Amended Statement of Claim of 15 February 2010. There clearly was no scope for a r 444 letter. Furthermore, in light of the plaintiff’s response to the application and to the submissions on the applications, the plaintiff would have been highly unlikely to produce a response within the Rules to any further r 444 letter.
- [6] The plaintiff has not advanced any submissions which would persuade me that there should be an order different from order 5 made on 21 June 2010, namely:

“The plaintiff pay the first and third defendants’ costs of and incidental to the applications and the costs, if any, thrown away as a consequence of the need to amend their defences to any further statement of claim.”

- [7] There is no basis for making a different order than order 4 which was:

“The plaintiff pay the second defendant’s costs of and incidental to the proceedings including this application.”

² Plaintiff’s written submissions on costs, received 24 June 2010.

- [8] It is unnecessary to make any formal order about the costs thrown away resulting from the amendments made in the two amended statements of claim filed on 14 January and 18 January 2010. Rule 386 provides that:

“The costs of and resulting from an amendment made under r 378 are to be paid by the party making the amendment unless the court orders otherwise.”

There is no basis for ruling otherwise.

Orders

- [9] Orders 4 and 5 made on 21 June 2010 are confirmed.