

SUPREME COURT OF QUEENSLAND

CITATION: *Taylor v Gould & Ors (No 2)* [2011] QSC 248

PARTIES: **SYLVIA PAMELA TAYLOR**
(plaintiff)
v
ROBERT JOHN GOULD
(first defendant)
and
MARK LEONARD SEABROOK
(second defendant)
and
ANTHONY JAMES TAYLOR
(third defendant)

FILE NO/S: 5838/09

DIVISION: Trial

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 19 August 2011

DELIVERED AT: Brisbane

HEARING DATE: 11 July 2011

JUDGE: Dalton J

ORDER: **1. The plaintiff pay the first defendant's costs of and incidental to the proceeding on a standard basis to be assessed or agreed.**
2. The third defendant pay the plaintiff's costs of and incidental to the proceedings on a standard basis to be assessed or agreed.
3. The third defendant reimburse the plaintiff for the costs which the plaintiff pays to the first defendant pursuant to Order 1 above.

CATCHWORDS: COSTS – SEVERAL DEFENDANTS – SANDERSON ORDER – BULLOCK ORDER
Sharpley v O'Shea [1999] QSC 190

COUNSEL: S Shearer for the first defendant
No appearance for the second defendant
No appearance for the third defendant

SOLICITORS: Lillas & Loel for the plaintiff
Compass Legal Solutions for the first defendant

- [1] **DALTON J:** After delivering judgment in this matter I called for written submissions as to costs. I now give my decision as to costs in the proceeding.
- [2] The plaintiff submits she should have her costs against the third defendant. It seems to be right that costs should follow the event and I order that the third defendant pay the plaintiff's costs of and incidental to the proceeding against the third defendant on a standard basis to be assessed or agreed.
- [3] The plaintiff also submitted that I should make a Sanderson order whereby the third defendant is ordered to pay the first defendant's costs. In *Sharples v O'Shea*¹ Atkinson J restated the principle behind a Sanderson order:
"A Sanderson Order is appropriate when the joinder of two defendants was reasonable and the conduct of the unsuccessful defendant has been such as to make it fair to impose some liability on it for the costs of the successful defendant."
- [4] I cannot see that a Sanderson order is appropriate here. The plaintiff simply failed to make her case against the first defendant and, as I expressed in my reasons for judgment, even if the plaintiff had made out the facts she pleaded, I am not convinced that the plaintiff would have been successful. In terms of the principle discussed above, I cannot see that it was reasonable to join, or persist with the proceeding against the first defendant when there was not a clear case against him. It is true that the third defendant engaged in conduct which initially misled the plaintiff into thinking that she was being represented by the first defendant. However, I do not think that this conduct was such as to conceal the real facts behind the matter so as to prevent the plaintiff's lawyers making an informed choice as to whether or not the plaintiff should sue, or persist in suing, the first defendant. I therefore decline to make a Sanderson order.
- [5] I will however make a Bullock order because the plaintiff's taking proceedings against the first defendant was a direct result of the plaintiff being under the false impression, which the third defendant deliberately created in her, that the first defendant was acting for her.
- [6] The plaintiff submits that if I do not make a Sanderson order I should make no order as to costs as between the plaintiff and the first defendant. As explained in my reasons for judgment, I do not think that the plaintiff proved the factual case she pleaded, and have doubts whether even if she had, she would have succeeded against the first defendant. I cannot see in these circumstances that there is any reason to depart from the usual order that costs follow the event as between the plaintiff and first defendant.
- [7] Therefore I make the following orders as to costs:
1. The plaintiff pay the first defendant's costs of and incidental to the proceeding on a standard basis to be assessed or agreed.
 2. The third defendant pay the plaintiff's costs of and incidental to the proceedings on a standard basis to be assessed or agreed.
 3. The third defendant reimburse the plaintiff for the costs which the plaintiff pays to the first defendant pursuant to Order 1 above.

¹ [1999] QSC 190, [8].