

# SUPREME COURT OF QUEENSLAND

CITATION: *Multi-Service Group Pty Ltd (in liq) & Anor v Osborne & Anor* [2010] QCA 172

PARTIES: **MULTI-SERVICE GROUP PTY LTD (IN LIQUIDATION)**  
ACN 071 610 127  
(plaintiff/applicant/respondent)  
**ROBERT EUGENE MURPHY (AS LIQUIDATOR)**  
(second applicant/respondent)  
v  
**GRAEME JOHN OSBORNE**  
(defendant/first respondent/applicant)  
**GRO SERVICES PTY LTD**  
ACN 083 003 445  
(defendant/second respondent/applicant)

FILE NO/S: Appeal No 11380 of 2009  
Appeal No 11381 of 2009  
SC No 4620 of 2006  
SC No 5388 of 2004

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 2 July 2010

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: McMurdo P, Muir JA and Daubney J  
Judgment of the Court

ORDER: **The applicants be granted an indemnity certificate in respect of each appeal**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – applicant respondents sought to apply for an indemnity certificate under s 15(1) *Appeal Costs Fund Act* 1973 (Qld) – whether indemnity certificate should be granted  
*Appeal Costs Fund Act* 1973 (Qld), s 15, s 21  
*Cameron v Noosa Shire Council* [2006] QCA 144, cited  
*Holdway v Arcuri Lawyers (A Firm)* [2008] QCA 302, cited  
*Mitchell v Pacific Dawn Pty Ltd* [2003] QCA 526, cited

COUNSEL: D Savage SC, with I A Erskine, for the applicant  
P Morrison QC, with P Tucker, for the respondent

SOLICITORS: Tucker & Cowen for the applicant  
Ernst & Young for the respondent

- [1] **THE COURT:** This Court allowed appeals against orders in proceedings BS4620/06 and BS5388/04 that the appellants' "application for reactivation" of the proceeding be refused. The applicant respondents have applied for an order that they be granted an indemnity certificate under s 15 of the *Appeal Costs Fund Act 1973 (Qld)* in respect of each of the appeals.
- [2] Section 15(1) of the *Appeal Costs Fund Act 1973 (Qld)* provides:
- "15 Grant of indemnity certificate**  
(1) Where an appeal against the decision of a court—  
(a) to the Supreme Court;  
(b) to the High Court of Australia from a decision of the Supreme Court;  
on a question of law succeeds, the Supreme Court may, upon application made in that behalf, grant to any respondent to the appeal an indemnity certificate in respect of the appeal."
- [3] The Court's discretion to grant an indemnity certificate is unfettered<sup>1</sup> but, of course, must be exercised judicially on relevant considerations.
- [4] The fate of the appeal was dependent, essentially, on two matters: the correctness of the prior approach of the primary judge to the construction of *Practice Direction No. 4 of 2002* and whether there was a factual error in the primary judge's reasons.
- [5] It was held that the primary judge's conclusion was based, at least in part, on a factual error. That error was not one based in any way on the applicants' conduct or submissions. That is a matter which supports the application.<sup>2</sup>
- [6] The submissions at first instance by both parties accepted the principles expounded by the primary judge in *ARC Holdings Pty Ltd v Riana Pty Ltd & Anor.*<sup>3</sup> Those principles were challenged on appeal and held to be erroneous. In those circumstances it seems to be appropriate that the application be granted.
- [7] It is ordered that the applicants be granted an indemnity certificate in respect of each appeal.

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<sup>1</sup> *Appeal Costs Fund Act 1973 (Qld)*, s 21(1); *Cameron v Noosa Shire Council* [2006] QCA 144 at para [2].

<sup>2</sup> *Mitchell v Pacific Dawn Pty Ltd* [2003] QCA 526 at para [17] and *Holdway v Arcuri Lawyers (A Firm)* [2008] QCA 302 at para [9].

<sup>3</sup> [2008] QSC 191.