SUPREME COURT OF QUEENSLAND

CITATION:	*Wilson v R&Q Capital No 6 Ltd* [2026] QSC 123
PARTIES:	**LUISA MICHELLE WILSON AND LUISA MICHELLE WILSON AS LITIGATION GUARDIAN FOR BLAKE MARSHALL WILSON, ASHLEIGH TAYLOR WILSON, MASON PAUL MORRIS AND MAKAYLA MICHELLE MORRIS** (first plaintiff) **PAULA CRISTINA FONSECA-LEITE** (second plaintiff) **v** **R&Q CAPITAL NO.6 LTD & R&Q CAPITAL NO.7 LTD AS MEMBERS OF LLOYD'S SYNDICATE PSI 1110 AS THE INSURER FOR CRISCON PTY LTD (DEREGISTERED)** (first defendant) **CLAUDIO D'ALESSANDRO** (second defendant) **CONSTRUCTION BUILDING TECHNOLOGIES PTY LTD (ACN 602 999 262)** (third defendant) **CJA LOGISTICS PTY LTD (ABN 44 168 167 762)** (proposed third party)
FILE NO/S:	BS 11090/19
DIVISION:	Trial division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	25 June 2026
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGE:	Cooper J
ORDER:	

1. The plaintiffs (save for the minors Mason Paul Morris and Makayla Michelle Morris) are to pay the first defendant's costs of and incidental to:

(a) the amended application filed on 28 August 2025;

(b) the hearing on 28 August 2025;

(c) the further amended application filed on 11 March 2026;

(d) the further amended application filed on 25 March 2026;

(e) the hearing on 30 March 2026,

to be assessed on the standard basis if not agreed.

2. Enforcement of the costs order in paragraph 1 be stayed pending the resolution of the plaintiffs' professional negligence claim against their former lawyers.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW THE EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where the court previously heard two applications – where the first application was made by the plaintiffs under s 59(2)(b) of the *Personal Injuries Proceeding Act 2002* (Qld) to extend the time for the commencement of this proceeding ("the extension application") – where the second application was made by the first defendant for a declaration that it was not statute barred by reason of s 40 of the *Limitation of Actions Act 1974* (Qld) from proceeding against the proposed third party in respect of any cause of action brought by the plaintiffs in this proceeding, and for leave to issue a third party claim against the proposed third party ("the third party application") – where the court dismissed the extension application – where it was therefore not necessary for the court to determine the third party application – where the first defendant seeks an order that the plaintiffs pay its costs of and incidental to both applications – where the first defendant also seeks an order that the plaintiffs pay the costs of the proposed third party which the first defendant might otherwise be ordered to pay by reason of the dismissal of the third party application – where the plaintiffs submit that as between them and the first defendant, each party should bear its own costs of the applications – where the plaintiffs further submit that the first defendants ought to pay the proposed third party's costs of the third party application – where the proposed third party submits that the costs it incurred in responding to the third party application should be paid by the first defendant – whether, having regard to r 681 of the *Uniform Civil Procedure Rules 1999* (Qld), an order should be made that the plaintiff pay the first defendant's costs of the extension application – whether, having regard to r 681 of the *Uniform Civil Procedure Rules 1999* (Qld), an order should be made that the plaintiffs pay the first defendant's costs of the third party application

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – PARTIES AND NON-PARTIES – COSTS IN PROCEEDINGS WHERE MULTIPLE PARTIES – COSTS AGAINST ONE OF SEVERAL DEFENDANTS: BULLOCK AND SANDERSON TYPE ORDERS – where the proposed third party submits that costs should follow the event – where the first defendant submits that the circumstances justify the making of an order that the plaintiffs pay any costs liability which the first defendant might have to the proposed third party – whether, in the circumstances, the plaintiffs should be ordered to pay any costs liability which the first defendant might have to the proposed third party

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – RECOVERY OF COSTS – TIME FOR PAYMENT – where the plaintiffs submit that any costs order made against them be stayed pending the resolution of their claims against their former lawyers for professional negligence – whether there are special or exceptional circumstances which justify the grant of a stay pending the resolution of their professional negligence claim against their former lawyers – whether any costs orders made against the plaintiffs should be stayed

Personal Injuries Proceeding Act 2002 (Qld), s 59(2)(b)
Limitation of Actions Act 1974 (Qld), s 40
Uniform Civil Procedure Rules 1999 (Qld), r 681

Burke v Gillett [1996] 1 VR 196; [1996] VicRp 11, cited
Bullock v London General Omnibus Co [1907] 1 KB 264; [1906] UKLawRpKQB 151, cited
Edwards v Stocks (2009) 17 Tas R 454; [2009] TASSC 11, cited
Gladstone Park Shopping Centre Pty Ltd v Wills (1984) 6 FCR 496; [1984] FCA 166, cited
Gould v Vaggelas (1985) 157 CLR 215; [1984] HCA 68, cited
Oshlack v Richmond River Council (1998) 193 CLR 72; [1998] HCA 11, cited
Northern Territory v Sangare (2019) 265 CLR 164; [2019] HCA 25, cited
Sanderson v Blythe Theatre Co [1903] 2 KB 533, cited
Swisstex Finance Pty Ltd v Lamb [1993] 2 Qd R 463, cited
Virgtel Ltd v Zabusky (No 2) [2009] QCA 349, cited
Yamacoe Pty Ltd v Michel Survey Group Pty Ltd [2002] QSC 393, cited

COUNSEL:	DJ Schneidewin with BJ Stringer for the plaintiffs BF Charrington KC with KJ Kluss for the first defendant KF Holyoak for the proposed third party
SOLICITORS:	Travis Schultz & Partners for the plaintiffs Wotton Kearney for the first defendant Sparke Helmore Lawyers for the proposed third party

[1] The court heard two applications on 30 March 2026:

(a) an application by the plaintiffs under s 59(2)(b) of the *Personal Injuries Proceeding Act* 2002 (Qld) to extend the time for the commencement of this proceeding ("the extension application");

(b) an application by the first defendant for a declaration that it was not statute barred by reason of s 40 of the *Limitation of Actions Act* 1974 (Qld) from proceeding against the proposed third party in respect of any cause of action brought by the plaintiffs in this proceeding, and for leave to issue a third party claim against the proposed third party ("the third party application").

[2] By the proceeding, the plaintiffs pleaded dependency claims against the first defendant arising from the death of their respective partners, who were crushed by concrete panels that were being manoeuvred into position by a crane in a workplace accident in October 2016. The plaintiffs commenced the proceeding three days after the relevant limitation period expired.

[3] The first defendant opposed the extension application on the basis that it would suffer prejudice if that relief was granted because, pursuant to s 40 of the *Limitations of Actions Act*, it would be precluded from proceeding against the proposed third-party, who owned and operated the crane involved in the incident.

[4] The relief sought in the third party application would overcome the prejudice that would follow if the extension application was granted. Given the relief sought, the proposed third party was served with the third party application and appeared at the hearing.

[5] The extension application was dismissed because I was not satisfied that the plaintiffs had shown good reason why the discretion to extend the limitation period should be exercised in their favour, in circumstances where:

(a) I concluded that the prejudice the first defendant would suffer if the limitation period was extended would outweigh the prejudice the plaintiffs would suffer if the extension was refused; and

(b) I was not satisfied that the reason the proceeding was filed out of time was because of a delay caused by a conscientious effort to comply with the pre-trial requirements of the *Personal Injuries Proceeding Act*, but was due to the conduct of the plaintiffs' former lawyers (against whom the plaintiffs have commenced a proceeding claiming damages for professional negligence).

[6] Consequently, it was not necessary to determine the third party application, which was also dismissed.

[7] Following the dismissal of the applications, the parties have filed written submissions on costs.

[8] The first defendant seeks an order that the plaintiffs pay its costs of and incidental to both applications. The costs sought by the first defendant include the costs of earlier forms of application filed by the first plaintiff and an adjourned hearing on 28 August 2025. The first defendant also seeks an order that the plaintiffs pay the costs of the proposed third party which the first defendant might otherwise be ordered to pay by reason of the dismissal of the third party application.

[9] The plaintiffs submit that, as between them and the first defendant, each party should bear its own costs of the applications. They further submit that they have to pay the proposed third party's costs of the third party application. In the event those submissions are not accepted, the plaintiffs seek that any costs order made against them be stayed pending the resolution of their claims against their former lawyers for professional negligence.

[10] The proposed third party submits that the costs it incurred in responding to the third party application should be paid by the first defendant as the party which brought the third party application. There is no reason why it should have to recover those costs from the plaintiffs.

[11] The issues which arise for determination are:

(a) whether the plaintiffs should be ordered to pay any of the first defendant's costs;

(b) whether the proposed third party's costs should be paid by the first defendant or by the plaintiffs;

(c) whether any costs orders made against the plaintiffs should be stayed.

Should the plaintiffs be ordered to pay any of the first defendant's costs?

[12] Rule 681 of the *Uniform Civil Procedure Rules* 1999 (Qld) provides that costs are in the discretion of the court, but follow the event, unless the court orders otherwise.

[13] The general rule that costs follow the event embodies the principle that a successful party is ordinarily entitled to an award of its costs in its favour. This is not done to punish the unsuccessful party but to indemnify the successful party: *Oshlack v Richmond River Council* (1998) 193 CLR 72, at 97 [67].

The first defendant's costs of the extension application

[14] The first defendant succeeded in resisting the plaintiffs' application to extend the limitation period. It submits that there is no reason to depart from the usual rule.

[15] The plaintiffs submit that the circumstances in which they brought the extension application justify a departure from the general rule such that an order that each party bear their own costs is appropriate.

[16] The plaintiffs characterise the extension application as an attempt to mitigate losses which they have suffered because their former lawyers failed to commence the dependency claims against the first defendant before the limitation period expired.

[17] It appears that neither of the parties appreciated that the plaintiffs' claims were statute barred until shortly before the hearing on 28 August 2025. That hearing occurred in circumstances where the first plaintiff had originally sought to add a cause of action for nervous shock in this proceeding. The first defendant filed the third party application in response to the application to add the nervous shock claim. The first defendant initially indicated that it would not oppose the addition of the nervous shock claim, provided it was not precluded from pursuing the proposed third party in respect of the dependency claim and the proposed nervous shock claim.

[18] On 26 August 2025, the first defendant served an outline of submissions which identified the fact that the proceeding had been commenced outside the relevant limitation period. In response, the first plaintiff filed an amended application at the hearing on 28 August 2025, seeking to extend the limitation period. The hearing of the amended application was adjourned. The extension application was further amended, and the second plaintiff joined in the application, before the final hearing.

[19] I accept that the plaintiffs acted reasonably and appropriately in bringing the extension application.

[20] The plaintiffs also submit, and I accept, that the issues for determination on the extension application were finely balanced, and, as explained at [5] above, turned on a weighing of the relative prejudice which each party would suffer if the extension application was decided against it, and the conduct of the plaintiffs' former lawyers. I accept the plaintiffs' submission that their failure to commence the proceeding within time was not due to their own conduct.

[21] There seems to be little doubt that the plaintiffs have been placed in a very unfortunate position by the conduct of their former lawyers. Nevertheless, I am not persuaded that the circumstances they have identified warrant depriving the first defendant of an order for its costs of successfully resisting the extension application. It is open to the plaintiffs to seek to recover costs they are required to pay to the first defendant following the dismissal of the extension application in the claim against their former lawyers for professional negligence as costs reasonably incurred by them in attempting to mitigate the loss caused by the failure to commence the proceeding within time.

[22] I am satisfied that as between the plaintiffs and the first defendant, the costs of the extension application should follow the event.

The first defendant's costs of the third party application

[23] The first defendant also seeks an order that the plaintiffs pay its costs of the third party application.

[24] The dismissal of the third party application was an event separate from the dismissal of the extension application. Further, the plaintiffs did not oppose the relief sought in the third party application (in the event the extension application had succeeded). Accordingly, it would not be appropriate to order costs of the third party application,

as between the plaintiffs and the first defendant, on the basis that the first defendant was the successful party entitled to the benefit of the general rule that costs should follow the event. On the third party application, there was no event as between the plaintiffs and the first defendant which would engage that general rule.

[25] For the reasons set out below at [35]-[42], I do not consider it appropriate to order that the plaintiffs pay the first defendant's costs of the third party application.

Should the proposed third party's costs be paid by the first defendant or by the plaintiffs?

[26] The proposed third party submits that costs should follow the event, such that the first defendant should be ordered to pay its costs of the first defendant's application. The proposed third party says that it is entitled to look for payment of its costs to the first defendant as the party which brought the application it was required to respond to, especially when both plaintiffs have deposed that they do not have the financial capacity to meet any adverse costs order.

[27] The first defendant submits that the circumstances justify the making of an order that the plaintiffs pay any costs liability which the first defendant might have to the proposed third party.

[28] In appropriate circumstances, such an order may be made by analogy with what is known as a *Sanderson* order or a *Bullock* order: for example, see *Burke v Gillett* [1996] 1 VR 196, at 201.

[29] As explained in *Edwards v Stocks* (2009) 17 Tas R 454, 461 [15], such orders are sometimes made in a case where one defendant is successful and another defendant is unsuccessful. A *Sanderson* order is an order that the unsuccessful defendant pay the successful defendant's costs: *Sanderson v Blythe Theatre Co* [1903] 2 KB 533. A *Bullock* order is an order that the plaintiff pay the costs of the successful defendant, and that the unsuccessful defendant indemnify the plaintiff as to those costs: *Bullock v London General Omnibus Co* [1907] 1 KB 264.

[30] I am not persuaded that an order analogous to a *Sanderson* order should be made in circumstances where I accept the plaintiffs' evidence as to their respective financial positions and, specifically, that each of them would be unable to meet any costs order made against them.

[31] The impecuniosity of a party opposing a costs order, without more, is ordinarily not a relevant consideration: *Northern Territory v Sangare* (2019) 265 CLR 164, at 173-174 [26]-[27]. Where two different forms of costs order might be made the impecuniosity of a party sought to be made liable under one form of order can be relevant: *Edwards v Stocks* (2009) 17 Tas R 454, at 460-461 [12]-[16].

[32] In *Swisstex Finance Pty Ltd v Lamb* [1993] 2 Qd R 463, at 465, Ryan J followed the statement by Goff LJ in *Johnson v Ribbins* [1977] 1 All E.R. 806, at 810–811, that "the court should … normally order the defendant, though successful in the action, to pay the costs of the third party if he also be successful. Then, if in the circumstances of the case, those costs ought fairly to be borne by the plaintiff, the court will further order that they be added to the defendants' costs of the action as against the plaintiff", and later, at 811, that "it cannot be right to deprive a third party of an order for costs

to which he is otherwise entitled against the defendant, because the defendant when looking to the plaintiff for reimbursement finds a person not worth powder and shot".

[33] To similar effect, in *Gladstone Park Shopping Centre Pty Ltd v Wills* (1984) 6 FCR 496, at 506, Davies J observed that "if the applicant be impecunious and the respondent be a person of substance, an order that the costs of the party joined be paid directly by the applicant will deprive the party joined of effective recovery of costs. In such event, the party joined, having been brought into the litigation at the instigation of the respondent, and being successful in the litigation, is ordinarily given an award of costs against the respondent, with the respondent being given a right of recovery against the impecunious applicant".

[34] I accept the proposed third party's submission that it should not be deprived of the benefit of an order for costs against the defendant by an order analogous to a *Sanderson* order that the plaintiffs pay those costs directly to the proposed third party.

[35] That leaves the question whether, in the circumstances, the costs the first defendant is required to pay to the proposed third party should be added to the costs the first defendant is entitled to recover from the plaintiffs. An order to that effect would be analogous to a *Bullock* order: *Yamacoe Pty Ltd v Michel Survey Group Pty Ltd* [2002] QSC 393, at [29].

[36] A court may make a *Bullock* order where it was reasonable in all the circumstances for the plaintiff to bring the action against two or more defendants, such that the costs the subject of the order have been reasonably and properly incurred by the plaintiff as between the plaintiff and the unsuccessful defendant. This generally also requires that the conduct of the unsuccessful defendant is such as to make it fair to impose some liability on it for the costs of the successful defendant: *Gould v Vaggelas* (1985) 157 CLR 215, at 229-230 and 247.

[37] Adapting those statements of principle to the present situation, the question of reasonableness is to be assessed as between the first defendant (as the party claiming the benefit of a *Bullock* type order) and the plaintiffs (as the parties sought to be made liable under it). It is not simply a question whether the first defendant acted reasonably in bringing the third party application. The question is whether some conduct of the plaintiffs makes it fair to impose liability on them for the costs of the proposed third party: *Yamacoe Pty Ltd v Michel Survey Group Pty Ltd* [2002] QSC 393, at [30] and [52]. If nothing that was done by the plaintiffs caused the first defendant to bring the third party application it is difficult to see why they should be required to pay for the first defendant's decision to bring that application: *Gould v Vaggelas* (1985) 157 CLR 215, at 229.

[38] In that regard, the first defendant submits that, but for the conduct of the plaintiffs' former lawyers, the plaintiffs would not have needed to bring the extension application and the third party application would also not have been filed. The first part of that submission concerning the extension application is correct, but I do not accept the second part of the submission. The first defendant filed the third party application before it realised that the proceeding was statute-barred. That is consistent with the fact that, if the proceeding had not been statute barred, the first defendant would still have been needed to bring the third party application if it wished to pursue a third party claim against the proposed third party.

[39] Likewise, I can only accept part of the first defendant's submission that it was put to the expense of resisting the extension application and pursuing the third party application to enable the plaintiffs to demonstrate that they had taken all reasonable steps to mitigate the losses they claim against their former lawyers. As observed at [16] above, the plaintiffs accept that they brought the extension application as an attempt to mitigate losses caused by the conduct of their former lawyers. I also accept that the relief sought in the third party application had a bearing on the issues considered in determining the extension application, due to the possibility that the relief might ameliorate the prejudice to the first defendant if the extension application was granted. However, it does not follow from this that the plaintiffs' conduct in bringing the extension application caused, or made it necessary for, the first defendant to pursue the third party application.

[40] To the contrary, I am satisfied that the first defendant filed, and ultimately pursued, the third party application with a view to advancing its own interests by seeking to preserve its ability to pursue a third party claim against the proposed third party in the event that the plaintiffs' claims were permitted to proceed.

[41] In that sense, the first defendant's conduct was similar to the respondents in *Gladstone Park Shopping Centre Pty Ltd v Wills* (1984) 6 FCR 496, at 510-511, where on appeal Beaumont J (with whom Northrop J agreed) refused to make a *Sanderson* type order that the costs of the successful third parties should be paid by the applicant rather than the respondents. At first instance in that case, the trial judge had made a *Bullock* type order by which the respondents were to pay the costs of the third parties and the applicant was to indemnify the respondents for those costs. The applicant, who had very little in the way of property or income, did not appeal the making of the *Bullock* type order. The respondents' appeal seeking a *Sanderson* type order was dismissed.

[42] Although it was considered appropriate in the circumstances of *Gladstone Park Shopping Centre* that the unsuccessful applicant should bear the ultimate burden for the costs of the third party proceeding, I am not persuaded that the same outcome is appropriate in the circumstances of the present case. Nothing that was done by the plaintiffs would make it fair to impose liability on them for the first defendant's costs of attempting to secure an advantage for its own benefit through the relief sought in the third party application. In all the circumstances, I am satisfied that it is appropriate that the first defendant should bear those costs, comprising both its own costs of the third party application and the costs of the proposed third party.

Should there be a stay of the costs order against the plaintiffs?

[43] In *Virgtel Ltd v Zabusky (No 2)* [2009] QCA 349, at [19], McMurdo P (with whom Mullins and Philippides JJ agreed) stated that, under its inherent jurisdiction, the court has a broad and unfettered discretion to grant a stay in respect of costs orders according to legal principle. Where the costs orders are final orders, the party to whom costs are to be paid is generally entitled to enforce the cost order unless the party liable to pay costs shows "special or exceptional circumstances" warranting a stay. The onus is on the party liable to pay the costs to demonstrate why the court should grant the stay and deny the party to whom costs are to be paid the benefit of the order in its favour.

[44] That the plaintiffs have applied for a stay at an early stage, before costs have been assessed, is a relevant consideration: *Virgtel Ltd v Zabusky (No 2)* [2009] QCA 349, at [23].

[45] The plaintiffs submit that the following matters meet the description of special or exceptional circumstances which justify the grant of a stay pending the resolution of their professional negligence claim against their former lawyers:

(a) the dismissal of the extension application means that they can only recover damages that might otherwise have been recovered from the first defendant on their dependency claims by pursuing the professional negligence claim against their former lawyers;

(b) as I have already accepted at [30] above, they are each unable to meet any costs order made against them. They have limited assets, apart from their principal places of residence, and limited income after paying everyday expenses.

[46] Although a party's impecuniosity is ordinarily not a relevant consideration, it may be relevant to the extent that it may inform the structure of a costs order. For example, impecuniosity may justify an order that costs be paid over time so as to prevent unnecessary hardship and improve the likelihood that the order will be complied with: *Northern Territory v Sangare* (2019) 265 CLR 164, at 175 [32]. It seems to me that, in an appropriate case, a stay of a costs order may be justified for the same reasons.

[47] I am satisfied that this is such a case. I regard the combination of the plaintiffs having to bring the extension application as an attempt to mitigate loss they claim to have suffered because of the conduct of their former lawyers, the prospect that the plaintiffs might recover the costs they are ordered to pay to the first defendant as part of the damages claimed in the professional negligence claim against those former lawyers, and the financial position of the plaintiffs, to be special or exceptional circumstances which justify the grant of a stay which would deny the first defendant the benefit of enforcing the costs order until the plaintiffs' claim against their former lawyers has been resolved.

Orders

[48] For the reasons set out above, the orders will be:

1. The plaintiffs (save for the minors Mason Paul Morris and Makayla Michelle Morris) are to pay the first defendant's costs of and incidental to:

   (a) the amended application filed on 28 August 2025;

   (b) the hearing on 28 August 2025;

   (c) the further amended application filed on 11 March 2026;

   (d) the further amended application filed on 25 March 2026;

   (e) the hearing on 30 March 2026,

   to be assessed on the standard basis if not agreed.

2. Enforcement of the costs order in paragraph 1 be stayed pending the resolution of the plaintiffs' professional negligence claim against their former lawyers.