

FEDERAL COURT OF AUSTRALIA

Clampett v Attorney-General of the Commonwealth of Australia (No 2) [2010]

FCAFC 13

Citation: Clampett v Attorney-General of the Commonwealth of Australia (No 2) [2010] FCAFC 13

Appeal from: Noah v Bailey [2008] FMCA 1002; Noah v Bailey [2008] FMCA 1426

Parties: **LEONARD WILLIAM CLAMPETT and LESLEY ALEXANDRA NOAH v ATTORNEY-GENERAL OF THE COMMONWEALTH OF AUSTRALIA**

File number(s): QUD 203 of 2008
QUD 323 of 2008

Judges: **BLACK CJ, FINKELSTEIN and GREENWOOD JJ**

Date of judgment: 25 February 2010

Date of hearing: 20 November 2008

Date of last submissions: 16 December 2009

Place: Brisbane

Division: GENERAL DIVISION

Category: No catchwords

Number of paragraphs: 4

Counsel for the Appellants: Mr DP O'Gorman SC

Counsel for the Appellants: Mr R Reed

Solicitor for the Appellants: Fisher Dore Lawyers

Counsel for the Respondent: Mr RM Derrington SC

Solicitor for the Respondent: Australian Government Solicitor

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION**

QUD 203 of 2008

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

**BETWEEN: LEONARD WILLIAM CLAMPETT
 Appellant**

**AND: ATTORNEY-GENERAL OF THE COMMONWEALTH OF
 AUSTRALIA
 Respondent**

JUDGES: BLACK CJ, FINKELSTEIN AND GREENWOOD JJ

DATE OF ORDER: 25 FEBRUARY 2010

WHERE MADE: BRISBANE

THE COURT ORDERS THAT:

1. There be no order for the costs of the appeal.
2. There be no order as to the costs of the proceedings in the Federal Magistrates Court the subject of the appeal.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.
The text of entered orders can be located using Federal Law Search on the Court's website.

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION**

QUD 323 of 2008

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

**BETWEEN: LESLEY ALEXANDRA NOAH
 Appellant**

**AND: ATTORNEY-GENERAL OF THE COMMONWEALTH OF
 AUSTRALIA
 Respondent**

JUDGES: BLACK CJ, FINKELSTEIN AND GREENWOOD JJ

DATE OF ORDER: 25 FEBRUARY 2010

WHERE MADE: BRISBANE

THE COURT ORDERS THAT:

1. There be no order for the costs of the appeal.
2. There be no order as to the costs of the proceedings in the Federal Magistrates Court the subject of the appeal.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.
The text of entered orders can be located using Federal Law Search on the Court's website.

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION**

QUD 203 of 2008

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

**BETWEEN: LEONARD WILLIAM CLAMPETT
 Appellant**

**AND: ATTORNEY-GENERAL OF THE COMMONWEALTH OF
 AUSTRALIA
 Respondent**

JUDGES: BLACK CJ, FINKELSTEIN AND GREENWOOD JJ

DATE: 25 FEBRUARY 2010

PLACE: BRISBANE

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION**

QUD 323 of 2008

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

**BETWEEN: LESLEY ALEXANDRA NOAH
 Appellant**

**AND: ATTORNEY-GENERAL OF THE COMMONWEALTH OF
 AUSTRALIA
 Respondent**

JUDGES: BLACK CJ, FINKELSTEIN AND GREENWOOD JJ

DATE: 25 FEBRUARY 2010

PLACE: BRISBANE

REASONS FOR JUDGMENT

THE COURT

1 In these appeals the successful appellants have applied for orders for the costs of the appeals and the proceedings at first instance.

2 As the reasons for judgment on the appeals show, the circumstances of these cases are unusual and although the appellants were successful the respondent opposes the making of

any orders for costs. In his written submissions, counsel points out that costs were not sought in the Notices of Appeal and that the appeals were argued in that context. More fundamentally, the appellants were – counsel submits – “the authors of their own misfortune”. It is also pointed out, correctly, that the essential point upon which the appellants succeeded emerged only during the hearing of the appeals.

3 Since the behaviour of the appellants before the Federal Magistrate may remain to be considered in a further hearing, we think it better to put that matter to one side and to take a broad view of the matter of costs noting that costs were not sought in the appeals and that the appeals were determined on a point which really only emerged during the hearing.

4 In all the circumstances, the appropriate order is that there should be no order as to the costs at first instance or on appeal.

I certify that the preceding four (4) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Chief Justice Black and Justices Finkelstein and Greenwood.

Associate:

Dated: 25 February 2010