CITATION:	*Rallen Australia Pty Ltd v Sweetpea Petroleum Pty Ltd (No 3)* [2024] NTSC 51
PARTIES:	RALLEN AUSTRALIA PTY LTD v SWEETPEA PETROLEUM PTY LTD
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	2022-00344-SC
DELIVERED:	5 June 2024
HEARING DATES:	Issue of costs decided on the papers
JUDGMENT OF:	Barr J

CATCHWORDS:

COSTS – INTERLOCUTORY INJUNCTION – APPLICATION – Appellant sought stay of orders of Northern Territory Civil and Administrative Tribunal pending outcome of leave to appeal against Tribunal's decision – Appellant also sought interlocutory injunction to restrain respondent from constructing an access road – Interim injunction granted – Consent orders made for injunction to be lifted – Respondent sought costs on the indemnity basis – Order that appellant pay the respondent's costs on the standard basis

REPRESENTATION:

Counsel:

Applicant:	K Merrick
Respondent:	B Katekar SC, H Baddeley

Solicitors:

Applicant:	Gadens
Respondent:	Squire Patton Boggs

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Rallen Australia Pty Ltd v Sweetpea Petroleum Pty Ltd (No 3) [2024] NTSC 51

No. 2022-00344-SC

BETWEEN:

RALLEN AUSTRALIA PTY LTD
Applicant

AND:

SWEETPEA PETROLEUM PTY LTD
Respondent

CORAM: BARR J

REASONS FOR DECISION ON COSTS – INTERLOCUTORY INJUNCTION APPLICATION

(Delivered 5 June 2024)

[1] This decision is in respect of the costs of an interim injunction application made by the above applicant ("Rallen") on 24 June 2022. The injunction was granted on 28 June 2022, but was subsequently lifted as a result of consent orders made on 30 June 2022.

[2] The relevant chronology is as follows.

[3] On 20 and 21 June 2022, I heard an application by Rallen for leave to appeal against the decision of the Northern Territory Civil and Administrative Tribunal made on 7 February 2022, and the consequential orders made on 4 May 2022 determining an approved

access agreement to Tanumbirini Station. On 20 April 2023, I made an order granting leave to appeal but dismissed the appeal and confirmed the decision of the Tribunal.[1] I then made an order that Rallen pay Sweetpea's costs of the application for leave to appeal, to be taxed in default of agreement.

[4] On 20 June 2022, the first day of the hearing of the application for leave to appeal referred to in [3], Rallen filed a summons seeking a stay of the "further operation of the decision of the Tribunal contained in the orders made by the Tribunal on 4 May 2022, and the access agreement attached to those orders, until the determination of the applicant's application for leave to appeal, and if granted, the applicant's appeal".

[5] The stay application was listed for hearing, to take place on 15 July 2022.

[6] However, on 24 June 2022, Rallen filed a further summons, seeking an interlocutory injunction "until 15 July 2022 or further order" to prevent Sweetpea, its contractors or employees from:

a. engaging in the construction of a track, referred to as the 'Western Access Track', from a point 300m north of the central line of the Newcastle Creek, south to the Tanumbirini/Beetaloo boundary;

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1 *Rallen Australia Pty Ltd v Sweetpea Petroleum Pty Ltd* [2023] NTSC 36 at [153] – [155].

b. without the prior consent of Rallen, utilising the track known as the 'Eastern Access Track' for the movement of heavy vehicles; and

c. without the prior consent of Rallen, cutting the central fence line that runs north to south between the paddocks known as 'Southern Cross' and 'Telecom'.

[7] Rallen's application for an interlocutory injunction came on for hearing on 28 June 2022, but because of time constraints was adjourned part-heard to the morning of 30 June 2022. An interim order was made in favour of Rallen, preventing any further construction activity on the Western Access Track until 5:00 pm on 30 June 2022. However, on 30 June 2022, under the terms of a consent order, the interim injunction was lifted with immediate effect. The consent order also provided that the costs of the injunction application (and assessment of damages resulting from the interim injunction) be reserved.

[8] Rallen's stay application was heard on 15 July 2022. For reasons published to the parties on 2 August 2022, I ordered that the stay application be dismissed.[2] On 5 July 2023, I ordered that Rallen pay Sweetpea's costs of the stay application.[3]

[9] The outstanding costs issue between the parties is in respect of Rallen's application for an interlocutory injunction. Sweetpea seeks an order that its costs of the application be paid by Rallen "on an

2 *Rallen Australia Pty Ltd v Sweetpea Petroleum Pty Ltd* [2022] NTSC 60.

3 *Rallen Australia Pty Ltd v Sweetpea Petroleum Pty Ltd (No 2)* [2023] NTSC 58.

indemnity or alternatively standard basis".[4] In his affidavit in support of the order sought, the lawyer for Sweetpea made the following submissions:[5]

> Shortly prior to the full hearing of the Interim Injunction application on 30 June 2022, Rallen conceded the application such that the court made consent orders which, inter alia, lifted the Interim Injunction with immediate effect and reserved for argument the costs of the Interim Injunction Application....
>
> Sweeptea succeeded in opposing the Interim Injunction Application, caused the Interim Injunction to be lifted and succeeded in the substantive appeal. In these circumstances, the usual order under the [Supreme Court Rules], that the costs of an interlocutory injunction be costs in the proceedings, such that the party which is ultimately successful in the proceedings (i.e. Sweetpea), should be made.

[10] Rallen's solicitors contend that Sweetpea's lawyer statement that Rallen *conceded* the application was "not a correct characterisation of events". They contend that the application was not 'conceded', but rather it was 'settled'. They invite the Court to examine the correspondence between the parties in relation to the settlement. In my opinion, however, the correspondence is not helpful. It does not raise any disentitling conduct on the part of Sweetpea.

[11] Similarly, Rallen's contention that the application was 'settled' rather than 'conceded' is not helpful, because the suggested settlement did

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4 Summons filed 5 June 2022.

5 Affidavit Masiullah Zaki promised 5 June 2023, pars 9, 11. It would appear that something has been left out of the second part of the submission. Nonetheless, it is clear that Sweetpea claims the costs of opposing the interim injunction in substantial part (at least) on the basis that Sweetpea successfully defended Rallen's substantive appeal from the Tribunal's decision.

not resolve the issue of costs but rather left that issue for the Court to determine.

[12] I have concluded that, whether there was a settlement or a concession on its part, Rallen "effectively surrendered", such this Court is able to determine that Sweetpea was the successful party.[6] Moreover, the purpose of Rallen's injunction application was to maintain the status quo pending the hearing of its stay application which, as mentioned in [8], was unsuccessful.

[13] I bear in mind also that Sweetpea was ultimately successful in defending Rallen's substantive appeal/application for leave to appeal. In those circumstances, Rule 63.18 becomes relevant in that it provides that the costs of an interlocutory application in a proceeding are to be "costs in the proceeding" unless the Court otherwise orders. The meaning and effect of the term 'costs in the proceeding' is explained in Rule 63.02(2):

> The party who is successful in the proceeding is entitled to the party's costs of the application, or part of the proceeding, in respect of which this order is made.

[14] Therefore, Rule 63.18, read with Rule 63.02(2) has the effect that the 'winner takes all', unless the Court orders otherwise.[7] In the present

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6 See, for example, *Randazzo Investments (NT) Pty Ltd v City of Palmerston* [2018] NTSC 6 per Kelly J at [21].

7 See *Rallen Australia Pty Ltd v Sweetpea Petroleum Pty Ltd (No 2)* [2023] NTSC 58 at [14] – [16], [22].

case, I see no reason to order otherwise. I propose to make a costs order against Rallen.

[15] Sweetpea has sought costs on the indemnity basis, which I decline to order. While Rallen's application was on foot for only seven days and the injunction itself was only in force from 28 June to 30 June, effectively only for a day or so, the short life of the injunction does not of itself establish that Rallen must have known the application was misconceived. In my assessment, the fact that Rallen desisted so soon after commencement is more likely to have been because Rallen and its principals were concerned by the undertaking as to damages required to maintain the injunction and the significant potential quantum of the ongoing loss and damage identified by Sweetpea as a result of the grant of the injunction; hence, were not prepared to further expose Rallen to that risk. Rallen's early withdrawal can be seen not only as motivated by self-interest but also as a proper attempt to limit the unnecessary incurring of costs on the part of Sweetpea.

[16] Order 63.28(1) of the *Supreme Court Rules 1987* provides as a general rule that the Court should award standard costs. Indemnity costs are only ordered when there is a special or unusual feature in the case.[8]

[17] I do not consider that there was any special or unusual feature in this case sufficient to justify an award of indemnity costs.

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8 *BAE Systems Australia Ltd v Rothwell* (2013) 275 FLR 244 at [26].

[18] I order that (1) Rallen pay Sweetpea's costs of and incidental to Rallen's application for an interlocutory injunction filed 24 June 2022, on the standard basis, and (2) Rallen pay Sweetpea's costs of the costs application by summons filed 5 June 2023, including the drafting of written submissions. Further, to the extent necessary, I certify for senior and junior counsel, pursuant to Rule 63.72(10) of the *Supreme Court Rules 1987*.