

PARTIES:

IRAKLIS ROUSSOS NOMINEES P/L
(ACN 009 600 631) as Trustee for the
IRAKLIS ROUSSOS FAMILY TRUST

and:
IRAKLIS ROUSSOS

V

ROMESO P/L as Trustee for the ROMESO
UNIT TRUST

AND:
NIGHTCLIFF BUILDERS (NT) P/L
(ACN 056 395 861) as Trustee for the
NIGHTCLIFF BUILDERS UNIT TRUST

AND:
LANKY P/L (ACN 051 314 624) as Trustee for
the NICHOLAS MELLIOS FAMILY TRUST

AND:
C. MELLIOS NOMINEES P/L
(ACN 009 610 100) as Trustee for the
C. MELLIOS FAMILY TRUST

AND:
LATHER P/L (ACN 054 315 687) as Trustee
for the HARALAMBOS MELLIOS FAMILY
TRUST

AND:
CHRISTOS MELLIOS

AND:
NICHOLAS MELLIOS

AND:
HARALAMBOS MELLIOS

TITLE OF COURT:

SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION:

SUPREME COURT OF THE NORTHERN
TERRITORY exercising Territory jurisdiction

FILE NO: 57 of 2003 (20305783)

DELIVERED: 5 February 2004

HEARING DATES: 8 January 2004

JUDGMENT OF: THOMAS J

REPRESENTATION:

Counsel:

Appellant:	G Clift
Respondent:	C Ford

Solicitors:

Appellant:	De Silva Hebron
Respondent:	Cridlands

Judgment category classification:	C
Judgment ID Number:	tho200402
Number of pages:	6

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Iraklis Roussos Nominees Pty Ltd & Ors v Romeso Pty Ltd & Ors [2004] NTSC 3
No. 57/03 (20305783)

BETWEEN:

IRAKLIS ROUSSOS NOMINEES P/L
(ACN 009 600 631) as Trustee for the IRAKLIS
ROUSSOS FAMILY TRUST
First Plaintiff

and:

IRAKLIS ROUSSOS
Second Plaintiff

AND:

ROMESO P/L as Trustee for the ROMESO
UNIT TRUST
First Defendant

and:

NIGHTCLIFF BUILDERS (NT) P/L
(ACN 056 395 861) as Trustee for the
NIGHTCLIFF BUILDERS UNIT TRUST
Second Defendant

and:

LANKY P/L (ACN 051 314 624) as Trustee for
the NICHOLAS MELLIOS FAMILY TRUST
Third Defendant

and:

C. MELLIOS NOMINEES P/L
(ACN 009 610 100) as Trustee for the
C. MELLIOS FAMILY TRUST
Fourth Defendant

and:

LATHER P/L (ACN 054 315 687) as Trustee
for the HARALAMBOS MELLIOS FAMILY
TRUST
Fifth Defendant

and:

CHRISTOS MELLIOS

Sixth Defendant

and:

NICHOLAS MELLIOS

Seventh Defendant

and:

HARALAMBOS MELLIOS

Eighth Defendant

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 5 February 2004)

- [1] This is an application on summons for an order that the plaintiff pay the defendants' costs of and incidental to the application for the interlocutory injunction to be taxed forthwith.
- [2] The application for costs follows orders made by this Court for which written reasons were delivered on 2 October 2003 dismissing the plaintiffs' application for interlocutory injunction.
- [3] The applicant defendants' claim:
1. there ought to be an award for costs to the defendants for the plaintiffs' failed application for injunction.
 2. those costs ought to be taxed and paid forthwith.

[4] Rule 63.18 of the Northern Territory Supreme Court Rules provides as follows:

“Each party shall bear his own costs of an interlocutory or other application in a proceeding, whether made on or without notice, unless the Court otherwise orders.”

[5] The other relevant provision is Rule 63.04 which provides as follows:

- (1) The Court may exercise its power and discretion as to costs at any stage of a proceeding or after the conclusion of the proceeding.
- (2) Subject to this rule, the costs a party is required to pay under these Rules or an order of the Court shall be paid immediately.
- (3) Subject to subrule (4), where –
 - (a) the Court makes an interlocutory order for costs; or
 - (b) costs are payable by virtue of these Rules without an order for costs,those costs shall not be taxed until the conclusion of the proceeding to which they relate.
- (4) If it appears to the Court when making an interlocutory order for costs or at a later time that all or a part of the costs ought to be taxed at an earlier stage, it may order accordingly.
- (5) In the case of an appeal, the costs of the proceeding giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.

[6] The Court has a discretion to award costs in interlocutory proceedings.

Such a discretion must be exercised judicially - *Markorp Pty Ltd v King (as Liquidator of Murray Constructions P/L) & Ors* (1992) 106 FLR 286 at 292-3, *Paspaley Pearls Pty Ltd v Artsheen Pty Ltd & Ors* [1997] NTSC 126.

- [7] Mr Ford who appeared on behalf of the applicant, seeks an order for costs in the exercise of the Court's discretion or alternately on the basis that there were exceptional circumstances.
- [8] It is the practice of this Court in the usual run of cases to make no order for costs in respect of interlocutory applications.
- [9] However, this matter does not fall into such a category. On either interpretation of Rule 63.18 that is in the exercise of a discretion or on the basis of exceptional circumstances - see *TTE Pty Ltd v Ken Day Pty Ltd* (1990) 2 NTLR 143 at 145, I consider the applicant defendant is entitled to an order for costs.
- [10] Mr Clift, on behalf of the plaintiffs, submits that the refusal to grant the interlocutory injunction does not put an end to the plaintiffs' claim and there has been no binding determination of fact on the issues to be determined at trial. Mr Clift further argues that the defendants have not made good their assertion that the plaintiffs' application for interlocutory injunction lacked merit or was misconceived. The position of the plaintiff with respect to the application for costs is that there was nothing about the application which falls into the category of exceptional circumstances. Mr Clift contends the usual rule with respect to interlocutory applications should apply and there be no order for costs. The alternate position advocated by Mr Clift on behalf of the plaintiffs, is that the appropriate order should be that the defendants' costs should be costs in the cause - see *Piddington v The*

Attorney-General (1933) 33 State Reports NSW 317 at 329, Memorandum 57 ER 143.

- [11] Mr Clift submitted that the Court cannot be certain as to the final outcome of this matter. If the defendants are ultimately successful then it will have its costs.
- [12] Finally, Mr Clift points to the fact that the writ seeks permanent and interlocutory injunction. Accordingly, this application could reasonably have been expected to be made and that the discretion to award costs should only be exercised if the defendants could not have reasonably anticipated such an application. Mr Clift submits that the fact the application itself was lengthy and complex, is not unusual in applications of this nature and does not take it out of the usual.
- [13] A transcript of the proceedings indicates that submissions with respect to the plaintiffs' application for interlocutory injunction occupied a full day on 17 September 2003. The submissions by both counsel referred to lengthy affidavit material with numerous and lengthy annexures.
- [14] In the written reasons for judgment, which were also somewhat lengthy and delivered on 2 October 2003, I found that the applicants had failed to discharge the onus upon them to establish there is a serious issue to be tried with respect to the redemption.

- [15] Secondly, I held that I had not been persuaded damages would not be an adequate remedy.
- [16] Thirdly, I made a finding that the balance of convenience favoured the defendants who are now the applicants for costs.
- [17] In all of these circumstances, I consider the applicant is entitled to an order for costs.
- [18] With respect to the provisions of Rule 63.04. I refer to the decision of *Markorp Pty Ltd v King* (supra). In that case, Mildren J referred to the reason for the rule in the majority of cases where payment for costs in one interlocutory application may, through the course of the action, be offset by costs in other interlocutory applications. The costs, with respect to the interlocutory application before this Court, are no doubt substantial. The plaintiffs have a substantive action which is proceeding, for the taking of accounts, tracing of monies and damages. I am informed there will be an amendment to the plaintiffs' claim to include application for a permanent injunction. The application for interlocutory injunction was in respect of a discrete issue. I am not persuaded that the costs are likely to be set off by other interlocutory applications. I am not able to find that to make such an order for costs to be taxed forthwith would be unfair or oppressive.
- [19] Accordingly, I order that the plaintiffs pay the defendants' costs as agreed or failing agreement, to be taxed forthwith.