

PARTIES: BATHANY HOLDINGS PTY LTD  
v  
AUSTRALIAN FRONTIER HOLIDAYS LTD

TITLE OF COURT: SUPREME COURT OF THE NORTHERN  
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN  
TERRITORY EXERCISING TERRITORY  
JURISDICTION

FILE NOS: No. 91 of 1995

DELIVERED: Darwin 27 October 1995

HEARING DATES: 18 May 1995

JUDGMENT OF: Kearney J

**REPRESENTATION:**

*Counsel:*

Plaintiff: S. Gearin  
Defendant: P. Barr

*Solicitors:*

Plaintiff: Mildrens  
Defendant: Cridlands

Judgment category classification: C  
Judgment ID Number: kea95041.J  
Number of pages: 3

kea95041.J

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

No. 91 of 1995

BETWEEN:

BATHANY HOLDINGS PTY LTD  
Plaintiff

AND:

AUSTRALIAN FRONTIER HOLIDAYS LTD  
Defendant

CORAM: KEARNEY J

RULING

(Delivered 27 October 1995)

The application for costs

By summons of 12 May 1995 the plaintiff sought an interlocutory injunction to restrain the defendant from implementing an alleged notice of termination of an agreement between them, pending the hearing of its claim for a declaration in its Originating Motion of 12 May. On 18 May I ordered that the application of 12 May be refused, for the reasons set out at transcript pp123-4. I indicated at the time that I would deliver further written reasons in due course, for the conclusion therein expressed that an award of

damages would be the more appropriate and just remedy for the plaintiff should it ultimately succeed in establishing that the agreement remained in full force and effect.

Mr Barr of counsel for the defendant then submitted that the defendant should have its costs of the application of 12 May, and that the Court should certify for counsel under r63.72(a). Ms Gearin of counsel for the plaintiff opposed that application for costs, submitting that as the application of 12 May was interlocutory in nature the costs should be "costs in the cause". I indicated that I would rule on the question of costs when giving the additional written reasons earlier referred to.

On 25 September a notice of discontinuance was filed by the plaintiff. Presumably, this was done by consent pursuant to r25.03. On this basis, it is now unnecessary to provide the additional written reasons; I now rule upon the sole outstanding question, of costs. Costs flowing from the discontinuance are regulated by r25.05 and r63.11(6); this ruling relates only to the costs of the interlocutory application of 12 May.

#### Ruling

Rule 63.18 provides that each party must bear its own costs of an interlocutory application "unless the Court otherwise orders." I bear in mind the principles set out in *TTE Pty Ltd & Anor. v Ken Day Pty Ltd* (1990) 2 NTLR 143 and *Yow v Northern Territory Gymnastic Association Inc* (1991) 1

NTLR 180, in determining when the Court should "otherwise order".

I consider that the grounds of the plaintiff's application of 12 May were without real merit. Accordingly, the award of costs falls within the exception to the general approach in r63.18.

I order that the defendant have its costs of the interlocutory application of 12 May; in that regard I certify for counsel under r63.72(a).

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