Intermin Resources Ltd v North Concrete Pty Ltd [2005] NTSC 35

PARTIES:	INTERMIN RESOURCES LTD
	v
	NORTH CONCRETE PTY LTD
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	93/04 (20416302)
DELIVERED:	1 July 2005
HEARING DATES:	5 August 2004
JUDGMENT OF:	THOMAS J

REPRESENTATION:

Counsel:

Appellant:	C Ford
Respondent:	L Silvester

Solicitors:

Appellant:	Cridlands
Respondent:	Povey Stirk

Judgment category classification:	C
Judgment ID Number:	tho200501
Number of pages:	4

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

Intermin Resources Ltd v North Concrete Pty Ltd [2005] NTSC 35
No. 93/04 (20416302)

BETWEEN:

INTERMIN RESOURCES LTD
(ACN 007761186)
Applicant

AND:

NORTH CONCRETE PTY LTD
(ACN 009640346)
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 1 July 2005)

[1] On 3 August 2004, I delivered written reasons for judgment setting out the reasons for my decision to grant the interlocutory injunction sought by the plaintiff and to dismiss the interlocutory injunction sought by the defendant.

[2] The matter was then adjourned to 5 August 2004 for further submissions as to the appropriate orders to be made, following upon the decision on the respective applications.

[3] Following those submissions, I made the following orders on 5 August 2004, subsequently authenticated on 6 August 2004:

"Upon the plaintiff undertaking to submit to such order as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct to any person, whether or not a party affected by the operation of the interlocutory order or undertaking or of any interlocutory continuation with or without any variation of the order or undertaking.

(1) Upon that undertaking being given, the defendant shall, within seven days, remove its screening plant from Mineral Lease Southern 150, known as White Range Mine, and is restrained until further order from placing a mobile screening plant or any other fixed plant and equipment on Mining Lease Southern 150.

(2) The defendant's summons of 26 July 2004 is dismissed.

(3) The plaintiff's costs of and incidental to its summons of 13 July 2004 are costs in the proceedings.

(4) I certify the costs fit for senior and junior counsel.

(5) I note, with respect to the proposed order number 4, relating to the costs of the defendant's summons, that I reserve my decision on that and when I have had an opportunity to look at those submissions that have been put forward on the issue I will give a ruling in respect of order number 4."

[4] I will now set out some reasons for my ruling with respect to the plaintiff's application that the defendant pay the plaintiff's cost of and incidental to the summons of 26 July 2004. This application was opposed by Mr Silvester, counsel for the defendant.

[5] The defendant's summons of 26 July was the defendant's application for a cross injunction, which was dismissed.

[6] Mr Silvester submitted that the normal rule in interlocutory proceedings is that costs be in the cause. He argued on behalf of the defendant that the cross injunction application was necessary because if the Court had held that the status quo was that the screening plant was on mineral lease South 150 and operating, albeit in a different location, then the cross injunction orders would have been necessary to secure an arrangement between the parties whereby they could operate side by side. Accordingly, it is the submission on behalf of the defendant that the costs of the summons should be costs in the cause.

[7] Rule 63.18 provides that:

> "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."

[8] This Court has a discretion to award costs in interlocutory proceedings. Such a discretion must be exercised judicially:

> "*Markorp Pty Ltd v King & Ors* (1992) 106 FLR 286 at 292-3
> *Paspaley Pearls Pty Ltd v Artsheen Pty Ltd & Ors* [1997] NTSC 126
> *Wentworth v Rogers (No 3)* (1986) 6 NSWLR 642 at 644 and 651
> *Micallef v ICI Australia Operations* [2001] NSWCA 274
> *Duke Group Ltd (In Liq) v Arthur Young & Ors* 4 ASCR 355
> *Jess v Scott* (1986) 12 FCR 187 at 188.9 and 196.1"

[9] This was not a "run of the mill" interlocutory application seeking to enforce compliance with a procedural matter. It was a substantial application which would not necessarily have been reasonably anticipated by the plaintiffs.

[10] The application on summons included the presentation of evidence, and extensive submissions from senior counsel for both parties.

[11] The written reasons for judgment, delivered on 3 August 2004, made reference to the evidence presented by the plaintiff and the defendant with respect to each application for injunctive relief and to the submissions made on behalf of the respective parties. The summons issued by the defendant for injunctive relief was dismissed.

[12] It is reasonable to anticipate that the costs will be substantial and not necessarily offset by other applications.

[13] In these circumstances I consider it appropriate to exercise a discretion in favour of the plaintiff with respect to an award of costs.

[14] Accordingly, in addition to the orders made on 5 August 2004 and authenticated on 6 August 2004, I make a further order:

- The defendant to pay the plaintiff's costs of the summons issued by the defendant on 26 July 2004 which was subsequently dismissed.

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