

# SUPREME COURT OF QUEENSLAND

CITATION: *Commissioner of the Australian Federal Police v Alex* [2024]  
QSC 59

PARTIES: **COMMISSIONER OF THE AUSTRALIAN FEDERAL  
POLICE**  
(applicant)

v

**GEORGE ALEX**  
(not a party to the application / first respondent)

**PASQUALE LOCCISANO**  
(not a party to the application / second respondent)

**KEVIN MCHUGH**  
(not a party to the application / third respondent)

**MARK BRYERS**  
(not a party to the application / fourth respondent)

**GORDON MCANDREW**  
(not a party to the application / fifth respondent)

**LINDSAY KIRSCHBERG**  
(not a party to the application / sixth respondent)

**CHERYL ROSTRON**  
(not a party to the application / seventh respondent)

**ARTHUR ALEX**  
(not a party to the application / eighth respondent)

**CAITLIN HALL**  
(not a party to the application / ninth respondent)

**WILLIAM SAMUEL PAHL**  
(not a party to the application / tenth respondent)

**LUCAS CONNELL**  
(not a party to the application / eleventh respondent)

**ADRIAN METLY**  
(not a party to the application / twelfth respondent)

**CITY NOMINEES PTY LTD**  
(interested party applicant)

**OFFICIAL TRUSTEE IN BANKRUPTCY**  
(third party)

FILE NO/S: 7923 of 2020

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 11 April 2024

DELIVERED AT: Brisbane

HEARING DATE: Heard on papers, written submissions received 29 January 2024, 9 February 2024 and 12 February 2024.

JUDGE: Kelly J

ORDER: **1. The interested party applicant, City Nominees Pty Ltd, shall pay the costs of the applicant and of the Official Trustee in Bankruptcy of and incidental to the amended application dated 29 December 2023, filed with leave on 15 January 2024, to be agreed, or failing agreement to be assessed on the standard basis.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where the Court determined an application to vary orders – where the Official Trustee in Bankruptcy sought costs on an indemnity basis or, alternatively, on the standard basis against the interested party applicant – where the Official Trustee in Bankruptcy submitted that the conduct of the interested party applicant necessitated an appearance by the Official Trustee in Bankruptcy and putting on of a significant volume of evidence – where the interested party applicant dropped allegations against the Official Trustee in Bankruptcy and abandoned orders sought at the hearing – whether the court should depart from the general rule as to costs – whether the interested party applicant should pay the applicant and the Official Trustee in Bankruptcy’s costs

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – OFFERS OF COMPROMISE, PAYMENTS INTO COURT AND SETTLEMENTS – GENERALLY – where the interested party applicant sought costs against the applicant and Official Trustee in Bankruptcy – where the interested party applicant claimed that the hearing could have been avoided had the other parties agreed to offers made by the interested party applicant – where the interested party applicant dropped allegations against the Official Trustee in Bankruptcy and abandoned orders sought at the hearing – whether the applicant and the Official Trustee in Bankruptcy should pay the interested party applicant’s costs

COUNSEL: B Walker for City Nominees Pty Ltd, the interested party applicant  
M Brady KC, with C de Marco, for the applicant  
E J Coker for the Official Trustee in Bankruptcy

SOLICITORS: No appearance for the interested party applicant  
Commissioner of the Australian Federal Police for the applicant  
Harris Carlson Lawyers for the Official Trustee in Bankruptcy

- [1] On 15 January 2024, I delivered an ex tempore decision in respect of an amended application dated 29 December 2023 (“the application”) filed by the interested party applicant, City Nominees Pty Ltd (“Nominees”).
- [2] By the application, Nominees sought to vary orders made on 17 July 2020 pursuant to s 39(1)(e) of the *Proceeds of Crime Act 2002* (Cth). Relevantly, Nominees sought relief against the Official Trustee in Bankruptcy (“the Official Trustee”) so as to remove the Official Trustee’s custody and control over certain real property. Alternatively, Nominee’s sought to vary the orders to allow for that property to be refinanced through the existing lender and require the Official Trustee to take all reasonable steps to facilitate the proposed finance.
- [3] The orders I made on 15 January 2024 were in the following terms:
- “1. Pursuant to s 39(1)(e) of the *Proceeds of Crime Act 2002* (Cth), the orders made on 17 July 2020 are varied by amending paragraph 27 to include a new paragraph 27(h) in these terms:
 

Give consideration to any offer made to refinance any loan, or vary any loan agreement, secured by a mortgage registered over a Controlled Property and, if considered by the Official Trustee to be appropriate to prevent dissipation in the value of the Controlled Property or to otherwise preserve its value, enter into any loan or varied loan agreement in respect of the Controlled Property.
  2. By 29 January 2024, the interested party applicant is to file, serve and email to Associate Kelly J their outline of submissions as to costs (limited to 3 pages) and any supporting affidavit material on which they intend to rely.
  3. By 12 February 2024, the [applicant] and third party are to file, serve and email to Associate Kelly J their outline of submissions as to costs in reply (limited to 3 pages) and any supporting affidavit material on which they intend to rely.”

- [4] By an email dated 29 December 2023, the lawyer for Nominees made a without prejudice offer to the applicant and the Official Trustee as follows:

“On a without prejudice basis, it is my client’s intention to maintain the status quo in relation to the restrained real property until the determination of the related criminal matter. As such, will you consent to the orders sought by my client in an effort to do this or alternatively agree to alternative orders which direct the [O]fficial [T]rustee to facilitate an extension of the finance attached to the property, noting their previous refusal to do so. Upon acceptance of this offer, each party to bear their own costs of this application.”

- [5] The application was heard in the Applications List on 15 January 2024. During the hearing, Mr Walker, who appeared for Nominees, cross-examined Mr Mitchell Buchanan for the purpose of demonstrating wrongdoing on the part of the Official Trustee. Following the cross-examination and during his oral submissions, Mr Walker formally withdrew “any suggestion, explicit or implicit, of wrongdoing against the [O]fficial [T]rustee”.<sup>1</sup> By that very late stage, the costs of the application had been incurred. Until that point, the applicant and the Official Trustee had been put to the cost of appearing on the application in which wrongdoing was alleged as against the Official Trustee and substantive orders were sought directed to the removal of the Official Trustee. Given that wrongdoing was asserted against the Official Trustee, it was necessary for the Official Trustee to appear, and rely upon the affidavit of Mr Buchanan.

- [6] Mr Walker then made an oral submission to the effect that the Court was not required to make any finding about the conduct of the Official Trustee but the existing orders might be varied “to clarify the position of the [O]fficial [T]rustee that they actually do have the power to properly consider, and it its considered reasonable, to implement a new loan”.<sup>2</sup> Hence, it was not until mid-way through the hearing on 15 January 2024, that Nominees abandoned its claims of wrongdoing against the Official Trustee and sought relief of a very different kind to that sought by the application. The relief ultimately granted was of a very different nature to that sought by the application. The late change of position meant that the applicant and the Official Trustee had no meaningful opportunity to consider whether to consent to the relief granted.

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<sup>1</sup> Transcript T1-47, lines 30-35.

<sup>2</sup> Transcript T1-37, lines 44-46.

- [7] Having regard to all of these circumstances, it is appropriate that Nominees pay the costs of the applicant and of the Official Trustee, of and incidental to the application, to be agreed, or failing agreement, to be assessed on the standard basis.

**Orders**

1. The interested party applicant, City Nominees Pty Ltd, shall pay the costs of the applicant and of the Official Trustee in Bankruptcy of and incidental to the amended application dated 29 December 2023, filed with leave on 15 January 2024, to be agreed, or failing agreement to be assessed on the standard basis.