SUPREME COURT OF QUEENSLAND

CITATION:	*Hookey & Anor v Manthey & Ors (No 2)* [2018] QSC 252
PARTIES:	**SCOTT GREGORY HOOKEY** (first applicant) AND **MARETTI AUSTRALIA PTY LTD ACN 619 520 115** (second applicant) **V** **STEVEN CHARLES MANTHEY** (first respondent) AND **MICHAEL MANTHEY** (second respondent) AND **MICHAEL JOHNSTON** (third respondent) AND **BRENDA MANTHEY** (fourth respondent) AND **SC MANTHEY PTY LTD** (fifth respondent)
FILE NO/S:	BS No 7639 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	6 November 2018
DELIVERED AT:	Brisbane
HEARING DATE:	On the papers
JUDGE:	Brown J

ORDERS: **The orders of the Court are:**

1. **That the parties bear their own costs of their appearance on 9 August 2018.**

2. **That, save as provided in order (1), the applicants should pay 80 percent of the respondents' costs of the application to be assessed on the standard basis.**

3. **That, save as provided in order (1), 20 percent of the applicants' costs of the application be the applicants' costs in the proceedings.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL MATTERS – GENERAL RULE: COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where judgment in the application ordered that the respondents be restrained from dealing with, modifying or in any way altering engine identified in the order, together with some incidental orders, but otherwise did not continue the freezing orders made on an *ex parte* basis – where the application was previously adjourned with costs reserved – where the applicants contend that the costs of the application for a freezing order and other injunctive relief should be each party's costs in the proceedings – where the respondents seek the costs of the application – whether costs should follow the event

Order as to affidavit to disclose location of the engine

[1] In paragraph 123 of my reasons,[1] I invited the parties to make submissions as to whether they wish to contend that an order should be made in the nature of a notification order, or an order seeking an affidavit disclosing the location of the engine.

[2] The applicants do not seek a notification order.

[3] The applicants do seek an order that the first and second respondents be required to file an affidavit as to the location of the engine. The respondents do not oppose an order requiring the first respondent to depose to the location of the engine. The respondents however contend that no order should be made in respect of the second respondent. In that regard, they submit that there was no suggestion that the second respondent had done any of the

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1 [2018] QSC 207.

things pleaded in paragraph 20 of the statement of claim, nor that he had failed to disclose information to the applicants, nor that there was a risk that he would do anything that might frustrate the enforceability of the injunction that has been continued. I accept that to be the case and presently will limit the order to apply only to the first respondent. I order that the first respondent file and serve an affidavit deposing to the present location of the engine, the subject of the proceedings, within 14 days.

Costs

[4] On 6 September 2018, I made orders to continue an order of Jackson J to restrain the respondents from dealing with, modifying or in any way altering the two stroke internal combustion engine identified in the order, together with some incidental orders, but otherwise did not continue the orders made by Jackson J, on an *ex parte* basis, freezing the assets of the first and fifth respondents. To that extent, the applicants had very limited success in their application, not succeeding in maintaining the freezing orders.

[5] The applicants contend that the costs of the application for a freezing order and other injunctive relief should be each party's costs in the proceedings. They largely rely on the fact that the Court found that there was a *prima facie* case of a joint venture to develop and commercialise the engine and a breach of such an agreement which justified a continuation of the injunction granted in paragraph 7 of the order of 18 July 2018.

[6] It was also submitted by the applicants that if the Court made an order that Mr Steven Manthey or the first and second respondents deliver an affidavit in the terms addressed above, that further supports the argument for the costs of the application to be costs in the proceedings. The ordering of the affidavit is justified based on the other orders made, but does not significantly affect the success of the respondents.

[7] The respondents contend that that aspect of the order, which is really in the nature of an interlocutory injunction, was not the subject of any significant challenge save insofar as it was contended that no *prima facie* case had been pleaded by the applicants.

[8] The respondents seek the costs of the application, given that the application for orders freezing the assets of the first and fifth respondents was effectively dismissed. It contended that the marginal success in having the injunction restraining the first, second and fifth

respondents from dealing with the engine was only an issue to the extent that it overlapped with the application for a freezing order and had the applicants failed to establish any *prima facie* case, there would have been no basis for continuing the injunction.

[9] I agree with the submissions of the respondents that notwithstanding that a limited injunction had been continued, they were overall generally successful. As such, the usual order would be that costs follow the event. I do not consider that in the present case there is anything that warrants costs being reserved or otherwise being ordered to be party's costs in the proceedings save in one respect, given that the basis upon which the applicants have failed is unlikely to be an issue at trial. The usual order as to costs should apply, save in the respects I address below.

[10] The applicant contends that the respondents should not have the costs reserved by Jackson J on 26 July 2018, given that the application was adjourned because the respondents needed more time. It contends further that the respondents should also not be awarded their costs of the appearance before Davis J on 9 August 2018 as the application was further adjourned on that date because the solicitors then retained by the respondents had a conflict of interest. Neither Jackson J nor Davis J considered it appropriate to order costs against the respondents in respect of those days and reserved costs. That would suggest that they considered that costs would be appropriately determined at the one time after the whole application was determined, but there is the possibility it was simply a case of deferring the argument to another day.

[11] According to the respondents, the application for an adjournment was made by the applicants orally on 9 August 2018, in order for them to bring an application to restrain the former solicitors for the respondents, TVP Law, from acting. A timetable was agreed for the filing of material including a statement of claim and the hearing of the application. TVP Law subsequently indicated that they would withdraw and the question of whether there was in fact any conflict of interest was not resolved. Given that outcome, I consider that neither party should be awarded the costs of their appearance on that day.

[12] In the reasons for judgment, I refer to the fact that the statement of claim that was ordered by Davis J on 9 August 2018 to be delivered, deviated significantly from the way that the case had been formulated before both Jackson J and Davis J. In particular, there were no allegations of dishonestly ultimately pleaded in the statement of claim, nor was any proprietary claim

pleaded to entitle the second applicant possession of the engine pleaded. The respondents had prepared submissions for the purposes of resisting the continuation of the orders made by Jackson J.

[13] The Court may, in its discretion, rather than simply ordering that costs follow the event, order that a party pay a proportion of another parties' costs as a way to reflect fairly the parties' comparative success or failure in the outcome which was obtained based on an overall impression having regard to the significance of the issues, the way in which they were determined and the amount of time and cost spent on them.

[14] I regard the respondents as having enjoyed significant success, save insofar as the interlocutory injunction was continued, which was not a significant part of the application before me but still was a live issue. The question of whether the interlocutory injunction is ultimately justified will be determined at trial. Accordingly, I consider that the costs order should reflect both of those matters. I also take into account the fact that the applicants changed their case from that which had been previously submitted, to that contained in the statement of claim and had failed to make full disclosure as required on an *ex parte* application, which I considered was a factor which weighed against the continuation of the orders made by Jackson J in respect of the freezing of the assets. I consider, however, that there should be an order to take account of the fact that the interlocutory order is continued.

[15] In all of the circumstances I consider that the appropriate orders are:

(1) That the parties bear their own costs of their appearance on 9 August 2018.

(2) That, save as provided in order (1), the applicants should pay 80 percent of the respondents' costs of the application to be assessed on the standard basis.

(3) That, save as provided in order (1), 20 percent of the applicants' costs of the application be the applicants' costs in the proceedings.