

FEDERAL COURT OF AUSTRALIA

Robit Nominees Pty Ltd v Oceanlinx Limited (in liq) (Receivers and Managers Appointed), in the matter of Oceanlinx Limited (in liq) (Receivers and Managers Appointed) (No 2) [2016] FCA 342

File number: NSD 1304 of 2014

Judge: **YATES J**

Date of judgment: 8 April 2016

Catchwords: **COSTS** – where party wholly successful – where party indemnified for costs – whether the court should depart from the usual costs order

Legislation: *Corporations Act 2001* (Cth) s 443D

Cases cited: *Robit Nominees Pty Ltd v Oceanlinx Limited (in liq) (Receivers and Managers Appointed), in the matter of Oceanlinx Limited (in liq) (Receivers and Managers Appointed)* [2016] FCA 225

Date of hearing: Heard on the papers

Date of last submissions: 5 April 2016

Registry: New South Wales

Division: General Division

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Category: Catchwords

Number of paragraphs: 7

Counsel for the Plaintiffs: Mr J Kohn

Solicitor for the Plaintiffs: JPM Lawyers

Counsel for the First, Second and Third Defendants: Mr DR Stack

Solicitor for the First, Second and Third Defendants: Bridges Lawyers

Counsel for the Fourth and Fifth Defendants: Mr MJ Dawson

Solicitor for the Fourth and Fifth Defendants: ERA Legal

ORDERS

NSD 1304 of 2014

IN THE MATTER OF OCEANLIX LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)

BETWEEN: **ROBIT NOMINEES PTY LTD** (and another named in the Schedule)
Plaintiffs

AND: **OCEANLIX LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)** (and others named in the Schedule)
Defendants

JUDGE: **YATES J**

DATE OF ORDER: **8 APRIL 2016**

THE COURT ORDERS THAT:

1. The plaintiffs pay the first, second and third, and the fourth and fifth, defendants' costs of the proceeding.
2. The plaintiffs pay the first, second and third, and the fourth and fifth, defendants' costs of the plaintiffs' interlocutory process dated 9 July 2015.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

YATES J:

1 On 11 March 2016, I ordered that this proceeding be dismissed and that, in the event that the parties were unable to agree on the question of costs, written submissions be filed on that question, which I would then determine on the papers. The reason for taking that course was that the fourth and fifth defendants had signified at the hearing that they wished to make certain submissions on the question of costs: *Robit Nominees Pty Ltd v Oceanlinx Limited (in liq) (Receivers and Managers Appointed), in the matter of Oceanlinx Limited (in liq) (Receivers and Managers Appointed)* [2016] FCA 225 at [266] (**my earlier reasons**).

2 In my earlier reasons, I stated that I could see no reason why the plaintiffs should not pay the defendants' costs. The first, second and third defendants, and the fourth and fifth defendants, have advanced that provisional view in their written submissions. Put simply, they each submit that costs should follow the event. The fourth and fifth defendants advance no additional submission in that regard.

3 The defendants also seek an order that the plaintiffs pay the costs of the plaintiffs' interlocutory process dated 9 July 2015 by which the plaintiffs sought to further amend their claim. At the time of hearing that interlocutory process, I reserved the question of costs.

4 The plaintiffs do not oppose an order that they pay the first, fourth and fifth defendants' costs. However, they argue that no order should be made as to the second and third defendants' costs because, pursuant to s 443D of the *Corporations Act 2001* (Cth), those defendants are entitled to an indemnity for their costs against the first defendant's property. The plaintiffs say that, given this indemnity, it would be inappropriate to make an order for costs in favour of the second and third defendants because "there would potentially be a doubling up on the costs payable by the Plaintiffs" and "the second and third Defendants would stand to make a windfall gain". This argument is untenable.

5 The plaintiffs have not addressed, separately, the question of reserved costs in relation to their interlocutory process.

6 I am satisfied that the plaintiffs should pay the first, second and third defendants', and the fourth and fifth defendants', costs of the proceeding. I am also satisfied that the plaintiffs should pay the first, second and third defendants' costs, and the fourth and fifth defendants'

costs, of the interlocutory process. This particular interlocutory application was made only some days before the commencement of the hearing and was in the nature of an indulgence sought by the plaintiffs to amend their claim.

7 Orders will be made accordingly.

I certify that the preceding seven (7) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Yates.

Associate: 

Dated: 8 April 2016

SCHEDULE OF PARTIES

NSD 1304 of 2014

Plaintiffs

Second Plaintiff: OCEAN ENERGY CONSTRUCTIONS PTY LTD

Defendants

Second and Third Defendants: VAUGHAN NEIL STRAWBRIDGE AND JASON TRACY IN THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF OCEANLINX LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)

Fourth Defendant: WAVE ENERGY RESOURCES PTY LTD

Fifth Defendant: WAVE POWER RENEWABLES LIMITED (HONG KONG COMPANY 2063597)