Supreme Court

New South Wales

Case Name:	George Thomas Hotels (Campsie) Pty Limited and Anor v NSW Independent Liquor and Gaming Authority and Ors
Medium Neutral Citation:	[2017] NSWSC 994
Hearing Date(s):	26 July 2017
Date of Orders:	26 July 2017
Decision Date:	26 July 2017
Jurisdiction:	Equity - Expedition List
Before:	Sackar J
Decision:	See para [22]
Legislation Cited:	Civil Procedure Act 2005 (NSW) Liquor Act 2007 (NSW) Uniform Civil Procedure Rules 2005 (NSW)
Cases Cited:	Buckley and Anor v Independent Liquor and Gaming Authority and Anor [2016] NSWSC 1533 George Thomas Hotels (Campsie) Pty Limited & Anor v NSW Independent Liquor & Gaming Authority & Ors [2017] NSWSC 792 R v Australian Broadcasting Tribunal; Ex parte Hardiman (1980) 144 CLR 13 Taylor v Owners Strata Plan No. 11564 (No 2) [2013] NSWCA 153
Category:	Costs
Parties:	George Thomas Hotels (Campsie) Pty Limited (First Plaintiff) Golden Corridor Management Pty Limited (Second Plaintiff) NSW Independent Liquor & Gaming Authority (First

	Defendant) Station House Campsie Pty Ltd (Second Defendant) Jarrod Peter Smith (Third Defendant)
Representation:	Counsel: B Coles QC (Plaintiffs) C Frommer (First Defendant) W G Muddle SC (Second and Third Defendants) Solicitors: Back Schwartz Vaughan (Plaintiffs) NSW Crown Solicitor's Office (First Defendant) Hatzis Cusack (Second and Third Defendants)
File Number(s):	2017/129748
Publication Restriction:	n/a

JUDGMENT

1 I gave judgment in this matter on 19 June 2017; *George Thomas Hotels (Campsie) Pty Limited & Anor v NSW Independent Liquor & Gaming Authority & Ors* [2017] NSWSC 792.

2 The background to this litigation is set out in my judgment at [5]-[24] and I do not propose to repeat it here.

3 In summary, the Plaintiffs sought a declaration the First Defendant (the Independent Liquor and Gaming Authority, **the Authority**), had no power to revisit or re-enliven a Removal Application (s.59, Liquor Act 2007 (NSW) (**the Act**)) because it had been withdrawn pursuant to s.45(2) of the Act.

4 Proceedings concerning that Application came before Adams J on 25 July 2016, with judgment being handed down on 2 November 2016; *Buckley and Anor v Independent Liquor and Gaming Authority and Anor* [2016] NSWSC 1533 (**Buckley proceedings**).

5 When the current proceedings were commenced, the Plaintiffs only joined the First Defendant. It was suggested to the Plaintiffs by the First Defendant and what became the Second and Third Defendants that it would be appropriate to join the latter. The Plaintiffs resisted such a move.

6 The application for joinder came before me on 12 May 2017. I ordered the other Defendants be joined. In my view those Defendants not only had a right to be heard on matters directly affecting them, the nature of the relief sought necessitated their joinder (T15/36-44, Transcript of 12 May 2017).

7 The proceedings were heard before me on 6 June. The issues debated were first, whether the Plaintiffs lacked standing and secondly whether the Authority was empowered to revisit the Removal Application. The latter focused very much upon what had been argued before Adams J and the effect of the orders the judge eventually made.

8 I determined the issue of standing in favour of the Plaintiffs and the second issue of the Removal Application in favour of the Defendants.

9 The argument before the Court is what the appropriate costs order should be.

10 The Plaintiffs and the First Defendant have agreed on costs, with the Plaintiffs agreeing to pay the costs of the First Defendant.

11 However the Plaintiffs submit that I should make no order as to costs in relation to the Second and Third Defendants.

12 The Plaintiffs say there are numerous reasons for this. First, they submit only one set of costs should be allowed where there are defendants with identical interests. Further, they submit the relevant Defendants should properly be characterised as interveners who have, as it were, unnecessarily poked their noses into the litigation. In addition, they point to the fact the relevant Defendants by “forceful contention” submitted the Plaintiff’s had no standing – a point I ultimately determined against the Defendants. The Plaintiffs also submit further reasons why I should make no order as to costs (Plaintiffs’ Submissions [18]–[35]). The substance of these matters is somewhat elaborate and if I may say overworked but include the point at which the Plaintiffs belatedly became aware of an amended summons in the Buckley proceedings, and as a result were in effect wrong footed.

13 A number of authorities are relied upon to support the proposition that to order costs in favour of the Second and Third Defendants would be unduly to reward them for unnecessary duplication (Plaintiffs’ Submissions [8]-[14]).

14 In particular reliance is placed on *Taylor v Owners Strata Plan No. 11564 (No 2)* [2013] NSWCA 153 at [6]-[9]. In those paragraphs the authorities are reviewed by the Court of Appeal and they deal with the circumstances in which a Court might exercise its discretion and allow only one set of costs. Examples include cases where there could be no possible conflict, or where to maintain separate representation should be seen as unreasonable or clearly inappropriate. It is observed that a Court might be more amenable to such an order if objection is fairly taken prior to a hearing.

15 In my view the First Defendant on the one hand and the Second and Third Defendants on the other did have separate interests. The First Defendant is the relevant Authority. The role in any litigation of such an entity will usually be limited, and necessarily so; *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13 at 35-36.

16 The First Defendant's role in such litigation cannot be, in law, that of a contradictor. Here the First Defendant correctly and firmly took that view and requested the Plaintiffs join the other Defendants for that very reason.

17 At the hearing the Second and Third Defendants as it turned out advanced similar but not identical arguments to the First Defendant. Those Defendants however were at the hearing out of necessity.

18 The First Defendant had no right nor need to protect the commercial interests of the other Defendants. Indeed, if the First Defendant's request of the Plaintiffs had been immediately acceded to, it may have played little, if any, role in the proceedings. As it turned out, the First Defendant played a constructive and helpful role on standing, which was in essence contrary to the position of the Second and Third Defendants. Further, consistent with its obligations to the Court, the First Defendant advanced additional arguments on the question of jurisdictional error.

19 The Second and Third Defendants, as I have indicated, ask for their costs of both the argument on joinder and the proceedings.

20 On any costs question, the court has a very wide discretion. This is clear from s.98(1) of the Civil Procedure Act 2005 (NSW). Subject to some unusual factor,

costs usually follow the event. This is clear from rules 42.1 and 42.2, of the Uniform Civil Procedure Rules 2005 (NSW).

21 In my opinion the Second and Third Defendants had a legitimate and separate interest to protect and subject to the qualification which follows, there is no reason to deny them an order for costs. The Plaintiffs were unsuccessful on what I regard to be the main point of the proceedings before me and which I considered took the substantial amount of time orally and in writing. Equally the Plaintiffs inappropriately opposed the joinder of the Second and Third Defendants. The Second and Third Defendants did, however, persist in the standing argument and lost. Although this issue did not in my view take up any substantial time, it is a factor that should be taken into account.

22 I consider in all the circumstances the Plaintiffs should pay the Second and Third Defendant's costs of the joinder argument before me on 12 May, but 70% of the Defendants' costs before me on 6 June 2017.

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