

FEDERAL COURT OF AUSTRALIA

Walter Rau Neusser Oel und Fett AG v Cross Pacific Trading Ltd [2005] FCA

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**WALTER RAU NEUSSER OEL UND FETT AG v CROSS PACIFIC TRADING LTD
AND ORS
NSD 432 of 2005**

**ALLSOP J
15 AUGUST 2005
SYDNEY**

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

NSD 432 of 2005

**BETWEEN: WALTER RAU NEUSSER OEL UND FETT AG
 APPLICANT**

**AND: CROSS PACIFIC TRADING LTD
 FIRST RESPONDENT**

**PATRICK SHUNG WONG
SECOND RESPONDENT**

**WILLEM JOHAN VAN VLYMEN
THIRD RESPONDENT**

**ORBIS COMMODITIES PTY LIMITED
FOURTH RESPONDENT**

**INTERNATIONAL COMTRADE & SHIPPING LIMITED
FIFTH RESPONDENT**

**RUSSELL ISLAND PLANTATION ESTATES LIMITED
SIXTH RESPONDENT**

**KAY LITTLE JOHN
SEVENTH RESPONDENT**

**AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED
EIGHTH RESPONDENT**

JUDGE: ALLSOP J

DATE OF ORDER: 15 AUGUST 2005

WHERE MADE: SYDNEY

THE COURT ORDERS THAT:

1. The applicant pay the first to seventh respondent's costs of steps seeking to set aside the orders made on 21 March 2005, to the extent that those costs have been thrown away.
2. Those costs are to be paid, subject to further order, on a party/party basis.
3. The respondents, subject to further order, take no step in the taxation or recovery of said costs until the determination of the proceedings or until further orders.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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**AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED
EIGHTH RESPONDENT**

JUDGE: ALLSOP J

DATE: 15 AUGUST 2005

PLACE: SYDNEY

REASONS FOR JUDGMENT

- 1 I gave the parties leave to file submissions as to costs. Notwithstanding the directions I made as to the length of the submissions both parties have exceeded that length. A page restriction is not to be evaded by close typing. Nor is it to be evaded in the submissions seeking leave to

put on longer submissions.

- 2 Nevertheless, I have read the submissions of the parties. The respondents seek costs on an indemnity basis. They say that the non-disclosure hitherto made was deliberate. The applicant, in submissions which to, a significant extent, go close to seeking to take issue with the way I approached the matter on 18 July, says that the costs should be costs in the cause.
- 3 Notwithstanding some of the submissions of the parties, the parties should understand a number of things. First, the order for costs in relation to the freezing orders is based on what I found was a failure to disclose. Whether or not that failure was deliberate or not I do not propose to deal with at the moment. I am not prepared on the material before me to conclude that it was.
- 4 Secondly, the matters that I dealt with were not findings on a final basis as some of the submissions seem to assume. What I was dealing with was a failure to put an articulated case to me not whether that articulated case was right. No party should think that I have made any findings whatsoever on the substantive issues in this case.
- 5 I think the respondents should have an order for costs. However, I propose to undertake a hearing in this matter on the merits later this year. Serious allegations of fraud are made. Depending upon whether they are made out or not those matters may significantly influence how I should approach the costs in this matter.
- 6 For the sake of good order, these orders provide orders which I think justly account for the responsibility for costs on what I presently know of the matter. It may be that upon and after hearing the matter in full the level of costs which are awarded might be changed. I think that there has been a significant body of preparation for the hearing undertaken by solicitors and counsel on behalf of the respondents during the course of these interlocutory matters. It may well be difficult for a taxing officer to discern what is thrown away and what is not. However, I do not think that the respondents should have all their costs up to any particular time. It is the costs that otherwise have not been or will not be of any utility in defending this case which should be paid.
- 7 Having taken into account all the submissions put to me on costs the orders that I propose to make in relation to costs are as follows:
 1. The applicant pay the first to seventh respondents' costs of steps seeking to set aside the orders made on 21 March 2005, to the extent that those costs have been thrown

away.

2. Those costs are to be paid, subject to further order, on a party party basis.
3. The respondents, subject to further order, take no step in the taxation or recovery of said costs until the determination of the proceedings.

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

Associate:

Dated: 15 August 2005

Counsel for the Applicant: Mr A W Street SC with Mr J A N Hogan-Doran

Solicitor for the Applicant: Ebsworth & Ebsworth

Counsel for the Respondents: Mr M S Jacobs QC with Mr P J Bambagiotti

Solicitor for the Respondents: Alexander & Associates

Date of Hearing: 10 June 2005

Date of Judgment: 15 August 2005