



**NOTICE OF ORDER**

IN THE MAGISTRATES' COURT  
OF VICTORIA AT MELBOURNE

Court Reference: N11438481

You are advised that on 29 August 2023 the following entries were made in the register:

ANTON PETRUS TRICHARDT

Plaintiff

Monique Hardinge

Plaintiff

Monique Hardinge

Plaintiff

MIRKA CARMELLI

Defendant

MITCH KARAFILI

Defendant

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**PROCEEDING:** Application - Interlocutory

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**ORDER(S):**

ANTON PETRUS TRICHARDT vs MITCH KARAFILI

Not by consent

**Free Text Order**

Order that

THE COURT ORDERS THAT:

1. The First and Second Defendants are jointly and severally liable to pay the First Plaintiff the sum of \$22,220 and interest of \$3,086.
2. The First and Second Defendants are jointly and severally liable to pay the Second Plaintiff the sum of \$3,833.33 and interest of \$527.
3. The First Defendant is solely liable to pay the First Plaintiff the sum of \$24,040 and interest of \$3,615.
4. The First Defendant is solely liable to pay the Second Plaintiff the sum of \$6,937.50

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and interest of \$954.

5. The Defendants are jointly and severally liable to pay the Plaintiffs' costs and disbursements fixed in the sum of \$34,796.90.

Subcase: Complaint filed by ANTON PETRUS TRICHARDT, & Ors.

Order relates to: ANTON PETRUS TRICHARDT, MIRKA CARMELLI, MITCH KARAFILI, Monique Hardinge, Monique Hardinge

### **Claim Order**

Claim order made

MIRKA CARMELLI (Defendant) to pay ANTON PETRUS TRICHARDT (Plaintiff) claim of \$46,260.00 and interest of \$6,701.00 and costs of \$34,796.90.

Subcase: Complaint filed by ANTON PETRUS TRICHARDT, & Ors.

Order relates to: ANTON PETRUS TRICHARDT, MIRKA CARMELLI

### **Claim Order**

Claim order made

MITCH KARAFILI (Defendant) to pay ANTON PETRUS TRICHARDT (Plaintiff) claim of \$22,220.00 and interest of \$3,086.00 and costs of \$34,796.90.

Subcase: Complaint filed by ANTON PETRUS TRICHARDT, & Ors.

Order relates to: ANTON PETRUS TRICHARDT, MITCH KARAFILI

### **Claim Order**

Claim order made

MIRKA CARMELLI (Defendant) to pay Monique Hardinge (Plaintiff) claim of \$10,770.83 and interest of \$1,481.00 and costs of \$34,796.90.

Subcase: Complaint filed by ANTON PETRUS TRICHARDT, & Ors.

Order relates to: MIRKA CARMELLI, Monique Hardinge

### **Claim Order**

Claim order made

MITCH KARAFILI (Defendant) to pay Monique Hardinge (Plaintiff) claim of \$3,833.33 and interest of \$527.00 and costs of \$34,796.90.

Subcase: Complaint filed by ANTON PETRUS TRICHARDT, & Ors.

Order relates to: MITCH KARAFILI, Monique Hardinge

### **Free Text Order**

Order that

#### ***Introduction***

Following a trial on 29-30 May 2023 and written submissions of 10 July 2023, the court published its reasons on 24 July 2023.

On 27 July 2023, the court made directions for the parties to file costs submissions by 3 August 2023.

In their submissions dated 1 August 2023 (**Submissions**), the plaintiffs seek an order that the defendants pay the costs of the proceeding.

The defendants filed submissions on 29 August 2023.

#### ***Indemnity Costs***

First, the plaintiffs submit that costs should be paid on an indemnity basis. The plaintiffs rely upon the matters at paragraph 14(a) to (g) of their Submissions to justify an indemnity costs order.

In seeking indemnity costs, the plaintiffs are asking the court to depart from its usual course. That is the general rule that a successful party is ordinarily entitled to costs – costs follow the event. Special circumstances must be present to justify a departure from

Notice of order

the 'usual rule'; *Ugly Tribe Co Pty Ltd v Sikola* [2001] VSC 189

In my view, the factors raised by the plaintiff, individually and collectively, do not amount to special circumstances.

First, irrelevant, or disparaging assertions about the first plaintiff is not a special circumstance. Neither is the removal of defences, or abandonment of certain alleged defences in witness statements. In particular, the court has already made a costs order of 1 February 2023 to reflect the defendant's conduct in this regard. Ultimately, none of these matters were relevant to the issues before the court and did not unnecessarily prolong the trial.

Secondly, the first defendant's defence as to contract formation was plainly arguable. It required a careful consideration of all surrounding circumstances as set out in the judgment. As to the second defendant, he had partial success regarding the enforceability of the indemnity relied upon by the plaintiffs.

In those circumstances, I decline to make an indemnity costs order.

**Offers of Compromise.**

Alternatively, the plaintiffs rely upon an Offers of Compromise dated 13 July 2022 and 10 February 2023. They submit that the defendants' refusal of these offers was unreasonable and triggered the costs consequences set out in r 26.08(2)(b) of the *Magistrates' Court General Civil Procedure Rules 2020*.

*13 July 2022 Offer of Compromise*

The first plaintiff's 13 July 2022 Offer of Compromise refers to 'full satisfaction of the Second Plaintiff's claim' at paragraph [2]. It therefore has no costs consequences for the first plaintiff.

The second plaintiff's 13 July 2022 Offer of Compromise expressly refers to the second plaintiff's claim. However, I consider the court should decline to give effect to the Offer of Compromise and 'otherwise order' on the basis that:

- (a) the plaintiffs have retained joint solicitors and counsel;
- (b) joint items of costs have been claimed on the higher Scale F;
- (c) there are minor items of costs that are solely referable to the second plaintiff;
- (d) given the conduct of the proceeding, it is more appropriate to award costs on Scale F, given the first plaintiff's case involved more evidence and court time; and
- (e) in all the circumstances, the unique costs items of the second plaintiff have been awarded on Scale F such that no 25% uplift should be allowed.

For those reasons, I do not consider the 12 July 2022 Offers of Compromise require a 25% up lift on costs.

*10 February 2023 Offer of Compromise*

By the 10 February 2023 Offer of Compromise, the plaintiff agreed to accept the sum of \$50,000 in full satisfaction of their claim (inclusive of costs). The combined total of the claim awarded by the court was \$57,030.83 (exclusive of costs).

On that basis, I consider the costs consequences of r 26.08(2)(b) apply and there is no reason to 'otherwise order'.

Total costs and disbursements awarded as per the attached table - \$34,796.90

**Cost Items –Allowed**

Item	Amount (\$)	Reason
Item 3	1,140	No 25% uplift
Item 7	236	2x defences + 2x amended

		defences
Item 8	419	No 25% uplift
Item 12	398	No 25% uplift 2 times
Item 13	285	No 25% uplift Only first defendant produced an affidavit of documents on 2 November 2022.
Item 19	800	No 25% uplift 1x proper basis certificate + 1x overarching obligations certificate + 1x notice to cross examine + 1x notice to produce.
Item 20	618	No 25% uplift
Item 22	562	No 25% uplift 2 letters of compromise
Item 31	986	No 25% uplift 2 affidavits
Item 33	4,906.25	No 25% uplift
Item 34	997.5	25% uplift applied
Item 35	1,251.25	25% uplift applied
Item 36	997.5	25% uplift applied
Item 39	1,525	25% uplift applied
Item 42	727.5	4 Hours Only 1 Court appearance for reserve costs -10/10/2022
Item 47	895	25% uplift applied
Item 48	2,350	25% uplift applied
Item 49	1,046	8 extra hours 25% uplift applied
Item 50	1,650	3 hours 25% uplift applied
Item 51	825	4 hours 25% uplift applied

		2 hour preparation and conference
Item 53	6,805	25% uplift applied
Item 55	1,333.75	25% uplift applied
Item 66	41.25	25% uplift applied
<b>DISBURSMENTS</b>		
Transcription Service (2 days)	2,495	
Mediation Fees	438.8	
Payment to Process Server	215	
Court Audio of trial	110	
Magistrates Court Fee to file complaint	743.1	
<b>TOTAL</b>	<b>34,796.9</b>	

**Cost Items –Disallowed**

Item	Amount	Reason
Item 59	824	Unreasonable and disproportionate.  Included in General preparation
Item 60	10,127.88	Unreasonable and disproportionate  Included in General preparation
Item 61	7,920	Unreasonable and disproportionate  Included in General preparation
Item 62	6,778.75	Unreasonable and disproportionate  Included in General preparation
Item 67	1,140	Unreasonable and disproportionate  Included in General preparation
<b>TOTAL</b>	<b>26,790.63</b>	

Subcase: Complaint filed by ANTON PETRUS TRICHARDT, & Ors.

Notice of order

Order relates to: ANTON PETRUS TRICHARDT, MIRKA CARMELLI, MITCH KARAFILI,  
Monique Hardinge, Monique Hardinge

Magistrate Timothy Greenway

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Date: 30 August 2023



Supreet Kaur  
Deputy Registrar  
Magistrates' Court of Victoria

