

# NOTICE OF FILING

## Details of Filing

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*Sia Lagos*

Registrar

## Important Information

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Federal Court of Australia  
District Registry: Victoria  
Division: General

VID404/2025

**ALON CASSUTO**

Applicant

**MARY KOSTAKIDIS**

Respondent

**APPLICANT'S SUBMISSIONS: COSTS OF RESPONDENT'S STRIKE OUT APPLICATION**

**A. INTRODUCTION**

1. These submissions are made by the Applicant, Alon Cassuto, in respect of the costs of Ms Kostakidis's application to strike out his pleading, which application substantially failed.
2. On the last occasion, when judgment was delivered,<sup>1</sup> the parties indicated to the Court that they would consider the judgment, and confer, and make submissions at the case management hearing on 19 December 2025, if necessary.<sup>2</sup> The parties have been unable to reach agreement on the question of costs, necessitating this submission.
3. Mr Cassuto relies on the affidavit of Raphael Yehudah Leibler sworn on 17 December 2025 (**Leibler Affidavit**).
4. Mr Cassuto submits that the respondent, Ms Kostakidis should be ordered to pay 90% of his costs of and incidental to the application.
5. By her application filed on 16 May 2025, Ms Kostakidis sought an order that the whole, or alternatively, almost all of the paragraphs of, Mr Cassuto's amended statement of claim be struck out. The submissions filed by Ms Kostakidis were voluminous. She raised a scattergun attack on Mr Cassuto's pleading which was, with respect, easy to understand. Ms Kostakidis filed a total of 47 pages of submissions (in

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<sup>1</sup> *Cassuto v Kostakidis* [2025] FCA 1226 (J).

<sup>2</sup> 9 October 2025, VID404/2025 Hearing Transcript, 3:10-14, 3:22-37, 4:7-9.

chief and reply), a 292-page affidavit (including exhibits), a 26-page aide memoire, and required a hearing of half a day.

6. Notwithstanding the considerable ink spilled by Ms Kostakidis on her application, the application was largely a failure. The rejections of Ms Kostakidis's submissions are numerous and need not be set out in detail: see J [28]-[48], [64]-[90], [92]-[94].
7. The only respect in which it could be said that Ms Kostakidis 'succeeded' is that she submitted that certain paragraphs of the pleading should be struck out because of their inconsistent descriptions of the groups of people subject of Ms Kostakidis's offending conduct (J [49]). As McDonald J observed, rightly with respect, the complaint "goes to form and clarity of Mr Cassuto's pleading, rather than its substance" (J [49]). His Honour also observed that her argument had been made in an "extreme form" (J [54]), with criticisms that were "overstated and unrealistic" (J [50]), noting that there was only one sensible way of reading Mr Cassuto's pleading (J [55]).
8. His Honour noted that "[w]hile there is still a degree of ambiguity ... which should be improved, the pleading is nowhere near a problematic as Ms Kostakidis's submission attempts to suggest" (J [55]). His Honour accepted that it was clear enough that the pleading intended to refer to two distinct groups but that, given that the descriptions used in the pleading were not consistent, it was preferable that the same descriptions be used (J [58], [95]). This led his Honour to strike out the relevant paragraphs of the pleading with a right to replead (J [60]; see also [63]).<sup>3</sup> Mr Cassuto has made modest amendments to his pleading, accordingly.<sup>4</sup>
9. Ms Kostakidis herself has acknowledged her failure on the application, posting online that it was a "a disappointing result", that "nothing substantive was knocked out", and that the paragraphs struck out could be "reinstated with slight modification".<sup>5</sup>

## **B. PRINCIPLES**

10. The Court's discretion as to costs, conferred by s 43 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), is a wide one.<sup>6</sup> The discretion is unfettered except by the principle that it be exercised judicially.<sup>7</sup>

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<sup>3</sup> His Honour also struck out a single particular at [22] and [25] (J [91]).

<sup>4</sup> Mr Cassuto struck out the entire paragraphs that were subject to his Honour's orders, however the amended versions are in substantially the same form with some minor amendments.

<sup>5</sup> Leibler Affidavit, [24]; Exhibit 'RYL-1', 48-57.

<sup>6</sup> *Rainforest Reserves Australia Inc v Minister for Environment and Water* [2025] FCA 702, [17] (Sharrif J).

<sup>7</sup> *MMD Design and Consultancy Ltd v Camco Engineering Pty Ltd (No 2)* [2023] FCA 1416, [20] (Rofe J); *Bed Bath n Table Pty Ltd v Global Retail Brands Australia Pty Ltd (No 3)* [2023] FCA 226, [25] (Rofe J).

11. The ordinary position is that costs should follow the event,<sup>8</sup> although it has been observed that s 43 of the FCA Act does not prescribe a general or ordinary rule as to costs and does not specify that costs are to follow the ‘event’.<sup>9</sup>
12. The general principle is that the successful party is entitled to its costs, unless there are special circumstances that warrant departure from that position.<sup>10</sup> A successful party may be awarded less than its costs, or costs may be apportioned, based upon success on the issues.<sup>11</sup>
13. Relevant factors include the extent of a party’s success, the extent of its success or failure on individual issues and its conduct of the proceedings.<sup>12</sup> For example, in relevantly analogous circumstances to the present, in *Insurance Commission of Western Australia v Antony Leslie John Woodings as liquidator of the Bell Group Ltd (in liq) (No 3)* [2018] WASC 44, Pritchard J considered a case in which a strikeout application in respect of 18 prayers for relief was brought, in which the applicant succeeded on one. Her Honour held at [21]-[24] that the largely unsuccessful applicant would pay 80% of the respondent’s costs. Apportioning costs is approached primarily as “a matter of impression and evaluation”, rather than with arithmetical precision, having considered the importance of matters upon which the parties have been successful or unsuccessful, the time occupied and the ambit of the submissions made, as well as any other relevant matter.<sup>13</sup>

### C. MR CASSUTO SHOULD HAVE 90% OF HIS COSTS

14. Mr Cassuto was overwhelmingly successfully on the application. In this case, Ms Kostakidis failed to strike out the pleading in whole, and almost all of her submissions otherwise failed. That said, Ms Kostakidis obtained a small degree of success in that the Court struck out a number of paragraphs concerning the victim

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<sup>8</sup> *Rainforest Reserves Australia Inc v Minister for Environment and Water* [2025] FCA 702, [17] (Sharrif J).

<sup>9</sup> *Rainforest Reserves Australia Inc v Minister for Environment and Water* [2025] FCA 702, [18] (Sharrif J).

<sup>10</sup> *Rainforest Reserves Australia Inc v Minister for Environment and Water* [2025] FCA 702, [19] (Sharrif J).

<sup>11</sup> *Idenix Pharmaceuticals LLC v Gilead Sciences Pty Ltd (No 2)* [2018] FCAFC 7, [3] (Nicholas, Beach and Burley JJ); *MMD Design and Consultancy Ltd v Camco Engineering Pty Ltd (No 2)* [2023] FCA 1416, [20] (Rofe J); *Bed Bath n Table Pty Ltd v Global Retail Brands Australia Pty Ltd (No 3)* [2023] FCA 226, [25] (Rofe J).

<sup>12</sup> See, eg, *Queensland North Australia Pty Ltd v Takeovers Panel (No 2)* (2015) 236 FCR 37, [18] (Dowsett, Middleton and Gilmour JJ).

<sup>13</sup> See *Chen v Chan* [2009] VSCA 233, [10] (Maxwell P, Redlich JA and Forrest AJA), cited with approval in *Termite Resources NL (in liq) v Meadows, in the matter of Termite Resources NL (in liq) (No 3)* [2019] FCA 529, [20] (White J).

groups referred to in the pleading and gave Mr Cassuto the right to replead (which he has done).

15. Further, Ms Kostakidis took an approach on this application that the Court should discourage. She brought a wide-ranging attack that was inconsistent with her obligation to act consistently with the overarching purpose of the civil practice and procedure provisions, to facilitate the just resolution of disputes according to law, and as quickly, inexpensively and efficiently as possible (ss 37M and 37N of the FCA Act). While upholding a very small number of Ms Kostakidis's submissions, the Court noted that her submission had been "extreme", "overstated", "unrealistic".
16. In the circumstances, Mr Cassuto submits that the fairest approach is for the Court to award him 90% of his costs, on the standard basis. Of course, that number is not intended to reflect any exercise in mathematical precision, but rather, as a matter of impression and evaluation, reflects the overall success of the parties on this hard-fought application.

**Michael Borsky**

**Tim Jeffrie**

**Colette Mintz**

17 December 2025