

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 6/03/2025 5:34:03 PM AEDT
Date Accepted for Filing: 6/03/2025 5:34:09 PM AEDT
File Number: VID1023/2023
File Title: MOIRA DEEMING v JOHN PESUTTO
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. VID1023/2023

Federal Court of Australia
District Registry: Victoria
Division: General

Moira Deeming

Applicant

John Pesutto

Respondent


Affidavit of: **Peter Llewellyn Bartlett**
Address: 447 Collins Street, Melbourne VIC 3000
Occupation: Solicitor
Date: 6 March 2025

I, **Peter Llewellyn Bartlett**, Solicitor, of 447 Collins Street Melbourne, in the State of Victoria, say on oath:

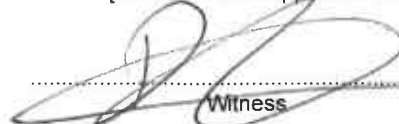
1. I am a partner of MinterEllison and am the lawyer for the Respondent in these proceedings. I am authorised to swear this affidavit on behalf of the Respondent.
2. Nothing in this affidavit or its annexures is intended to waive any client legal or legal professional privilege. To the extent that any part of this affidavit may be construed as a waiver of privilege, I withdraw and do not rely on that part of the affidavit.
3. Exhibited to this affidavit is a paginated bundle of documents marked **Exhibit PLB-1**.

Filed on behalf of (name & role of party)	<u>John Pesutto</u>
Prepared by (name of person/lawyer)	<u>Peter Bartlett</u>
Law firm (if applicable)	<u>Minter Ellison</u>
Tel	<u>+61 3 8608 2677</u> Fax <u>-</u>
Email	<u>Peter.Bartlett@minterellison.com</u>
Address for service (include state and postcode)	<u>Level 20, 447 Collins Street, Melbourne, Victoria, 3000</u>

[Version 3 form approved 02/05/2019]



 Peter Llewellyn Bartlett



 Witness

Background

4. On 19 December 2024, Justice O'Callaghan made the following orders in relation to the costs of the proceeding:
 - (a) that judgment be entered for the Applicant against the Respondent in the sum of \$315,632.88 (order 1);
 - (b) that the Respondent pay the Applicant's costs on the ordinary basis for costs incurred prior to 11.00am on 12 February 2024 and on an indemnity basis for costs incurred after 11.00am on 12 February 2024 (order 2);
 - (c) that the assessment of the Applicant's costs be referred to Senior National Judicial Registrar Legge to be determined on a lump sum basis pursuant to rule 40.02(b) of the Federal Court Rules 2011 (Cth) (order 3);
 - (d) that the Applicant was to file and serve a Costs Summary by 27 January 2025 and the Respondent was to file and serve any Costs Response by 14 February 2025 (orders 4 and 5); and
 - (e) that the Applicant was to file and serve any written submissions addressing the law as to costs on relevant issues by 21 February 2025 and the Respondent was to file and serve any written submissions addressing the law as to costs on relevant issues by 28 February 2025 (orders 6 and 7).
5. A copy of the orders made on 19 December 2024 are at pages 35-36 of Exhibit PLB-1.
6. On 17 December 2024, I caused for a Notice to Produce to be filed with the Court (NTP). A copy of the NTP is at pages 1-3 of Exhibit PLB-1.
7. The Applicant's Costs Summary was filed and served on 2 February 2025.


Relevant correspondence between the parties

8. At 2:25pm on 16 December 2024, I received an email from Giles George sent on behalf of the Applicant containing proposed Short Minutes of Order.
9. At 3:36pm on 17 December 2024, I caused for a letter to be sent to Giles George on behalf of the Respondent, together with the NTP. The letter raised matters relating to the Applicant's third party funding arrangements.
10. At 5:05pm on 17 December 2024, I received an email from Giles George sent on behalf of the Applicant. The email relevantly said the following: "The issues you raise in relation to the indemnity principle are questions for taxation or assessment of the lump sum amount payable."



 Peter Llewellyn Bartlett

ME_951131559_1



 Witness

11. On 18 December 2024, the parties' legal representatives exchanged various emails in relation to the proposed orders to be made by the Court. The parties were able to reach a consent position in relation to the proposed orders.
12. On 19 December 2024, Justice O'Callaghan made orders giving effect to the consent reached between the parties.
13. On 7 January 2025, the parties' legal representatives exchanged emails in relation to the NTP.
14. On 2 February 2025, the Applicant filed and served the Costs Summary.
15. On 7 February 2025, I caused a letter to be sent to Giles George in relation to the Costs Summary.
16. On 14 February 2025, I caused for an email to be sent to Giles George in relation to the Costs Summary and the Costs Response.
17. On 17 February 2025, I received a letter from Giles George in response to the letter from MinterEllison dated 7 February 2025.
18. On 18-19 February 2025, the parties exchanged email correspondence in relation to the date by which the Costs Response is to be filed.
19. On 26 February 2025, Giles George sent an email to the Court. The parties and the Court exchanged email correspondence between 26 February and 3 March 2025.
20. A bundle of the relevant correspondence summarised in paragraphs 8-19 above is at pages 4-113 of PLB-1.

Mrs Deeming's funding for the litigation

21. Since 2023, the Applicant has maintained a website at the domain www.defenddeeming.com.au (the **Website**). The Website calls for donations from members of the public to fund this proceeding. The Website remains online at the time of me swearing this affidavit. A screenshot of the landing page of the Website is at pages 114-118 of PLB-1.
22. On a number of occasions since 16 February 2024, the Applicant has promoted the Website on her 'X' profile. A screenshot of the Applicant's posts about the Website is at pages 119-120 of PLB-1.
23. On 16 February 2024, Mrs Deeming published a post on 'X' in which she said that a gift made through the Website is a "direct deposit to my defamation fund bank account x". A



 Peter Llewellyn Bartlett

ME_95110559_1



 Witness

screenshot of the Applicant's post the gift being paid into her bank account is at page 121 of PLB-1.

24. In accordance with Schedule 2 of the *Members of Parliament (Standards) Regulations 2019 (Regulations)* made under the *Members of Parliament (Standards) Act 1978 (Act)*, the Applicant relevantly submitted an ordinary return for two periods being 1 July 2023 to 31 January 2024 (**First Period**) and 2 February 2024 to 30 June 2024 (**Second Period**). The period 1 July 2024 to 31 January 2025 (**Third Period**) has only recently been submitted by Members of Parliament and will be tabled by the Clerk of the Parliaments on Tuesday 18 March 2025.
25. For the First Period, the Applicant disclosed gifts, exceeding the value threshold of \$600 (s 20(1)(b) of the Act) in the form of financial contributions to this legal proceeding at pages 97 and 98 of the ordinary return in respect of the proceeding. A copy of the Applicant's disclosed gifts in the First Period is at pages 122-131 of PLB-1.
26. For the Second Period, the Applicant disclosed a personal loan from Mr Hilton Grugeon (at page 94) and gifts (at page 97) in the ordinary return in respect of the proceeding. A copy of the Applicant's disclosed gifts in the Second Period is at pages 132-140 of PLB-1.
27. A Member of Parliament is not required by the Act and Regulations to disclose gifts possessing a value of \$600 or less.

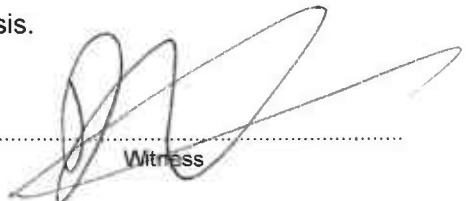
The Costs Summary

28. The Respondent has engaged Ms Cate Dealehr, an accredited costs law specialist and Principal at ALCG, to assist with assessing the Applicant's costs in this proceeding.
29. I am informed by Ms Dealehr and verily believe that:
 - (a) A Costs Summary needs to identify the assumptions made and identify any qualifications so as to explain how the claim for recoverable costs has been claimed. The recoverable costs are those costs fairly and reasonably incurred where the work was undertaken efficiently and appropriately. This requires an understanding as to whether the task and therefore the fee charged was appropriate having regard to the nature of the work and the time taken to complete the task.
 - (b) The ratio of work undertaken by counsel and solicitors and the interrelation of work undertaken by both counsel and solicitors claimed by the Applicant also needs to be examined to ensure costs are fairly and reasonably incurred. This applies whether the test is on a party/party basis or an indemnity basis.



 Peter Llewellyn Bartlett

ME_951134_59_1

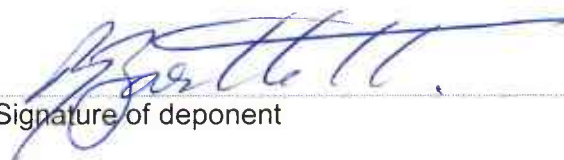


 Witness

- (c) Clause 1(f) of the Costs Practice Note (GPN-COSTS) Annexure A, Part B requires that a summary of the categories of work fairly and reasonably incurred be identified in % terms of the total costs claimed and gives the example of "discovery 15%".
- (d) The Costs Summary (paragraph 17) does not identify the task undertaken by the solicitors (i.e. what work was done) but rather the activity undertaken (i.e. how the work was done) such as "amending", "attendance", "drafting".
- (e) In the absence of a proper categorisation of work undertaken, the only way to identify the work undertaken is to call for the solicitor's invoices which would be inexpensive to the Costs Applicant and avoid any unnecessary delay.

Sworn by the deponent
 at Melbourne in Victoria
 on 6 March 2025
 Before me: Dean Levitan

)
)
)
)
)


 Signature of deponent


 Signature of witness
 of 447 Collins Street, Melbourne, Victoria, 3000