

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2007-404-003474

BETWEEN ANZA DISTRIBUTING (NZ) LIMITED
(IN LIQUIDATION)
Applicant

AND USG INTERIORS PACIFIC LIMITED
Respondent

Hearing: On the Papers

Counsel: F C Deliu in Person, by memorandum

Judgment: 27 November 2009

**JUDGMENT OF COOPER J
ON MR DELIU'S APPLICATION FOR COSTS**

This judgment was delivered by Justice Cooper on
27 November 2009 at 4.30 p.m., pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Solicitors:
Bell Gully, PO Box 4199, Auckland 1140
Russell McVeagh, PO Box 8, Auckland 1010
Equity Law, PO Box 8333, Symonds Street, Grafton, Auckland 1020

[1] Following my judgment of 18 September 2009 (“the judgment”: *ANZA Distributing New Zealand Limited (In Liquidation) v USG Interiors Pacific Limited* HC AK CIV 2007-404-003474), Mr Deliu has filed a memorandum dated 19 October 2009 in which he seeks costs against the liquidators of ANZA Distributin (NZ) Ltd (In Liquidation), USG Interiors Pacific Ltd and their respective solicitors.

[2] In the judgment, I upheld claims that had been made by the liquidators and USG for costs against Mr and Ms Misbin, and Mr Orlov who had acted for them. I rejected their application for costs against Mr Deliu, who also acted in conjunction with Mr Orlov.

[3] Mr Deliu narrowly escaped an award against him personally for the reasons addressed at [46] of the judgment. He had played his part in advancing applications that had no prospect of success and/or were misconceived, albeit apparently, at Mr Orlov’s direction. The possibility that an award might be made against both Mr Orlov and Mr Deliu have been mentioned by the Court. In my view, the other parties acted reasonably in making their application against Mr Deliu. They were not to know until the hearing that Mr Orlov would claim sole responsibility for the events that occurred.

[4] In a subsequent memorandum dated 25 November 2009 Mr Deliu points out that neither Bell Gully nor Russell McVeagh have filed a notice of opposition under r 7.24 of the High Court Rules. However, notices of opposition must only be filed in respect of an “application” which in context must mean here an “interlocutory application”. An “interlocutory application” is one that is made in accordance with r 7.19 or 7.41. The former must be made in form G31, where on notice. The latter is not relevant. Mr Deliu has proceeded by memorandum, not by application. The technical point that he raises can be met by technical response. I note that in an e-mail sent to Mr Deliu, the solicitors for the liquidators indicated they would simply make submissions in opposition, and that was a stance they were entitled to adopt.

[5] However, I do not consider that the liquidators and USG should be put to that expense. All questions of costs are in the discretion of the Court. I am not prepared

to make an award of costs in favour of Mr Deliu given the circumstances recorded in paragraph [3] above.