

**AFFIDAVIT OF VASILIOS KALANTZIS**

**22 JULY 2011**

**COURT DETAILS**

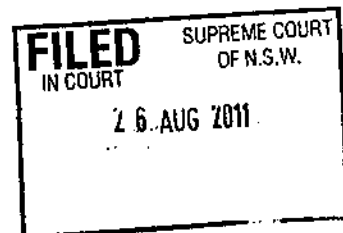
Court	SUPREME COURT OF NEW SOUTH WALES
Division	COMMON LAW
List	DEFAMATION
Registry	SYDNEY
Case number	2011/66430

**TITLE OF PROCEEDINGS**

Applicant	BRIDGETTE REBECCA STYLES
Respondent	CLAYTON UTZ

**FILING DETAILS**

Filed for	<b>Plaintiff</b>
Filed in relation to	In support of the Applicant's application for leave to file an Amended Statement of Claim
Legal representative	Vasilios Kalantzis
Legal representative reference	VK:VO:00095
Contact name and telephone	Vasilios Kalantzis 9332 3842



**AFFIDAVIT**

Name           Vasilios Kalantzis  
 Address        55 Stanley Street EAST SYDNEY NSW 2010  
 Occupation     Solicitor  
 Date            22 July 2011

I say on oath:

- 1        I am the solicitor on the record in this matter.
- 2        Annexed hereto and marked "A" is a copy of my notice of appearance filed on 22 July 2011.
- 3        I swear this affidavit in support of the Applicant's application for leave to file a Consolidated and Amended Statement of Claim.

Discovery of the material on which the amendments are based

- 4        I am informed by the Applicant and verily believe that on 1 December 2010 the Applicant issued a subpoena to *Mallesons Stephen Jacques*, in the related defamation proceedings No 297774 of 2009 ("Defamation Proceedings"). Annexed hereto and marked "B" is a true copy of that subpoena.
- 5        I am informed by the Applicant and verily believe that on 9 December 2010 *Mallesons Stephen Jacques* produced under the subpoena issued to it in the Defamation Proceedings, a chain of emails dated on or about 26 September 2008, which contain the emails and image referred to at paragraph 41B of the Amended and Consolidated Statement of Claim. Annexed hereto and marked "C" are true copies of those emails together with the images which appear in them.
- 6        I am informed by the Applicant and verily believe that on 9 December 2010 *Mallesons Stephen Jacques* produced under the subpoena issued to it in the Defamation Proceedings, a chain of emails dated on or about 17 May 2007. Annexed hereto and marked "D" are true copies of those emails.
- 7        I am informed by the Applicant and verily believe that on 10 December 2010 the parties reached an in principle agreement to cross vest these proceedings and the

Defamation Proceedings, into the same Court, which agreement Mr Norman Lucas of Clayton Utz acknowledged in an email he sent to the Applicant on 13 December 2010. Annexed hereto and marked "E" is a true copy of that email.

8 On 23 December 2010, the Applicant sent Mr Norman Lucas a letter of response to his email of 13 December 2010. Annexed hereto and marked "F" is a true copy of that letter.

9 I am informed by the Applicant and verily believe that a substantial amount of correspondence was subsequently exchanged between the parties in January and February 2011, before the final agreement to cross vest the proceedings was reached.

10 On 18 February 2011, on the application of the Applicant, with the consent of the Respondent, Perram J, made a cross vesting order transferring these proceedings into the Common Law division of the Supreme Court of New South Wales pursuant to s.5(4) of the *Jurisdiction of Courts (Cross-Vesting) Act 1987 (Cth)*.

11 On 7 March 2011, on the first date that these proceedings were before this Court, the plaintiff obtained orders releasing her from the implied undertaking in *Home Office v Harman* [1983] 1 AC 280; *Ainsworth v Hanrahan* (1991) 25 NSWLR 155 in respect of material returned on subpoena and/or discovered in the Defamation Proceedings and providing that discovery in the Defamation Proceeding would be discovery in this matter. Annexed hereto and marked "G" is a true copy of the short minutes of the 7 March 2011 order.

12 I am informed by the Applicant and verily believe that pursuant to Order 6 made on 7 March 2011 the parties exchanged categories for discovery in respect of these proceedings on 14 March 2011.

13 I am informed by the Applicant and verily believe that on 23 May 2011 the parties exchanged verified lists of documents falling into agreed categories in these proceedings and the related Defamation Proceedings, pursuant to discovery orders made on 6 April 2011. Annexed hereto and marked "H" is a true copy of an affidavit sworn by Mr Norman Lucas on 23 May 2001 verifying the verified list of documents served by the Respondent (the "Lucas Affidavit").

14 I am informed by the Applicant and verily believe that on 14 June 2011 the Respondent produced for inspection the Documents referred to in Part 1 of its verified list ("Discovered Documents").



15 I am informed by the Applicant and verily believe that ten days later on 24 June 2011 the Applicant served on the Respondent a Consolidated and Amended Statement of Claim, by reason of information that she had obtained in:

- (a) material contained in the Discovered Documents;
- (b) material contained in the Lucas Affidavit;
- (c) material produced by *Mallesons Stephen Jacques* under subpoena in the Defamation Proceedings; and
- (d) comments that were made in Court when the matter was before the Court on 7 June 2011.

16 I am informed by the Applicant and verily believe that, prior to obtaining the Discovered Documents, the Applicant was not of the view that there were reasonable grounds for believing on the basis of provable facts, independent of admissions likely to be made by the Respondent's witnesses, that the claim for the intentional tort against the Respondent had reasonable prospects of success.

17

SWORN at East Sydney

Signature of deponent



Signature of witness



Name of witness Victoria-Jane Otavski

Address of witness 55 Stanley Street, EAST SYDNEY, NSW, 2010

Capacity of witness Solicitor



A<sup>1</sup>

SUPREME COURT OF N.S.W.  
THE ORIGINAL OF THIS  
DOCUMENT WAS FILED ON  
22 JUL 2011  
CLERK OF THE COURT

Form 77 (version 2)  
UCPR 7.26 and 7.28

### NOTICE of APPOINTMENT OF SOLICITOR

#### COURT DETAILS

Court	SUPREME COURT OF NEW SOUTH WALES
Division	COMMON LAW
List	DEFAMATION
Registry	SYDNEY
Case number	2011/66430

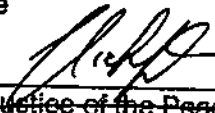
#### TITLE OF PROCEEDINGS

Applicant BRIDGETTE REBECCA STYLES

Respondent CLAYTON UTZ

#### FILING DETAILS

Filed for	Applicant
Legal representative	Vasilios Kalantzis
Legal representative reference	VK:VO:000095
Contact name and telephone	Vasilios Kalantzis (02) 9332 38 42

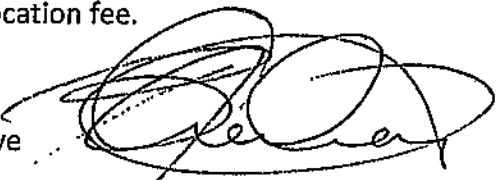
This and the following <sup>1</sup> pages is  
 the annexure marked " A " referred to in the  
 Affidavit of VASILIOS KALANTZIS  
 sworn/affirmed  
 at EAST SYDNEY this 22nd day of July 2011  
 Before me  
  
 Solicitor/Justice of the Peace

#### APPOINTMENT OF SOLICITOR

Bridgette Rebecca Styles, the Applicant, has appointed Vasilios Kalantzis, of Kalantzis Lawyers to act as the plaintiff's solicitor in these proceedings.

#### SIGNATURE

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature of legal representative	
Capacity	Solicitor on record
Date of signature	22 July 2011

**FURTHER DETAILS ABOUT FILING PARTY****Legal representative for filing party**

Name	Vasilios Kalantzis
Practising certificate number	
Firm	Kalantzis Lawyers
Address	55 Stanley Street EAST SYDNEY NSW 2010
DX address	
Telephone	(02) 9332 3842
Fax	(02) 9332 4304
Email	<a href="mailto:vkalantzis@kallaw.com.au">vkalantzis@kallaw.com.au</a>
Electronic service address	<a href="mailto:vkalantzis@kallaw.com.au">vkalantzis@kallaw.com.au</a>

## RE: Styles v Izzo & Catanzariti & Ors - 13 December Directions

From: **Lucas, Norman** (nlucas@claytonutz.com)  
 Sent: Monday, 13 December 2010 8:31:01 AM  
 To: Bridgette Styles (bridgettestyles@hotmail.com)  
 Cc: Dawson, Anna (adawson@claytonutz.com)

Dear Ms Styles

Our position is as follows.

As I said, we accept that there is substantial overlap between the two proceedings (particularly in terms of the factual matrix and witnesses). We can also see how all parties would benefit from not having to duplicate effort (eg: undertake discovery twice).

So, in principle, we can see the sense of what you have foreshadowed.

However, as you know, we have elected to have a jury in these proceedings. That is not a right which the defendants are prepared to forego. Accordingly, we could only consider consenting to a cross-vesting application if we can be satisfied that a jury can be empanelled in the Federal Court.

We will need a bit of time to consider that issue.

Assuming that can occur, we would also require written confirmation that you will not object to there being a jury in the Federal Court (indeed that you acknowledge our right to have a jury). The exact form of this can be discussed.

Obviously this is not a matter that can be resolved "on the run". We note you raised it with us for the first time on Friday afternoon. Plainly too you need to put on a formal application. It thus seems to us that a timetable should be made this morning which encompasses the filing of a motion and supporting affidavit and permits us to file any affidavit in response.

Regards,

**Norman Lucas | Partner | Litigation & Dispute Resolution  
 Clayton Utz**

1 O'Connell Street, Sydney NSW 2000 Australia | D +61 2 9353 4664 | F +61 2 8220 6700 |  
[nlucas@claytonutz.com](mailto:nlucas@claytonutz.com)  
[www.claytonutz.com](http://www.claytonutz.com)

 Please consider the environment before printing this e-mail

This and the following <sup>1</sup> pages is  
 the annexure marked "E" referred to in the  
 Affidavit of **VASILIOS KALANTZIS**  
 sworn/affirmed  
 at **EAST SYDNEY** this **22nd** day of **July** 2011  
 Before me

  
 Solicitor/~~Justice of the Peace~~

From: Bridgette Styles [mailto:bridgettestyles@hotmail.com]  
 Sent: Friday, 10 December 2010 7:05 PM  
 To: Lucas, Norman  
 Subject: Styles v Izzo & Catanzariti & Ors - 13 December Directions

Dear Mr Lucas

I refer to our conversation today in which you agreed that, in principle, cross vesting and consolidation is a sensible idea.

I asked you to please let me know what your instructions were, or indeed if you had been able to obtain such instructions, in relation to cross vesting and consolidation by the end of the day, however I note that you have not done so.

Could you please call me on 0407 894 888, or reply to me before 8am on Monday 13 December 2010 in relation to this issue, as we agree with you that it should be mentioned at the directions hearing.

Regards

Bridgette

This email is confidential. If received in error, please delete it from your system.



23 December 2010

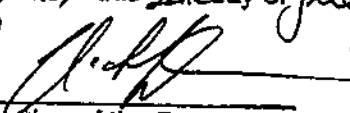
Ms Bridgette Styles  
C/o Level 30, 264 George Street  
SYDNEY 2000

Mr Norman Lucas  
Partner  
Clayton Utz  
1 O'Connell Street  
SYDNEY 2000

Your ref 664/15540/80104268

Dear Sir

Styles v Luis Izzo & Ors  
Supreme Court of NSW Proceedings No. 297774 of 2009

This and the following <sup>1</sup> pages is  
the annexure marked " F " referred to in the  
Affidavit of VASILIOS KALANTZIS  
sworn/affirmed  
at EAST SYDNEY this 22nd day of July 20 11  
Before me  
  
Solicitor/Justice of the Peace

I refer to your email of 13 December 2008 and the directions hearing which was held in this matter on 13 December 2008.

In your letter, you state that while in principle you agree that it is in the interests of both parties for this matter and the related Federal Court Proceedings NSD 776 of 2010 (**Related Matter**) to be cross vested into a single Court, you go on to state, with considerable emphasis, that:

*"...the Defendants could only consider consenting to a cross-vesting application if we can be satisfied that a jury can be empanelled in the Federal Court... [The Defendants] have elected to have a jury in these proceedings. That is not a right which the defendants are prepared to forego."*

I subsequently indicated that in order to secure your consent to the transfer of these proceedings into the Federal Court I was willing to consent to have a jury in the Federal Court.

However, at the Directions hearing which was held in the Related Matter on 14 December 2010 Perram J indicated that it would be for the Federal Court (rather than the parties by consent or the Supreme Court of New South Wales by order) to decide whether this matter will be heard by a jury in the Federal Court. The application and order made in the Supreme Court of New South Wales (**Supreme Court**) to transfer these proceedings into the Federal Court can not mandate that the matter be heard by a jury in the Federal Court.

The ordinary mode of trial in the Federal Court under section 39 of the *Federal Court Act* 1976 is by judge alone. Trial by jury is exceptional. Accordingly I understand that outside Court your Counsel Kylie Nomchong indicated that the Defendants will not consent to a transfer of these proceedings into the Federal Court because of the prejudice which they will experience if they are denied their right to have this matter tried by jury. She indicated further that it would be more appropriate for the Related Matter to be transferred into the Supreme Court of New South Wales.

In circumstances where the defendants will not consent to a transfer of this matter to the Federal Court, at this stage, I am not prepared to waste the costs of a contested application. A transfer of the Related Matter into the Supreme Court is a matter that can be investigated by your clients if it is a course they want to pursue. I will not oppose any such application. In my view it is more appropriate for the Defendants to make that application because it is the Defendants who will suffer prejudice if this matter is transferred into the Federal Court and it is the Defendants who have indicated that they will oppose my proposed application to transfer this matter into the Federal Court.

In the event that the Defendants fail to file an application seeking orders transferring the Related Matter into the Supreme Court by 1 February 2011, I reserve my right to file a motion in the Supreme Court seeking to have these proceedings transferred into the Federal Court. In any such application I will rely on this letter and the correspondence which has been exchanged on the topic of cross vesting in reply to any objection the Defendants raise to my application.

Please let me know at your earliest convenience your thoughts on this matter and in particular whether you will be in a position to file a cross vesting application in the Federal Court, in the Related Matter, by 1 February 2011.

If you have any further questions or queries about anything in this letter or the matter generally please do not hesitate to contact me on 0407 894 888.

Yours faithfully

Bridgette Styles

G

Final as made

**SHORT MINUTES OF CONSENT ORDER**

7 March 2011

**COURT DETAILS**

Court	SUPREME COURT OF NEW SOUTH WALES
Division	COMMON LAW
List	DEFAMATION
Registry	SYDNEY
Case number No	66430 of 2011

**TITLE OF PROCEEDINGS**

Applicant	BRIDGETTE REBECCA STYLES
Respondent	CLAYTON UTZ

**ORDERS**

By consent the Court orders:

1. That proceedings number 2009/297774 and 2011/66430 be heard together.
2. That proceedings number 2009/297774 and 2011/66430 be case managed concurrently pursuant to r. 2.1 of the *Uniform Civil Procedure Rules* (2005) NSW.
3. Discovery in one matter is to be discovery in the other.
4. Evidence in one matter is to be evidence in the other.
5. The parties are released from the implied undertaking in *Home Office v Harman* [1983] 1 AC 280; *Ainsworth v Hanrahan* (1991) 25 NSWLR 155 and are able to use material returned on subpoena in proceedings No 29774 of 2009 in proceedings No 66430 of 2011 and vice versa.
6. The parties to exchange categories of discovery (supplementary to those already exchanged by the parties in respect of proceedings number 2009/297774) referable to the issues in proceedings number 2011/66430, by 14 March 2011.
7. Each party to notify the other in writing of any objections to the proposed categories of discovery in writing by 21 March 2011.

This and the following <sup>1</sup> page the annexure marked "G" referred to in the Affidavit of VASILIOS KALANTZIS sworn/affirmed at EAST SYDNEY this 22nd day of July 2011 Before me


  
Solicitor/Justice of the Peace

8. The parties' legal representatives are directed to confer:
  - (a) to resolve (if possible) any objections to each party's proposed categories of discovery, and
  - (b) in relation to proposed orders for the future conduct of proceedings number 2009/297774 and 2011/66430 and to produce a draft of agreed proposed orders, by 28 March 2011.
9. Both proceedings be stood over for a hearing on the parties' objections to categories of discovery in the absence of agreement to same and any other motion filed by the parties at **9.30 am in the Defamation Motions List on 4 April 2011.**
10. Liberty to apply on 2 days' notice.

**AFFIDAVIT**

Name Norman Lucas  
 Address Level 19  
 1 O'Connell Street  
 Sydney NSW 2000  
 Occupation Lawyer  
 Date 23 May 2011

This and the following <sup>2</sup> pages is  
 the annexure marked "H" referred to in the  
 Affidavit of VASILIOS KACANTZIS  
 sworn/affirmed  
 at EAST SYDNEY this 23rd day of July 2011  
 Before me

  
 Solicitor/~~Justice of the Peace~~

I say on oath:

1. I am a partner of Clayton Utz and the solicitor on the record for the defendants in proceedings number 297774 of 2009 and the defendant/respondent in proceedings number 66430 of 2011. I am authorised to make this affidavit on behalf of the second to two hundred and sixteenth defendants in proceedings number 297774 of 2009 and on behalf of the defendant/respondent in proceedings number 66430 of 2011 (referred to herein as "Clayton Utz").
2. I have made reasonable enquiries as to the existence and location of the documents referred to in the order.
3. I believe that, subject to the document referred to in paragraph 4 below, there are no documents (other than excluded documents) falling within any of the classes specified in the order that are, or that within the last 6 months before the commencement of the proceedings have been, in the possession of Clayton Utz, other than the documents referred to in Part 1 or 2 of the list of documents.
4. The document known as the Montage, referred to in category 35 of the categories of discovery by the defendants dated 13 April 2011, is not in the possession of Clayton Utz. I am informed by Mr Abraham Ash a solicitor employed by Clayton Utz, and verily believe, that the Montage was either lost or destroyed when he moved from office number 21.05 to 21.03 in or about July 2009.
5. I believe that the documents in Part 1 of the list are in the possession of Clayton Utz.
6. I believe that the documents in Part 2 of the list are within the possession of the persons respectively specified in that part.

  
 Deponent

  
 Witness

7. As to documents in Part 2 of the list in respect of which no person is specified, I do not know who possesses these documents.
8. As to the documents in the list that are claimed to be privileged documents, the facts relied on as establishing the existence of the privilege are as follows:
- (a) The documents described at item P1 comprise communications made in the period September 2008 to December 2008 between, or by, partners or employees of Clayton Utz and either the General Counsel of Clayton Utz or partners and employed solicitors of Clayton Utz acting in the capacity of internal legal advisors. I believe that the communications are confidential communications which seek or constitute legal advice concerning:
- (i) the conduct of the investigation involving the plaintiff undertaken by Clayton Utz during the plaintiff's employment;
  - (ii) Clayton Utz's response to allegations and demands/claims made by the plaintiff during her employment at Clayton Utz; and
  - (iii) employment issues concerning the plaintiff.
- (b) The documents described at item P2 comprise communications made in the period October 2008 to December 2008 between the plaintiff and/or her legal advisers and Clayton Utz. I believe that the communications are confidential and have been prepared for the dominant purpose of Clayton Utz seeking to reach a compromise with or settle the plaintiff's demand/claim.
- (c) The documents described at item P3 comprise communications made in the period February 2008 to December 2008 between external clients of Clayton Utz and partners or employed solicitors of Clayton Utz, or communications between lawyers at Clayton Utz acting on behalf of such external clients. I believe that the communications are confidential and seek or constitute legal advice concerning various legal matters pertaining to those particular external clients.
- (d) The documents described at P4 comprise communications made in December 2008 between, or by, employees of Clayton Utz. I believe that the communications were prepared for the

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Deponent

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Witness

dominant purpose of aiding Clayton Utz's conduct of any litigation commenced by the plaintiff which was then anticipated.

SWORN at SYDNEY

Signature of deponent 

Signature of witness 

Name of witness Anna Dawson

Address of witness 1 O'Connell Street, Sydney NSW

Capacity of witness Lawyer