

CITATION: *Ecowise Services (Australia) Pty Ltd v Tom Manolakos* NTMC  
[2004] 073

PARTIES: ECOWISE SERVICES (AUSTRALIA) PTY  
LTD

v

TOM MANOLAKOS

TITLE OF COURT: Local Court

JURISDICTION: Local Court

FILE NO(s): 20405628

DELIVERED ON: 29<sup>th</sup> September 2004

DELIVERED AT: Darwin

HEARING DATE(s): 27<sup>th</sup> September 2004

JUDGMENT OF: Judicial Registrar Fong Lim

**CATCHWORDS:**

Right of Appearance – factors to consider when granting leave – Rule 1.15 Local  
Court Rules

**REPRESENTATION:**

*Counsel:*

Plaintiff: Elizabeth Leahy  
Defendant: Mr Lelekis

*Solicitors:*

Plaintiff: Elizabeth Leahy  
Defendant: Self

Judgment category classification: C  
Judgment ID number: NTMC [2004] 073  
Number of paragraphs: 14

IN THE LOCAL COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20405628

BETWEEN:

Ecowise Services (Australia) Pty Ltd  
Plaintiff

AND:

Tom Manolakos  
Defendant

REASONS FOR JUDGMENT

(Delivered 29<sup>th</sup> September 2004)

Judicial Registrar Fong Lim:

1. The Defendant made an oral application for leave of the Court to have Mr Lelekis represent him in these proceedings. The application was originally adjourned to allow the Defendant to file an affidavit in support of his application. An affidavit was filed on the 27<sup>th</sup> of September 2004 the day this application was heard.
2. The Local Court Rules set out the rights of appearance in matters before this court at rule 1.15

Subject to rule 32.02, a party may appear in Court –

- (a) in person;
- (b) by a legal practitioner;
- (c) by an articled clerk unless the Court orders otherwise; or
- (d) with the leave of the Court –

(i) in the case of a corporation – by an officer or employee of the corporation;

(ii) in the case of a firm – by a partner or employee of the firm;

(iii) in enforcement proceedings – by a commercial agent; or

(iv) by some other person.

3. Rule 32.02 refers to representation at conciliation conferences and pre hearing conferences
4. Further to the Local Court Rules the court has a total discretion to regulate its own proceedings and part of that is to decide who should be allowed to appear in the court and who should not.

Halisbury's Laws paragraph 250 – 310

A court has an inherent right in regulating its own proceedings to allow a person, not being a party or a party's lawyer, to conduct a case on behalf of a party where it is desirable to do so in the interests of the administration of justice. A court will only exercise this discretion where special circumstances exist

5. Mr Lelekis is a person who has a law degree however does not presently have a practising certificate to practice as a legal practitioner under the Legal Practitioner's Act. Throughout this application Mr Lelekis has advised the Court that he was appearing as a business associate and friend of the Defendant and not a legal practitioner. Mr Lelekis provided to the court an affidavit stating that he does not receive and financial remuneration from the Defendant and that he will represent his friend to the best of his abilities.
6. In his affidavit of the 30<sup>th</sup> August 2004 Mr Lelekis makes the submission, (which of course does not properly belong in an affidavit) that:

16. I believe the defendant has full and frank disclosure of the nature of my representation and if the Defendant has confidence in my abilities to provide a satisfactory defence in this matter then the Court shall not interfere with the Defendant's choice of legal representation.

7. It is clear from that paragraph of his affidavit that Mr Lelekis does see himself as the Defendant's legal representative.
8. In his affidavit Mr Manolakos makes statements which clearly show that he views Mr Lelekis as his legal representative. One example is in paragraph 2 of his affidavit in which he states:

I have asked Mr Lelekis to act as my legal representative in this matter.

9. Mr Manolakos also advises that court that he is fluent in the English language and has a basic understanding of legal process having been involved in litigation previously.
10. I agree with both Mr Lelekis and Mr Manolakos that a party should be allowed to choose his legal representation but what they both fail to realise that without a current practising certificate Mr Lelekis cannot be Mr Manolakos' legal representative. There are reasons why the rules only allow legal practitioners, a party themselves or an articled clerk to appear in court and the main reason is accountability to the court. A party acting for himself of course is accountable to the court as his actions will directly affect his action before the court and is accountable for costs. A legal practitioner is accountable to the court as an officer of the court and can be held accountable for costs personally should the Court be of the view that the representation has not been of assistance to the Court or has caused the client some problems. An articled clerk is also accountable to the court through his principal solicitor. Any other person ( whether they have legal training or not) does not have this accountability the only way they can be made accountable is in the extreme circumstances where the court may consider an order for contempt of court.
11. It is through the accountability to the court that the court has the tool to control the proceedings before it.

12. Other factors which the court could consider when deciding to allow a third party act for a party to the action are things like whether the party has a language difficulty, if the party has a legal disability, if the party has an emotional difficulty in dealing with their matter (eg a claim for personal injuries – stress claim), or if it is clear that the party does not understand the process and is unlikely to for whatever reason.
13. Mr Manolakos does not have a language difficulty, he is fluent in English, he is not impecunious and cannot afford a lawyer he simply chooses to use Mr Lelekis, and he has an understanding of legal process having been involved in litigation before. Apart from the fact that he states to the court it is his desire to have Mr Lelekis as his “legal representative” he has not given the court any good reason why he is not capable of representing himself.
14. In light of the above I refuse Mr Lelekis leave to appear on behalf of Mr Manolakos. Of course my refusal to allow Mr Lelekis right of appearance in court does not stop him from advising his friend on his matter it just stops him from appearing on Mr Manolakos’s behalf.

Dated this 29<sup>th</sup> day of September 2004

-----  
Tanya Fong Lim  
JUDICIAL REGISTRAR