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27 August 2020

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Dear Colleagues,

RE: BOUCHERE & ORS v CAR FESTIVALS PTY LTD & ORS

We refer to the above matter and enclose herewith, filed Further Amended Statement of Claim.

Kind regards,
GREG WALSH & CO

G A Walsh OAM
Encl.

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/08/2020 3:08:34 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD1446/2019
File Title: LYNELLE BOUCHERE v CAR FESTIVALS PTY LTD ABN 70 603 505
728 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 27/08/2020 7:14:59 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Further Amended Statement of claim

No. NSD1446 of 2019

Federal Court of Australia
District Registry: Sydney
Division: General

Lynelle Bouchere

Applicant

Car Festivals Pty Ltd ACN 603 505 728 and others named in the schedule

First Applicant

RELIEF CLAIMED

1. An order for loss or damage pursuant to s 236 and/or s 237 of the *Australian Consumer Law*, Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**).
2. Further or in the alternative, an order for loss or damage pursuant to s 267 of the ACL.
- 2A. Damages.
3. Such further other orders as the Court thinks fit.

THE APPLICANT

1. The Applicant brings this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth):
 - (a) on her own right; and
 - (b) on behalf of persons (**Group Members**) who:
 - (i) were consumers (within the meaning of s 3 of the ACL) who purchased tickets from the Respondents to attend the Red CentreNATS event held

Filed on behalf of (name & role of party)	Lynelle Bouchere First Applicant		
Prepared by (name of person/lawyer)	Gregory Alexander Walsh		
Law firm (if applicable)	Greg Walsh & Co Solicitors		
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(include state and postcode)	OATLEY 2223		

between 1 and 3 September 2017 at the Inland Dragway Alice Springs (**Red CentreNATS**);

(II) was a spectator of the burnout competitions at the Red Centre NATS on 3 September 2017; and

(III) suffered loss or damage as a result of the Incident.

2. The Applicant was born on 29 May ~~1955~~ 1995.

THE RESPONDENTS

3. At all material times, the First Respondent:

(a) was and is a corporation able to sue and be sued pursuant to the *Corporations Act 2001* (Cth); and

(b) carried on in trade or commerce the business of event organising.

4. At all material times, the Second Respondent:

(a) was and is a corporation able to sue and be sued pursuant to the *Corporations Act 2001* (Cth); and

(b) was and is a government owned major events company;

(c) carried on in trade or commerce the business of developing, delivering, promoting and facilitating significant entertainment, sporting and cultural events in the Northern Territory.

5. At all material times, the Third Respondent:

(a) was and is a corporation able to sue and be sued pursuant to the *Corporations Act 2001* (Cth); and

(b) carried on in trade or commerce the business of organising and promoting the annual car festival "Summernats" in Canberra and organising and promoting car festivals in association with other event organisers in Australia.

RED CENTRENATS

6. The Red CentreNATS is an annual motoring festival taking place in Alice Springs.

7. In 2017, Red Centre NATS took place from 1 to 3 September 2017.

8. At all material times, the Respondents arranged, promoted, organised and operated the Red CentreNATS (**Services**) to consumers.

- 8A. In late 2014 to early 2015, the Respondents designed and approved a plan to extend and expand the burnout track and burnout pad for burnout competitions at the Alice Springs Inland Dragway.
- 8B. In 2015, the Respondents caused work to be undertaken to extend and expand the burnout track and burnout pad in accordance with the plan, including the installation of spectator fencing.
- 8C. At the time, the Respondents were aware that constraints on the extension and expansion of the burnout track and burnout pad included the proximity of the spectator area and the need for safety barriers.
- 8D. The Respondents did not undertake any safety assessments prior to the extension and expansion of the burnout track and burnout pad at the Alice Springs Inland Dragway.
- 8E. At a date unknown to the Applicant, the Respondents chose Alice Springs Inland Dragway as the location for the burnout competitions for the 2017 Red CentreNATS.
- 8F. On 6 March 2017, the Second Respondent entered into a venue hire agreement for the Alice Springs Inland Dragway for the 2017 Red CentreNATS.

Particulars

- (a) Venue Hire Agreement between the Second Respondent and Central Australian Drag Racing Association dated 6 March 2017.
- 8G. From 28 August 2017 to 5 September 2017, the Second Respondent had an exclusive licence to use the Alice Springs Inland Dragway for drag racing and burnout competitions and all uses ancillary or connected to that.

Particulars

- (a) Venue Hire Agreement, cl 2.1; Schedule 1, Item 4.
- 8H. The Respondents designed the venue layout and stipulated the infrastructure requirements for competition and spectator areas at the Alice Springs Inland Dragway for the 2017 Red CentreNATS.
- 8I. For the 2017 Red CentreNATS, the Respondents designated the location for:
- (a) the burnout pad for the burnout competition at the Alice Springs Inland Dragway;
and
- (b) the area for spectators to view the burnout competition at the Alice Springs Inland Dragway.

- 8J. The Respondents installed equipment and infrastructure for the burnout competition for competitors and spectators at the designated locations, and in accordance with their venue layout and design.
- 8K. The Second Respondent provided or caused to be provided at the Alice Springs Inland Dragway for the 2017 Red CentreNATS:
- (a) Fencing and barriers for spectators and crowd-control;
 - (b) Fire-fighting equipment;
 - (c) On-site fire crew;
 - (d) On-site first aid services;
 - (e) Emergency medical services for spectators and competitors;
 - (f) Operational signage;
 - (g) Safety and recovery vehicles; and
 - (h) Site maps.
- 8L. The Respondents developed systems to manage the health and safety of spectators and competitors at the 2017 Red CentreNATS.

Particulars

- (a) an Operations Plan;
 - (b) a Crisis Management Plan;
 - (c) a Work Health & Safety Management Plan;
 - (d) a Safe Work Management Statement;
 - (e) an Event Safety Plan;
 - (f) a Security Management Plan;
 - (g) a Risk Register.
9. The Respondents were responsible for organising the program for the Red CentreNATS which included the burnout competitions at the Alice Springs Inland Dragway.
10. The Respondents prepared and issued the Red CentreNATS Entrant Guide that:
- (a) detailed the terms and conditions for entrants in events at the Red CentreNATS;
 - (b) provided information to ticketholders about attending the event.
11. The Respondents were responsible for checking vehicles for safety and entry-worthiness for events at the Red Centre NATS and authorised the vehicles that entrants would be able to use in the burnout competitions.

Particulars

Red Centre NATS Entrant Guide, cl 6.

12. The Respondents:

- (a) prescribed the entry requirements for entrants and their vehicles in the burnout competitions;
- (b) permitted and authorised vehicles fuelled by methanol to be used in the burnout competitions;
- (c) prescribed the judging criteria for the burnout competitions,
- (d) prescribed the safety requirements for entrants and approved passengers, including that drivers and passengers must wear an approved fire suit.

Particulars

Red Centre NATS Entrant Guide, cl 12.1.

13. The judging criteria provided that burst tyres, instant smoke and constant and thick smoke and driver control and pad use improved chances of winning the burnout competition.

Particulars

Red Centre NATS Entrant Guide, cl 12.1.

14. The judging criteria provided that points would be detracted for fire.

Particulars

Red Centre NATS Entrant Guide, cl 12.1.

15. The Respondents:

- (a) arranged and supervised the burnout competition for the Red CentreNATS at a designated burnout pad, constructed of bitumen or concrete, situated at the Inland Dragway at Alice Springs; and
- (b) designated a spectator area for the burnout competition at an area immediately adjacent to the burnout pad (**Spectator Mound**); and
- (c) had positioned security guard(s) at the Spectator Mound to ensure spectators remained in the designated Spectator Mound.

16. The Spectator Mound was separated from the burnout pad by a chain-link fence with two rail panels and no other safety barriers or protection to spectators.

17. The Respondents offered tickets to attend as spectators at the Red CentreNATS, including the burnout competitions, for \$50.00.

18. The terms of the ticket provided that spectators were to comply with directions of the Respondents relating to access and safety at the Red CentreNATS.

Particulars

Ticketing Terms & Conditions of Entry, cl 9.

CONSUMER GUARANTEES

19. In providing the Services, the Respondents guaranteed that the Services would be rendered with due care and skill (**Due Care and Skill Guarantee**).

Particulars

ACL, s 60.

20. The purpose of the Services was to provide ticketholders to the Red CentreNATS with the safe enjoyment experience of spectators at a recreational motor vehicle event (**Event Purpose**).
21. The Event Purpose was known to the Respondents.

Particulars

Implied from the nature and promotion of the Red CentreNats.

22. In supplying the Services, the Respondents guaranteed that the Services would be reasonably fit for the Event Purpose (**Fit for Purpose Guarantee**).

Particulars

ACL, s 61.

BURNOUT EVENT ON 3 SEPTEMBER 2017

23. The Applicant purchased a ticket from the Respondents to attend the Red CentreNATS.
24. On 3 September 2017, the Applicant attended the Event as a ticketholder for the Red CentreNATS.
25. On 3 September 2017, in accordance with the program arranged by the Respondents provided, the burnout competitions commenced at around 1:15 pm at the burnout pad.
26. From the commencement of the burnout competitions on 3 September 2017 and as a result of entrants performing burnouts on the burnout pad, an amount of rubber detritus accumulated on the burnout pad in close proximity to the fence separating the Spectator Mound.
27. The Applicant was a spectator at the burnout competition and stood on the Spectator Mound.

28. There were approximately 800 spectators on the Spectator Mound.
29. At around 3:45 pm on 3 September 2017, a burnout entrant with a modified vehicle fuelled by methanol performed a burnout on the burnout pad and flames were emitted from the vehicle towards the Spectator Mound and which caused the rubber detritus on the burnout pad to catch alight and eject towards the Spectator Mound causing injury to spectators, including the Applicant (**the Incident**).

CONTRAVENTION OF CONSUMER GUARANTEES

30. In contravention of the Due Care and Skill Guarantee, the Respondents failed to exercise due care and skill in supplying the Services by:
 - (a) Failing to take adequate precautions for the safety of the Applicant;
 - (b) Failing to take steps to construct a safe barrier between the burnout pad and spectators to prevent inflammable materials dissipating over the spectators and the Applicant;
 - (c) Failing to identify and direct to spectators a safe distance for spectators to observe the burnout competition without exposing spectators to a not insignificant risk of reasonably foreseeable injury;
 - (d) Exposing the Applicant to a risk of injury which could have been avoided by reasonable care and skill;
 - (e) Failing to warn the Applicant of the dangers to which she was exposed as spectators of the burnout competitions when standing on the designated Spectator Mound;
 - ~~(f) Failing to observe the Applicant was in a position of peril in the circumstances;~~
 - (g) Failing to inspect the burnout pad area to ensure that rubber detritus did not accumulate;
 - (h) Failing to take steps to remove rubber detritus material from the burnout pad area in proximity to spectators;
 - ~~(i) Failing to keep a proper look out;~~
 - (j) Failing to have adequate and immediate emergency medical services available to deal with burns and fire-related injuries.
31. By reason of the facts and circumstances alleged, in contravention of the purpose guarantee, the Services provided by the Respondents were in breach of the Fitness for Purpose Guarantee.

Particulars

- (a) Failing to take adequate precautions for the safety of the Applicant;
 - (b) Failing to take steps to construct a safe barrier between the burnout pad and spectators to prevent inflammable materials dissipating over the spectators and the Applicant;
 - (c) Failing to identify and direct to spectators a safe distance for spectators to observe the burnout competition without exposing spectators to a not insignificant risk of reasonably foreseeable injury;
 - (d) Exposing the Applicant to a risk of injury which could have been avoided by reasonable care and skill;
 - (e) Failing to warn the Applicant of the dangers to which she was exposed as spectators of the burnout competitions when standing on the designated Spectator Mound;
 - ~~(f) Failing to observe the Applicant was in a position of peril in the circumstances;~~
 - (g) Failing to inspect the burnout pad area to ensure that rubber detritus did not accumulate;
 - (h) Failing to take steps to remove rubber detritus material from the burnout pad area in proximity to spectators;
 - ~~(i) Failing to keep a proper look out;~~
 - (j) Failing to have adequate and immediate emergency medical services available to deal with burns and fire-related injuries.
32. In the circumstances, the supply of the services created an unsafe situation and was a major failure within the meaning of s 268 of the ACL.
33. Because of the Respondents' failures to comply with the Due Care and Skill Guarantee and the Fitness for Purpose Guarantee, the Applicant suffered the following loss or damage;

Particulars of Injuries

- ~~(a) Severe burns to face;~~
- (b) Burns to face;
- ~~(c) Severe burns to ears;~~
- (d) Burns to ears;
- (e) Severe burns to arms;

- (f) Severe burns to legs;
- (g) Severe burns to scalp;
- (h) Severe burns to left and right toes;
- (i) Discolouration to body at sites of burns;
- (j) Nervous shock;
- (k) Severe pain and discomfort to various parts of body being sites of burns.
- (l) Ethanol poisoning
- (m) Singing of the eyelash/eyebrows
- (n) Third degree burns behind left knee;
- (o) Right leg burns from foot to mid thigh;
- (p) Right arm burns from fingers to elbow
- (q) Left arm burns from fingers to elbow;
- (r) Severe nerve damage to both legs;

Particulars of Disabilities

- (a) Pain and discomfort to, face, arms, leg, ears, scalp and toes;
- (b) Loss of hair on scalp;
- (c) Discolouration to face;
- (d) Discolouration to body at sites of burns;
- (e) Sensitivity of skin to some exposure;
- (f) Paraesthesia to sites of burns;
- (g) Nightmares;
- (h) Intrusive thoughts;
- (i) Panic/anxiety attacks;
- (j) Isolation/fear
- (k) Loss of confidence;
- (l) Post traumatic stress disorder;
- (m) Loss of enjoyment of life consequent upon her inability to participate in sporting and leisure activities including problems associated with looking after children;
- (n) Chronic loss of sleep;

- (o) Interference to eyesight;
- (p) Weight gain;
- (q) Need to apply constantly sunscreen and moisturiser everyday

Particulars of Past out of pocket expenses

Particulars of past out of pocket expenses will be provided prior to the hearing of this matter.

Particulars Future out of pocket expenses

Particulars of future out of pocket expenses will be provided prior to the hearing of the matter.

Particulars Economic loss

- (a) At the time of the incident, The Applicant was employed by Ingham's Group Limited as a ~~Senior Site Supervisor~~ Leading Hand in Darwin.
- (b) The Applicant had commenced working for Ingham's on 23rd June 2017 on a casual basis.
- (c) The Applicant worked approximately 25 hours per week at a rate of \$26 per hour.
- (d) The Applicant was unable to attend to her work from 4 September 2017 to 31 December 2017.
- (e) The Applicant claims economic loss at the rate of \$26 per hour for the period of her absence of 15 weeks.
- (f) The Applicant also as a result of her injuries and ongoing disabilities, has been placed at a marked disadvantage to compete on the open labour market. This aspect of The Applicant claim is by way of general damages.

Particulars Past and future domestic assistance

Particulars of past and future domestic assistance will be provided prior to the hearing of this matter.

34. The Applicant claims:

- (a) loss and damages pursuant to ss 236, 237 and/or 267 of the ACL; and
- (b) costs.

Negligence

35. From the commencement of planning of the Red CentreNATS event in late 2014 to early 2015 to 3 September 2017 (inclusive), the Respondents knew or ought to have known:

- (a) the burnout competition was a dangerous activity with significant risk of injury, disability or death to spectators and competitors;
- (b) the risk of injury was increased because of the close proximity between the vehicles and spectators at the burnout competition;
- (c) there was a real and foreseeable risk that vehicles participating in the burnout competition would emit fire in the direction of spectators and cause injury;
- (d) there was an increased risk of fire where the participating vehicle used methanol fuel;
- (e) fire crew and emergency medical services would need to be able to respond quickly and in a coordinated manner in the event of injury to spectators as a result of fire;
- (f) there was a significant likelihood that debris, including rubber, could accumulate on the burnout pad over the course of the burnout competitions;
- (g) there was a real and foreseeable risk that debris from the burnout pad may fly out towards the spectators causing injury during the burnout competitions;
- (h) chain-link fencing with rail panels was an inadequate barrier to protect or minimise risk of harm from fire and debris to spectators of burnout competitions;
- (i) limited resources were available in Alice Springs to respond immediately to an incident involving serious injuries to a number of individuals;

Particulars

- (l) The Alice Springs Hospital was limited to three resuscitation beds.
- (j) the burnout competition would attract hundreds of spectators;
- (k) spectators and competitors depended upon the Respondents for the provision of emergency fire and medical services in circumstances where the Respondents operated and ran the 2017 Red CentreNATS event, which included the provision of first aid services by the Respondents, and where the Respondents were coordinating communication, command and control arrangements with Northern Territory police, fire and ambulance services, including the Respondents providing access and egress routes to those services.

Particulars

- (l) The Respondents had knowledge or ought to have had knowledge of each of the matters pleaded in paragraph 35 as a result of having previously arranged, organised and operated similar events to the Red

CentreNATS 2017, including the Summernats Festival in the Australian Capital Territory; and

- (II) The Respondents had knowledge of the matters pleaded in paragraphs 35(a) and (b) as those matters were identified in the Events Risk Register for the Red CentreNATS 2017 event.
- (III) Further, or in the alternative, the Respondents would have had knowledge of the matters pleaded in paragraph 35 if they had undertaken the appropriate risk and safety assessment of the burnout competition at Red CentreNATS 2017 as required under their duty of care as pleaded below.

36. From the commencement of planning of the Red CentreNATS event in late 2014 to early 2015 to 3 September 2017 (inclusive), the Respondents assumed responsibility for the operation and management of the event in a safe manner for spectators and competitors.

Particulars

- (a) Refer to paragraphs 8 to 18 above.
37. From 28 August 2017 to 5 September 2017, the Respondents occupied the Alice Springs Inland Dragway and controlled:
- (a) the burnout competition rules and judging criteria;
 - (b) which vehicles would be permitted to participate in the burnout competitions;
 - (c) the safety barriers and precautions in place for spectators and competitors at the burnout competition;
 - (d) the location of the burnout competitions;
 - (e) the location of the Spectator Mound;
 - (f) the availability of on-site fire services, first aid and medical services for spectators and competitors;
 - (g) the coordination of communication between the on-site fire services, first aid and medical services and venue staff.
38. In the circumstances of paragraphs 35 to 37 above, the Respondents owed the Applicant and Group Members a duty of care.
39. In all the circumstances as pleaded in paragraphs 3 to 18 and 23 to 29 and 35 to 38 above (inclusive) and from the commencement of planning of the Red CentreNATS event in late

2014 to early 2015 to 3 September 2017 (inclusive), the Respondents owed the Applicant and Group Members a duty of care to:

- (a) act in a manner to prevent spectators and competitors from suffering foreseeable harm as a result of vehicles participating in the burnout competition emitting fire in the direction of spectators and / or debris from the burnout pad flying out towards the spectators during the burnout competitions;
- (b) not engage in action which they knew or ought to have known could expose spectators and competitors to an unreasonable risk of foreseeable harm as a result of vehicles participating in the burnout competition emitting fire in the direction of spectators and / or debris from the burnout pad flying out towards the spectators during the burnout competitions;
- (c) undertake risk and safety assessment of the burnout pad and the Spectator Mound for the burnout competitions at the Alice Springs Inland Dragway;
- (d) implement reasonable precautions and safety controls to manage foreseeable risks in the circumstances identified in sub-paragraphs 35(a), (b), (c), (d), (f), (g), (h), and (j) above;
- (e) prepare and implement systems to manage the safety of spectators and competitors specific for the 2017 Red CentreNATS burnout competition; and

Particulars

- (l) Such systems as envisaged by the AS/NZS 4804 – Safety Management Systems, AS 3745 – Emergency Planning in Facilities, AS/NZS ISO 31000 – Risk Management.
 - (f) warn spectators that the barriers that were in place between the Spectator Mound and burnout pad exposed spectators to an unreasonable risk of foreseeable harm as a result of vehicles participating in the burnout competition emitting fire in the direction of spectators and / or debris from the burnout pad flying out towards the spectators during the burnout competitions.
40. In breach of the duty of care they owed to the Applicant and Group Members, the Respondents:
- (a) Failed to carry out risk and safety assessments of the burnout pad and Spectator Mound prior to the burnout competitions in the 2017 Red CentreNATS event;
 - (b) Failed to implement reasonable precautions to protect against foreseeable risks of harm as a result of vehicles participating in the burnout competition emitting fire in

the direction of spectators and / or debris from the burnout pad flying out towards the spectators during the burnout competitions;

Particulars

- (I) The Respondents failed to install appropriate barriers between the Spectator Mound and burnout pad proportionate to the foreseeable risk.
 - (II) The Respondents failed to provide an exclusion zone between the Spectator Mound and burnout pad.
- (c) Failed to prepare and implement systems to manage the safety of spectators and competitors specific for the 2017 Red CentreNATS event and the burnout pad at Alice Springs Inland Dragway;

Particulars

- (I) The Event Safety Plan prepared for the 2017 Red CentreNATS event detailed Burnout Pad Management for a location and event in the Australian Capital Territory.
 - (II) The systems prepared by the Respondents as pleaded in paragraph 8L above:
 - (i) failed to provide for coordination of communication between fire crew, security guards, venue managers, medical staff and emergency responders to enable emergency medical services were provided in a timely manner in response to fire and injury;
 - (ii) failed to provide for safety and crisis response training to staff overseeing the burnout competitions;
 - (iii) failed to require first aid services in a location proximate to the burnout pad to provide immediate response in the case of burns to spectators;
 - (iv) failed to provide venue layout which included easy access and egress routes for emergency vehicles to the Spectator Mound.
- (d) Failed to warn spectators that by standing on the Spectator Mound they were exposed to unreasonable risk of foreseeable harm as a result of vehicles participating in the burnout competition emitting fire in the direction of spectators and / or debris from the burnout pad flying out towards the spectators during the burnout competitions.

41. As a result of these breaches by the Respondents, the Respondents caused the Applicant and the Group Members to suffer harm.

Particulars

Refer to paragraph 33 above.

42. The Applicant and the Group Members seek the following relief:
- (a) Damages;
 - (b) Interest, where appropriate, upon those damages;
 - (c) Costs;
 - (d) Any further or other order which the Court deems appropriate.

Date: ~~November 2019~~ May 2020

Signed by Gregory Alexander Walsh
Lawyer for the Applicant and Group Members

This pleading was prepared by Gregory Alexander Walsh, lawyer

Certificate of lawyer

I Gregory Alexander Walsh certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant and Group Members, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 26 August 2020



Signed by Gregory Alexander Walsh
Lawyer for The Applicant and Group
Members

Schedule

No. NSD1446 of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent: Northern Territory Major Events Company Pty Ltd
ACN 085 961 520

Third Respondent Summernats Pty Ltd
ACN 139 042 961

Date: 26 August 2020