

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
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



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 19/11/2020 12:02:50 PM AEDT

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.



Defence to Further Amended Statement of Claim

No. NSD1446 of 2019

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

Lynelle Bouchere

Applicant

Car Festivals Pty Ltd

ABN 70 670 505 728

First Respondent

Northern Territory Major Events Company Pty Ltd

ABN 22 085 961 520

Second Respondent

Summernats Pty Ltd

ABN 48 139 042 961

Third Respondent

The Second Respondent, Northern Territory Major Events Company Pty Ltd (ABN 22 085 961 520) (**NTMEC**) pleads as follows in answer to Further Amended Statement of Claim filed on behalf of the Applicant and Group Members on 27 August 2020 (**Claim**):

The Applicant

1 In answer to paragraph 1 of the Claim, NTMEC:

- (a) Admits the Applicant brings the proceedings as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) in her own right and on behalf of the Group Members;
- (b) Does not know and cannot admit the Applicant and/or any of the Group Members were consumers within the meaning of s3 of the ACL;

Filed on behalf of (name & role of party)	Northern Territory Major Events Company Pty Ltd (ABN 22 085 961 520), Second Respondent		
Prepared by (name of person/lawyer)	David Lee		
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- (c) Denies that the Applicant purchased a ticket from NTMEC to attend RedCentre NATS;
- (d) Does not know and cannot admit that each of the Group Members purchased tickets from NTMEC to attend RedCentre NATS;
- (e) Admits that the Applicant was a spectator of the burn-out competition at RedCentre NATS on 3 September 2017;
- (f) Does not know and cannot admit that each of the Group Members were spectators at the burn-out competition at RedCentre NATS on 3 September 2017; and
- (g) Does not know and cannot admit the Applicant and/or group members suffered loss or damage as a result of the incident.

2 NTMEC admits paragraph 2 of the Claim.

The Respondents

3 NTMEC admits paragraph 3 of the Claim.

4 NTMEC admits paragraph 4 of the Claim.

5 NTMEC admits paragraph 5 of the Claim.

RedCentre NATS

6 NTMEC admits paragraph 6 of the Claim.

7 NTMEC admits paragraph 7 of the Claim.

8 NTMEC admits paragraph 8 of the Claim.

8A In answer to paragraph 8A of the Claim, NTMEC:

- (a) Admits it approved a plan with respect to modifications to the burn-out pad located at the Alice Springs Inland Dragway (**ASID**) after consultation with the First Respondent (**Car Festivals**), the Third Respondent (**Summernats**) and the Central Australian Drag Racing Association (**CADRA**);
- (b) Denies NTMEC designed any such plan;
- (c) Denies the balance of the paragraph insofar as it is alleged against NTMEC.

8B NTMEC denies paragraph 8B of the Claim insofar as it is alleged against NTMEC.

8C NTMEC denies paragraph 8C of the Claim insofar as it is alleged against NTMEC.

- 8D NTMEC admits paragraph 8D of the Claim.
- 8E NTMEC admits paragraph 8E of the Claim.
- 8F In answer to paragraph 8F of the Claim, NTMEC admits that it entered into a Venue Hire Agreement with CADRA for use of the ASID at the 2017 RedCentre NATS event and repeats and relies upon the entirety of the Venue Hire Agreement as if set out in full hereunder.
- 8G NTMEC admits paragraph 8G of the Claim and repeats and relies upon its answer to paragraph 8F above.
- 8H NTMEC denies paragraph 8H of the Claim insofar as it is alleged against NTMEC.
- 8I NTMEC denies paragraph 8I of the Claim insofar as it is alleged against NTMEC.
- 8J NTMEC denies paragraph 8J of the Claim insofar as it is alleged against NTMEC.
- 8K NTMEC admits paragraph 8K of the Claim, and says that it delegated the provision of those matters to Car Festivals, Summernats and CADRA.
- 8L NTMEC admits paragraph 8L of the Claim and repeats and relies upon the documents enumerated at sub-paragraphs (a) to (g) in paragraph 8L of the Claim, as if set out in full hereunder.
- 9 NTMEC admits paragraph 9 of the Claim.
- 10 NTMEC admits paragraph 10 of the Claim.
- 11 NTMEC denies paragraph 11 of the Claim insofar as it is alleged against NTMEC.
- 12 NTMEC denies paragraph 12 of the Claim insofar as it is alleged against NTMEC.
- 13 NTMEC admits paragraph 13 of the Claim.
- 14 NTMEC admits paragraph 14 of the Claim.
- 15 In answer to paragraph 15 of the Claim, NTMEC:
- (a) Denies that it arranged and supervised the burn-out competition for the RedCentre NATS event;
 - (b) Admits that, in conjunction with Car Festivals, Summernats and CADRA, it designated a spectator area for the burn-out competition;
 - (c) Denies the spectator mound was in an area immediately adjacent to the burn-out pad;

- (d) Admits that it positioned security guards to patrol the spectator mound; and
- (e) Otherwise denies the balance of the paragraph insofar as it is alleged against NTMEC.

16 NTMEC admits paragraph 16 of the Claim.

17 NTMEC admits paragraph 17 of the Claim.

18 NTMEC admits paragraph 18 of the Claim and relies on the full Ticketing Terms & Conditions of Entry.

Consumer guarantees

19 In answer to paragraph 19 of the Claim, NTMEC:

- (a) Repeats its answer to paragraph 1 of the Claim;
- (b) Does not know and cannot admit that it provided services to each of the Applicant and/or any of the group members;
- (c) Admits that, if it did provide services to the Applicant and/or any of the group members, then there was an implied guarantee that such services would be rendered with the due care and skill pursuant to s60 of the ACL; and
- (d) Otherwise denies the paragraph insofar as it is alleged against NTMEC.

20 NTMEC denies paragraph 20 of the Claim.

21 NTMEC denies paragraph 21 of the Claim.

22 In answer to paragraph 22 of the Claim, NTMEC:

- (a) Repeats its answers at paragraphs 19-21 above; and
- (b) Denies the paragraph insofar as it is alleged against NTMEC.

Burn-out event on 3 September 2017

23 NTMEC denies paragraph 23 of the Claim.

24 NTMEC denies paragraph 24 of the Claim.

25 NTMEC admits paragraph 25 of the Claim.

26 NTMEC admits paragraph 26 of the Claim.

27 NTMEC admits paragraph 27 of the Claim.

28 NTMEC does not know and cannot admit paragraph 28 of the Claim.

29 In answer to paragraph 29 of the Claim, NTMEC:

- (a) Admits that at around 3:45pm on 3 September 2017, a burnout entrant performed a burnout on the burnout pad and flames were emitted from the vehicle towards the Spectator Mound;
- (b) Otherwise does not know and cannot admit the paragraph.

Contravention of consumer guarantees

30 NTMEC denies paragraph 30 of the Claim and each subparagraph therein, insofar as they are alleged against NTMEC.

31 NTMEC denies paragraph 31 of the Claim and each particular thereunder, insofar as they are alleged against NTMEC.

32 NTMEC denies paragraph 32 of the Claim, insofar as it is alleged against NTMEC.

33 In answer to paragraph 33 of the Claim, NTMEC:

- (a) Denies it failed to comply with any due care and skill guarantee and/or any fitness for purpose guarantee; and
- (b) Does not know and cannot admit the particulars of any injury, disability and loss as alleged by the Applicant.

34 NTMEC denies paragraph 34 of the Claim insofar as it is alleged against NTMEC, and denies the Applicant is entitled to loss and damages from NTMEC pursuant to the ACL or otherwise, or to recovery from NTMEC for any costs.

Negligence

35 In answer to paragraph 35 of the Claim, NTMEC:

- (a) denies subparagraphs (a)-(i) insofar as they are alleged against NTMEC; and
- (b) admits subparagraphs (j)-(k).

36 NTMEC denies paragraph 36 of the Claim insofar as it is alleged against NTMEC, and says that it delegated any responsibility for those matters to Car Festivals, Summernats and/or CADRA .

37 NTMEC denies paragraph 37 of the Claim insofar as it is alleged against NTMEC, and denies that it was the occupier of the ASID.

38 NTMEC denies paragraph 38 of the Claim insofar as it is alleged against NTMEC, and denies NTMEC owed the Applicant and/or the group members a duty of care in the manner alleged, or at all.

39 In answer to paragraph 39 of the Claim, NTMEC:

(a) Denies paragraph 39 of the Claim and each subparagraph therein, insofar as they are alleged against NTMEC; and

(b) Repeats and relies upon its answer at paragraph 38 above.

40 NTMEC denies paragraph 40 of the Claim and each subparagraph therein, insofar as they are alleged against NTMEC.

41 NTMEC denies paragraph 41 of the Claim insofar as it is alleged against NTMEC.

42 NTMEC denies paragraph 42 of the Claim insofar as it is alleged against NTMEC, and denies the Plaintiff is entitled to recover from NTMEC any damages, interest and costs as claimed, or at all.

Contractual arrangements with Car Festivals

43 In further answer to the whole of the Claim, NTMEC says that it entered into a Sanctions Agreement with Car Festivals commencing on 1 October 2015 for the promotion, organisation and management of the RedCentre NATS event and repeats and relies upon the whole of the Sanctions Agreement as if set out in full hereunder.

44 Pursuant to the terms of the Sanctions Agreement, any responsibility of NTMEC for the operation, supervision, judging and control of the burn-out competition was delegated to Car Festivals.

Contractual arrangements with CADRA

45 In further answer to the whole of the Claim, NTMEC:

(a) Says that it entered into a Venue Hire Agreement with CADRA for the 2017 RedCentre NATS event, for the provision of, among other things, emergency procedures, safe conduct of the competition, and design and preparation of the competition areas (including the burnout pad and spectator mound) to a suitable standard to conduct the competition activities; and

(b) Repeats and relies upon the whole of the Venue Hire Agreement as if set out in full hereunder.

46 Pursuant to the terms of the Venue Hire Agreement, any responsibility of NTMEC for the adequacy and safety of the venue for the burnout competition, and the provision of emergency support, was delegated to CADRA.

Statutory defence

47 In answer to the whole of the Claim, NTMEC says that:

(a) For the purposes of s275(b) of the ACL, the law of the Northern Territory:

(i) was the proper law of the contracts referred to in the Claim and in this Defence above; and

(ii) would be the law of any hypothetical contract between NTMEC and any of the spectators.

48 At all material times, the law of the Northern Territory included the *Motor Accidents (Compensation) Act 1979 (NT) (MACA)*.

49 For the purposes of s4A(1)(a) and (b) and (2) of MACA, the Incident, the subject of the Applicant's claim, was an occurrence caused by, or arising out of the use of a motor vehicle, resulting in injury to a person.

50 In the premises, the Applicant's and any Group Member's rights to pursue actions for damages in respect of the accident, the subject of their claims, are subject to the operation of MACA.

51 Section 5 of MACA operates to:

(a) Abolish any action for damages, whether at common law or by statute, for injury to the Applicant and any Group Member arising out of the Incident;

(b) Limit or preclude any term of the contracts alleged to have been entered into by the Applicant and/or Group Members with NTMEC arising out of the accident and the subject of the Applicant's claim; and

(c) Limit or preclude any term of any hypothetical contract entered into between NTMEC and any of the spectators arising out of the accident and the subject of the Applicant's claims.

52 In the premises, by operation of s275 of the ACL, s5 of MACA applies to limit or preclude:

- (a) NTMEC's liability for any failure to comply with a guarantee that applies to a supplier of services to consumers under Subdivision B of Division 1 of Part 3-2 of the ACL; and
- (b) The recovery of any compensation from the alleged breaches of guarantee by NTMEC.

53 Further, s5 of MACA operates to bar the claim by the Applicant and the Group Members against NTMEC for compensation for negligence.

Waiver

54 Further and in the alternative, in answer to the claim in negligence, NTMEC:

- (a) Says that if the Applicant and/or the Group Members purchased tickets from NTMEC to attend RedCentre NATS, then they agreed to the terms and conditions therein;
- (b) Says that the terms and conditions included an acknowledgement that those attending the RedCentre NATS did so at their own risk, assumed all risk and liability for personal injury or death, and that NTMEC bears no liability for any personal injury sustained at or after the event;
- (c) Says that the terms and conditions extended to limit any liability of NTMEC to NTMEC repaying the cost of the ticket; and
- (d) Says that NTMEC has no liability to the Applicant and/or the Group Members in negligence.

55 Further and in the alternative, in answer to the claim in negligence, NTMEC:

- (a) Repeats the matters pleaded in paragraph 54(a)-(c) above; and
- (b) Says that the Applicant and/or the Group Members voluntarily assumed the risk of suffering personal injury from standing in close proximity to the burnout; and
- (c) Says that under the doctrine of *volenti non fit injuria*, NTMEC is not liable in negligence for any ensuing injury.

Limitation to Damages

56 Further and in the alternative, in answer to the whole of the claim, if NTMEC is liable as alleged:

- (a) Any order for loss or damage or damages would be an award of personal injury damages for the purposes of Part VIB of the *Competition and Consumer Act 2010* (Cth); and
- (b) NTMEC relies on the limitation to any award of personal injury damages as set out in Divisions 3, 4, 5 and 6 of Part VIB of the *Competition and Consumer Act 2010* (Cth) to the extent applicable to the claims brought by the Applicant and each Group Member.

Date: 13 November 2020



Signed by David Lee
Lawyer for the Second Respondent

This pleading was prepared by David Lee, lawyer

Certificate of lawyer

I David Lee certify to the Court that, in relation to the defence filed on behalf of the Second Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 13 November 2020



Signed by David Lee
Lawyer for the Second Respondent