

NOTICE OF FILING

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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



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

Dated: 20/11/2020 10:12:44 AM 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.

Form 17
Rule 8.05(1)(a)



Statement of Second Cross-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

Northern Territory Major Events Company Pty Ltd

ABN 22 085 961 520
Second Cross-Claimant

Central Australian Drag Racing Association Inc

ABN 77 903 410 796
Third Cross-Respondent

Filed on behalf of (name & role of party)	Northern Territory Major Events Company Pty Ltd (ABN 22 085 961 520), Second Respondent / First Cross-Claimant		
Prepared by (name of person/lawyer)	David Lee		
Law firm (if applicable)	Clyde & Co		
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[Form approved 01/08/2011]

1. At all material times the Cross-Applicant (**NTMEC**) was and is a corporation able to sue in its own name.
2. At all material times the Cross-Respondent (**CADRA**) was and is a corporation able to be sued in its own name.
3. For the purposes only of this Cross-Claim, the Cross-Claimant repeats the matters alleged by the Applicant in paragraphs 6 to 41 of the Further Amended Statement of Claim filed 27 August 202

Claim in contract

4. In about 6 March 2017, NTMEC and CADRA entered into a venue hire agreement in relation to the 2017 RedCentre NATS event (**Venue Hire Agreement**).
5. It was a term of the Venue Hire Agreement (clause 5.1(a)) that CADRA was responsible for ensuring that adequate emergency procedures were in place at the event premises.
6. It was a term of the Venue Hire Agreement (clause 5.2(a)) that CADRA was responsible for the safe conduct of the competition and associated aspects during the course of the event.
7. It was a term of the Venue Hire Agreement (clause 5.2(b)) that CADRA may make arrangements and engage such personnel as is appropriate in order to ensure efficient control of all persons attending the event.
8. It was a term of the Venue Hire Agreement (clause 7.1(a)) that CADRA must at least 2 days before the start of the event have the competition areas prepared to a suitable standard to conduct the competition on the burnout pad and all associated areas.
9. It was a term of the Venue Hire Agreement (clause 7.1(b)) that CADRA must ensure that the competition areas of the event were of a first class standard and suitable for the intended purpose.

10. It was a term of the Venue Hire Agreement (clause 15.1) that CADRA would supply all of its services under the Venue Hire Agreement with due care and skill, and in compliance with all applicable laws.
11. It was a term of the Venue Hire Agreement (clause 15.6) that CADRA indemnify and keep indemnified NTMEC from and against all actions, suits, proceedings, costs, claims, damages and demands whatsoever, against NTMEC for or on account of injury or damage to persons suffered or sustained in consequence of any negligence or default of CADRA, its employees, agents or subcontractors.
12. Without admission and for the purposes of this Cross-Claim only, if the Applicant and/or the Group Members suffered loss or damage as alleged in the Further Amended Statement of Claim or at all, then:
 - (a) Such injury loss or damage was caused and/or contributed to by CADRA's breach of the Venue Hire Agreement in failing to exercise due care and skill in ensuring that adequate emergency procedures were in place at the event premises;
 - (b) Such injury loss or damage was caused and/or contributed to by CADRA's breach of the Venue Hire Agreement in failing to exercise due care and skill in the safe conduct of the competition and associated aspects during the course of the event;
 - (c) Such injury loss or damage was caused and/or contributed to by CADRA's breach of the Venue Hire Agreement in failing to exercise due care and skill in having the competition areas prepared to a suitable standard to conduct the competition on the burnout pad and all associated areas;
 - (d) Such injury loss or damage was caused and/or contributed to by CADRA's breach of the Venue Hire Agreement in failing to exercise due care and skill in ensuring that the competition areas of the event were of a first class standard and suitable for the intended purpose; and/or
 - (e) Such injury loss or damage was caused and/or contributed to by negligence of CADRA or any employee or subcontractor of CADRA.

13. In accordance with its obligations under the Venue Hire Agreement, NTMEC says that CADRA is liable to indemnify NTMEC against any liability, damages, expenses and costs that NTMEC sustains or incurs as a result of these proceedings.
14. In the alternative, by reason of CADRA's breach of the Venue Hire Agreement, NTMEC has suffered loss and damage including any liability, damages, expenses and costs that NTMEC sustains or incurs as a result of these proceedings.

Claim in negligence

15. In providing services under the Venue Hire Agreement, CADRA owed a duty to NTMEC to exercise reasonable skill and care.
16. Without admission and for the purposes of this Cross-Claim only, if the Applicant and/or the Group Members suffered loss or damage as alleged in the Further Amended Statement of Claim or at all, then:
 - (a) Such injury loss or damage was caused and/or contributed to by CADRA's breach of duty to NTMEC in failing to exercise due care and skill in ensuring that adequate emergency procedures were in place at the event premises;
 - (b) Such injury loss or damage was caused and/or contributed to by CADRA's breach of duty to NTMEC in failing to exercise due care and skill in the safe conduct of the competition and associated aspects during the course of the event;
 - (c) Such injury loss or damage was caused and/or contributed to by CADRA's breach of duty to NTMEC in failing to exercise due care and skill in having the competition areas prepared to a suitable standard to conduct the competition on the burnout pad and all associated areas;
 - (d) Such injury loss or damage was caused and/or contributed to by CADRA's breach of duty to NTMEC in failing to exercise due care and skill in ensuring that the competition areas of the event were of a first class standard and suitable for the intended purpose.

17. By reason of CADRA's breach of its duty to NTMEC, NTMEC has suffered loss and damage including any liability, damages, expenses and costs that NTMEC sustains or incurs as a result of these proceedings.

Claim for contribution/indemnity

18. As the occupier of the event venue, CADRA owed a duty of care to the Applicant and the Group Members.
19. Alternatively, by reason of its provision of services under the Venue Hire Agreement, CADRA owed a duty of care to the Applicant and the Group Members.
20. Without admission and for the purposes of this Cross-Claim only, if the Applicant and/or the Group Members suffered loss or damage as alleged in the Further Amended Statement of Claim or at all, then as particularised in the Further Amended Statement of Claim such injury loss or damage was caused and/or contributed to by breach of CADRA's duty of care to them.
21. In the event that NTMEC is found liable to the Applicant and/or the Group Members, NTMEC is entitled to contribution and/or indemnity from Car Festivals and Summernats:
 - (a) as joint tortfeasors pursuant to s 12(4) and s 13 of the *Law Reform (Miscellaneous Provisions) Act 1956* (NT); and/or
 - (b) under the principles of equitable contribution.

Remedies

1. Declaration that CADRA indemnifies NTMEC for any liability NTMEC has to the Applicant and/or the Group Members.
2. Damages.

3. Contribution or Indemnity from CADRA for any liability NTMEC has to the Applicant and/or the Group Members, including under s 12(4) and s 13 of the *Law Reform (Miscellaneous Provisions) Act 1956* (NT).
4. Equitable contribution.
5. Interest.
6. Costs.

Date: 13 November 2020



Signed by David Lee
Lawyer for the Second Respondent and First
Cross-Claimant

This pleading was prepared by David Lee, Lawyer for the Second Respondent and First Cross-Claimant and Hilbert Chiu of Counsel, and settled by Julian Sexton SC.

Certificate of lawyer

I David Lee certify to the Court that, in relation to the statement of cross-claim filed on behalf of the first cross claimant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 13 November 2020



Signed by David Lee
Lawyer for the Second Respondent and First
Cross-Claimant

Schedule

No. NSD1446 of 2019

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

Cross-Respondents

Central Australian Drag Racing Association Inc
ABN 77 903 410 796
Third Cross-Respondent