

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/01/2021 8:56:27 AM AEDT 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: 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



Sia Lagos

Dated: 25/01/2021 9:00:22 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.



**Defence of First and Second Cross Respondents
to Statement of First Cross Claim filed on 20 November 2020**

No. 1446 of 2019

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

Lynelle Bouchere

Applicant

Car Festivals Pty Ltd and others
Respondents

Northern Territory Major Events Company Pty Ltd
First Cross Claimant

Car Festivals Pty Ltd
First Cross Respondent

Summernats Pty Ltd
Second Cross Respondent

Preliminaries

- A Headings are used for convenience only. They do not form part of the First and Second Cross Respondent's response to the Statement of First Cross Claim filed 20 November 2020 (**Cross Claim**).
- B Unless the context requires otherwise, the First and Second Cross Respondents adopt the defined terms and sub-headings used in the Cross Claim, but do not admit any factual assertions contained in or implied by the use of those terms or sub-headings.

In answer to the Cross Claim, the First and Second Cross Respondents say as follows:

Background

- 1 The First and Second Cross Respondents admit paragraph 1.
- 2 The First and Second Cross Respondents admit paragraph 2.
- 3 The First and Second Cross Respondents admit paragraph 3.
- 4 In answer to paragraph 4, the First and Second Cross Respondents:
 - (a) admit that the Cross Claimant repeats the paragraphs stated therein;

- (b) refer to and repeat the admissions, non-admissions and denials contained in their defence (**Defence**) to the Second Further Amended Statement of Claim filed 27 August 2020 (**SFASOC**);
- (c) otherwise deny the paragraph.

Claim in contract against Car Festivals

5 In answer to paragraph 5, the First and Second Cross Respondents:

- (a) admit that NTMEC and Car Festivals entered into the Sanctions Agreement on or about 1 October 2015;
- (b) otherwise deny the paragraph.

6 In answer to paragraph 6, the First and Second Cross Respondents:

- (a) refer to and repeat paragraph 5 herein;
- (b) otherwise admit the paragraph.

7 In answer to paragraph 7, First and Second Cross Respondents:

- (a) rely upon the terms of the Sanctions Agreement for their full force and effect as if set out in full herein;
- (b) admit that Schedule 2, clause 2(f) of the Sanctions Agreement provided that, among other things, Car Festivals must undertake all responsibilities for the Event (as defined at clause 2.1 and item 3 of Schedule 1) only as and to the extent of, relevantly, in respect of Personnel – Management Personnel, Car Festivals, at its cost, supplying the following staff for the ongoing management of the Sanctions Agreement:
 - (i) Event Manager;
 - (ii) Event Coordinator;
 - (iii) Social Media/Marketing Coordinator;
 - (iv) Company directors as required;
- (c) say that, pursuant to Schedule 2, clause 2(f) of the Sanctions Agreement, in respect of Personnel – Management Personnel, NTMEC was required, at its cost, to provide the required personnel to ensure planning and coordination activities are undertaken;
- (d) otherwise deny the paragraph.

8 In answer to paragraph 8, the First and Second Cross Respondents:

- (a) rely upon the terms of the Sanctions Agreement for their full force and effect as if set out in full herein;
- (b) admit that Schedule 2, clause 2(f) of the Sanctions Agreement provided that, among other things, Car Festivals must undertake all responsibilities for the Event (as defined at clause 2.1 and item 3 of Schedule 1) only as and to the extent of, relevantly, in respect of Sport – Competition Venues:

- (i) as to sub-paragraph 8(a), Car Festivals being responsible for physically planning the venue layout and infrastructure for competition areas for implementation by NTMEC, and otherwise deny sub-paragraph 8(a);
- (ii) as to sub-paragraphs 8(b) - (c), admit the sub-paragraphs.

9 In answer to paragraph 9, the First and Second Cross Respondents:

- (a) rely upon the terms of the Sanctions Agreement for their full force and effect as if set out in full herein;
- (b) otherwise admit the paragraph.

10 In answer to paragraph 10, the First and Second Cross Respondents:

- (a) rely upon the terms of the Sanctions Agreement for their full force and effect as if set out in full herein;
- (b) say that clause 9.1 of the Sanctions Agreement provided that Car Festivals is entitled to access the Venue (as defined at clause 2.1 and item 4 of Schedule 1) during access periods as notified by NTMEC to supply the Services (as defined at clause 2.1 and Schedule 2) and exercise the Provider Rights (as defined at clause 2.1 and Schedule 3) in accordance with the Sanctions Agreement and, in doing so, must do the matters alleged at paragraph 10, which matters they otherwise admit.

11 In answer to paragraph 11, the First and Second Cross Respondents:

- (a) rely upon the terms of the Sanctions Agreement for their full force and effect as if set out in full herein;
- (b) say that clause 11.4 of the Sanctions Agreement provided that Car Festivals indemnifies NTMEC against all losses, damages, expenses and costs (on a full indemnity basis) that NTMEC sustains or incurs as a result, whether directly or indirectly, of:
 - (i) breach of the Sanctions Agreement by Car Festivals;
 - (ii) the negligence of Car Festivals or any employee or subcontractor of Car Festivals in relation to the Sanctions Agreement; or
 - (iii) the supply of Services (as defined at clause 2.1 and Schedule 2) or exercise of Car Festivals of the Provider Rights (as defined at clause 2.1 and Schedule 3),

except to the extent that that loss was caused by the negligence of NTMEC;

- (c) otherwise deny the paragraph.

12 The First and Second Cross Respondents deny paragraph 12.

13 The First and Second Cross Respondents deny paragraph 13.

14 The First and Second Cross Respondents deny paragraph 14.

Claim for negligence against Car Festivals

- 15 In answer to paragraph 15, the First and Second Cross Respondents:
- (a) rely upon the terms of the Sanctions Agreement for their full force and effect as if set out in full herein;
 - (b) otherwise admit the paragraph.

- 16 In answer to paragraph 16, the First and Second Cross Respondents:
- (a) say that, by operation of paragraph 2 of Schedule 1 of the Sanctions Agreement, that agreement was not in force in February 2015;
 - (b) otherwise deny the paragraph.

17 The First and Second Cross Respondents deny paragraph 17.

Claim for contribution/indemnity against Car Festivals and Summernats

- 18 The First and Second Cross Respondents deny paragraph 18.
- 19 The First and Second Cross Respondents deny paragraph 19.
- 20 The First and Second Cross Respondents deny paragraph 20.

Remedies

- 21 The First and Second Cross Respondents deny that NTMEC is entitled to the relief claimed or at all.

Date: 22 January 2021

Signed by Rachael Arnold, by her employed solicitor Catherine Blair,
Lawyer for the First Cross Respondent and
Second Cross Respondent

This pleading was prepared by Rachael Arnold, lawyer for the First Cross Respondent and Second Cross Respondent and Naomi Oreb of counsel, and settled by Ruth C A Higgins SC.

Certificate of lawyer

I, Rachael Arnold, certify to the Court that, in relation to the Defence filed on behalf of the First Cross Respondent and Second Cross 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: 22 January 2021

Signed by Rachael Arnold, by her employed
solicitor Catherine Blair,
Lawyer for the First Cross Respondent and
Second Cross Respondent