

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION** **No: NSD1177/2010**

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/05/2011.

DETAILS OF FILING

Document Lodged: Cross-claim where cross-claim is not served before date of directions hearing appointed in application: Federal Court Rules form 9
File Number: NSD1177/2010
File Title: Brisbane Broncos Leagues Club Ltd ACN 010 798 679 v Alleasing Finance Australia Pty Ltd (Formerly Rentworks Ltd) ACN 003 421 136 & Anor
District Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 1/06/2011

Warwick Soden
Registrar

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
DIVISION: GENERAL**

NSD 1177/2010

**BRISBANE BRONCOS LEAGUES CLUB LTD (ACN 010 798
679)**

Applicant

**ALLEASING FINANCE AUSTRALIA PTY LTD (ACN 003 421
136)**

First Respondent

**TOTAL CONCEPT PROJECTS (AUSTRALIA) PTY LTD (IN
LIQUIDATION) (ACN 073 747 772)**

Second Respondent

**ALLEASING FINANCE AUSTRALIA PTY LTD (ACN 003 421
136)**

Cross-Claimant

**MOUNT PRITCHARD & DISTRICT COMMUNITY CLUB
LTD (ACN 000 458 622)**

Cross-Respondent

**FOURTH CROSS-CLAIM
(Order 5 rules 5(2) and 8(3))**

The Cross-Claimant cross-claims against the Cross-Respondent for rental instalments and other amounts due and payable pursuant to the Rental Agreements the subject of the controversy between the First Respondent and Mount Pritchard & District Community Club Ltd as a Group Member in these proceedings.

- 1 On 4 March 2004 Alleasing Finance Australia Pty Ltd (“**AFA**”) and the Cross-Respondent (“**Mount Pritchard**”) entered into an agreement for the rental of audio visual and other equipment (“**Equipment**”) to Mount Pritchard (“**First Rental Agreement**”).

Particulars

The Rental Agreement is in writing and is comprised of:

Filed on behalf of the First Respondent by:
MALLESONS STEPHEN JAQUES
Level 61 Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

DX 113 Sydney
T+ 61 +61 2 9296 2000
F+ 61 +61 2 9296 3999
Ref: MLS/WJA
Matter no: 02-5503-6303



- (i) RentWorks Agreement dated 27 February 2004 (“**RentWorks Agreement**”);
and
- (ii) Rental Schedule No 09887/2001 dated 4 March 2004 (“**Rental Schedule No 09887/2001**”).

2 On or about 28 September 2004 AFA and Mount Pritchard entered into a new agreement for the rental of the Equipment previously the subject of the First Rental Agreement (“**Second Rental Agreement**”).

Particulars

The Rental Agreement is in writing and is comprised of:

- (i) RentWorks Agreement; and
- (ii) Rental Schedule No 10413/2002 dated 28 September 2004 (“**Rental Schedule No 10413/2002**”).

3 On or about 25 February 2005 AFA and Mount Pritchard entered into a further agreement for the rental of additional audio visual and other equipment (“**Additional Equipment**”) to Mount Pritchard (“**Third Rental Agreement**”).

Particulars

The Third Rental Agreement is in writing and is comprised of:

- (i) the RentWorks Agreement; and
- (ii) Rental Schedule No 10801/2003 dated 25 February 2005 (“**Rental Schedule No 10801/2003**”).

4 It was a term of the Second Rental Agreement that:

- (a) Mount Pritchard would pay AFA two quarterly rental instalments of \$0 and 18 quarterly rental instalments of \$65,668.25 (including stamp duty and GST) in advance on the first day of each month of January, April, July and October occurring during the term of the Rental Agreement;

Particulars

Clauses 4.1, 4.2 and 1.1 (definition of “Payment Date”) of the RentWorks Agreement.

Clause 3(c) of the Rental Schedule.

- (b) the initial term of the Second Rental Agreement was from 1 October 2004 to 30 September 2010.



Particulars

Clause 3.1 of the RentWorks Agreement.

Clause 3(b) of the Rental Schedule.

The first Payment Date was the Commencement Date, being 1 October 2004.

The term of the Rental Agreement was 60 months from that date, ending 30 September 2010.

5 It was a term of the Third Rental Agreement that:

- (a) Mount Pritchard would pay AFA quarterly rental instalments of \$7,923.99 (including stamp duty and GST) in advance on the first day of each month of January, April, July and October occurring during the term of the Rental Agreement;

Particulars

Clauses 4.1, 4.2 and 1.1 (definition of "Payment Date") of the RentWorks Agreement.

Clause 3(c) of the Rental Schedule.

- (b) the initial term of the Third Rental Agreement was from 1 April 2005 to 31 March 2010;

Particulars

Clause 3.1 of the RentWorks Agreement.

Clause 3(b) of the Rental Schedule.

The first Payment Date after the Commencement Date was 1 April 2005. The Term of the Rental Agreement was 60 months from that date, ending 31 March 2010.

6 It was a term of each of the Second Rental Agreement and the Third Rental Agreement that:

- (a) the initial term of the Rental Agreement (being the terms specified in paragraphs 4(b) and 5(b) above, as extended or varied under clauses 17 or 20 of the RentWorks Agreement) would automatically be extended for a further term of 3 months unless Mount Pritchard delivered the equipment to AFA on or before the expiry of the term;

Particulars

Clause 17.1(b) of the RentWorks Agreement.

- (b) if Mount Pritchard did not return the equipment at the expiration of the 3 months referred to in paragraph (a) above, the term would be further extended until such time as AFA



terminated the Rental Agreement by notice in writing or Mount Pritchard terminated the Rental Agreement by delivering up the Equipment to AFA;

Particulars

Clause 17.2 of the RentWorks Agreement

- (c) Mount Pritchard would pay each instalment of rent by noon on the relevant payment date in funds that are immediately available to the person or account nominated by AFA;

Particulars

Clause 4.5 of the RentWorks Agreement.

- (d) the requirement to pay all rental instalments on time pursuant to clause 4.5 of the RentWorks Agreement was an essential term of the Rental Agreement;

Particulars

Clause 9.1(a) of the RentWorks Agreement.

- (e) AFA could give Mount Pritchard notice terminating the rental of all Equipment then being rented under the Rental Agreement if there was a breach of any essential term specified in clause 9.1 of the RentWorks Agreement;

Particulars

Clause 11.1 of the RentWorks Agreement.

- (f) Mount Pritchard would pay to AFA on demand interest on any amount due to AFA but unpaid charged at a rate of interest of 2% above the Interbank Swap Rate commensurate with the term of the Rental Agreement and as calculated by reference to the rates published in the Australian Financial Review on the date payment fell due;

Particulars

Clauses 18.1 and 1.1 (definition of "Overdue Rate") of the RentWorks Agreement.

- (g) Mount Pritchard's obligation to pay rent and other moneys under the Rental Agreement was absolute and unconditional and, without limitation, continued notwithstanding any defect in, breakdown, accident, loss, theft or damage to the Equipment, and was not subject to set-off or reduction for any reason;

Particulars

Clause 4.6 of the RentWorks Agreement.



- (h) if AFA terminated the renting of Equipment, Mount Pritchard would immediately:
 - (i) return the equipment to AFA at a place specified by AFA; and
 - (ii) pay to AFA all moneys then payable under the Rental Agreement.

Particulars

Clause 11.3 of the RentWorks Agreement.

- (i) Mount Pritchard must pay or reimburse AFA for:
 - (i) any moneys which AFA may reasonably think fit to pay to make good any failure by Mount Pritchard to comply with any of Mount Pritchard's obligations; and
 - (ii) any costs or expenses (including legal costs) reasonably incurred by AFA in connection with the enforcement of AFA's rights under the Rental Agreement.

Particulars

Clauses 14.1(c) and 14.1(d).

- 7 Pursuant to the Second Rental Agreement and the Third Rental Agreement Mount Pritchard took possession of the Equipment and the Additional Equipment and retained the Equipment and the Additional Equipment in its possession until 2 March 2011.
- 8 From and including 1 July 2007, the quarterly rental instalments payable under the Second Rental Agreement, and referred to in paragraph 4(a) above, reduced to \$65,179.40 (including GST) with the abolition of stamp duty on hiring arrangements from that date.
- 9 From and including 1 July 2007, the quarterly rental instalments payable under the Third Rental Agreement, and referred to in paragraph 5(a) above, reduced to \$7,865.00 (including GST) with the abolition of stamp duty on hiring arrangements from that date.
- 10 Mount Pritchard did not deliver the Equipment to AFA on or before the expiry of the initial term of the Second Rental Agreement.
- 11 Mount Pritchard did not deliver the Additional Equipment to AFA on or before the expiry of the initial term of the Third Rental Agreement.
- 12 By reason of the matters pleaded in paragraph 10 above, and pursuant to clause 17.1 of the RentWorks Agreement, the term of the Second Rental Agreement was extended to 31 December 2010.
- 13 By reason of the matters pleaded in paragraph 11 above, and pursuant to clause 17.1 of the RentWorks Agreement, the term of the Third Rental Agreement was extended to 30 June 2010.



- 14 Mount Pritchard did not deliver the Equipment to AFA on or before 31 December 2010.
- 15 Mount Pritchard did not deliver the Additional Equipment to AFA on or before 30 June 2010.
- 16 By reason of the matter pleaded in paragraph 14 above, and pursuant to clause 17.2 of the RentWorks Agreement, the term of the Second Rental Agreement was extended until such time as AFA terminated the Second Rental Agreement by notice in writing or Mount Pritchard terminated the Second Rental Agreement by delivering up the Equipment to AFA.
- 17 By reason of the matter pleaded in paragraph 15 above, and pursuant to clause 17.2 of the RentWorks Agreement, the term of the Third Rental Agreement was extended until such time as AFA terminated the Third Rental Agreement by notice in writing or Mount Pritchard terminated the Third Rental Agreement by delivering up the Equipment to AFA.

Particulars

Clause 17.2 of the RentWorks Agreement.

- 18 Mount Pritchard paid AFA rental instalments payable under the Second Rental Agreement from 1 April 2005 to 30 September 2010.
- 19 Mount Pritchard paid AFA rental instalments payable under the Third Rental Agreement from 1 April 2005 to 31 March 2010.
- 20 Mount Pritchard has failed to pay AFA quarterly rental instalments of \$65,179.40 due and payable pursuant to the Second Rental Agreement on each of 1 October 2009, 1 January 2010, 1 April 2010, 1 July 2010, 1 October 2010 and 1 January 2011.
- 21 Mount Pritchard has failed to pay AFA quarterly rental instalments of \$7,865.00 due and payable pursuant to the Third Rental Agreement on each of 1 April 2010, 1 July 2010, 1 October 2010 and 1 January 2011.
- 22 On 3 February 2011, AFA gave Mount Pritchard notice terminating the Second Rental Agreement and Third Rental Agreement.

Particulars

Letter from AFA to Mount Pritchard dated 3 February 2011.

- 23 Pursuant to clause 11.3 of the RentWorks Agreement, on 3 February 2011 Mount Pritchard was liable to pay AFA all moneys then payable under the Rental Agreements.

Particulars

Mount Pritchard was liable to pay:



- (i) \$391,076.40, being comprising of six rental instalments of \$65,179.40 pursuant to the Second Rental Agreement;
- (ii) \$31,460.00, being comprised of four rental instalments of \$7,865.00 pursuant to the Third Rental Agreement; and
- (iii) overdue interest calculated pursuant to clause 1.1 (definition of “Overdue Rate”) and clause 18.1 of the RentWorks Agreement.

24 In breach of the terms of the Rental Agreements Mount Pritchard has failed to pay the amounts pleaded in the previous paragraph.

25 Mount Pritchard is liable to pay AFA the amounts pleaded in paragraph 23 above, plus overdue interest, which continues to accrue, calculated pursuant to clause 1.1 (definition of “Overdue Rate”) and clause 18.1 of the RentWorks Agreement.

The cross-claimant Alleasing Finance Australia Pty Ltd (ACN 003 421 136) claims -

- 1 Damages for breach of contract.
- 2 Interest pursuant to clause 18.1 of the RentWorks Agreement, or alternatively pursuant to section 51A(1)(a) of the *Federal Court of Australia Act 1974* (Cth).
- 3 Costs on an indemnity basis, pursuant to clause 14.1 of the RentWorks Agreement, alternatively costs pursuant to section 43 of the *Federal Court of Australia Act 1976* (Cth).
- 4 Such further or other orders as the Court thinks fit.

Date: 31 May 2011

A handwritten signature in blue ink, appearing to read 'M. Saville', written over a dotted line.

Moira Leonie Saville
Solicitor for the Cross-Claimant



To Mount Pritchard & District Community Club Ltd (ACN 000 458 622)

1. Judgment may be given or an order made unless the prescribed form of notice of your appearance is received in the Registry within 14 days after service of this statement of cross-claim upon you and you comply with the Rules of Court relating to your defence.

The cross-claimant's address for service is (see Order 7 rule 6):

MALLESONS STEPHEN JAQUES
Level 61 Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
DX 113 Sydney
Ref: MLS/WJA

This pleading was prepared by Moira Leonie Saville and Wilson Antoon, Solicitors.

Version 3



**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
DIVISION: GENERAL**

NSD 1177/2010

**BRISBANE BRONCOS LEAGUES CLUB LTD (ACN 010 798
679)**

Applicant

**ALLEASING FINANCE AUSTRALIA PTY LTD (ACN 003 421
136)**

First Respondent

**TOTAL CONCEPT PROJECTS (AUSTRALIA) PTY LTD (IN
LIQUIDATION) (ACN 073 747 772)**

Second Respondent

**ALLEASING FINANCE AUSTRALIA PTY LTD (ACN 003 421
136)**

Cross-Claimant

**MOUNT PRITCHARD & DISTRICT COMMUNITY CLUB
LTD (ACN 000 458 622)**

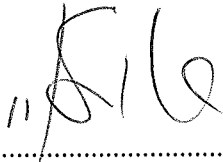
Cross-Respondent

**CERTIFICATE OF LEGAL REPRESENTATIVE
(Order 11 rule 1B)**

I, MOIRA LEONIE SAVILLE certify to the Court that, in relation to the pleading dated 31 May 2011 filed on behalf of the Cross-Claimant, 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: 31 May 2011


.....
Legal Representative for
the Cross-Claimant

Filed on behalf of the First Respondent by:
MALLESONS STEPHEN JAQUES
Level 61 Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

DX 113 Sydney
T+61 2 9296 2000
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Ref: MLS/WJA
Matter no: 02-5503-6303