

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION** **No: NSD1198/2010**

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/03/2011.

DETAILS OF FILING

Document Lodged: Amended Application/Appeal
File Number: NSD1198/2010
File Title: Asquith Rugby League Club Ltd ACN 000 610 542 & Anor v Capital Finance Australia Limited ACN 069 663 136 & Anor
District Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



★ Dated: 18/03/2011

Registrar

Warwick Soden

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 REGISTRY
GENERAL DIVISION**

File No NSD 1198 of 2010

**ASQUITH RUGBY LEAGUE CLUB
LIMITED**

(ACN 000 610 542)

First Applicant

**SHELLHARBOUR WORKERS' CLUB
LIMITED**

(ACN 001 068 864)

Second Applicant

**CAPITAL FINANCE AUSTRALIA
LIMITED**

(ACN 069 663 136)

First Respondent

**TOTAL CONCEPT PROJECTS
(AUSTRALIA) PTY LIMITED**

(in liquidation)

(ACN 073 474 772)

Second Respondent

**Amended Application under Part IVA of the Federal Court of Australia
Act 1976**

(Order 73, rule 3)

1. This application is brought by the applicants as representative parties pursuant to Part IVA of the Federal Court of Australia Act 1976 (Cth).
2. The group members to whom this proceeding relates are entities who are defined in paragraph 2 of the Amended Statement of Claim, being entities who have:

(a) entered into Rental Agreements with the First Respondent; and/or

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- (b) entered into a Revenue Agreement with the Second Respondent;
- (c) entered into an Advertising Agreement with the Second Respondent or a related entity of the Second Respondent;
- (d) been Group Members when the proceedings commenced on 13 September 2010, suffered loss and damage as a result of the wrongful conduct of the Respondents pleaded in the Amended Statement of Claim filed herein; and/or
- (e) become Group Members following the orders of the Court on 16 February 2011, having first suffered loss and damage on or after 16 February 2005 as a result of the wrongful conduct of the Respondents pleaded below.
- ~~(e) as at the commencement of proceedings, entered into a Retainer Agreement with Slater & Gordon Lawyers, the solicitors on the record in these proceedings.~~

3. On the grounds set out in the Amended Statement of Claim, the applicants claim for themselves and the Group Members:

- (a) A declaration that the conduct pleaded at paragraphs 6 and 6A, 9 and 10 of the Amended Statement of Claim was misleading or deceptive conduct in trade or commerce contrary to section 52 of the Trade Practices Act 1974 (Cth) (the Act);
- ~~(b) A declaration that the conduct of the First Respondent pleaded at paragraphs 32 to 35 of the Statement of Claim was unconscionable conduct in trade or commerce contrary to section 51AC of the Act;~~
- ~~(c) A declaration that the First Respondent is a person knowingly concerned in, or party to, the contraventions of the Act constituted by the Second Respondent's conduct at paragraphs 6 (b), (d), (e)(iv), (e)(v), (e)(vi) and (f) of the Statement of Claim;~~
- ~~(d) A declaration that on their true construction clauses 8 and 11 of the Rental Agreement between the First Respondent and each Group Member and clauses 1.4, 2.4 and 2.5 of the Return Conditions Appendix thereto do not require the delivery up to the First Respondent at expiration (or earlier termination of the rental) of any equipment that was not in fact delivered to each Group Member by or on behalf of the First Respondent and in respect of which that Group Member had not had possession or paid rental;~~
- ~~(e) In the alternative to (d) above, an order under section 87 of the Act varying 8 and 11 of the Rental Agreement between the First Respondent and each Group Member and clauses 1.4, 2.4 and 2.5 of the Return Conditions Appendix thereto to the effect that they shall not require the delivery up to the First Respondent at expiration (or earlier termination of the rental) of any~~

~~equipment that was not in fact delivered to each Group Member by or on behalf of the First Respondent and in respect of which that Group Member had not had possession or paid rental;~~

(ea) A declaration that by the conduct of its agent, the Second Respondent, supplying or offering to supply services to each Group Member on condition that they acquire leasing services from the First Respondent, the First Respondent contravened section 47(1) of the Act by engaging in the practice of exclusive dealing;

(f) An order pursuant to section 87(2)(c) of the Act that the First Respondent pay to each Group Member such sums as the Court considers just by way of refund of rental payments made to the First Respondent under the Rental Agreements between that Group Member and the First Respondent.

(fa) An order pursuant to section 87(2)(ba) of the Act refusing to enforce the rental agreements entered into between the Second Respondent and each Group Member insofar as they obliged each Group Member to pay rent to the Second Respondent;

(fb) An order pursuant to section 87(2)(a) of the Act declaring the whole or any part of the rental agreements entered into between the Second Respondent and each Group Member void;

(fc) A compensation order pursuant to section 87 of the Act;

(g) Damages pursuant to section 82 of the Act;

~~(h) Damages against each of the First and Second Respondents for breach of contract;~~

(i) Interest pursuant to section 51A of the Federal Court of Australia Act 1976;

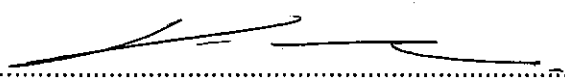
(j) Such further or other order as Court considers fit;

4. The questions of law or fact common between the claims of the Applicant and the Group Members or between Group Members are:

~~(a) Whether the Respondents in the course of trade and commerce engaged in conduct as alleged in paragraphs 6, 9 and 10 of the Statement of Claim and, if so, whether that conduct was misleading or deceptive within the meaning of section 52 of the Act;~~

- ~~(a) Whether the First Respondent was a person knowingly concerned in, or party to, any contraventions of the Act by the Second Respondent;~~
- ~~(a) Whether the Second Respondent was relevantly an agent of the First Respondent in any of its dealings with Group Members;~~
- ~~(a) The true construction of the Rental Agreements between each Group Member and the First Respondent;~~
- ~~(a) Whether the conduct of the First Respondent as alleged at paragraph 32 to 35 was unconscionable conduct in trade or commerce within the meaning of section 51AC of the Act;~~
- ~~(a) Whether the agreements pleaded against each of the First and Second Respondents were breached by them;~~
- ~~(a) Whether the Group Members are entitled to relief and, if so, what that relief should be.~~
- (a) Whether the Second Respondent's representations (alleged in paragraph 6(e)(v) and (vi) and paragraph 6A of the Amended Statement of Claim) to each of the Group Members were made with the authority of the First Respondent;
- (b) Whether the Second Respondent had a reasonable basis for making the representations alleged in paragraph 6(e)(iv) and (v) and paragraph 6A of the Amended Statement of Claim to each of the Group Members and if not, whether that conduct was misleading or deceptive within the meaning of section 52 of the Act.
- (c) Whether it was a condition of the supply, of offer of supply, by the Second Respondent of the services to Group Members that Group Members acquire leasing services from another person, the rental company that owned the Equipment, as alleged in paragraphs 37 to 39 of the Amended Statement of Claim.
- (d) Whether exclusive dealing engaged in by the Second Respondent (alleged in paragraphs 37 to 39 of the Amended Statement of Claim) was engaged in by the Second Respondent on behalf of the First Respondent and with the authority of the First Respondent.

Date: ~~13-17 September~~ March 20102011


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Van Angelo Moulis
Practice Group Leader
Slater & Gordon Lawyers
Solicitor for the Applicant



TO: Capital Finance Australia Limited (ACN 069 663 136)
20 Lexington Drive
Bella Vista, NSW 2153

AND: Total Concept Projects (Australia) Pty Ltd (ACN 073 474 772) (In Liquidation)
C/ Blair Pleash
Hall Chadwick
St Martins Tower, Level 29
31 Market Street
Sydney NSW 2000

A directions hearing in this application will be heard by the Court at the time and place specified below.

If there is not attendance before the Court by you or a legal practitioner representing you, the application may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time, you must file an appearance in the Registry.

Time:

Place:

Date:

.....
Registrar

The applicant's address for service (see Order 7, rule 6) is:

C/ Van Angelo Moulis
Slater & Gordon Lawyers
Level 11, 51 Druitt Street
Sydney NSW 2000
DX 1163 Sydney

The First Applicant's address is:

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Waitara, NSW 2077

The Second Applicant's address is:

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