

Jacobson J

7/6

ORIGINAL

Form 16

IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES REGISTRY

File NO. NSD1198 OF 2010

ASQUITH RUGBY LEAGUE CLUB  
LIMITED  
ACN 000 610 542

First Applicant

SHELLHARBOUR WORKERS' CLUB  
LIMITED  
ACN 000 850 260

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

**Defence to Amended Statement of Claim**

(Order 11, rule 20)

The First Respondent (**Capital**) pleads its Defence to the Amended Statement of Claim (**Claim**) as follows:

1. In answer to paragraphs 1 and 2 of the Claim, Capital does not admit that the proceeding has been validly commenced as a representative proceeding.
2. In answer to paragraph 3 of the Claim, Capital does not admit that seven or more Group Members as defined (being persons other than the representative parties) have or had claims against it.

Version 1  
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3. In answer to paragraph 4 of the Claim, Capital:
  - (a) admits that it was a company duly incorporated;
  - (b) admits that it was in the business of supplying, or offering to supply, services of renting communications equipment to businesses;
  - (c) admits that it from time to time was engaged in trade or commerce within the meaning of that term as used in the *Trade Practices Act 1974 (Cth) (TPA)*.
  - (d) otherwise does not admit the allegations contained in this paragraph.
4. Capital does not know the allegations in paragraph 5 of the Claim, and otherwise does not plead to that paragraph, as it contains no allegation against it.
5. Capital does not admit paragraph 6 of the Claim.
6. Capital does not admit paragraph 6A of the Claim.
7. In answer to paragraph 7 of the Claim, Capital:
  - (a) does not admit that the TCP Representations were communicated by officers or employees of TCP; and
  - (b) denies that any of the TCP Representations, to the extent that they are found to have been communicated, were communicated by officers or employees of TCP acting within the actual and/or ostensible authority of Capital.
8. In answer to paragraph 8 of the Claim, Capital:
  - (a) does not admit that the TCP Representations were communicated by officers or employees of TCP;
  - (b) denies that any of the TCP Representations, to the extent that they are found to have been communicated, were communicated by officers or employees of TCP as agent for Capital; and
  - (c) denies that it is liable, as principal or otherwise, for the TCP Representations, to the extent that they are found to have been communicated.
9. There is no paragraph 9.

10. There is no paragraph 10.
11. Capital does not admit the allegations in paragraph 11 of the Claim.
12. There is no paragraph 12.
13. There is no paragraph 13.
14. Capital does not admit the allegations in paragraph 14 of the Claim.
15. In answer to paragraph 15 of the Claim, Capital:
  - (a) admits that each Group Member as defined (without admitting that they are Group Members within the meaning of section 33A of the *Federal Court of Australia Act 1976 (Cth)*) (**applicants and alleged represented persons**) entered into Rental Agreements with it;
  - (b) admits that each of the applicants and alleged represented persons made rental payments to it in respect of the equipment the subject of the Rental Agreements; and
  - (c) otherwise denies the allegations contained in this paragraph.
16. Capital denies paragraph 16 of the Claim.
17. There is no paragraph 17.
18. Capital does not admit the allegations in paragraphs 18A.
19. Capital does not admit the allegations in paragraphs 19.
20. Capital does not admit the allegations in paragraphs 20.
21. Capital does not admit the allegations in paragraphs 21.
22. Capital does not admit the allegations in paragraphs 22.
23. Capital admits that each of the applicants and alleged represented persons entered into one or more Rental Agreements but otherwise does not admit paragraph 23 of the Claim.
24. Capital admits the allegations contained in paragraph 24 of the Claim.
25. There is no paragraph 25.
26. There is no paragraph 26.
27. There is no paragraph 27.

28. There is no paragraph 28.
29. There is no paragraph 29.
30. There is no paragraph 30.
31. There is no paragraph 31.
32. There is no paragraph 32.
33. There is no paragraph 33.
34. There is no paragraph 34.
35. There is no paragraph 35.
36. There is no paragraph 36.
37. In response to paragraph 37 of the Claim, Capital repeats its response in paragraphs 3 and 4 of this defence.
38. In answer to paragraph 38 of the Claim, Capital admits that Capital purchased the Equipment from TCP but does not admit the allegations contained in this paragraph.
39. Capital denies paragraph 39 of the Claim.
40. In answer to paragraph 40 of the Claim, Capital:
  - (a) denies that:
    - (i) TCP ever acted on behalf of it;
    - (ii) TCP was ever an agent of it;
    - (iii) TCP ever had the actual and/or apparent authority pleaded;
    - (iv) it ever engaged in or was a party to exclusive dealing;
    - (v) there was ever an arrangement, agreement or understanding between it and TCP whereby officers or employees of TCP procured rental business for it by marketing digital signage equipment to businesses which equipment was then procured and sold to it for it then to rent to those businesses;

- (vi) it ever consented to and/or authorised any steps taken by TCP by its officers and employees in procuring any alleged business;
  - (vii) it ever clothed TCP with authority to negotiate and procure the entry of the Applicants into a Rental Agreement.
- (b) says that:
- (i) it never authorised any Rental Agreement issued by it to bear the name and/or logo of TCP.
  - (ii) it never authorised and/or consented to it being listed as an advertiser with TCP nor did it ever have an arrangement, agreement or understanding with TCP in respect to advertising with it.

41. In answer to paragraph 41 of the Claim, Capital:

- (a) repeats paragraph 22 of this defence; and
- (b) denies that it engaged in the practice of exclusive dealing pursuant to section 84 of the TPA.

42. In answer to paragraph 42 of the Claim, Capital:

- a) denies that the applicants and alleged represented persons have suffered any loss or damage as alleged;
- b) denies that it is liable for any alleged loss or damage, as alleged or otherwise;

43. By reason of the matters pleaded above, Capital denies that the applicants and alleged represented persons are entitled to any of the relief claimed in the Claim.

This pleading was prepared by Michael Lee of Counsel and Michael Joseph and Blake Shaw, solicitors.

Date: 6 June 2011


  
(Signed, solicitor for the First Respondent).

### Certificate of Legal Representative

I, Michael William Joseph, certify to the Court that the factual and legal material available to me at present provides a proper basis for:

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

Date: 6 JUNE 2011

  
Michael William Joseph  
Solicitor for the First Respondent