

**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 1/06/2011.

DETAILS OF FILING

Document Lodged: Defence: Federal Court Rules form 16
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

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 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
(ACN 073 474 772) (IN LIQUIDATION)**

Second Respondent

**DEFENCE OF FIRST RESPONDENT
(Order 11, rule 20)**

Alleasing Finance Australia Pty Ltd (“AFA”) pleads to the matters alleged in the Amended Statement of Claim as follows:

- 1 AFA does not plead to paragraph 1 of the Amended Statement of Claim, which does not allege any matter against it.
- 2 As to paragraph 2 of the Amended Statement of Claim, AFA:
 - (a) says that AFA entered into a Rental Agreement with the Applicant and with each of the following entities that have been named as Group Members in the particulars to paragraph 3 of the Amended Statement of Claim and the affidavit of Van Moulis sworn 17 November 2010:
 - (i) Ettalong Beach War Memorial Club Ltd (ACN 001 011 392) (“**Ettalong Beach**”);
 - (ii) St Marys Rugby League Club Ltd (ACN 000 518 089) (“**St Marys**”);
 - (iii) Mount Pritchard & District Community Club Ltd (ACN 000 458 622) (“**Mount Pritchard**”);

Filed on behalf of the First Respondent by:
MALLESONS STEPHEN JAQUES
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Matter no: 02-5503-6303

- (iv) Logan & District Services Club Inc (ABN 56 741 059 470) (“**Logan**”);
 - (v) Rooty Hill RSL Club Ltd (ACN 000 842 375) (“**Rooty Hill**”);
 - (vi) Wentworthville Leagues Club Ltd (ACN 000 244 459) (“**Wentworthville**”);
 - (vii) Castle Hill RSL Club (ACN 001 043 910) (“**Castle Hill**”); and
 - (viii) Redcliffe Leagues Club Ltd ACN 009 847 081 (“**Redcliffe**”);
- (b) denies that the Applicant or any of the Group Members identified in paragraph (a) above suffered loss and damage as a result of the alleged conduct of AFA pleaded in the Amended Statement of Claim;
 - (c) denies that it entered into a Rental Agreement with Redcliffe RSL & Ex Services Club; and
 - (d) otherwise does not admit the paragraph.

3 As to paragraph 3 of the Amended Statement of Claim, AFA:

- (a) says that none of Mount Pritchard, Rooty Hill and St Marys is a Group Member because, as at the date of the commencement of this proceeding, none of them has any claim for loss or damage against AFA as pleaded in the Amended Statement of Claim, any such claim (which is denied) having become statute-barred by that date;

Particulars

AFA refers to paragraphs 29 - 31 below.

- (b) says that Castle Hill is not a Group Member because, as at 16 February 2011, it did not have any claim for loss or damage against AFA as pleaded in the Amended Statement of Claim, any such claim (which is denied) having become statute-barred and compromised by that date;

Particulars

AFA refers to paragraphs 27 and 32 below.

- (c) says that Redcliffe is not a Group Member because, as at 16 February 2011, it did not have any claim for loss or damage against AFA as pleaded in the Amended Statement of Claim, any such claim (which is denied) having been compromised by that date; and

Particulars

AFA refers to paragraph 28 below.

- (d) otherwise denies the paragraph.

4 As to paragraph 4 of the Amended Statement of Claim, AFA:

- (a) says that at all material times AFA was in the business of renting a range of equipment, including communications equipment, to businesses; and
- (b) otherwise admits the paragraph.

5 As to paragraph 5 of the Amended Statement of Claim, AFA:

- (a) admits paragraph 5(a), but says that TCP was in liquidation as at the date of the commencement of this proceeding, and the Applicant has not sought or obtained leave to commence the proceeding against TCP;
- (b) does not admit paragraph 5(b) or 5(c); and
- (c) admits paragraph 5(d).

Alleged pre-contractual representations by TCP

6 As to paragraph 6 of the Amended Statement of Claim, AFA:

- (a) does not plead to paragraphs 6(b), 6(d), 6(e)(i), 6(e)(ii) or 6(e)(iv) as none of those paragraphs contain any allegation against AFA;
- (b) denies that TCP made the representations pleaded in sub-paragraph 6(e)(v) or 6(e)(vi) to the Applicant or to Ettalong Beach, Mount Pritchard, Logan, Rooty Hill, Castle Hill, St Marys or Wentworthville, and otherwise does not admit sub-paragraph 6(e)(v) or 6(e)(vi) in respect of any other Group Member;

Particulars

The Applicant has stated that the representation pleaded in sub-paragraph 6(e)(vi) was written and conveyed by the Revenue Agreements entered between the Group Members and TCP (particulars to paragraph 6 contained in the letter from Slater & Gordon Lawyers to Mallesons Stephen Jaques dated 12 November 2010). AFA denies that the Revenue Agreements produced by the Applicant to AFA convey the pleaded representation, and relies upon the terms of those agreements for their full force and effect.

The Applicant has further stated that the representation pleaded in sub-paragraph 6(e)(v) followed by necessary implication (in fact) from the representation pleaded in sub-paragraph 6(e)(vi) (particulars to paragraph 6 contained in the letter from Slater & Gordon Lawyers to Mallesons Stephen Jaques dated 12 November 2010).

The Revenue Agreements produced by the Applicant expressly contemplated that the advertising revenue to be generated may not have exceeded or equalled the rental payments. Consequently, the alleged representation pleaded in sub-

paragraph 6(e)(v) cannot be implied in fact from the alleged express representation pleaded in sub-paragraph 6(e)(vi).

- (c) in the case of Logan, says that if the representations pleaded at sub-paragraphs 6(e)(v) and (vi) were made, they were made by Total Concept Projects (Queensland) Pty Ltd (ABN 43 071 108 659) (“TCP Qld”), and not by TCP;

Particulars

The parties to the Revenue Agreement were Logan and TCP Qld.

- (d) says that if, which is denied, the representations in sub-paragraph 6(e)(v) or sub-paragraph (6)(e)(vi) were made by TCP, the representations were made subject to conditions or qualifications;

Particulars

- (i) In the case of Mount Pritchard: that the Club and TCP must meet at least annually to review the effectiveness of the advertising carried out through the plasma screen system and must attempt in good faith to implement arrangements that are appropriate for the Club and which aim to maximise the revenue received by the Club from advertising through the plasma screen system (Clause 9 of the Revenue Agreement);
- (ii) In the case of the Applicant, Ettalong Beach and Logan: that the Club keep in good condition hardware and software suitable and optimal for the purpose of advertising (Clause 6 of the Revenue Agreements);
- (iii) In the case of the Applicant and Logan: that the Club provide a written report to TCP (or, in the case of Logan, to Total Concept Projects (Queensland) Pty Ltd (TCP Qld)) regarding the advertising activities on a monthly basis (or, in the case of Logan, on a quarterly basis), which included detail of the Club’s own use of the screens and revenue generated (Clause 6 of the Revenue Agreements);
- (iv) In the case of Ettalong Beach: that the Club devote sufficient staff and resources with whom Total Concept Media Pty Ltd may liaise, including the approval of advertising supplied to the Club in a timely manner (Clause 6 of the Revenue Agreement);
- (v) In the case of Logan:
- (A) that the Club devote sufficient resources to the activity of generating an adequate supply of customers advertising on the system, including: employment and deployment of personnel sufficient for that purpose;

and acceptable promotion of the advertising activities by the Club (Clause 6 of the Revenue Agreement); and

(B) that the Club make available its staff and records to TCP Qld so as to enable TCP Qld to reach a conclusion as to the adequacy of the Club's commitment to the advertising activity on the screens (Clause 7 of the Revenue Agreement);

(vi) In the case of the Applicant and Logan: that should TCP (or, in the case of Logan, TCP Qld) be of the opinion, and totally at its own discretion, that the Club is not devoting sufficient resources to the advertising activity, TCP (or, in the case of Logan, TCP Qld) might at any stage give the Club three months' notice of its intention to withdraw the revenue undertaking (Clause 7 of the Revenue Agreement between the Applicant and TCP, and Clause 6 of the Revenue Agreement between Logan and TCP Qld);

(vii) In the case of any other Group Members, particulars will be provided following discovery. AFA reserves the right to provide further particulars following discovery.

(e) otherwise does not admit the allegations in paragraph 6 of the Amended Statement of Claim.

7 As to paragraph 7 of the Amended Statement of Claim, AFA:

(a) denies the allegations in that paragraph;

(b) says that at all material times there was an express understanding or arrangement between TCP and AFA that the relationship between TCP and AFA was that of independent contractors, and that no agency relationship was intended between them;

Particulars

Clause 1 of the Agreement executed by TCP on 31 March 2005.

(c) says that it was a term of the Rental Agreements between AFA and the Group Members that:

(i) the Group Member acknowledged that AFA had given no representation or warranty regarding the quality, fitness, safety or suitability of the Equipment, and that no person was authorised by AFA to do so; and

Particulars

Clause 5.2(b) of the Master Rental Agreements.

- (ii) to the full extent permitted by law, all express and implied terms, conditions and warranties (other than the ones set out in the Master Rental Agreement or a Rental Schedule) were excluded;

Particulars

Clause 12.1 of the Master Rental Agreements.

- (d) further, in respect of the Applicant, says that on or about 2 July 2008 the Rental Agreement between the Applicant and AFA was terminated and the Applicant entered into a new Rental Agreement with Alleasing Pty Ltd in respect of substantially the same equipment that was the subject of the Applicant's Rental Agreement with AFA ("**Alleasing Pty Ltd Rental Agreement**"), and that the Applicant expressly acknowledged by entry into that agreement that TCP was not the agent of the lessor of the equipment that was previously the subject of the Rental Agreement between AFA and the Applicant, that the Applicant had not relied on any statement, document or promise made on the lessor's behalf, and that the lessor was not responsible for any statement, document or promise made by a third person introducing the Applicant to the agreement.

Particulars

Clause 2.5 of the Alleasing Pty Ltd Rental Agreement provided that the supplier of the Goods was not the agent of the lessor.

- 8 AFA denies the allegations in paragraph 8 of the Amended Statement of Claim.

Alleged misleading or deceptive conduct

- 9 As to paragraph 11 of the Amended Statement of Claim, AFA:

- (a) repeats paragraphs 6 - 8 above;
- (b) does not admit paragraph 11(b);
- (c) denies paragraph 11(d);
- (d) does not admit paragraphs 11(e)(ii), 11(e)(iii) or 11(e)(iv);
- (e) does not admit that the conditions referred to in paragraph 6 above were satisfied by the Applicant or any of the Group Members;
- (f) in the case of the Applicant, further says that
 - (i) the rental agreement alleged to be referable to clause 7 of the Revenue Agreement was terminated and/or re-rolled on or about 1 July 2007; and

- (ii) consequently, the Revenue Agreement ended no later than on or about 1 July 2007.

Particulars

Clause 7 of the Revenue Agreement.

10 As to paragraph 14 of the Amended Statement of Claim, AFA:

- (a) denies that the alleged conduct of TCP pleaded in paragraphs 6(e)(v) and 6(e)(vi) of the Amended Statement of Claim (which is denied) comprised representations with respect to a future matter within the meaning of section 51A of the *Trade Practices Act 1974* (Cth), and
- (b) otherwise does not plead to the allegations in that paragraph.

11 As to paragraph 15 of the Amended Statement of Claim, AFA:

- (a) does not admit paragraph 15(a), so far as it concerns the TCP Representations pleaded at sub-paragraphs 6(b), (d) and (e)(i), (ii) and (iv) of the Amended Statement of Claim;
- (b) denies paragraph 15(a), so far as it concerns the TCP Representations pleaded at sub-paragraphs (6)(e)(v) and (vi) of the Amended Statement of Claim; and
- (c) denies paragraph 15(c) of the Amended Statement of Claim, repeats paragraph 7(c) above, and says that the Applicant and the Group Members who entered an agreement with AFA on the terms of the Master Rental Agreement were aware that their rental obligations to AFA were absolute and unconditional and not subject to the amount of advertising revenue generated through use of the Equipment; and

Particulars

Master Rental Agreement, clause 4.6.

- (d) further in response to paragraph 15(a) and (c) says, in the case of Rooty Hill, that Rooty Hill entered into the Rental Agreement with AFA before TCP made the alleged TCP Representations pleaded at sub-paragraphs 6(e)(v) and (vi) of the Amended Statement of Claim.

Particulars

Rooty Hill entered into the Rental Agreement on 13 May 2004 and the Revenue Agreement on 23 October 2004.

12 As to paragraph 16 of the Amended Statement of Claim, AFA:

- (a) admits that the Applicant and the Group Members identified in paragraph 2(a) above have incurred obligations to AFA;

- (b) otherwise denies the allegations in paragraph 16 so far as they concern loss or damage allegedly suffered by reason of AFA's conduct; and
- (c) does not admit the allegations in paragraph 16 so far as they concern loss or damage allegedly suffered by reason of TCP's conduct.

Agreements with TCP

- 13 AFA admits paragraph 18A of the Amended Statement of Claim so far as concerns the Applicant, Logan, Wentworthville, St Marys, Mount Pritchard and Ettalong Beach, and otherwise does not admit the allegations in that paragraph so far as concerns any other Group Member.
- 14 As to paragraph 19 of the Amended Statement of Claim, AFA:
- (a) admits the allegations in that paragraph so far as concerns the Applicant, Ettalong Beach, Rooty Hill, Castle Hill, Mount Pritchard, St Marys and Wentworthville;
 - (b) denies the allegations in that paragraph so far as concerns Logan, and says that Logan entered into a Revenue Agreement with TCP Qld, and not with TCP; and
 - (c) otherwise does not admit the allegations in that paragraph so far as concerns any other Group Member
- 15 As to paragraph 20 of the Amended Statement of Claim, AFA:
- (a) repeats paragraph 6 above; and
 - (b) otherwise denies the allegations in that paragraph.
- 16 AFA admits paragraph 21 of the Amended Statement of Claim so far as concerns the Applicant, Ettalong Beach, Logan, Mount Pritchard, Rooty Hill, St Marys and Wentworthville, and otherwise does not admit the allegations in that paragraph so far as concerns any other Group Member.
- 17 As to paragraph 22 of the Amended Statement of Claim, AFA:
- (a) admits that each of Logan, Wentworthville and St Marys entered into a written Advertising Agreement with Total Concept Media Pty Ltd;
 - (b) admits that Ettalong Beach entered into a written Advertising Agreement with TCP; and
 - (c) otherwise does not admit the allegations in that paragraph so far as concerns the Applicant or any other Group Member.

Agreements with AFA

- 18 As to paragraph 23 of the Amended Statement of Claim, AFA:
- (a) so far as concerns the Applicant:

- (i) says that AFA did not enter into the Rental Agreement with the Applicant referred to in paragraph (c) of the particulars to paragraph 23 of the Amended Statement of Claim; and
- (ii) otherwise admits the paragraph;
- (b) so far as concerns the Group Members identified in paragraph 2(a) above, admits the paragraph; and
- (c) so far as concerns any other Group Member, does not admit the allegations in that paragraph.

19 As to paragraph 24 of the Amended Statement of Claim, AFA:

- (a) says that it was an express term of the Master Rental Agreement that:
 - (i) AFA agreed to rent to the person named as Renter the Equipment, being the equipment described in a Rental Schedule, and included any part of that equipment or any substituted equipment;

Particulars

Clauses 1.1 (definition of "Equipment"), 2.1 and 2.2.

- (ii) the Term of the Rental Agreement commenced on the first Payment Date occurring on or after the Commencement Date and, subject to clauses 17 and 20, would continue for the number of months specified in the applicable Rental Schedule or as extended or varied pursuant to clauses 17 and 20;

Particulars

Clauses 1.1 (definition of "Term") and 3.1

- (b) otherwise admits the paragraph so far as it concerns the Applicant and the Group Members identified in paragraph 2(a) above; and
- (c) does not admit the allegations in that paragraph so far as concerns any other Group Member.

Alleged exclusive dealing by TCP

20 As to paragraph 37 of the Amended Statement of Claim, AFA repeats paragraphs 4 and 5 above.

21 As to paragraph 38 of the Amended Statement of Claim, AFA:

- (a) in response to paragraph 38(i), denies that TCP supplied, or offered to supply, the services of marketing the Equipment to Logan, Mount Pritchard, Rooty Hill, St Marys and Wentworthville Leagues, and otherwise does not admit the allegations in that paragraph;

Particulars

AFA refers to the particulars to paragraph 38 contained in the letter from Slater & Gordon Lawyers to Mallesons Stephen Jaques dated 23 May 2011 which state that the services of marketing the equipment were supplied pursuant to the Advertising Agreements.

In the case of Logan, St Marys and Wentworthville Leagues, the Advertising Agreements were entered into with Total Concept Media Pty Ltd.

In the case of Mount Pritchard and Rooty Hill, the party to the unexecuted Advertising Agreement produced by the Applicant was Roar Media Pty Ltd.

- (b) in response to paragraph 38(iii), denies that TCP gave an undertaking in the terms pleaded in that paragraph and repeats paragraph 6 above;
- (c) in response to paragraph 38(a):
 - (i) in the case of Rooty Hill:
 - (A) denies that as at the time of the alleged offer to supply of TCP's services pleaded in paragraphs 38(i)-(iii) ("TCP Services") (which is not admitted), TCP had supplied the Equipment to AFA pursuant to an invoice payable to TCP;
 - (B) admits that as at the time of the alleged supply of TCP's services pleaded in paragraphs 38(iii) (which is not admitted), TCP had supplied the Equipment to Rooty Hill pursuant to an invoice payable by AFA to TCP;
 - (C) otherwise does not admit the allegations in that paragraph insofar as concerns Rooty Hill;
 - (ii) otherwise denies that as at the time of the alleged supply, or offer to supply, of the TCP Services (which is not admitted), TCP had supplied the Equipment to AFA pursuant to invoices payable to TCP;
- (d) in response to paragraph 38(b):
 - (i) in the case of Rooty Hill, denies that Rooty Hill entered into the Revenue Agreement and Full Service Agreement prior to its entry into the Rental Agreement, and denies that Rooty Hill was not aware prior to the execution of those agreements, that AFA was the owner of the Equipment, and does not admit that Rooty Hill entered into the Club Digital Network Agreement and Advertising Agreement prior to its entry into the Rental Agreement;

Particulars

Rooty Hill entered into the Rental Agreement on or about 10 May 2004, the Revenue Agreement on or about 23 October 2004 and the Full Service Agreement on or about 1 October 2004.

- (ii) otherwise denies that AFA was the owner of the Equipment at the time TCP allegedly negotiated the entry by Group Members into the Club Digital Network Agreements, Revenue Agreements, Full Service Agreements and Advertising Agreements, or at the time of the entry by Group Members into the Rental Agreements (and in relation to the alleged entry by the Group Members into those agreements, AFA repeats paragraphs 13-19 above);
- (e) in response to paragraph 38(c) denies that the written proposals presented by TCP to Group Members expressly contemplated the amount of rental under the Rental Agreements entered into with AFA, and otherwise does not admit the allegations in that paragraph;

Particulars

Any amounts of rental referred to in the written proposals were indicative only, were expressed to be subject to finance approval by a finance company, and did not correspond with any amount of rental payable under the Rental Agreements with AFA.

The written proposal to Rooty Hill did not contain any reference to the prospective entry of Rooty Hill into a Rental Agreement, or the amount of rental including the cost of equipment, installation and cabling and monthly service fee payable under the Full Service Agreements.

Further particulars will be provided after discovery by Group Members.

- (f) in response to paragraph 38(d), denies that the Revenue Agreements contained terms which anticipated the entry of the Group Members into and the terms (including the amount of rental) of the Rental Agreements offered to them by AFA, and denies (except in the case of Rooty Hill) that AFA was the owner of the Equipment at the time of entry by Group Members into the Revenue Agreements, and otherwise does not admit the allegations in that paragraph;
- (g) denies paragraph 38(e), and says that the option of the Group Members acquiring the Equipment in their own right was offered by TCP or, alternatively, the option of the Group Members acquiring the Equipment in their own right was available to the Group Members;

Particulars

The TCP written proposals produced by the Applicant in these proceedings anticipated that the Group Members would or could acquire the Equipment in their own right, including by reason of:

- (i) in the case of Mount Pritchard, Rooty Hill and St Marys, the Trading Terms provided for an initial payment by the Group Members equal to 25% of the contract price on placement of order, a further payment equal to 70% of the contract price payable within seven (7) days of delivery of the goods on site, and the balance of 5% of contract price payable within 7 days from practical completion or handover, whichever occurred earlier;
- (ii) in the case of Ettalong Beach, Rooty Hill, St Marys and Mount Pritchard, the written proposals provided that the services would be supplied upon receipt of a Purchase Order or letter of intent by each Group Member;
- (iii) in the case of the Applicant, Ettalong and Logan, the Contract Terms and Conditions anticipated receipt of a purchase order from the Club;
- (iv) in the case of St Marys, the Contract Terms & Conditions provided that until payment in full was received by TCP and property in the goods/works passed to St Marys, St Marys would hold the goods/works or the unpaid part thereof as bailee for TCP. It also provided that Title was further reserved against all amounts owing, and that TCP reserved the right to charge St Marys interest at 1.75% per month on outstanding Invoices.

Further particulars will be provided following discovery by the Applicant and each Group Member.

- (h) in response to paragraph 38(f):
 - (i) denies that AFA was, at the time of the alleged presentation or delivery of Rental Agreements, the owner of the Equipment;

Particulars

Clause 2.1 of the Master Rental Agreements.

AFA did not pay the supplier of the equipment until the supplier had delivered and installed the equipment or, in some cases, until the Group

Member had entered into the Rental Agreement and signed an Authority to Pay.

- (ii) in the case of Mount Pritchard, says that it was Mount Pritchard (and not TCP) who proposed for a finance company to purchase the Equipment from TCP and to lease the Equipment from the finance company; and

Particulars

Clause 2 of the Deed of Agreement between Mount Prichard and TCP dated 30 January 2004.

- (iii) otherwise does not admit the allegations in that paragraph;
- (i) in response to paragraph 38(g), admits that TCP provided the serial numbers to AFA in relation to Rental Schedule 11169/2001 dated 31 August 2005 with the Applicant, but says that TCP provided the serial numbers to AFA on behalf of the Applicant, and otherwise does not admit the allegations in that paragraph;

Particulars

Clause 2.1 of the Master Rental Agreement between AFA and the Applicant provided that, from time to time the Applicant could request AFA to rent equipment to the Applicant by delivering to AFA a completed and signed Rental Schedule together with a supplier's invoice addressed to AFA for the equipment. TCP's conduct in providing a supplier's invoice and serial numbers to AFA for equipment that the Applicant was requesting AFA to rent to the Applicant was conduct by TCP on behalf of the Applicant under clause 2.1 of the Master Rental Agreement.

- (j) in response to paragraph 38(h):
 - (i) admits that the monthly service fee for the Full Service Agreement entered into by the Applicant was incorporated into the rent paid by the Applicant to AFA, denies that the monthly service fee for the Full Service Agreement entered into by St Marys, Ettalong Beach, Mount Pritchard, Wentworthville and Logan was incorporated into the rent paid by the Club to AFA, and otherwise does not admit the allegations in that paragraph insofar as concern any other Group Members;
 - (ii) denies that the terms of the Full Service Agreements and the Rental Agreements entered into by Rooty Hill, Mount Pritchard, St Marys and Ettalong Beach were the same;

Particulars

In the case of Mount Pritchard, the term of the Full Service Agreement was 60 months from 1 March 2004, and the term of Rental Schedule 10413/2002 was 60 months from 1 October 2004 (clause 3.1 of the RentWorks Agreement and clause 3(b) of Rental Schedule 10413/2002) and the term of Rental Schedule 09887/2001 was 60 months from 1 April 2004 (clause 3.1 of the RentWorks Agreement and clause 3(b) of Rental Schedule 09887/2001).

In the case of Rooty Hill, the term of the Full Service Agreement was 60 months from 1 October 2004, and the term of the Rental Agreement was 48 months from 1 July 2004 (clause 3.1 of the RentWorks Agreement and clause 3(b) of Rental Schedule 10042/2002).

In the case of Ettalong Beach, the term of the Full Service Agreement was 60 months from 1 December 2004, and the term of the Rental Agreement was 63 months from 1 April 2005 (the Rental Schedule defines the term as 63 months from the Commencement Date. The parties agreed that the Commencement Date would be 1 April 2005, the quarterly payments of \$68,218.33 being made from such date).

In the case of St Marys, the term of the Full Service Agreement was 60 months from 1 April 2004, and the term of the Rental Agreement was 60 months from 1 July 2004 (clause 3.1 of RentWorks Agreement and clause 3(b) of Rental Schedule 09942/2012).

(iii) otherwise does not admit the allegations in that paragraph;

(k) otherwise does not admit the allegations in paragraph 38 of the Amended Statement of Claim.

22 AFA denies paragraph 39 of the Amended Statement of Claim, and further repeats paragraph 23(c) below.

Alleged exclusive dealing by AFA

23 As to paragraph 40 of the Amended Statement of Claim, AFA:

- (a) repeats paragraphs 7 and 21 above;
- (b) denies that the conduct that is alleged to constitute exclusive dealing (being the supply or offer to supply of the TCP Services on the pleaded condition, which is denied) was engaged in by TCP on behalf of, or as an agent of, or with the authority of AFA;

(c) says that, if (which is denied) TCP was acting as AFA's agent in supplying or offering to supply the TCP Services on the alleged condition that the Group Members acquire leasing services from AFA, then the TCP Services were being supplied by AFA on the condition that other services be acquired from AFA, and such circumstances (if established) cannot amount to exclusive dealing within the meaning of subs 47(6) of the *Trade Practices Act 1974 (Cth)* ("**TPA**"); and

(d) otherwise denies the allegations in that paragraph.

24 AFA denies paragraph 41 of the Amended Statement of Claim.

25 AFA denies paragraph 42 of the Amended Statement of Claim.

26 Further, or alternatively, AFA pleads as follows in respect of the claims by the Applicant and Group Members.

Compromised claims

27 In the case of Castle Hill, AFA says:

(a) on 17 December 2009 Castle Hill and AFA entered into a Deed of Release ("**Castle Hill Deed of Release**");

(b) on 19 November 2010 Castle Hill and AFA entered into a second Deed of Release ("**Second Castle Hill Deed of Release**");

(c) it was each an express term of the Castle Hill Deed of Release and Second Castle Hill Deed of Release (collectively, "**Deeds of Release**") that:

(i) in consideration of Castle Hill's payment of \$24,750.00 including GST and the release in clause 2, AFA released Castle Hill from all liability that Castle Hill otherwise would have had to AFA in relation to the Rental Agreements including any liability arising as a consequence of not returning the Equipment;

Particulars

Clause 1.

(ii) in consideration of the release in clause 1, Castle Hill released AFA from all and any liability of any nature which Castle Hill had against AFA, or but for the execution of the release, might have had against AFA, arising out of the Rental Agreements or any of the circumstances preceding the entry into by Castle Hill of the Rental Agreements;

Particulars

Clause 2.

- (d) in the premises, the claims made by the Applicant on behalf of Castle Hill in the proceedings have already been compromised and cannot be made again under the terms of the pleaded Deeds of Release;
- (e) in the premises, AFA is entitled, by way of defence, to obtain from this Court an order restraining the Applicant and/or Castle Hill from making those allegations;
- (f) alternatively, if, which is denied, AFA is liable to Castle Hill as alleged, Castle Hill is liable to AFA for its breach of the Deeds of Release in an amount equal to AFA's liability to Castle Hill and the two liabilities are liable to be set off against each other, such set off operating as a defence to Castle Hill's claims;
- (g) alternatively, if, which is denied, Castle Hill had the rights pleaded in these proceedings:
 - (i) it had as at 19 November 2009 the right to seek vindication of those rights through litigation or instead to agree to a compromise of its rights on the terms set out in the Castle Hill Deed of Release;
 - (ii) having regard to the express terms of the Deeds of Release, the two rights referred to in the previous paragraph were alternative and mutually inconsistent; and
 - (iii) by entering into a compromise on the terms set out in the Deeds of Release, Castle Hill elected to exercise its right to compromise on those terms so as to extinguish the alternative and inconsistent right to sue AFA in respect of matters arising out of the Rental Agreements or any of the circumstances preceding the entry into the Rental Agreements, and further or alternatively waived any right it otherwise had to sue AFA in respect of such matters.

28 In the case of Redcliffe, AFA says:

- (a) on 15 March 2011 Redcliffe and AFA entered into a Deed of Release ("**Redcliffe Deed of Release**");
- (b) it was an express term of the Redcliffe Deed of Release that in consideration of payment of the amount and the release in clause 1, Redcliffe released AFA from all and any liability of any nature which Redcliffe had against AFA, or but for the execution of the Redcliffe Deed of Release, may have had against AFA, arising out of the Rental Agreements between AFA and Redcliffe, or any of the circumstances preceding entry by Redcliffe into the Rental Agreements;

Particulars

Clause 2.

- (c) in the premises, the claims made by the Applicant on behalf of Redcliffe in the proceedings have already been compromised and cannot be made again under the terms of the pleaded Redcliffe Deed of Release;
- (d) in the premises, AFA is entitled, by way of defence, to obtain from this Court an order restraining the Applicant and/or Redcliffe from making those allegations;
- (e) alternatively, if, which is denied AFA is liable to Redcliffe as alleged, Redcliffe is liable to AFA for its breach of the Redcliffe Deed of Release in an amount equal to AFA's liability to Redcliffe and the two liabilities are liable to be set off against each other, such set off operating as a defence to Redcliffe's claims;
- (f) alternatively, if, which is denied, Redcliffe had the rights pleaded in these proceedings:
 - (i) it had as at 15 March 2011 the right to seek vindication of those rights through litigation or instead to agree to a compromise of its rights on the terms set out in the Redcliffe Deed of Release;
 - (ii) having regard to the express terms of the Redcliffe Deed of Release, the two rights referred to in the previous paragraph were alternative and mutually inconsistent; and
 - (iii) by entering into a compromise on the terms set out in the Redcliffe Deed of Release, Redcliffe elected to exercise its right to compromise on those terms so as to extinguish the alternative and inconsistent right to sue AFA in respect of matters arising out of the Rental Agreements or any of the circumstances preceding the entry into the Rental Agreements, and further or alternatively waived any right it otherwise had to sue AFA in respect of such matters.

Statute-barred Group Members

29 In the case of Rooty Hill, AFA says that:

- (a) Rooty Hill entered into its Rental Agreement with AFA on 13 May 2004;

Particulars

Rental Schedule dated 13 May 2004.

AFA also refers to the particulars to paragraph 9 of the Amended Statement of Claim contained in the letter from Slater & Gordon Lawyers to Mallesons Stephen Jaques dated 12 November 2010.

- (b) the alleged loss and damage was first suffered by Rooty Hill no later than 13 May 2004;

Particulars

The particulars to paragraph 16 of the Amended Statement of Claim allege that the Group Members suffered loss and damage by incurring obligations to AFA pursuant to the Rental Agreements.

The particulars to paragraph 42 of the Amended Statement of Claim allege that the Group Members suffered loss and damage equivalent to the difference between the value of the Equipment that the Group Members could have acquired otherwise than from Alleasing as at the date of entry into the Club Digital Network Agreement and the total amount payable by the Group Members under the Rental Agreement.

- (c) the alleged causes of action did not accrue within six years before the commencement of this action and are barred by section 82(2) and section 87(1CA) of the *Trade Practices Act 1974* (Cth).

30 In the case of St Marys, AFA:

- (a) says that St Marys entered into its Rental Agreement with AFA on 7 April 2004;

Particulars

Rental Schedule dated 7 April 2004.

AFA also refers to the particulars to paragraph 9 of the Amended Statement of Claim contained in the letter from Slater & Gordon Lawyers to Mallesons Stephen Jaques dated 12 November 2010.

- (b) says that the alleged loss and damage was first suffered by St Marys no later than 7 April 2004;

Particulars

AFA repeats the particulars to the preceding paragraph.

- (c) the alleged causes of action did not accrue within six years before the commencement of this action and are barred by section 82(2) and section 87(1CA) of the *Trade Practices Act 1974* (Cth).

31 In the case of Mount Prichard, AFA says that:

- (a) Mount Prichard entered into its Rental Agreement with AFA on 4 March 2004 (“**First Mount Pritchard Rental Agreement**”);

Particulars

Rental Schedule No. 09887/2001 dated 4 March 2004.

AFA also refers to the particulars to paragraph 9 of the Amended Statement of Claim contained in the letter from Slater & Gordon Lawyers to Mallesons Stephen Jaques dated 12 November 2010.

- (b) AFA agreed to enter into a revised Rental Agreement with Mount Pritchard in respect of the same equipment the subject of Rental Schedule No. 09887/2001 dated 4 March 2004 on 28 September 2004 (“**Second Mount Pritchard Rental Agreement**”);

Particulars

Rental Schedule No. 10413/2002 dated 28 September 2004.

AFA also refers to the particulars to paragraph 9 of the Amended Statement of Claim contained in the letter from Slater & Gordon Lawyers to Mallesons Stephen Jaques dated 12 November 2010.

- (c) the Second Mount Pritchard Rental Agreement concerned the same equipment the subject of the First Mount Pritchard Rental Agreement, being the Rental Agreement pursuant to which Mount Pritchard incurred obligations to AFA in alleged reliance on the TCP Representations;

Particulars

Rental Schedule No. 10413/2002 is in all material respects identical to Rental Schedule No. 09887/2001 other than an amendment to the Term of the Rental Agreement and the allowance of 2 nil rental instalments.

- (d) the alleged loss and damage was first suffered by Mount Pritchard no later than 4 March 2004;

Particulars

AFA repeats the particulars to paragraph 29(b).

- (e) the alleged causes of action did not accrue within six years before the commencement of this action and are barred by section 82(2) and section 87(1CA) of the *Trade Practices Act 1974* (Cth).

32 In the case of Castle Hill, AFA:

- (a) says that Castle Hill entered into the following Rental Agreements with AFA for the rental of plasma video display screens and related networking equipment:
- (i) Rental Schedule No. 09056/2005 dated 21 March 2003;
 - (ii) Rental Schedule No. 09760/2006 dated 2 February 2004;
 - (iii) Rental Schedule No. 10089/2007 dated 16 June 2004; and

- (iv) Rental Schedule No. 10104/2008 dated 16 June 2004;
- (b) in the case of Rental Schedule No. 09056/2005, says that the alleged loss and damage was first suffered by the Club no later than 21 March 2003;
- (c) in the case of Rental Schedule No. 09760/2006, says that the alleged loss and damage was first suffered by the Club no later than 2 February 2004;
- (d) in the case of Rental Schedule No. 10089/2007, says that the alleged loss and damage was first suffered by the Club no later than 16 June 2004;
- (e) in the case of Rental Schedule No. 10104/2008, says that the alleged loss and damage was first suffered by the Club no later than 16 June 2004;

Particulars

AFA repeats the particulars to paragraph 29(b).

- (f) the alleged causes of action did not accrue within six years before the commencement of this action or of Castle Hill becoming a Group Member following the orders of the Court on 16 February 2011 and are barred by section 82(2) and section 87(1CA) of the *Trade Practices Act 1974 (Cth)*.

Apportionment under Part VIA of the *Trade Practices Act 1974 (Cth)*

33 In the alternative, in answer to the claims of the Applicant and the Group Members for damages pursuant to section 82 of the *Trade Practices Act 1974 (Cth)* (TPA) allegedly caused by conduct done in contravention of section 52 of the TPA (the **Misleading Conduct Damages Claims**), AFA relies on the provisions of Part VIA of the TPA as pleaded hereunder.

34 Each Misleading Conduct Damages Claim is an apportionable claim within the meaning of 87CB(1) of the TPA.

35 If:

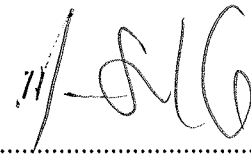
- (a) AFA is liable to the Applicant or to any of the Group Members in respect of a Misleading Conduct Damages Claim (which is denied); and
- (b) the matters pleaded in paragraphs 6(b), (d) and (e), 11, and 14-16 of the Amended Statement of Claim are established as against TCP (which is not admitted),

then TCP was, together with AFA, a concurrent wrongdoer within the meaning of section 87CB(1)(3) of the TPA in respect of the Misleading Conduct Damages Claim of the Applicant and each Group Member.

36 Further, or alternatively, if, which is otherwise denied, AFA is liable as alleged by the Applicant in the Amended Statement of Claim, AFA:

- (a) refers to paragraphs 19 - 20 of the Amended Statement of Claim;
- (b) says that in breach of the Revenue Agreements between TCP and the Group Members, TCP failed to pay to the Group Members the deficiency in advertising revenue as against the rental for the Equipment; and
- (c) as a result of such breach, each Group Member suffered the loss and damage claimed in these proceedings.

37 In the premises the liability of AFA in relation to the Misleading Conduct Damages Claims of the Applicant and the Group Members is limited, pursuant to section 87CD of the TPA, to an amount reflecting the proportion of the damage or loss claimed that the court considers just having regard to the extent of AFA's responsibility for the damage or loss.



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Moira Leonie Saville
Solicitor for the First Respondent

This pleading was prepared by Moira Leonie Saville and Wilson Antoon, solicitors, and Scott Nixon of Counsel.

**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
(ACN 073 474 772) (IN LIQUIDATION)**

Second 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 First 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: 31 May 2011



.....
Legal representative for the First Respondent

Filed on behalf of the First Respondent by:
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