

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD2162/2018
File Title: ALOIS JACK & ORS v CORESTAFF NT PTY LTD ACN 129 495 263
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 12/08/2019 12:02:28 PM AEST

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.



Form 17
Rule 8.05(1)(a)

Amended Statement of Claim

No. NSD 2162 of 2018

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

Alois Jack and others

Applicants

CoreStaff NT Pty Ltd (ACN 129 495 263)

Respondent

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Filed on behalf of (name & role of party) Applicants

Prepared by (name of person/lawyer) Stewart A Levitt

Law firm (if applicable) Levitt Robinson Solicitors

Tel (02) 9286 3133 Fax n/a

Email slevitt@levittrobinson.com; olacey@levittrobinson.com

Address for service Ground Floor, 162 Goulburn Street
(include state and postcode) East Sydney NSW 2010

A. INTRODUCTION

1. In or about 2011 and 2012, the respondent sent to each applicant a standard form letter styled "Re: Offer of Employment" ("**Offer Letter**"), further details of which are pleaded below.
2. Each Offer Letter was accepted.
3. On or after 23 November 2012, the respondent sent to each applicant a letter advising him that his services were no longer required ("**Termination Letter**"), further details of which are pleaded below.
4. For the reasons pleaded in this document, the respondent:
 - a. by issuing the Offer Letters and/or, by those letters, by making certain representations, contravened ss 18 and/or 31 of the *Australian Consumer Law* in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* ("**ACL**");
 - b. by issuing the Termination Letters:
 - i. terminated the employment;
 - ii. acted in breach of the contract; and
 - iii. caused loss or damage by contravening ss 18 and/or 31 of the ACL (for the purposes of s 236(1)) and/or the breach of contract.
5. In Part B of this document, the first applicant, for himself and each group member identified in the originating application (which includes the other applicants) ("**Group Members**"), brings a representative action in respect of the respondent's alleged contravening conduct and alleged breach of contract, on the basis that s 33ZE(1) of the *Federal Court of Australia Act 1976 (Cth)* ("**FCA Act**") suspends all limitation periods that would otherwise apply to the claim of a Group Member.
6. In Part C of this document, and if (which is denied) s 33ZE(1) of the FCA Act has no application in respect of non-party contractual claims, each applicant other than the first applicant brings an individual contractual claim.

B. REPRESENTATIVE ACTION

B.1 Parties

7. The first applicant commences the proceedings pleaded in this Part B of this statement of claim as representative proceedings pursuant to Part IVA of the FCA Act on behalf of himself and the Group Members.
8. Immediately prior to the commencement of these proceedings, seven or more persons have claims against the respondent within the meaning of s 33C of the FCA Act.
9. The respondent is and at all material times was:
 - a. incorporated in Australia pursuant to the *Corporations Act 2001* (Cth) and capable of being sued;
 - b. a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth);
 - c. carrying on business in Australia; and
 - d. carrying on a "labour on-hire" business whereby:
 - i. the respondent hired workers from overseas for particular occupations in Australia;
 - ii. the respondent arranged for those workers to obtain temporary work visas in Australia and sponsored their visas as provided for in Australian migration law; and
 - iii. the workers would then be "on-hired" by the respondent to its client organisations in return for a fee.

B.2 Offer Letter

10. On ~~in~~ or about 4 January 2012 ~~late 2011~~, the respondent sent an Offer Letter to the first applicant in the course of and for the purposes of the respondent's business.
11. At that time, the first applicant resided in Papua New Guinea ("PNG") and was employed as a Metal Fabricator by Newcrest Mining Ltd.

Particulars

Particulars of the first applicant's residency and employment at the time he received the respondent's Offer Letter will be provided at the time of the first applicant's lay evidence.

12. The respondent's Offer Letter to the first applicant:
 - a. offered the first applicant "a three year full time employment contract in the position of Metal Fabricator ANZCO occupation code 322311 with Corestaff NT Pty Ltd (Corestaff) in Australia";
 - b. stated that the first applicant "will be working on a mine site in the state of Western Australia", which location "may change" depending on the respondent's client's requirements;
 - c. stated that first applicant's "base rate of pay is AUD 115000 ~~120000~~ per annum";
 - d. stated that the first applicant would receive 9% superannuation "payable to your nominated Australian superannuation fund";
 - e. stated that, subject "to the work site industrial instrument of the Client, the ordinary hours of work shall be 38 hours a week";
 - f. invited the first applicant to "[p]lease complete the acceptance below and return the signed copy of the letter to our office within fourteen days"; and
 - g. otherwise is relied on and incorporated in full.

B.3 Representations

13. By the Offer Letter which was sent by the respondent to the first applicant, the respondent impliedly represented to the first applicant that:
 - a. if the first applicant countersigned the Offer Letter and returned it to the respondent within 14 days, then the first applicant would be employed on the ~~under a three year employment contract with base remuneration of A\$120,000 per year, 9% superannuation, 38 hours of work per week and subject to the express terms of the Offer Letter ("Employment Representation"), namely:~~
 - i. three years of full time employment in the position of Metal Fabricator ANZCO occupation code 322311 with the respondent in Australia;

- ii. working on a mine site in Western Australia, which location may change depending on the respondent's client's requirements;
 - iii. a base rate of A\$115,000 per annum;
 - iv. 9% superannuation payable to the first applicant's nominated Australian superannuation fund; and
 - v. Subject to the work site industrial instrument of the respondent's client, ordinary hours of work of 38 hours per week.
- b. the respondent had and would continue to have arrangements in place which were sufficient to meet a contractual obligation to the first applicant of the kind pleaded in paragraph 13(a)(i)-(v) above \$120,000 per year for 3 years ("Arrangements in Place Representation"); and/or
- c. the respondent had reasonable grounds to make:
- i. the Employment Representation;
 - ii. the Arrangements in Place Representation; and/or
 - iii. the offer and the other statements which the respondent made in the Offer Letter, in particular, those pleaded in paragraph 12(a)-(e) above,

(together, the **"Reasonable Grounds Representations"**).
14. Each of the Employment Representation and, the Arrangements in Place Representation (to the extent the Arrangements in Place Representation related to the respondent continuing to have arrangements in place) ~~and the Reasonable Grounds Representations~~ were representations with respect to a future matter for the purposes of s 4 of the ACL.
- 14A. At the time the Offer Letter was sent by the respondent to the first applicant, the respondent:
- a. did not have arrangements in place which were sufficient to meet a contractual obligation to the first applicant of the kind pleaded at paragraph 13(a)(i)-(v) above;
 - b. accordingly, did not have reasonable grounds for making either the Employment Representation or the Arrangements in Place Representation; and

- c. further, or alternatively, did not have reasonable grounds for making the Reasonable Grounds Representations.

B.4 Misleading or deceptive conduct

15. By making the Employment Representation, the respondent engaged in conduct in trade or commerce within the meaning of s 18 of the ACL.
16. By making the Arrangements in Place Representation, the respondent engaged in conduct in trade or commerce within the meaning of s 18 of the ACL.
17. By making the Reasonable Grounds Representations, the respondent engaged in conduct in trade or commerce within the meaning of s 18 of the ACL.
18. The Employment Representation, on and from the time it was made, was misleading or deceptive, or likely to mislead or deceive.

Particulars

The Employment Representation was akin to an offer promise that in the future, if the first applicant accepted the Offer Letter, conditions of employment on the terms of that letter would be made available and owed to him. However, the respondent was not in a position to make the kind of detailed offer set out in the Offer Letter. It did not confirm beforehand the availability of a position for the first applicant at \$11520,000 per year with the hours and superannuation etc. provided for in the Offer Letter. So much can be inferred from the conditions encountered by the first applicant immediately upon arrival in Australia (pleaded in paragraph 36.c below). As such, the respondent did not have a reasonable basis for the Employment Representation. In this regard, the first applicant relies on paragraphs 14 and 14A pleaded above and s 4 of the ACL. Further particulars may be provided after the first applicant's evidence and discovery.

19. The Arrangements in Place Representation, on and from the time it was made, was misleading or deceptive, or likely to mislead or deceive.

Particulars

The first applicant repeats the particulars to paragraph 18 above. In particular, for the time that the Arrangements in Place Representation was made, the first applicant relies on paragraph 14(a) pleaded above and for the time afterward, the first applicant also relies on s 4 of the ACL.

20. The Reasonable Grounds Representations, on and from the time that they were made, were misleading or deceptive, or likely to mislead or deceive.

Particulars

The first applicant repeats the particulars to paragraph 18 above. The first applicant relies on paragraph 14A(b) above.

21. By making the Employment Representation, the respondent engaged in conduct in contravention of s 18 of the ACL.
22. By making the Arrangements in Place Representation, the respondent engaged in conduct in contravention of s 18 of the ACL.
23. By making the Reasonable Grounds Representations, the respondent engaged in conduct in contravention of s 18 of the ACL.

B.5 Misleading conduct relating to employment

23A. Further, or in the alternative, in making the Employment Representation, the respondent engaged in conduct in relation to employment:

- a. That is pleaded in paragraph 13(a)(i)-(v) above;
- b. That was to be, or may be, offered by the respondent at the time the Offer Letter was countersigned by the applicant; and
- c. That would thereafter be offered by the respondent to the first applicant.

24. Further, or in the alternative, in By making the Employment Representation, the respondent engaged in conduct in relation to employment that was to be, or may be, offered by the respondent within the meaning of s 31 of the ACL.

24A. Further, or in the alternative, in making the Arrangements in Place Representation, the respondent engaged in conduct in relation to employment:

- a. That is pleaded in paragraph 13(a)(i)-(v) above;
- b. That was to be, or may be, offered by the respondent at the time the Offer Letter was countersigned by the applicant; and
- c. That would thereafter be offered by the respondent to the first applicant.

25. Further, or in the alternative, in By making the Arrangements in Place Representation, the respondent engaged in conduct in relation to employment that was to be, or may be, offered by the respondent within the meaning of s 31 of the ACL.

25A. Further, or in the alternative, in making the Reasonable Grounds Representations, the respondent engaged in conduct in relation to employment:

- a. That is pleaded in paragraph 13(a)(i)-(v) above;

- b. That was to be, or may be, offered by the respondent at the time the Offer Letter was countersigned by the applicant; and
 - c. That would thereafter be offered by the respondent to the first applicant.
26. Further, or in the alternative, in ~~By~~ making the Reasonable Grounds Representations, the respondent engaged in conduct in relation to employment that was to be, or may be, offered by the respondent within the meaning of s 31 of the ACL.
27. At the time of the Employment Representation, Arrangements in Place Representation and/or Reasonable Grounds Representations, the first applicant was seeking employment with the respondent within the meaning of s 31 of the ACL.
28. The Employment Representation, on and from the time it was made, was misleading as to the availability, nature and terms or conditions of the employment that was to be or may be offered by the respondent.

Particulars

The first applicant repeats the particulars to paragraph 18 above.

29. The Arrangements in Place Representation, on and from the time it was made, was misleading as to the availability, nature and terms or conditions of the employment that was to be or may be offered by the respondent.

Particulars

The first applicant repeats the particulars to paragraph 19 ~~18~~ above.

30. The Reasonable Grounds Representations, on and from the time they were made, were misleading as to the availability, nature and terms or conditions of the employment that was to be or may be offered by the respondent.

Particulars

The first applicant repeats the particulars to paragraph 20 ~~18~~ above.

31. By reason of paragraphs 14 and 28, in making the Employment Representation, the respondent engaged in conduct in contravention of s 31 of the ACL.
32. By reason of paragraphs 14, 14A(a) and 29, in making the Arrangements in Place Representation, the respondent engaged in conduct in contravention of s 31 of the ACL.

33. By reason of paragraphs 14, 14A(b) and 30, in making the Reasonable Grounds Representations, the respondent engaged in conduct in contravention of s 31 of the ACL.

B.6 Reliance

34. In reliance on:

- a. the Employment Representation;
- b. the Arrangements in Place Representation; and/or
- c. the Reasonable Grounds Representations,

and in ~~late 2011 to early~~ 2012:

- d. on or about 25 January 2012, the first applicant countersigned the Offer Letter under the words, *inter alia*, "Acknowledged and accepted", and returned it to the respondent;
- e. the first applicant resigned from what was then his employment in PNG;
- f. the first applicant travelled from PNG to Perth, Western Australia to commence his employment with the respondent; and
- g. the first applicant incurred expenses in travelling from PNG to Australia.

B.7 Contract

35. The respondent's Offer Letter, once accepted by the first applicant, constituted a contract between the first applicant and the respondent on the terms and conditions of that letter.

B.8 Work for the respondent

36. Between approximately July February ~~2012~~ and 23 November 2012:

- a. the first applicant performed work for the respondent;
- b. the respondent, itself or via another entity within the "CoreStaff" group, made payments to the first applicant on account of his expenses, wages and entitlements; and

- c. the work provided by the respondent to the first applicant differed from what was detailed in the Offer Letter.

Particulars

The first applicant was required to perform shift work on a two-weeks-on-one-week-off basis, alternating between one week of night shifts and one week of day shifts. When working, the first applicant's hours were 84 hours per week comprising shifts of 12 hours per day, seven days per week at a flat hourly rate of \$45 per hour. Further particulars, including of the amounts paid to the first applicant, will be provided after the first applicant's lay evidence and after discovery.

B.9 Termination Letter and return to PNG

- 37. On or about 23 November 2012, the respondent issued a Termination Letter to the first applicant.
- 38. From and after the time of the respondent's Termination Letter:
 - a. the respondent did not employ the first applicant in any capacity;
 - b. the respondent made no payments to the first applicant in respect of his employment entitlements; and
 - c. the respondent terminated the first applicant's employment.
- 39. In or about December 2012, the first applicant obtained sponsorship and employment from Tristar Industries Pty Ltd.

Particulars

Further particulars will be provided at discovery.

B.10 Breach of contract

- 40. On and from the date of the respondent's Termination Letter, the respondent breached the parties' contract:
 - a. by purporting to terminate the parties' contract without any right to do so; and/or
 - b. by failing to make payments to the first applicant in accordance with the parties' contract.
- 41. At all relevant times the first applicant was ready, willing and able to perform work required of him in accordance with the parties' contract.

B.11 Loss and damage

42. The first applicant and Group Members have suffered loss and damage by and resulting from the contraventions and breach of contract (or any one or combination of them) pleaded in this Part B.

Particulars

The loss suffered by the first applicant will be calculated by reference to:

- i. for the ACL contraventions: the difference between, on the one hand, the income the first applicant would have earned in employment in PNG for the three years identified in the Offer Letter and, on the other hand, income actually received from the respondent and any other employer during that period, plus compensatory damages for the cost of, and the disappointment and injury to feelings occasioned by, relocating to Australia under false pretences and being left in Australia suddenly and unexpectedly without employment; and
- ii. for breach of contract: the total sum of the outstanding benefits under the parties' contract for the remainder of the term of three years.

Further particulars in relation to the first applicant's losses will be provided after the service of evidence and discovery.

Particulars of the losses of Group Members will be provided following opt out, the determination of the first applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

C. INDIVIDUAL CONTRACTUAL CLAIMS

43. In the alternative, and if (which is denied) s 33ZE(1) of the FCA Act has no application in respect of non-party contractual claims, each applicant other than the first applicant ("**Remaining Applicants**") brings an individual contractual claim as pleaded in this Part C.
44. Each of the Remaining Applicants:
- a. received an Offer Letter from the respondent;
 - b. countersigned the Offer Letter under the words, *inter alia*, "Acknowledged and accepted", and returned it to the respondent;
 - c. resigned from what was then their employment in PNG;
 - d. travelled from PNG to Perth, Western Australia to commence employment with the respondent;
 - e. incurred expenses in travelling from PNG to Australia;

- f. performed work for the respondent;
 - g. received a Termination Letter; and
 - h. was not paid anything further by the respondent from the date of that Remaining Applicant's Termination Letter.
45. The respondent's Offer Letter, once accepted by each Remaining Applicant, constituted a contract between the first applicant and the respondent on the terms and conditions of that letter.
46. On and from the date of the respondent's Termination Letter, the respondent breached the parties' contract:
- a. by purporting to terminate the parties' contract without any right to do so; and/or
 - b. by failing to make payments to the relevant Remaining Applicant in accordance with the parties' contract.
47. At all relevant times the Remaining Applicants were ready, willing and able to perform work required in accordance with the parties' contract.
48. The respondent is liable to pay damages to the Remaining Applicants for breach of contract.

Particulars

Damages will in the amount of the total sum of the outstanding benefits under the contract between each Remaining Applicant and the respondent for the remainder of the term of three years.

Date: 7 August 2019 ~~22 November 2018~~



Signed by Stewart Alan Levitt
Lawyer for the Applicants

This pleading was prepared by J. J. Fernon SC and J. C. Conde of counsel.

Certificate of lawyer

I, Stewart Alan Levitt, certify to the Court that, in relation to the statement of claim filed on behalf of the applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 7 August 2019 ~~22 November 2018~~



Signed by Stewart Alan Levitt
Lawyer for the Applicants