

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/08/2021 2:15:59 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
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



Dated: 9/08/2021 2:18:00 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

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.



Further Amended Defence

No. NSD2162 of 2018

Federal Court of Australia
District Registry: NSW
Division: General

Alois Jack and others

Applicants

CoreStaff NT Pty Ltd

Respondent

To the applicants' amended statement of claim dated 12 August 2019, the respondent says as follows:

1. As to paragraph 1 of the amended statement of claim, the respondent:
 - a. Admits that (under its former name CoreStaff Pty Ltd, which held the same ACN) it sent a letter to each applicant with the subject line "*Re: Offer of Employment*"; and
 - b. Otherwise denies the allegations insofar as they purport to allege a conclusion as to the making of a particular offer.
2. The respondent does not know and cannot admit the matters alleged at paragraph 2 of the amended statement of claim.
3. As to paragraph 3 of the amended statement of claim, the respondent:
 - a. Admits that on or after 23 November 2012, it sent to the first, second, fourth to seventh, ninth, tenth, fourteenth, and seventeenth to twentieth applicants a letter in the following terms:

"Dear ...

Due to the severe downturn in the mining industry our client has advised CoreStaff your services are no longer required.

As you are aware your last day of work was ...

Filed on behalf of (name & role of party)	CoreStaff NT Pty Ltd: Respondent		
Prepared by (name of person/lawyer)	James Morse		
Law firm (if applicable)	DLA Piper Australia		
Tel	(02) 9286 8530	Fax	9286 8007
Email	James.Morse@dlapiper.com		

Address for service
(include state and postcode) Level 22, No. 1 Martin Place
SYDNEY NSW 2000
CZO:JRM:3162824/492079

You had requested CoreStaff to endeavour to find you another position rather than immediately cancelling your nomination and we had agreed to this request and to pay you at a nominal rate.

We have unfortunately exhausted all avenues and will now cancel your nomination.

CoreStaff will be prepared to re-sponsor you when the industry recovers.

Please go to www.immi.gov.au for all information regarding your obligations in relation to your visa."

- b. Denies it sent such a letter to the third applicant who was placed in new employment at his request;
 - c. Denies it sent such a letter to the eighth and eleventh applicants because:
 - i. The eighth applicant resigned on 31 May 2013; and
 - ii. The eleventh applicant resigned on 10 June 2013;
 - d. Denies it sent such a letter to the thirteenth applicant (or in the alternative, denies that such letter had the effect alleged) because his employment was transferred to Watpac Civil and Mining Pty Ltd;
 - e. Denies it sent such a letter to the fifteenth applicant who resigned on 10 June 2013; and
 - f. Does not know and cannot admit whether it sent such a letter to the twelfth and sixteenth applicants.
4. As to paragraph 4 of the amended statement of claim, the respondent:
- a. Denies the allegations in paragraph 4(a) of the amended statement of claim; and
 - b. As to paragraph 4(b) of the amended statement of claim:
 - i. Has pleaded at paragraph 3 above to the allegation concerning the letters referred to in paragraph 3 of the amended statement of claim;
 - ii. Does not admit that the effect of the letters was to terminate the employment of those employees who were sent the letter;
 - iii. Otherwise does not know and cannot admit the allegations in paragraph 4(b)(i); and
 - iv. Denies the matters alleged at paragraphs 4(b)(ii) and 4(b)(iii).
5. The respondent makes no response to does not know and cannot admit the allegations in paragraph 5 of the amended statement of claim, as no allegation is made against the respondent.

6. The respondent makes no response to ~~does not know and cannot admit~~ the allegations in paragraph 6 of the amended statement of claim, as no allegation is made against the respondent.
7. The respondent makes no response to ~~does not know and cannot admit~~ the allegations in paragraph 7 of the amended statement of claim, as no allegation is made against the respondent.
8. The respondent does not know and cannot admit the allegations in paragraph 8 of the amended statement of claim.
9. As to paragraph 9 of the amended statement of claim, the respondent:
 - a. Admits the allegations in paragraphs 9(a) to 9(c); and
 - b. As to paragraph 9(d):
 - i. Admits it carried on a labour on-hire business;
 - ii. Admits the allegations in paragraph 9(d)(i), but says its predominant business was on-hiring Australian workers for positions in Australia;
 - iii. Denies it arranged for overseas workers to obtain temporary work visas, because it did not;
 - iv. Admits it acted as a sponsor (within the meaning of that expression in the *Migration Act 1958* (Cth)) for overseas workers to obtain visas;
 - v. Admits it on-hired its workers to its clients for a fee; and
 - vi. Otherwise does not admit the balance of the paragraph.
10. As to paragraph 10 of the amended statement of claim, the respondent:
 - a. Admits it sent to the first applicant a letter dated 4 January 2012;
 - b. Admits it sent the letter dated 4 January 2012 in the course of and for the purposes of its business;
 - c. Denies that the letter constituted an offer capable of acceptance;
 - d. Will rely upon the letter at trial for its full terms, true meaning and effect; and
 - e. Otherwise does not admit the balance of the paragraph.
11. As to paragraph 11 of the amended statement of claim, the respondent:
 - a. Admits the first applicant resided in Papua New Guinea in January 2012; but
 - b. Does not know and cannot admit the balance of the paragraph, including whether the first applicant was employed in January 2012 as a metal fabricator by Newcrest Mining Ltd.

12. As to paragraph 12 of the amended statement of claim, and in respect of the letter pleaded in paragraphs 10(a) and 10(b) above, ~~it~~ the respondent:
- a. Denies that the letter “*offered*” the first applicant “*a three-year full-time employment contract*” insofar as the pleading is intended to convey that there was made by the letter such an offer capable of acceptance;
 - b. Admits the allegations in paragraph 12(b);
 - c. Admits the allegations in paragraph 12(c);
 - d. In respect of paragraph 12(d), says that the letter stated only “*Superannuation 9% payable to your nominated Australian superannuation fund*”;
 - e. Admits the allegations in paragraph 12(e);
 - f. Admits the allegations in paragraph 12(f);
 - g. Is not required to plead to paragraph 12(g);
 - h. Relies on the letter for its full terms, true meaning and effect; and
 - i. Otherwise does not admit the balance of the paragraph.
13. As to paragraph 13 of the amended statement of claim, the respondent:
- a. Denies it made an implied representation to the first applicant in the terms of the representation pleaded in paragraph 13(a), described by the first applicant as the “*Employment Representation*”, and denies that such a representation arose by implication from the letter of 4 January 2012;
 - b. ~~Says that the letter of 4 January 2012 was understood by the first applicant to have been made in the context of and subject to the matters pleaded in paragraphs 36 and 37 below;~~
 - c. Denies it made an implied representation to the first applicant in the terms of the representation pleaded in paragraph 13(b), described by the first applicant as the “*Arrangements in Place Representation*”, and denies that such a representation arose by implication from the letter of 4 January 2012;
 - d. Says that the letter of 4 January 2012 was understood by the first applicant to have been made in the context of and subject to the matters pleaded in paragraphs 36 and 37 below;
 - e. Consequently, denies making any representation to the effect alleged at paragraphs 13(c)(i) or 13(c)(ii) of the amended statement of claim;
 - f. Does not know and cannot admit the allegations in paragraph 13(c)(iii) absent particulars of “*the offer*” and “*the other statements*” referred to;
 - g. As a consequence of (e) and (f) above, denies that it made an implied representation to the first applicant in the terms of the representations pleaded in paragraph 13(c), described by the first applicant as the

“*Reasonable Grounds Representations*”, and denies that such representations arose by implication from the letter of 4 January 2012; and

- h. Otherwise does not admit the balance of the paragraph.
14. As to paragraph 14 of the amended statement of claim, the respondent:
- a. Has denied making the Employment Representation and the Arrangements in Place Representation; and
 - b. Consequently, denies the allegations in the paragraph.
- 14A. As to paragraph 14A of the amended statement of claim, the respondent:
- a. Says that the phrase “*arrangements in place*” is vague, embarrassing and objectionable;
 - b. Otherwise denies the allegations pleaded in paragraph 14A(a);
 - c. Has denied making the Employment Representation, the Arrangements in Place Representation, and the Reasonable Grounds Representations;
 - c. Says that the letter of 4 January 2012 was understood by the first applicant to have been made in the context of and subject to the ~~matters~~-representations pleaded in paragraphs 36 and 37 below; and
 - d. Consequently, denies the allegations pleaded in paragraphs 14A(b) and 14A(c).
15. In the premises of the matters pleaded in paragraphs 13, 14 and 14A above, the respondent denies paragraph 15 of the amended statement of claim.
16. In the premises of the matters pleaded in paragraphs 13, 14 and 14A above, the respondent denies paragraph 16 of the amended statement of claim.
17. In the premises of the matters pleaded in paragraphs 13, 14 and 14A above, the respondent denies paragraph 17 of the amended statement of claim.
18. As to paragraph 18 of the amended statement of claim, the respondent:
- a. Has denied making the Employment Representation;
 - b. Says that if, which is denied, the Employment Representation was made, in the premises pleaded in paragraph 13 above it was not misleading or deceptive or likely to mislead or deceive;
 - c. Says, in the further alternative, that if, which is denied, the Employment Representation was made, there were reasonable grounds for doing so, namely, the demand then and likely demand in the future for skilled labour in the mining industry in Australia; and
 - d. Otherwise does not admit the balance of the paragraph.

19. As to paragraph 19 of the amended statement of claim, the respondent:
 - a. Has denied making the Arrangements in Place Representation;
 - b. Says that if, which is denied, the ~~Agreements~~ Arrangements in Place Representation was made, in the premises pleaded in paragraph 13 above it was not misleading or deceptive or likely to mislead or deceive;
 - c. Says, in the further alternative, that if, which is denied, the Arrangements in Place Representation was made, there were reasonable grounds for doing so, namely, the demand then and likely demand in the future for skilled labour in the mining industry in Australia; and
 - d. Otherwise does not admit the balance of the paragraph.
20. As to paragraph 20 of the amended statement of claim, the respondent:
 - a. Has denied making the Reasonable Grounds Representations;
 - b. Says that if, which is denied, the Reasonable Grounds Representations were made, in the premises pleaded in paragraph 13 above they were not misleading or deceptive or likely to mislead or deceive;
 - c. Says, in the further alternative, that if, which is denied, the Reasonable Grounds Representations were made, there were reasonable grounds for doing so, namely, the demand then and likely demand in the future for skilled labour in the mining industry in Australia; and
 - d. Otherwise does not admit the balance of the paragraph.
21. In the premises, the respondent denies paragraph 21 of the amended statement of claim.
22. In the premises, the respondent denies paragraph 22 of the amended statement of claim.
23. In the premises, the respondent denies paragraph 23 of the amended statement of claim.
- 23A. In the premises, the respondent denies paragraph 23A of the amended statement of claim.
24. In the premises, the respondent denies paragraph 24 of the amended statement of claim.
- 24A. In the premises, the respondent denies paragraph 24A of the amended statement of claim.
25. In the premises, the respondent denies paragraph 25 of the amended statement of claim.
- 25A. In the premises, the respondent denies paragraph 25A of the amended statement of claim.

26. In the premises, the respondent denies paragraph 26 of the amended statement of claim.
27. In the premises, the respondent denies paragraph 27 of the amended statement of claim.
28. In the premises, the respondent denies paragraph 28 of the amended statement of claim.
29. In the premises, the respondent denies paragraph 29 of the amended statement of claim.
30. In the premises, the respondent denies paragraph 30 of the amended statement of claim.
31. In the premises, the respondent denies paragraph 31 of the amended statement of claim.
32. In the premises, the respondent denies paragraph 32 of the amended statement of claim.
33. In the premises, the respondent denies paragraph 33 of the amended statement of claim.
34. As to paragraph 34 of the amended statement of claim, the respondent:
 - a. Has denied making the Employment Representation, the Arrangements in Place Representation, and the Reasonable Grounds Representations;
 - b. Says that the letter of 4 January 2012 was understood by the first applicant to have been made in the context of and subject to the matters pleaded in paragraphs 36 and 37 below;
 - c. Denies that the first applicant relied on the Employment Representation, the Arrangements in Place Representation and/or the Reasonable Grounds Representations, if they were made;
 - d. Admits in respect of paragraph 34(d) that the letter pleaded in paragraph 10 of the amended statement of claim bears writing under the words "*Acknowledged and accepted by Alois Jack*" but does not know and cannot say whether the first applicant counter-signed the said letter;
 - e. Does not know and cannot admit the allegations in paragraph 34(e);
 - f. ~~Does not know and cannot admit~~ Admits the allegations in paragraph 34(f); ~~and~~
 - g. Does not know and cannot admit the allegations in paragraph 34(g); and
 - h. Otherwise does not admit the balance of the paragraph.

35. The respondent denies the allegations in paragraph 35 of the amended statement of claim.
36. The respondent says further that:
- a. ~~The respondent by its employee Mark Seigel and Jeff McKenzie of NRW Pty Ltd held interviews with each of the applicants in Papua New Guinea;~~
 - b. On or about 18 or 19 September 2011, the respondent by Mr Mark Seigel and Mr Jefferson McKenzie of NRW Civil & Mining interviewed the first applicant in Papua New Guinea;
 - b1. Mr Seigel also interviewed other candidates, including each of the other applicants, in Papua New Guinea;
 - c. In each of the interviews between Mr Seigel and ~~Mr McKenzie~~ and a ~~successful candidate~~ (which included the first applicant), Mr Seigel and/or ~~Mr McKenzie~~ said words to the effect that:
 - i. ~~The 457 visa required for the work was for a maximum three-year period;~~
 - ii. ~~A successful candidate would be placed with a client or clients of the respondent for employment if a position was available and if the successful candidate was a suitable candidate;~~
 - iii. ~~The availability of work was completely dependent on clients of the respondent having a demand for workers holding the skillset of the successful candidate;~~
 - iv. ~~Any offer of employment to a~~ A successful candidate's employment with the respondent would be conditional on the availability of continuing work offered by the clients of the respondent;
 - v. ~~The respondent could not guarantee the continuing availability of work with its clients;~~
 - vi. ~~If there was no longer work available, then the job would no longer exist;~~
 - vii. ~~A successful candidate would have to be approved as suitable for a position by clients of the respondent before the successful candidate could commence the 457 visa process;~~
 - viii. ~~Clients of the respondent may not always have a demand for workers during the three-year period and if this was the case, the Department of Immigration and Citizenship would decide if the successful candidate could stay in Australia;~~
 - ix. ~~The terms and conditions of employment for the role would be advised to a successful candidate after the candidate had arrived in Australia under their 457 visa;~~

- x. ~~If there was a downturn in the industry, a successful candidate would not be retained as an employee by the respondent;~~
 - xi. ~~If there was a downturn in the industry a successful candidate would have 28 days to be relocated to another site or to find a new job, but if they could not be relocated to another site or find a new job they would need to return to Papua New Guinea; and~~
 - xii. ~~A successful candidate's continued employment by the respondent was dependent upon there being work available.~~
 - xiii. If there was no longer work available for a successful candidate with a client of the respondent, the successful candidate would have a period of 28 days to either be relocated to work with another client of the respondent, or, alternatively, to find a new employer; and
 - xiv. If, after 28 days, the successful candidate had not been relocated to work with another client of the respondent and had not found a new employer, the worker's employment with the respondent would be terminated, their visa sponsorship would be cancelled and they would have to leave Australia.
37. ~~In the premises pleaded in paragraph 36 above~~Further to paragraphs 35 and 36 above, if, which is denied, the letter of 4 January 2012 once signed and returned by the first applicant formed a contract as pleaded in paragraph 35 of the amended statement of claim, then:
- a. ~~At the time the letter was received and counter-signed by the first applicant (which is not admitted) the first applicant and the respondent knew that the terms of the offer were:~~The contract was partly written and partly oral and contained (and was known by the first applicant and the respondent to contain) the following express terms:
 - i. The contract and the employment were ~~§~~subject to and conditional upon the terms of the visa continuing to be satisfied;
 - ii. The contract and the employment were subject to and conditional upon ~~and~~ there being work available for the first applicant with clients of the respondent; and
 - iii. The contract and the employment were ~~§~~subject to and conditional upon further contractual terms and conditions to be advised ~~provided~~ after the first applicant had arrived in Australia under his 457 visa;
 - iv. The contract and the employment incorporated the relevant terms of the On-Hire Labour Agreement approved by the Department of Immigration and Citizenship, including provisions allowing for termination of the employment of the first applicant by the respondent on the proviso that the respondent pay him for 28 days and use its best endeavours to assist him to find alternative employment;
 - v. The period of employment would be up to a maximum of three years;

- vi. The continued employment of the first applicant during the maximum period of three years was conditional on there being work available for the first applicant with clients of the respondent; and
- vii. The contract and the employment could be terminated by notice if the respondent was not able to find the first applicant work with the clients of the respondent.

Particulars

- A. To the extent that the contract was in writing, some terms were contained in the letter of 4 January 2012 and further terms were contained in a written document dated 3 July 2012 as pleaded in paragraphs 39 and 40 below.
 - B. To the extent that the contract was oral, the terms were agreed upon in the interview held between Mr Seigel and the first applicant on or about 18 or 19 September 2011 in Papua New Guinea pleaded at paragraph 36 above at which Mr Seigel said words to the effect of “*your employment will cease and you may have to leave Australia and return to Papua New Guinea in the event that we do not have sufficient work for you and you are not able to find another employer to sponsor you*” and to which the first applicant indicated his acceptance.
- b. Further or alternatively, it was a term of the contract that:
- i. ~~The period of employment would be a period up to a maximum of three years;~~
 - ii. ~~Any obligation to employ the first applicant for a period of three years was conditional upon there being work available for the first applicant with clients of the respondent; and~~
 - iii. ~~The contract would be subject to such further terms and conditions as agreed after the first applicant had arrived in Australia under his 457 visa.~~
- b1. Further or alternatively, the contract as pleaded in paragraph 37(a) above or as pleaded in paragraph 35 of the amended statement of claim contained an implied term that the contract and the employment could be terminated by the respondent giving the first applicant reasonable notice (**Termination by Notice Term**); and

Particulars

- A. The respondent says that the Termination by Notice Term was implied by fact or by law.
- B. To the extent that the Termination by Notice Term was implied by law the respondent relies on section 117 of the *Fair Work Act 2009* (Cth) or in the alternative the *Manufacturing and Associated Industries Award 2010*.

- C. To the extent that the Termination by Notice Term was implied in fact the respondent says that the term:
- I. Is reasonable and equitable;
 - II. Is necessary to give business efficacy to the contract; and
 - III. Is so obvious that it goes without saying.
- ~~c. Further or alternatively, on the proper construction of the contract any obligation to employ the first applicant for a period of three years was conditional upon:~~
- ~~i. There being work available for the first applicant with clients of the respondent; and~~
 - ~~ii. Such further terms and conditions as agreed after the first applicant had arrived in Australia under his 457 visa.~~
- c1. Further or alternatively, the contract as pleaded in paragraphs 37(a) or 37(b1) above or as pleaded in paragraph 35 of the amended statement of claim was varied in writing on or about 3 July 2012 to include the following express terms:
- i. That either party could terminate the employment by giving the other party notice; and
 - ii. That the employment and the contract may be terminated at the completion of a client assignment if the first applicant could not be placed in alternative employment.

Particulars

The respondent refers to the written document dated 3 July 2012 as pleaded in paragraphs 39 and 40 below and will refer to the document for its full terms and effect at trial.

38. As to paragraph 36 of the amended statement of claim, the respondent:
- a. Admits the allegations in paragraph 36(a) to the extent the first applicant commenced employment with the respondent on or about 9 July 2012;
 - b. Admits the allegations in paragraph 36(b) save that it says the payments to the first applicant occurred between 18 July 2012 and 17 October 2012; and
 - c. As to paragraph 36(c):
 - i. Denies the allegations;
 - ii. Is not required to plead to particulars; and
 - iii. Further or in the alternative says (even if the employment differed from the 4 January 2012 letter) the 4 January 2012 letter was not an offer capable of acceptance.

39. The respondent refers to paragraph 37(c1) above and says further that On or about 3 July 2012 the first applicant and the respondent executed a contract of employment titled “CoreStaff WA – Terms & Conditions of Employment” (the **3 July contract of employment**).
40. Further or alternatively to paragraph 37(c1) above, if, which is denied, the letter of 4 January 2012 once signed and returned by the first applicant formed a contract as pleaded in paragraph 35 of the amended statement of claim, that contract was replaced by tThe 3 July contract of employment which provided (relevantly) as follows:
- a. *“... This employee agreement is to be signed by all Contract Employee's [sic] prior to commencement of your assignment. Please note that you are not obligated to accept any assignment that does not meet your expectations”;*
 - b. Under the heading GENERAL CONDITIONS:
 - i. *“[t]he terms and conditions in this document commence on the date it is signed and continues in force until revoked by the employee or CoreStaff”; and*
 - ii. *“[t]he Terms and Conditions in this document apply to all assignments undertaken by the employee on behalf of CoreStaff. The parties will not execute a new Terms and Conditions document for each separate assignment”;*
 - c. Under the heading FITNESS FOR WORK POLICY:
 - i. *“[w]here practical, not to work any more than 12 hours in any one shift”;*
 - ii. *“[t]o have a minimum rest period between shifts of 10 hours”; and*
 - iii. *“[t]o not work any more than 14 continuous shifts”;*
 - d. Under the heading WAGES :
 - i. *“[p]ay rates will vary from one assignment to another (including Flat rates) and will be advised by your CoreStaff Consultant prior to starting”; and*
 - ii. *“[m]ost pay rates are flat for all hours worked and take into account all entitlements including overtime and casual loading”;*
 - e. Under the heading FLAT RATES:
 - i. *“[a] flat rate of pay is one pay rate for all hours worked and takes into account ordinary hours as well as any overtime hours, rostered or otherwise. The rate of pay is all inclusive and includes all responsibilities, disabilities, allowances and other factors associated with the work, location and environmental factors and includes payment for all hours necessary to undertake your rostered duties and*

if you are a casual employee a 20% loading in lieu of paid leave entitlements. Such payments include compensation for any necessary shift, public holiday and weekend work. It should be noted that different flat rates of pay might apply to work within the metropolitan areas and remote site work”;

- f. Under the heading SUPERANNUATION:
- i. *“[p]rovided you earn more than \$450 per calendar month, CoreStaff Pty Ltd will contribute 9% of your ordinary time earnings to the Superannuation Fund of your choice in accordance with the Superannuation Guarantee Act.”;*
 - ii. *“[t]he Contract Employee agrees that the ordinary time hours on which superannuation is paid, will be the first 8 hours of each day worked, up to a maximum of 38 hours per week”;* and
 - iii. *“[i]f you are being paid a flat pay rate for every hour worked instead of a normal time pay rate, then superannuation will be paid on all hours worked”;*
- g. Under the heading DURATION OF ASSIGNMENT:
- i. *“[e]ach assignment that you will be given will be for the duration of one day only”;* and
- h. Under the heading TERMINATION:
- i. *“[e]ither party may terminate [the first applicant's] employment upon giving the other party one hours' notice”;* and
 - ii. *“[n]ote: I am aware that I may be terminated at the completion of the assignment (By CoreStaff or Client) if I can not be placed in alternative work”.*
41. The respondent will rely at trial upon the 3 July contract of employment for its full terms true meaning and effect.
42. The 3 July contract of employment constituted the terms and conditions of employment between the first applicant and the respondent save that the first applicant was employed on a full-time and not casual basis, and that the minimum notice period for termination of the employment was therefore governed by section 117 of the Fair Work Act 2009 (Cth) and the termination provisions in the Manufacturing and Associated Industries Award 2010.
43. ~~Further or in the alternative, if, which is denied, there was as between the first applicant and the respondent a contract as pleaded in paragraph 35 of the amended statement of claim, then the contract was varied by the contract of employment.~~

44. As to paragraph 37 of the amended statement of claim, the respondent:
- a. Admits that the respondent issued to the first applicant a letter dated 23 November 2012;
 - b. Says that the terms of the letter were as follows:

“Dear Alois,

Due to the severe downturn in the mining industry our client has advised CoreStaff your services are no longer required.

As you are aware your last day of work was the 6th November 2012.

You had requested CoreStaff to endeavour to find you another position rather than immediately cancelling your nomination and we had agreed to this request and to pay you at a nominal rate.

We have unfortunately exhausted all avenues and will now cancel your nomination.

CoreStaff will be prepared to re-sponsor you when the industry recovers.

Please go to www.immi.gov.au for all information regarding your obligations in relation to your visa.”; and
 - c. Relies upon the letter for its full terms, true meaning and effect; and
 - d. Otherwise does not admit the balance of the paragraph.
45. The respondent admits the allegations in paragraph 38 of the amended statement of claim, to the extent it refers to the time from and after the letter referred to in paragraph 37~~44~~ above, and save that the respondent denies any employment entitlements were owing to the first applicant from and after that time.
46. The respondent does not know and cannot admit the allegations in paragraph 39 of the amended statement of claim.
47. The respondent:
- a. Denies the allegations in paragraph 40 of the amended statement of claim; and
 - b. Says that it acted as it was entitled to do under the contract of employment and/or the 3 July contract of employment.
48. The respondent does not know and cannot admit the allegations in paragraph 41 of the amended statement of claim.
49. As to paragraph 42 of the amended statement of claim, the respondent:
- a. Has denied the alleged contraventions and breaches;

- b. Denies the first applicant has suffered loss and damage by reason of any contraventions or breaches of contract by the respondent;
 - c. Does not know and cannot admit whether the first applicant or Group Members have suffered loss or damage; and
 - d. Otherwise denies the balance of the paragraph.
50. The respondent denies the allegations in paragraph 43 of the amended statement of claim.
51. As to each of paragraphs 44 to 48 of the amended statement of claim, the respondent says that:
- a. Any claims of the second to twentieth applicants are stayed pursuant to Orders of Bromwich J dated 6 December 2018;
 - b. Consequently, the respondent is not required to plead to the allegations; and
 - c. In the alternative to paragraphs 51(a) and 51(b) above, it does not know and cannot admit the allegations in the paragraphs.
52. Further, or in the alternative, as to the whole of the claims for breach of contract and misleading or deceptive conduct, the respondent says that the first applicant's claims are statute barred.
53. Further, or in the alternative, as to the whole of the claims for breach of contract and misleading or deceptive conduct, the respondent says that the first applicant has failed to mitigate his loss allegedly arising from the matters pleaded in the amended statement of claim.

Date: ~~12 September 2019~~ 9 August 2021



Signed by James Morse
Lawyer for the Respondent

This pleading was settled by Kylie Nomchong SC and Scott Maybury of Counsel

Certificate of lawyer

I James Morse certify to the Court that, in relation to the defence filed on behalf of the 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: ~~12 September 2019~~ 9 August 2021



Signed by James Morse
Lawyer for the respondent