

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33  
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: 27/08/2021 2:41:27 PM AEST

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

Registrar

### Important Information

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Amended in accordance with Order 43(b) made by Bromwich J on ~~25 November 2020~~ 21 July 2021

Form 34  
Rule 16.33

## Further Amended Reply

No. NSD2162 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

In reply to the respondent's Further Amended Defence dated ~~13 September 2019~~ 9 August 2021 ("**Defence**"), the applicants plead below. Unless the context requires otherwise, capitalised expressions have the same meaning given in the applicants' Amended Statement of Claim of 9 August 2019.

The applicants join issue with the respondent upon its Defence, save to the extent that the Defence contains admissions, and say further the following:

1. In reply to paragraphs 1, 10(c) and 38(c)(iii~~v~~) of the Defence:
  - (a) the respondent's denials that the Offer Letters (with the subject line "Re: Offer of Employment") constituted offers capable of acceptance are embarrassing in that the respondent has not pleaded why those letters were incapable of acceptance (cf. r 16.08 of the *Federal Court Rules 2011* (Cth) ("**FCR**"));
  - (b) the Offer Letters were capable of acceptance by the applicants; and
  - (c) the Offer Letters were accepted by each of the applicants.

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Filed on behalf of (name & role of party)	Applicants		
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2. In reply to paragraph 3(b) of the Defence, the respondent sent a Termination Letter to the third applicant on 22 October 2013.
- 2A. In reply to paragraphs 9(b)(vi), 10(e), 12(i), 13(h), 18(d), 19(d), 20(d), 34(h) and 44(d) of the Defence, the respondent's purported non-admissions are taken to be admissions under r 16.07(2) of the FCR. The respondent has not sought to revisit or withdraw these deemed admissions in its most recent pleading, which was filed more than eight months after the applicants' last filed reply.
3. In reply to paragraphs 10(d), 12(h), 41 and 44(c) of the Defence, the respondent's pleadings foreshadowing reliance upon documents for their "full terms, true meaning and effect" are embarrassing in that the respondent must plead the effect of the documents relied upon and otherwise avoid surprise.

### Particulars

The applicants rely upon FCR 16.04 and 16.08; *TCS ACES Pty Ltd v Mikohn Gaming Australasia Pty Ltd* [2007] NSWSC 1139 at [7]; and *Hill End Gold Ltd v First Tiffany Resource Corp* [2008] NSWSC 1412 at [10]-[11].

4. [Not used.] In reply to paragraph 12(c) of the Defence:
  - (a) ~~the amount referred to in the Offer Letter which the first applicant received was \$115,000 per annum; and~~
  - (b) ~~the amounts referred to in the Offer Letters which the other applicants and Group Members received were between \$112,000 and \$120,000 per annum.~~
5. In reply to paragraphs 13, 34(b), 36 and 37 of the Defence:
  - (a) the Employment Representation, the Arrangements in Place Representation and each of the Reasonable Grounds Representations are to be understood as representations arising from and relating to, for each applicant and Group Member, the Offer Letter which that person received;
  - (b) the Offer Letters were in plain terms and were not qualified by the interviews and context pleaded at paragraphs 36 and 37 of the Defence;
  - (c) the references in paragraph 13(c)(iii) of the Statement of Claim to "the offer and the other statements which the respondent made in the Offer Letter" are references to the text of the Offer Letter such that no particulars are required (cf. Defence para 13(f)); and

- (d) each of the offers in the Offer Letters was accepted by each applicant and Group Member; and
  - (e) the arising contract pleaded at paragraph 35 of the Statement of Claim did not contain the conditions, terms or limitations pleaded at paragraphs 36 and 37 of the Defence.
6. In reply to paragraphs 24-27 of the Defence, the respondent's denials that the pleaded representations were made in relation to employment or that the first applicant was seeking employment, for the purposes of s 31 of the ACL, are embarrassing in that the respondent has not pleaded why (cf. FCR r 16.08).
7. In reply to paragraph 35 of the Defence, the respondent's denial of a contract between the first applicant and the respondent on the terms and conditions of the Offer Letter is embarrassing in that the respondent has not pleaded why there was no such contract (cf. FCR r 16.08).
- 7A. In reply to paragraph 36 of the Defence (further to paragraph 5 above), the applicants:
- (a) deny that they were told the matters pleaded in subparagraph (c); and
  - (b) say that, in any event, the terms of the Offer Letter (which came after the alleged statements) prevail to the extent of any inconsistency.
- 7B. In reply to paragraph 37 of the Defence (further to paragraph 5 above and without limiting the general joinder of issue), the applicants:
- (a) deny the alleged terms and rely on the terms of the Offer Letters received by them;
  - (b) say that paragraph 37(a)(iv) is embarrassing because the "relevant" On-Hire Labour Agreement is not identified but is pleaded as having been part of the alleged "partly written and partly oral" contract alleged to have been "known by the first applicant and the respondent", which is denied;
  - (c) deny that they were given a copy of any "relevant" On-Hire Labour Agreement;
  - (d) deny the Termination by Notice Term pleaded in paragraph 37(b1) and say further that the alleged Termination by Notice Term is inconsistent with the express term of employment provided for in each of the Offer Letters received by them and thus cannot be an implied term; and

(e) otherwise deny that there was any agreement (whether partly written and/or partly oral) which was inconsistent with or otherwise modified the terms of the Offer Letters received by them.

8. ~~[Not used.] In reply to paragraph 38(a) of the Defence, the respondent's denial is embarrassing because it proceeds from a misconception that July 2012 did not fall "between" February and November 2012, whereas it did.~~

9. In reply to paragraphs 39-42~~3~~ of the Defence:

- (a) the alleged "3 July contract of employment" document was not knowingly signed by the first applicant;
- (b) the first applicant recalls signing a document or documents during induction after arriving in Australia but does not recall reading or signing a document which was in the terms of the "3 July contract of employment" pleaded by the respondent;
- (c) the first applicant considered at all times that the basis of his employment was the Offer Letter which he had received;
- (d) the first applicant travelled to Australia on the basis of the Offer Letter which the respondent has admitted sending him (Defence, para 10(a));
- (e) the respondent's pleading at paragraph 42 of the Defence that the "3 July contract of employment" document gave rise to an employment relationship "on a full-time and not casual basis" is embarrassing in that the respondent has not pleaded why, notwithstanding the express references in that document to "casual employment" and "casual employee" (cf. FCR r 16.08);
- (f) the first applicant never would have come to Australia on the basis of the terms of the alleged "3 July contract of employment" document, in particular that the first applicant's employment was casual and could be terminated on one hour's notice;
- (g) in the circumstances, the alleged "3 July contract of employment" document:
  - (i) is not an enforceable contract, given it was not agreed to by the first applicant and he did not have an intention to create legal relations in relation to it; and
  - (ii) did not cure or otherwise affect or negate the breaches of contract and misleading or deceptive conduct pleaded in the Statement of Claim;

- (h) further, the alleged "3 July contract of employment" document is not enforceable as a contract because:
- (i) it is void, as an illegal contract, in circumstances where:
- (A) item 2 of Schedule 4 of the Work Agreement under the *Migration Act 1958* (Cth) dated on or about 21 April 2011 between the respondent and the Commonwealth provided that the applicants were to be employed in ongoing, full-time positions; and
- (B) the alleged "3 July contract of employment" document purported to employ the first applicant as a casual employee paid only for the hours worked and without entitlement to paid public holidays, sick leave, spousal leave, compassionate leave, annual leave and leave loading;
- (ii) it is unenforceable, in all of the circumstances pleaded in the applicants' Statement of Claim and in this Reply (in particular in the circumstances of the Employment Representation, the Arrangements in Place Representation and each of the Reasonable Grounds Representations), on the basis that:
- (A) each of the applicants was under a special disability in that at the time of signing the alleged "3 July contract of employment" document they had already accepted the Offer Letter which they had received, they had left work and families in PNG, they had travelled to Australia, they were only handed the document for signing during induction in Australia, they did not have the document explained to them, they were in no practical position to negotiate or refuse to sign the document, and they stood to incur significant costs if they were to refuse to sign the document and were to be forced to seek to return to PNG without the respondent's support;
- (B) the respondent knew of each applicant's position and the special disability just pleaded;
- (C) the alleged "3 July contract of employment" document was not fair, just or reasonable; and

(D) accordingly, the respondent engaged in unconscionable conduct in equity and for the purposes of s 20 of the ACL;

and, or alternatively:

(E) in the above circumstances, an estoppel applies such that the respondent is estopped from enforcing the alleged "3 July contract of employment" ~~or otherwise relying on its terms~~ and/or denying the existence, terms or enforceability of the contract pleaded in paragraph 35 of the Amended Statement of Claim; and/or

(F) in the above circumstances:

(1) when the respondent sent each applicant an Offer Letter, the respondent impliedly represented to each applicant that it would not change the terms of employment in the Offer Letter received by each applicant (**No Changes Representation**); and

(2) from the time that the respondent provided the terms of the 3 July contract of employment to any applicant and purported to rely on it, the respondent in trade or commerce engaged in misleading or deceptive conduct in contravention of s 18 of the ACL, and/or engaged in conduct that was liable to mislead in contravention of s 31 of the ACL, because of the inconsistency of that conduct with the respondent's implied No Changes Representation;

(h1) in the alternative (and without limiting subparagraphs (d) or (g)(ii) above), if the alleged "3 July contract of employment" document is enforceable, then in all the circumstances as pleaded in this paragraph 9, the alleged "3 July contract of employment" must be read with and subject to the contract pleaded at paragraph 35 of the applicants' Amended Statement of Claim arising from the Offer Letter – in particular, without limitation, and contrary to the allegation in paragraph 42 of the Defence that s 117 of the Fair Work Act 2009 (Cth) applies, the contract arising from the Offer Letter was for a specified period of time (viz. 3 years) for the purposes of s 123 of the Fair Work Act;

(i) in the alternative, if the alleged "3 July contract of employment" document is enforceable and the first applicant was employed on a full-time and not casual

basis as alleged (Defence, para 42), then the first applicant is entitled to payment in lieu of notice pursuant to s 117 of the *Fair Work Act 2009* (Cth).

10. In reply to paragraph 52 of the Defence, the respondent's pleading that "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" are embarrassing in that the respondent has not pleaded why (cf. FCR r 16.08).

11. In reply to paragraph 53 of the Defence, the first applicant says that:

(a) the respondent's pleading that "the first applicant has failed to mitigate his loss" is embarrassing in that the respondent has not pleaded why (cf. FCR r 16.08); and

(b) the first applicant did mitigate his loss as he has deposed to in paragraphs 51-86 of his affidavit sworn 26 June 2020 and filed 1 July 2020.

Date: ~~27 November 2020~~ 27 August 2021



Signed by Stewart Alan Levitt, solicitor for the  
Applicants, by his employed solicitor,  
Christopher D'Netto~~Oliver John Lacey~~

This pleading was prepared by J. J. Fernon of Senior Counsel and J. C. Conde of Counsel.



### Certificate of Lawyer

I, Stewart Alan Levitt, certify to the Court that, in relation to the reply filed on behalf of the Applicants, 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: ~~27 November 2020~~ 27 August 2021



Signed by Stewart Alan Levitt, solicitor for the Applicants, by his employed solicitor,  
Christopher D'Netto ~~Oliver John Lacey~~