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Our Ref

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Date

10 July 2023

Dear Colleagues

Debrah Jackson v Carnival plc Federal Court Proceeding No QUD 183/2023 (Proceeding)

- 1 We refer to your client's Statement of Claim filed on 5 May 2023 (**SOC**).
- 2 In our clients' view, your client's SOC as drafted is ambiguous and/or embarrassing and is liable to being struck out, either in whole or in part. For example, although at [1] of the SOC it alleges that the Applicant has brought the proceeding both in her own right and as a representative party, the SOC does not contain any allegations capable of constituting claims by any group members as defined at [7] of the SOC, nor does it contain allegations that satisfy the requirements of s 33C of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).
- 3 With respect to the claims made by the Applicant which are pleaded, these contain conclusory statements without alleging the material facts supporting such conclusions. As a result, our client is unable to understand the case it is to meet.
- 4 Further, and as you are aware, r 16.41(1) of the *Federal Court Rules 2011* (Cth) (**FCR**) relevantly requires a party to state in a pleading the necessary particulars of each claim or other matter pleaded by the party.
- 5 The object of such particulars is to limit the generality of your client's pleading by:
 - (a) informing the Respondent of the nature of the case that it has to meet;
 - (b) preventing the Respondent from being taken by surprise at trial; and
 - (c) enabling the Respondent to collect whatever is necessary and available.

- 6 The SOC filed by your client is insufficiently particularised, and does not comply with FCR r 16.41. The absence of adequate particulars means that our client does not have fair notice of the case that it will have to meet at trial and, as a result, our client considers that it may be prejudiced in its defence of the proceeding: see FCR r 16.45.
- 7 We set out further below specific deficiencies with the SOC and our request for further particulars on various of the allegations that have been made. In our view, many of these deficiencies cannot be rectified by the provision of particulars alone, and the SOC, even with the proper furnishing of particulars, is liable to be struck out. We accordingly invite you to amend the SOC in accordance with FCR r 16.51(1) to address these deficiencies.

Request for particulars

Paragraph 5

- 8 Please provide:
- (a) particulars of:
 - (i) when the Cruise was booked;
 - (ii) how the Cruise was booked’
 - (iii) the payment or payments made, including how such payment or payments were made and the amount; and
 - (iv) particulars of the relevant contracts entered into by the applicant upon booking the cruise, including copies of the relevant documents.

Paragraph 6

- 9 As to the allegation that the pleaded itinerary was “advertised”, please provide:
- (a) particulars of:
 - (i) by whom the pleaded itinerary was advertised;
 - (ii) by what means the pleaded itinerary was advertised;
 - (iii) when the pleaded itinerary was advertised;
 - (b) copies of the relevant advertisements to which paragraph 6 refers.

Paragraph 9(a)

- 10 Please provide particulars of the “rights, benefits, facilities and privileges” alleged to have been provided by the Respondent.

Paragraphs 9(b), 10 and 11

- 11 Please provide particulars of what “service” is alleged to have been supplied by the Respondent:
- (a) to the applicant;

(b) to the other group members.

12 Our client notes that the term “*Services*” as defined in paragraph 9(b) is then used throughout the balance of your client’s SOC, but without any proper definition or particulars being provided as to what “*service*” (or, indeed, “*services*”) is alleged to have been provided by the Respondent. This defect goes to the core of how your client’s SOC is presently framed, and results in the entire claim being vague, embarrassing and liable to be struck out.

Paragraph 12

13 As to paragraph 12, please:

- (a) provide particulars of the advertisements referred to in paragraph 12;
- (b) provide particulars of how the pleaded representations or indications were made, including whether they were express or implied;
- (c) to the extent that the pleaded representations or indications are alleged to have been expressly made, provide particulars of where they were made;
- (d) to the extent that the pleaded representations or indications are allegedly to have been impliedly made, provide particulars of the bases on which it is alleged that such implication arose;
- (e) indicate whether the pleaded representations or indications are common to all group members.

Paragraph 14

14 As to paragraph 14:

- (a) for A(i) of the existing particulars, please provide particulars of:
 - (i) how the cruise was marketed, including any relevant documents;
 - (ii) the particulars sought in relation to paragraph 12 of the SOC as set out above, given the cross-reference to paragraph 12 in paragraph A(i) of the existing particulars;
- (b) for A(ii) of the existing particulars, please provide particulars of:
 - (i) how it is alleged that the Respondent “held itself out as supplying recreation services”;
 - (ii) the “recreation services” that the Respondent is alleged to have held itself out as supplying;
- (c) for A(iii) of the existing particulars, please provide particulars of the purpose and nature of the transaction said to be entered into by Applicant.

Paragraph 15

15 As to paragraph 15:

- (a) for A(i) of the existing particulars, please provide particulars of:
 - (i) how the cruise was marketed, including any relevant documents;
 - (ii) the particulars sought in relation to paragraph 12 of the SOC above, given the cross-reference to paragraph 12 in paragraph A(i) of the existing particulars;
- (b) for A(ii) of the existing particulars, please provide particulars of:
 - (i) how it is alleged that the Respondent “held itself out as supplying recreation services”;
 - (ii) the “recreation services” that the Respondent is alleged to have held itself out as supplying;
- (c) for A(iii) of the existing particulars, please provide particulars of the purpose of the transaction entered into by Applicant:

Paragraph 33

16 Please provide copies of any relevant documents containing the information pleaded in paragraph 33 as published.

Paragraph 34

17 Please provide copies of any relevant documents containing warnings published on the “DFA” [sic] internet site as alleged in paragraph 34.

Paragraph 37

18 Please provide copies of the relevant notification(s) relating to the upgrade of Cyclone Donna to category 4 as alleged in paragraph 37.

Paragraph 38

19 As to subparagraph 38(a), please provide particulars as to:

- (a) when, and for how long, “no activities were open onboard the Ship”;
- (b) what activities onboard the Ship are alleged to have not been open.

20 As to subparagraph 38(b), please provide particulars as to when, and for how long, “it was difficult to move around”.

21 As to subparagraph 38(c), please provide particulars as to when, and for how long, “the environment was unpleasant”.

Paragraph 44

22 Please provide particulars as to when, and for how long, the matters alleged in paragraph 44 occurred.

Paragraph 45

23 Please provide particulars as to:

- (a) whether it is alleged that all group members had the experience pleaded in paragraph 45, or only some of the group members;
- (b) if only some group members had the experience pleaded in paragraph 45:
 - (i) how many had that experience;
 - (ii) identify those passengers

Paragraph 46

24 Please provide particulars as to:

- (a) when, and for how long, the matters alleged in paragraph 44 occurred;
- (b) what facilities are alleged to have been closed;
- (c) at live performances are alleged to have been cancelled.

Paragraph 49

25 Please provide particulars of:

- (a) as to the “Services” alleged to have been provided, “rights, benefits, facilities and privileges” alleged to have been provided by the Respondent;
- (b) how it is alleged that these benefits were marketed, including any relevant documents;
- (c) what the content of the such alleged marketing was, including any relevant documents;
- (d) what is meant by the phrase “the area into which the Ship proposed to travel”;
- (e) the bases on which it is alleged that the matters alleged in paragraph 49 were reasonably foreseeable.

Paragraph 51

26 Please provide particulars of the basis on which it is alleged that the Respondent had or should have had knowledge of each of the matters alleged in paragraph 51.

Paragraph 52(b)

27 Please provide particulars of the alternate route that could have avoided or limited the impact of Cyclone Donna that is alleged.

Paragraph 54(a) and 54(b)

28 Please provide particulars of the bases on which it is alleged that the Respondent failed to make any or any proper enquiries as to the matters alleged.

Paragraph 54(e) and (f)

29 Please provide particulars of:

- (a) the alternate route that could have avoided or limited the impact of Cyclone Donna that is alleged;
- (b) the bases on which it is alleged that Cyclone Donna had the alleged impact on the Cruise.

Paragraph 55

30 Please provide the cross-reference that is missing from paragraph 55(a).

Paragraph 56 and 57

31 Paragraphs 56 and 57 rely upon the matters pleaded in paragraphs 50 to 54.

32 Paragraphs 50 to 54 do not contain any allegations informing the bases on which it is alleged that the "Services" (which themselves are not properly defined, as noted above) were not reasonably fit for purpose or of a kind which might reasonably be considered to achieve the a particular result. Accordingly, these paragraphs fail to properly disclose any cause of action under s 61 of the *Australian Consumer Law*.

33 In our client's view, this is a matter that can only be remedied by amendments to your client's SOC, and cannot solely be dealt with by way of particulars. Nonetheless, in order to attempt to clarify the case made by your client, please provide particulars of the bases on which it is alleged that the "Services" were not reasonably fit for purpose or not of a kind which might reasonably be considered to achieve a particular result.

Paragraph 58

34 As to paragraph 58, please:

- (a) particularise the nature of the loss and damage suffered by the applicant, including a breakdown of the specific types of losses or damages claimed;
- (b) particularise the quantum of alleged loss or damage alleged to have been suffered by the applicant.

Response requested

Please provide a response to the above request for particulars, and our request relating to s 33C of the FCA Act, by 18 July 2023.

If you client fails to provide an adequate response to our client's request, our client will seek an order from the Court under FCR r 16.45 requiring your client to provide further and better particulars.

Our client has requested a response prior to the First Case Management Hearing listed for 20 July 2023 so that, if an inadequate response is received, it can indicate to the Court its intention to seek an order under FCR 16.45.

Our client otherwise reserves all of its rights with respect to the SOC, including in relation to applying to strike out the SOC or taking other interlocutory steps.

We look forward to hearing from you.

Yours faithfully

