

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33  
File Number: NSD2168/2019  
File Title: RAYMOND BOULOS v M.R.V.L. INVESTMENTS PTY LTD ACN 000  
620 888  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 18/06/2020 1:23:57 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.

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## Reply

No. NSD 2168 of 2019

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

### Raymond Boulos

Applicant

**M.R.V.L Investments Pty Ltd**  
**(as trustee for the Hemmes Administration Trust)**  
**ACN 000 620 888**

Respondent

1. In reply to paragraph 6 of the Defence, the Applicant:
  - a. admits subparagraph 6(a);
  - b. says that the Merivale Agreement was not capable at law of being varied by an undertaking in order to pass the fairness test on or after 15 December 2008.
  
2. In reply to paragraph 7 of the Defence, the Applicant:
  - a. admits that on 29 December 2008, the Respondent, through its solicitors, Harmers Workplace lawyers, lodged a purported undertaking as alleged (the **First Undertaking**);
  - b. says that the Merivale Agreement was not capable at law of being varied by an undertaking in order to pass the Fairness Test on or after 15 December 2008;
  - c. admits that section 346R(2)(b) of the Workplace Relations Act (the **WRA**) as in force immediately before 28 March 2008 (the **Pre-reform WRA**) provided for the

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Filed on behalf of  
Prepared by  
Law firm  
Tel  
Email  
**Address for service**

Raymond Boulos, Applicant  
Terrence Lynch SC and Simon Meehan of counsel  
Adero Law  
(02) 61891022 Fax  
Rory.markham@aderolaw.com.au  
5 Torrens Street  
BRADDON ACT 2612

lodgement of a variation of a collective agreement by giving to the Workplace Authority Director a written undertaking;

- d. says that Division 5A of Part 8 of the Pre-reform WRA, containing section 346R(2)(b), was repealed with effect from 28 March 2008;

Sch 1, Item 2  
Workplace Relations Amendment  
(Transition to Forward with Fairness) Act 2008  
(the **Transitional Act**)

- e. denies that the lodgement of the First Undertaking on 29 December 2008 was provided for by section 346R(2)(b) of the Pre-reform WRA;
- f. says that the Merivale Agreement, having been made and lodged with the Workplace Authority Director before the commencement of Schedule 7B to the WRA with effect from 28 March 2008, was a "pre-transition collective agreement" within the meaning of that term in Schedule 7B;
- g. says that on 29 December 2008 section 346R(2)(b) and section 346T of the Pre-reform WRA, had no application in relation to a variation of a "pre-transition collective agreement";

cl.2(1)(c) and cl.3  
Schedule 7B WRA

- h. says that in the circumstances pleaded in paragraph 6(1) of the Amended Statement of Claim the Merivale Agreement ceased to operate on 29 December 2008, and could never operate again.

s.346ZB  
Pre-reform WRA

3. In reply to paragraph 8 of the Defence, the Applicant:

- a. admits sub-paragraph 8(a);
- b. denies sub-paragraph 8(b), and says that:

- i. Schedule 1, item 15 of the Transitional Act inserted Schedule 7B, "Transitional arrangements for existing collective agreements", into the WRA with effect from 28 March 2008; and
  - ii. Clause 2 of Schedule 7B of the WRA preserved, subject to clause 3 of Schedule 7B, the application of certain provisions of the Pre-reform WRA, including Division 5A of Part 8, in relation to pre-transition collective agreements;
- c. admits subparagraph 8(c), and says further that:
  - i. a variation of the Merivale Agreement was not lodged before the commencement of Schedule 7B of the WRA; and
  - ii. a variation of the Merivale Agreement was not made before the commencement of Schedule 7B of the WRA and lodged in accordance with section 377 of the Pre-reform WRA, within 14 days after that commencement;
- d. denies subparagraphs 8(d) and (e), and says that by operation of clause 3 of Schedule 7B, clause 2 of Schedule 7B had no application in respect of the purported variation of the Merivale Agreement constituted by the First Undertaking lodged with the Workplace Authority Director on 29 December 2008;
- e. denies that the Fairness Test provisions (contained in Division 5A of Part 8 of the Pre-reform WRA) continued to apply to the purported variation of the Merivale Agreement following their repeal on 28 March 2008, and says that the Merivale Agreement could not be varied in accordance with the Pre-reform WRA provisions preserved by clause 2 of Schedule 7B;
- f. denies that section 346T(2) of the Pre-reform WRA was preserved by clause 2 of Schedule 7B in respect of the purported variation of the Merivale Agreement;
- g. denies that the Merivale Agreement as purportedly varied by the First Undertaking began to operate on 29 December 2008 as alleged; and
- h. says that in the circumstances pleaded in paragraph 6(1) of the Amended Statement of Claim the Merivale Agreement ceased to operate on 29 December 2008, and could never operate again.

4. In reply to paragraph 10A the Applicant:

- a. denies that the Original Notice was validly rescinded on 4 June 2009 or at all;
- b. refers to and repeats its pleading in subparagraph 3(e) above and says that the purported Second Undertaking pleaded in paragraph 10(j) of the Defence was incapable of varying the Merivale Agreement;
- c. refers to and repeats its pleading in subparagraph 2(h) above and says that before the date of the purported rescission of the Original Notice the Merivale Agreement had ceased to operate on 29 December 2008 and could never operate again; and
- d. says in the alternative to subparagraph 4(c), that by reason of the matters pleaded in subparagraph 10(a) of the Defence, the Merivale Agreement had ceased to operate on 30 January 2009 and could never operate again.

5. In reply to paragraph 10B the Applicant:

- a. denies that, in the context of the WRA as in force as at 4 June 2009, the Workplace Authority Director was empowered pursuant to section 33(1) of the *Acts Interpretation Act 1901* (the **AI Act**) to rescind the Original Notice or the decision recorded in the Original Notice;
- b. says further that the Workplace Authority Director did not purport to rescind the decision recorded in the Original Notice;
- c. denies that the Original Notice was lawfully rescinded on 4 June 2009;
- d. denies that the Merivale Agreement was varied by the purported Second Undertaking and refers to and repeats its pleading in subparagraph 4(b) above;
- e. denies that the Merivale Agreement as purportedly varied by the Second Undertaking had lawful effect and operation.

6. In reply to paragraph 10C the Applicant:
- a. denies that, in the context of the WRA as in force as at 4 June 2009, the Workplace Authority Director was empowered by reason of section 33(3) of the AI Act to rescind the Original Notice;
  - b. denies that Workplace Authority Director validly rescinded the Original Notice on 4 June 2009 as alleged;
  - c. denies subparagraph 10C(c).

Date: 18 June 2020



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Signed by Rory Markham

Lawyer for the Applicant

This pleading was prepared by Terrence Lynch SC and Simon Meehan of counsel.

### **Certificate of lawyer**

I, Rory Markham, certify to the Court that, in relation to the reply filed on behalf of the Applicant, 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: 18 June 2020



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Signed by Rory Markham  
Lawyer for the Applicant

