

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

S ECI 2020 01535

BETWEEN:

NERITA SOMERS & ORS
(according to the attached Schedule)

Plaintiffs

-and-

BOX HILL INSTITUTE & ANOR
(according to the attached Schedule)

Defendants

ORDER

JUDGE: The Honourable Justice John Dixon
DATE MADE: 22 July 2020
ORIGINATING PROCESS: Writ filed 26 March 2020
HOW OBTAINED: At case management conference
ATTENDANCE: Mr J T Rush RFD QC with Mr M Guo, for the plaintiffs
Mr M Hooper of counsel, for the first defendant
Mr R Heath QC, for the second defendant
OTHER MATTERS: Nil

THE COURT ORDERS THAT:

1. Gobel Aviation Pty Ltd (**Soar**) is joined as the second defendant in the proceeding.
2. By 4:00pm on 31 July 2020, the plaintiffs shall amend the writ accordingly and shall file and serve an amended statement of claim against Soar as the second defendant in the proceeding.
3. By 4:00pm on 31 August 2020, the defendants shall each file and serve their amended defence or defences and any counterclaim to each of the amended statement of claim and the third party statement of claim.
4. By 4:00pm on 21 September 2020:
 - (a) the plaintiffs shall file and serve any reply to Soar's defence; and
 - (b) the first defendant shall file and serve any reply to Soar's third party defence, and its defence to Soar's counterclaim (if any).



5. By 15 August 2020, the defendants shall each make file and serve an affidavit verifying an exhibited list in electronic form, containing the name, student reference number, address, email address and phone number, for each of its students who is a group member as defined in paragraph 1 of the plaintiff's statement of claim (as amended).
6. By no later than 4:00pm on 15 August 2020, each of the parties shall agree on a protocol for discovery and inspection:
 - (a) where documents will be provided electronically;
 - (b) where an electronic index of documents will be provided; and
 - (c) in accordance with Practice Note SC Gen 5 (Technology in Civil Litigation).
7. Paragraph 9 of the orders of the Honourable Justice John Dixon made 25 May 2020 is vacated and, in lieu thereof, by 4:00pm on 21 August 2020, the first defendant shall make discovery, by affidavit, of the categories of documents set out in annexure A to this order.
8. By 4:00pm on 4 September 2020, the plaintiffs and the first defendant will produce their discovery for inspection in accordance with the agreed protocol.
9. By 4:00pm on 30 September 2020, the parties shall confer to settle the categories of documents to be discovered by Soar in the proceeding, and by each of the plaintiff and the first defendant in respect of the claims between them and Soar.
10. In default of agreement being reached in regard to the matters raised in paragraphs 6 and/or 9, the parties shall attend a conference before Judicial Registrar Clayton, on a date to be nominated by the Judicial Registrar, to facilitate discussion between the parties concerning the categories of documents to be discovered, and agreement on an appropriate document management system and protocol to be used for the discovery and inspection process, and to make any necessary orders.
11. By 4:00pm on 6 November 2020:
 - (a) Soar shall make discovery, by affidavit; and
 - (b) the plaintiffs and the first defendant shall make any further discovery, by affidavit.
12. By 4:00pm on 25 September 2020, the parties are to confer for the purposes of settling the content of the opt out notice and the time by and manner in which the opt out notice is to be given to group members. In the event of agreement, the parties shall submit proposed minutes of consent orders to the court.



13. In default of agreement being reached in regard to the matters raised in paragraph 12, the parties shall attend a conference before Judicial Registrar Clayton, on a date to be nominated by the Judicial Registrar, to facilitate discussion between the parties concerning the content of the opt out notice, and to make any necessary orders including as to the time by and manner in which the opt out notice is to be given to group members.
14. 4:00pm on 18 November 2020 is fixed as the time and date before which a group member may opt out of the proceeding.
15. On or before 4:00pm on 15 November 2020, the plaintiff shall serve on the defendants a copy of its letter of instructions to, and a statement of the qualifications and experience of, each expert witness that it proposes to call at the trial.
16. On or before 4:00 pm on 11 December 2020, the plaintiffs shall file and serve any notice pursuant to order 44 of the *Supreme Court (General Civil Procedure) Rules 2015 (Rules)* in respect of expert evidence on which it intends to rely at trial.
17. On or before 4:00pm on 28 February 2021, the defendants shall file and serve any order 44 notice pursuant to the Rules in respect of expert evidence on which they intend to rely at trial.
18. The proceeding is referred to Efthim AsJ, or to such other judicial mediator as he may nominate, for mediation.
19. The parties shall endeavour to complete mediation prior to 12 March 2021.
20. The case management conference is adjourned for further hearing on 12 March 2021.
21. Costs are reserved.

DATE AUTHENTICATED: 22 July 2020




The Honourable Justice John Dixon

ANNEXURE A

CATEGORIES OF DOCUMENTS TO BE DISCOVERED BY THE FIRST DEFENDANT

Box Hill Institute documents evidencing due diligence of the CPL Diploma course

- a. All business proposals prepared by Box Hill Institute (**BHI**) concerning the provision and delivery of aviation training courses, including the Diploma of Aviation (Commercial Pilot Licence Aeroplane) (AVISO215) (the "**CPL Diploma**") course.
- b. All business proposals received by BHI concerning the provision and delivery of the CPL Diploma course.
- c. A copy of all due diligence records demonstrating BHI's assessment and review of Gobel Aviation Pty Ltd's (**Soar**) suitability, capacity and adequacy as a provider of aviation training.
- d. A copy of all due diligence records demonstrating BHI's assessment and review of its own compliance with the National Vocational Education and Training Regulator Act 2011 (Cth), Vet Quality Framework and complying with Australian Skills Quality Authority (**ASQA**) rules, regulations and standards concerning the CPL Diploma course.
- e. A copy of all due diligence records demonstrating BHI's assessment and review of Soar's compliance with the Vet Quality Framework, complying with ASQA rules, regulations and standards concerning the CPL Diploma course.
- f. A copy of all due diligence records demonstrating BHI's assessment and review of Soar's compliance with the Civil Aviation Safety Authority (**CASA**) rules, regulations and standards concerning the CPL Diploma course.
- g. A copy of the all reports evidencing the number of students enrolled in the CPL Diploma course who have obtained their diploma qualification upon successful completion of the course.
- h. A copy of all reports evidencing the number of students enrolled in the CPL Diploma course who have obtained their commercial pilots licence through CASA.
- i. A copy of all file notes, minutes and memoranda from any meetings conducted by or participated in by BHI concerning its compliance with the National Vocational Education and Training Regulator Act 2011 (Cth), Vet Quality Framework, ASQA rules, regulations and standards concerning the CPL Diploma course.
- j. A copy of all file notes, minutes and memoranda concerning any meetings between BHI and Soar regarding their respective compliance with the National Vocational Education and Training Regulator Act 2011 (Cth), Vet Quality Framework, ASQA and CASA rules, regulations and standards concerning the CPL Diploma course.



- k. A copy of all correspondence regarding BHI and / or Soar's compliance with the National Vocational Education and Training Regulator Act 2011 (Cth), Vet Quality Framework, ASQA and CASA rules, regulations and standards concerning the CPL Diploma course.

Agreements entered into by BHI concerning the CPL Diploma course

- l. A copy of all contracts entered into between BHI and Gobel Aviation Pty Ltd (ABN 11 006 160 658) trading as Soar Aviation and /or any related corporate entities to Soar ("Soar") relating to the provision of the CPL Diploma course at BHI.
- m. The contracts between BHI and any external service providers, consultants, student experience consultants, flight instructors, lecturers relating to the CPL Diploma course.
- n. Administrative Staff Secondment Agreements between BHI and Soar associated with the delivery of the CPL Diploma course.

Australian Skills Quality Authority (ASQA) enquiries

- o. A copy of all reports by ASQA concerning the CPL Diploma course.
- p. A copy of all correspondence, reports, file notes and memoranda, excluding those of a purely administrative nature, connected to ASQA's decision to amend the scope of the registration of BHI (provider number 4687) as a Registered Training Authority (RTO) concerning the CPL Diploma course dated 17 December 2019.
- q. A copy of all correspondence, reports, file notes and memoranda connected to ASQA's decision to cancel the registration of Gobel Aviation Pty Ltd (provider number 22488) as a RTO dated 17 December 2019.
- r. A copy of all correspondence, reports, file notes and memoranda, excluding those of a purely administrative nature, connected to ASQA's decision to reconsider and amend its decisions referred to at orders (p) and (q) above.
- s. A copy of all communications sent to students enrolled in the CPL Diploma course concerning ASQA's decisions referred to at orders (q) to (r) above.

Communications from the Civil Aviation Safety Authority concerning the CPL Diploma course

- t. Copies of all correspondence and reports from the Civil Aviation Safety Authority (CASA) concerning the CPL Diploma course.

Communications and reports connected to the CPL Diploma course

- u. A copy of all written reports and correspondence authored by Mr Alan Middleton regarding Middleton's concerns and alleged deficiencies relating to course content, delivery and methods of charging fees concerning the CPL Diploma Course.



- v. A copy of all file notes / memoranda of meetings between Mr Alan Middleton and BHI related to Middleton's concerns relating to the CPL Diploma Course.
- w. A copy of all correspondence sent by BHI to Mr Alan Middleton in response to his concerns regarding the CPL Diploma Course.
- x. All contracts and deeds of settlement between Mr Alan Middleton and BHI.
- y. A copy of all written reports and correspondence authored by Mr Andrew Grady regarding Grady's concerns and alleged deficiencies relating to course content, delivery and methods of charging fees concerning the CPL Diploma Course.
- z. A copy of all file notes / memoranda of meetings between Mr Andrew Grady and BHI related to Grady's concerns relating to the CPL Diploma Course.
- aa. A copy of all correspondence sent by BHI to Mr Andrew Grady in response to his concerns regarding the CPL Diploma Course.
- bb. A copy of all written reports and correspondence received by BHI from any employee / consultant / contractor of BHI or Soar concerning any alleged alleging deficiencies in the CPL Diploma Course.

Documentation concerning Mr Norman Gray's involvement in the CPL Diploma course

- cc. All correspondence between Mr Norman Gray and Soar and /or any related corporate entities to Soar concerning the development of the CPL Diploma course.
- dd. All file notes and memoranda or meetings between Mr Norman Gray and Soar and /or any related corporate entities to Soar concerning the development of the CPL Diploma course.
- ee. The consultancy agreement between former CEO of BHI, Norman Gray, and BHI overseeing Mr Gray's position as senior strategy consultant in or around 2018.
- ff. Copies of all correspondence, minutes of meetings, file notes and memoranda concerning Norman Gray's intention to act as a director of Double Sunrise Holdings Pty Ltd, being the sole shareholding company of Soar Aviation Holdings Pty Ltd.
- gg. Copies of all correspondence between former CEO of BHI, Norman Gray and BHI acting in his capacity as a director of Double Sunrise Holdings Pty Ltd.

Documents concerning the internal management and administration of the CPL Diploma course

- hh. Copies of all reports and correspondence received by the current CEO of BHI, Vivienne King, concerning any alleged deficiencies in the CPL Diploma course.
- ii. All training manuals and course materials delivered by BHI / Soar to students during the CPL Diploma course, categorised into year and class number.



- jj. All policies and protocols for assessing student's progress through the CPL Diploma course.
- kk. All policies and protocols for assessing student engagement through the CPL Diploma course.
- ll. All policies and protocols concerning charging fees to students through the CPL Diploma course.
- mm. All policies and protocols applying to the representative plaintiffs during their enrolment in the CPL course, which are relevant to the issues in dispute.
- nn. Professional credentials of all lecturers, course administrators, course designers and flight instructors associated with the delivery of the CPL Diploma; course.
- oo. All employment pathway agreements associated with the delivery of the CPL Diploma course.
- pp. All Enrolment forms of all Representative Plaintiffs concerning the CPL Diploma course.
- qq. All documents evidencing the revenue paid by both the Commonwealth Department of Education Skills and Employment (as it is now known), and by students directly, to BHI and Soar in relation to the CPL Diploma course.
- rr. All invoices received by BHI from Soar concerning the CPL Diploma course.
- ss. A copy of the entire file held by the Aviation Faculty of BHI in relation to each of the representative plaintiffs.

Documentation evidencing student progression through the CPL Diploma course

- tt. Statements of Attainment from BHI and / or Soar in relation to each representative plaintiff.
- uu. Statements of attainment / reports / certificates issued by the Civil Aviation Safety Authority in relation to each representative plaintiff.
- vv. Copy of the student Pilot log book in relation to each representative plaintiff.
- ww. Practical flight test reports in relation to each representative plaintiff.
- xx. Student progress / competency reports issued by the defendant and / or Soar in relation to each representative plaintiff.
- yy. Exam papers and results of exams delivered by the defendant and / or Soar in relation to each representative plaintiff.



- zz. All records demonstrating the steps taken by BHI to monitor, intervene and assist the representative plaintiffs who were failing to progress at a satisfactory rate through the CPL Diploma course that would enable such students to obtain their commercial pilots certificate within 2 years of part time study or 14 months of full time study.

Feedback and complaints made by students enrolled in the CPL Diploma course

- aaa. A copy of all correspondence, emails, reports, file notes and memoranda received or maintained by BHI regarding any student feedback and / or complaints made concerning the alleged deficiencies in the CPL Diploma course.
- bbb. Call logs or recordings of all phone calls between BHI and students of the CPL Diploma course capturing student feedback and / or complaints concerning the alleged deficiencies in the CPL Diploma course.



SCHEDULE OF PARTIES

S ECI 2020 01535

BETWEEN:

NERITA SOMERS

First Plaintiff

ADEL HASSANEIN

Second Plaintiff

MATTHEW LAMONT

Third Plaintiff

FELIX OULDANOV

Fourth Plaintiff

-and-

BOX HILL INSTITUTE

First Defendant

GOBEL AVIATION PTY LTD

Second Defendant

