

*The 4th Michael Kirby Contract Law Moot
Melbourne, Australia*

29 September – 2 October 2014

THE PROBLEM

Organised by:
College of Law and Justice, Victoria University

Moot Co-ordinator
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Exhibit 15

BROWN, BLACK & WHITE, LAWYERS

576 Bourke Street, Melbourne, Vic, 3000

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14 March 2014

Mr. S. Silver
Partner
Gold, Silver & Diamond, Lawyers
872 Collins Street
MELBOURNE 3000

Dear Stirling

**Graffiti Removal Agreement with Social Conscience Pty Ltd
Arbitration: Notice of Dispute**

We refer to our letter of 29 January 2014 (which we reiterate here, despite the content of your letter of 30 January 2014) and have now received further instructions from our client.

In addition to the loss and damage set out in our earlier letter, we are now instructed that our client has had to cancel its State conferences scheduled to occur in Tasmania and South Australia respectively on 28 March 2014 and 15 April 2014 as a result of the conduct of your company's graffiti removal team and the extreme adverse negative publicity flowing therefrom.

Furthermore our client has suffered loss from the sudden and dramatic cancellation of subscriptions to its (formerly) popular monthly, publication "*Environs and the Environment - Yesterday, Today & Tomorrow*". Indeed, it has also cancelled its publishing contracts with printing houses in Melbourne, Hobart and Adelaide.

Sadly, one of our client's directors, Ms. Crystal Pye succumbed to consequential business pressures and suffered a breakdown 2 weeks ago. She was admitted to the Dandenong South Nerve Management Hospital and, fortunately, was discharged yesterday.

In summary, our client's claim for loss and damage flowing from your client's breach of the Graffiti Removal Agreement comprises:

Destroyed marquee (at original cost in Jan 1998):	\$ 80,000
Destroyed banners and signage (cost in Dec 2013):	\$ 15,000
Guests' wasted airfares and accommodation costs:	\$120,000
Cancelled monthly subscriptions:	\$ 85,000

Printing “break costs” (3 print houses):	\$ 30,000
Lost Net Profit on cancelled Tasmanian conference:	\$ 98,000 (est)
Lost Net profit on cancelled SA conference:	\$ 74,000 (est)
Director’s hospital and medical expenses:	<u>\$ 27,000</u>
	\$529,000

And with interest and costs.

We note that the GR Agreement requires that disputes and claims be resolved by arbitration in Melbourne.

Accordingly, please hereby treat this letter as a formal **Notice of Dispute** which is now provided to your client by way of service pursuant to Rule 6 of the *Institute of Arbitrators and Mediators of Australia Arbitration Rules* (IAMA).

For the purposes of arbitration, our client seeks damages in the amount of \$529,000 plus interest and costs on the following grounds:

1. That on 7 January 2014, Industry First Pty Ltd (the Respondent) entered into a binding written agreement (the GR Agreement) with Social Conscience Pty Ltd (the Claimant).
2. The Respondent has breached clauses 3(b) & 3(c) of the GR Agreement.
3. The GR Agreement did not include the Website “*Additional Terms and Conditions applicable to Graffiti Removal*”.
4. Further and alternatively to item 3 above, the *Australian Consumer Law* at all times applied to the construction and operation of the GR Agreement.
5. The GR Agreement contained implied terms to the effect that any person removing graffiti would be:
 - of adult age;
 - capable of speaking English to a reasonable level required of a commercial graffiti removalist;
 - properly trained in the application, use and disposal of Solvents;
 - properly trained in recognising and/or identifying any materials or fabrics likely to be adversely affected or damaged by the application and use of Solvents;
 - provided with and required to wear protective clothing;
 - capable of removing graffiti without undue shouting or abuse in a foreign language
6. The respondent has breached the express and implied terms such that the Claimant was contractually entitled to seek its loss and damage (as claimed) and also to refuse payment of the respondent’s Invoice No. SOC-001 (which amount is also disputed).

A copy of this letter has also been provided to IAMA together with all attached Exhibits Nos. 1 to 14.

Yours sincerely

Rod Brown

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Partner, Brown, Black & White, Lawyers

Cc: IAMA with enclosed Exhibits Nos. 1 to 14.

Exhibit 16

GOLD, SILVER & DIAMOND, LAWYERS

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Mr. R. Brown

Partner

Brown Black & White Lawyers

576 Bourke Street,

Melbourne 3000

17 March 2014

Dear Sir,

**Graffiti Removal Agreement between Industry First Pty Ltd and Social Conscience Pty Ltd;
Acceptance of Notice of Dispute**

We refer to your letter of 14 March 2014 which we have been instructed to accept as a Request for Arbitration and a Notice of Dispute from your client as Claimant.

The Respondent has no objection of a procedural nature, but resolutely denies all claims made by the Claimant in its Notice of Dispute (including in any exhibit thereto).

Further, for the purposes of arbitration, the respondent hereby counterclaims as an action on account and/or in debt for the amount of \$60,000 per its Invoice No. SOC-001 and all interest thereon at the rate of 12% per annum from Invoice date 15/01/2014 to the date of the arbitration.

However, just prior to receipt of your letter of 14 March 2014, we were provided with a Statutory Declaration of Mr. John Nerdle for the Respondent made on 12 March 2014. It is enclosed for your consideration and we will seek its admission for the purposes of the arbitration.

We confirm that a copy of this letter as Acceptance of Notice of Dispute has been forwarded to IAMA with Mr. Nerdle's Statutory Declaration.

Yours sincerely

Stirling Silver

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Partner

CC: IAMA with enclosed Statutory Declaration of Mr. J.M.A. Nerdle made 14/03/2014.

STATUTORY DECLARATION

I, **JOHNATHAN MARK ANTONY NERDLE**, Manager, of 1947 Mount Acheron Way, Kallista, in the State of Victoria do SOLEMNLY AND SINCERELY DECLARE as follows:

1. I am employed by Industry First Pty Ltd of 100 Armidale Street, Dandenong.
2. On 7 January 2014 at about 8.45am, I received a telephone call at work from a person who identified herself to me as "Julie" from Social Conscience Pty Ltd.
3. Julie explained to me that her company's marquee, banners and signage has been subjected to a graffiti attack and required urgent graffiti removal and cleaning. She said the marquee was on the banks of the Yarra River at or near Southbank or Flinders Street Station and was being used for a function extending over that week.
4. I explained to Julie that we (i.e. Industry First) could arrange get a team there urgently for a fixed price of \$50,000 incl GST plus a \$10,000 premium for urgency. I told her the team could be there in about 3 hours once our standard graffiti removal contract was signed and returned because we had many other urgent demands elsewhere. We operate on a "first-in, best-dressed" contract return basis. I faxed the contract with some alterations to Julie at about 9.45am that day.
5. On 7 January 2014, I received the signed contract at about 2.00pm whereupon I immediately telephoned Joe Vasilopoulos at "Graffiti Gangbusters" of Berwick, Victoria who told me he would send his graffiti removal team to the marquee site. All our teams were busy elsewhere. We have a reciprocal private arrangement with "Graffiti Gangbusters" if and when our respective teams are occupied elsewhere.
6. So far as I am aware, Joe told me the next day that his team did a good job removing all the graffiti and there were no complaints about any left-over smudging which often occurs.
7. I did receive an email from a Mr. Arnold Pye the night before which appeared to be complaining about something, but it did not make sense to me as all the graffiti had been removed. In fact, I thought it was prank email from Joe pretending to be Pye (Joe often does that sort of thing).
8. On 8 January 2014 I sent out Invoice No, SOC-001 for \$60,000 to Social Conscience Pty Ltd for payment. It remains unpaid. I am surprised about the non-payment because Julie sounded polite on the phone and we discussed her interests in quilting for some time.

Exhibit 17

BROWN, BLACK & WHITE, LAWYERS

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20 March 2014

Mr. S. Silver
Partner
Gold, Silver & Diamond, Lawyers
872 Collins Street
MELBOURNE 3000

Dear Stirling

**Graffiti Removal Agreement with Social Conscience Pty Ltd
Arbitration: Notice of Dispute & Acceptance**

We refer to your letter of 17 March 2014 and the enclosed Statutory Declaration of Mr. Nerdle.

We are instructed to not make any objection to the admission of the abovementioned Statutory Declaration provided our client has a fair opportunity to respond. In that regard we enclose a Statutory Declaration made by Ms. Crystal Pye yesterday.

Please confirm acceptance for arbitration purposes in due course.

Yours sincerely

Rod Brown

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Partner, Brown, Black & White, Lawyers

Cc: IAMA with enclosed Statutory Declaration of Ms. C. Pye.

STATUTORY DECLARATION

I, **CRYSTAL PEACHES PYE** , Company Director, of 47 Overwrought Avenue, Balwyn, in the State of Victoria do SOLEMNLY AND SINCERELY DECLARE as follows:

1. I am a Director and shareholder of Social Conscience Pty Ltd together with my husband Arnold Pye.
2. On 7 January 2014 at about 8.55am, I received a telephone call from our company's receptionist, Julie Pratz, who told me that our company's large marquee erected near Southbank for an annual function had been the subject of a vast graffiti attack. Julie was vague on detail as my husband Arnold had apparently urgently phoned her, but he suffers a stutter when emotional.
3. Julie explained to me that the company's marquee, banners and signage required extremely urgent graffiti removal and cleaning. She said she had received a contract from Industry First Pty Ltd by fax, and that it contained all the details apparently discussed by her (in consultation with my husband) with a person I now know to be John Nerdle, and for me to return from my manicurist to the office to sign it immediately.
4. I then tried to speak with my husband by mobile but he was incapable of explaining anything to me.
5. Julie told me to sign the contract and I did so as I assumed she had discussed all contractual terms with my husband. I did not read the contract or look at Industry's website. I simply relied on Julie's assurances and then returned to my manicurist because some long false nails had split.
6. From about 10pm on 7 January 2014 to date our business has literally collapsed because, as I now know, Industry First apparently sent a team of children to remove the graffiti. All relevant details can be found in the local newspapers thereafter, including the confirmation that all of the removalists, except for the leader, were in fact underage.
7. I have spent countless hours trying to hold the business together, but our clients simply keep cancelling and/or withdrawing from events, conferences, and even our monthly publications. Social Conscience is close to insolvency and my husband and I have previously guaranteed all its debts in various ways.
8. Apparently on 1 March 2014, I was arrested for wandering around the Melbourne Zoo in my dressing gown, but I cannot recall anything. I have been told by medical staff at the Dandenong South Nerve Management Hospital that I had a break down. My medical costs were about \$27,000 which were paid by the company, subject to any hospital benefit refunds.

9. I confirm that I did not read or understand the Graffiti Removal Contract. I do not recall signing it. I do everything my husband tells me to do.

10. Julie Pratz resigned from Social Conscience shortly afterwards and moved to Nepal.

11. My husband still resides with me, but we hardly speak to each other as he spend most of his time fishing or sleeping. He will not discuss this matter with me at all.

DECLARED at Balwyn Victoria)
this 19th day of March 2014) *C.P. Pye*

Before Me

Donald Donaldson
Justice of the Peace
Dandenong

Exhibit 18

GOLD, SILVER & DIAMOND, LAWYERS

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Mr. R. Brown

Partner

Brown, Black & White Lawyers

576 Bourke Street,

Melbourne 3000

21 March 2014

Dear Sir,

**Graffiti Removal Agreement between Industry First Pty Ltd and Social Conscience Pty Ltd;
Acceptance of Notice of Dispute**

We refer to your letter of 20 March 2014 and will not object to the inclusion of the Statutory Declaration of Ms. Pye made on 19 March 2014 for arbitration purposes.

Yours sincerely

Stirling Silver

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Partner

CC: IAMA