

*The 5th Annual Michael Kirby Contract Law Moot
Melbourne, Australia*

28 September – 1 October 2015

Clarifications

- 1. How similar is the contract in dispute to previous contracts with Parties on Axles? What were these contracts in relation to specifically? Were any of them for this particular event in previous years?**

The contract is based on Parties on Axles' standard terms and conditions so it is largely similar to past contracts, but not identical. Past contracts were for events hosted by clients of Events by D'sign. Parties on Axles has not been contracted for this event in the past.

- 2. In the Statement of Facts (page 4, paragraph 12), Lucy Luxe states that '[o]ur current contracts with you are all cancelled,' to which other contracts is she referring? What are these contracts in relation to and are they current? Do they contain any similar limitations of liability or other terms to those included in the contract in dispute?**

Lucy is referring to current contracts for clients of Events by D'sign, all of which were based on Parties on Axles' standard terms and conditions., including the dispute resolution mechanism

- 3. Are there any issues of a procedural nature that need to be resolved in arbitration before the claims on the merits can be heard? Have either of the parties objected to any of the evidence provided in the exhibits?**

No, there are no procedural issues. Objections to evidence are to be made in party submissions.

- 4. The 'tweet' does not have a time listed, at what time was this post made?**

The tweet was posted during the event (see paragraph 11 of the facts).

- 5. Did Events by D'sign make any deposit or payment for the services provided under the contract in dispute? If so, exactly how much and exactly when were those payments made?**

A \$700 deposit and a \$200 bond were paid at the time of booking, pursuant to the terms and conditions and the contract.

- 6. Who is the secretary for Events by D'sign; is it Gene Starr or Nadia Couch or both? The agreement executed on Page 16 indicates that both are secretaries and both have signed, in what capacity has either or both of these individuals signed the contract? Are either or both of these persons imparted with power of attorney or a less formal authorisation, such as their name and specimen**

signature appearing on a letter of authority or an Authorised Signatories list for Events by D'sign? Has Events by D'sign ever held either of these employees out to Parties on Axles as having any particular authority or status outside of their role?

Both Gene and Nadia are Administrative Secretaries at Events by D'sign but only Gene executed the contract, Nadia merely witnessed her signature. Gene has been asked by both Chloe and Lucy to sign contracts on behalf of the company, on an ad hoc basis, in the past. Gene has never been represented to clients as having any particular authority which binds the company.

- 7. In Exhibit 3, p 15, clause 16(f) the bus' schedule is listed as being included in Schedule 1 of the contract. The contract also stipulates that the party host will ensure all event guests are out of the venues at the designated times, also in accordance with Schedule 1 (clause 6.4). Are we able to obtain a copy of this part of Schedule 1 of the contract?**

This is not relevant as it is clear from the problem that the schedule was not adhered to.

- 8. The invoice for the replacement hummer has the time of 8:30PM listed on it, does this represent the time at which the invoice was paid, the time at which payment was due or the time at which it was provided for the purpose of future payment?**

This is the time at which the invoice was printed following the booking request.

- 9. It is stated that Events by D'sign employees were 'doing the best that they can'. Between 7pm and the time at which the hummer arrived, what exactly was done by Events by D'sign employees to attempt to resolve the situation, aside from Lucy leaving Charlie a voicemail?**

Events by D'sign employees arranged for alternate transport (ie the hummer) and ensured that their guests were entertained during this period.

- 10. Did the senior employee referred to at p. 4 [13] attempt to contact other Hummer or limousine services for more competitive quotes?**

No, given the urgency of the matter, the senior employee contacted Events by D'signs usual hire contact.

- 11. Did anyone from Parties on Axles inform anyone from Events by D'sign that the bus would arrive late?**

No, they did not.

- 12. What time did Lucy leave the voicemail for Charlie on 20 June?**

Lucy called Charlie that night (see paragraph 12 of the problem), at approximately 8:22pm.

- 13. Would the same traffic which delayed Parties on Axles have caused significant delay (delays which could throw off the schedule) to any of the five event venues?**

Had Parties on Axles been on time, this would not have been an issue as the other events were going against traffic.

- 14. Did Events by D'sign make any attempts to contact any of the five venues to inform them of the potential for late arrival so that the venues had the option to make other arrangements?**

No, this is the responsibility of the Party Host provided by Parties on Axles.

- 15. The bus arrived at 7:30PM at Federation Square on 20 June; if there were only 40 customers, would the guests have arrived at the first venue on time? Was Events by D'sign going to be in breach of contract with the venues regardless of the buses capacity for people, due to the lateness of the buses arrival and traffic?**

No, the guests would have been late regardless as the first venue was more than 30 minutes from Federation Square.

- 16. Prior to the event of 20 June, was Parties on Axles aware, or reasonably able to make themselves aware, of the congestion which resulted from the football game and major concert which took place in the same area?**

Yes, given that Parties on Axles supplies party transportation, it should make itself aware of traffic conditions between venues on any given night. This is with the exception of unforeseen circumstances, such as accidents.

- 17. Does Events by D'sign's company constitution require a company seal for executing company documents? Does the company constitution define the power of 'administration officers'?**

Events by D'sign's company constitution does not require a company seal for the execution of documents nor does it define the power of 'administration officers'.

- 18. Did Parties on Axles or Events by D'sign draft the Customer Specifications, in particular Clause 16(f), (a), (e); 6.1 and 6.2?**

Events by D'sign drafted the Customer Specifications but these were agreed to by Parties on Axles, as evidenced by the executed contract.

- 19. We note that some guests were leaving the party (Statement of Facts, [12], p. 4). How many guests left, and at what time did they leave?**

Five guests left at various intervals throughout the evening.

- 20. On how many occasions has Events by D'sign contracted with Parties on Axles? Have prior events involving Parties on Axles involved the use of the Night Crawler? Have there, at any point, been problems with Parties on Axles in the past?**

Events by D'sign have contracted with Parties on Axles numerous times in the past, without issue as evidenced by the references to the good relationship between the companies. As the Night Crawler is the newest bus in the fleet, it has not been used by Events by D'sign in the past.

- 21. The contract between the parties (Exhibit 3) notes the existence of Schedule 1. What was contained within schedule 1? What time did the bus arrive at each venue? Regarding the fourth venue, on what basis was entry denied? We note that Exhibit 7, para 3, page 24 specifically highlights that entry slots were missed for the first two venues, but nothing about the fourth.**

Schedule 1 outlined the time schedule for each venue, which allowed Parties on Axles ample time to move guests from one venue to another, allowing for potential stragglers and possible traffic. The bus entirely missed the entry slot for the first two venues due to the delay in leaving Federation Square. The bus arrived on time to the third venue and entry was denied at the fourth venue as the number of guests had dropped below the minimum number required by the venue for private entry.

- 22. Was there, at any time, modification of the plan outlined in Schedule 1, and if so, by whom?**

Not to the knowledge of Events by D'sign. As Events by D'sign was not notified of the fact that there had been mechanical issues, nor that a different bus was being sent to collect their party guests, they were not in a position to modify the times outlined in Schedule 1. This was the responsibility of the Parties on Axels' Party Host and it is clear from the fact that entry slots were missed, that no changes were communicated to the venues.

- 23. Did the Night Cruiser bus meet the specifications outlined in clause 16 of the contract?**

The Night Cruiser has a maximum capacity of 40 people and therefore does not comply with clause 16(a).

- 24. Is the discrepancy between Clauses 6.2 and 16(a) a typographical error or were Parties on Axles aware of the differences between the two clauses?**

There was no typographical error; this is a matter for submission.

- 25. When did Parties on Axles become aware that there were mechanical issues for the "Night Crawler" bus? At what point did Charlie, specifically, become aware? Was the bus serviced regularly? Were there any similar instances of mechanical issues that occurred previously?**

Parties on Axles became aware of the mechanical issues just prior to leaving the depot, whilst conducting a final inspection of the vehicle. A voice message was left on Charlie's phone advising him of the situation and the decision to use the Night Cruiser bus, prior to leaving for Federation Square. All of Parties by Axel's busses are serviced on a regular basis. Similar instances of mechanical issues have not occurred previously with the Night Crawler as this is a new bus.

- 26. Aside from hiring the ‘Hummerzine’, were there any steps taken to mitigate the situation? Specifically, were guests told anything of what was going on, or steps that were being taken to resolve the situation?**

Given that Events by D’sign was not made aware of any issues by Parties on Axels until the busses arrival, it was unable to mitigate the situation from the outset. Guests were made aware of the issue that had arisen with the smaller bus being sent and were also informed that the Hummerzine had been hired and was on its way.

- 27. Is Parties on Axles seeking damages or compensation for the cancellation of future contracts (ie. Counter-claiming)?**

This is a matter for party submissions.

- 28. On what date was the initial booking made? On what date was the deposit paid? Was there an invoice issued in relation to the deposit by Parties on Axles, and if so, what amount was on the invoice?**

The booking was made on 11 May 2015 (see Exhibit 1C). The \$200 bond and \$700 deposit were both paid on 14 May 2015, following execution of the contract. Events by D’sign received an invoice at this time for the amount paid to date and the amount remaining.

- 29. How much is the hire of the Night Cruiser?**

The Night Cruiser is \$3,800 to hire and the deposit would have only been \$350 but the bond would have been the same.

- 30. Did Parties on Axles know of the exact number of guests attending the event on the date RSVP was due?**

No, they did not know the exact number of guests attending but knew that it would be in the vicinity of 40-50 people. There was no alternative 50 seater bus available so this would not have impacted on the vehicle sent in place of the Night Crawler.

- 31. Is there a clause which references the standard terms and conditions that were sent via attachment in the email of the 11.5 (exhibit 1B)?**

Yes, these are expressly included in the contract.

- 32. We note that a ‘Chris’ Speedway signed the contract (Exhibit 3), page 16. His title is CEO. Are teams to assume that this should read ‘Charlie’ Speedway?**

Yes, this is a typographical error in the problem. The contract cannot be avoided on this basis.

- 33. Is the name of the signator on the Contract a typographical error, and is intended to read Chloe D’Sign? (see page 16)**

The name of the signator should read Chloe D’Sign. The contract cannot be avoided on this basis.

34. Is Lucy Luxe Events by D'sign's Event Coordinator or Director?

Lucy Luxe holds both positions within the company.

35. The Standard Terms and Conditions was sent via email to Events by D'sign (Exhibit 1B). Was the actual contract included in that email, or was it sent following the email in Exhibit 1C?

The contract was sent on 11 May (Exhibit 1C) prior to the bond and the deposit being paid.

36. What industry does MarkG work in, and what position does he hold? What number of followers (if any) does MarkG's twitter account have?

MarkG is a socialite and as such he has over 4,000 followers on Twitter.

37. Is '@Events by D'sign' the official account of the company?

Yes.

38. We note that Exhibit 6B states that "social media has a good handle on it". Is Stace Grae referring to the tweet in Exhibit 4, or other social media posts? If they are other posts, what type of controversy arose in social media, and when?

Stace Grae is referring to the tweet in Exhibit 4, the copious number of re-tweets that followed and other irate social media posts encouraging people to boycott Event by D'sign.

39. We note that at [10] of the Statement of Facts, 50 people were waiting for the bus. Was this reflective of RSVPs? Were there any unexpected guests that arrived without RSVPing? Were there any RSVPs that arrived after the due date of May 15 (Exhibit 2)?

There were only 2 unexpected guests who arrived, the rest had RSVPd to the event. All other replies were received by the RSVP date.

40. What time does the bus leave? That is, how much time was allotted for travel?

The bus departed Parties on Axel's depot approximately 1 hour before it was due to arrive at Federation Square which is a 40 minute drive from the depot.

41. How much did Events by D'sign earn in the last financial year?

Events by D'sign earned \$472,000 in the last financial year.

42. How much did Parties on Axles earn in the last financial year? What are their assets?

Parties on Axles earned approximately \$359,000 in the last financial year. It has 14 busses in its fleet which constitute the company's assets.

43. When were the Respondent and the Claimant's companies established?

Parties on Axles was established in 2010 and Events by D'sign was established in 2005 and is celebrating its 10th birthday (see paragraph 6 of the Statement of Facts).

44. Did the Respondent have a prevailing practice with the Claimant or its other customers to notify them when it would provide an alternative bus pursuant to clause 6.3 on p. 15 of the Contract?

Such a scenario had not previously arisen between Parties on Axles and Events by D'sign but it is understood that Parties on Axles has on occasion called its clients if alternate transportation is required so that there is no disharmony upon pick-up.

45. Is there a reason the Parties' deviated from the ACICA Standard Clause by omitting "or in connection with this Contract"?

No.

46. Has the Claimant complied with the ACICA Rule 4 and the Respondent complied with ACICA Rule 5?

Yes, they have each replied with their respective obligations.

47. Has the Tribunal been validly constituted pursuant to the rules contained in Section II of the ACICA Rules?

The Tribunal has been validly constituted. Submissions should focus on the substantive issues at hand.

48. Would fewer costs have been incurred if the Claimant made a decision to forego the first 2 venues?

This is a matter for party submission.

49. Are there any corrections to be made by the Parties in the statement of facts? P. 5 [21] – is "Costs paid pursuant to contacts with..." meant to be "Costs paid pursuant to contracts with..."

This is a typographical error and should read "Costs paid pursuant to contracts with..."