



FORM 5A

Rule 5.02(1)

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

Case: S ECI 2020 03679

Filed on: 21/09/2020 03:16 PM

B E T W E E N

No.

DRAGAN MARKOVIC

Plaintiff

-and-

**UNIFIED SECURITY GROUP (AUSTRALIA) PTY LTD
(ACN 138 976 397)**

First Defendant

-and-

MSS SECURITY PTY LTD (ACN 100 573 966)

Second Defendant

WRIT

Date of Document: 21 September 2020
Filed on behalf of: The Plaintiff
Prepared by:
Arnold Thomas & Becker Lawyers
573 Lonsdale Street
Melbourne Victoria 3000

Solicitors Code: 38
DX: 318
Telephone: (03) 9614 1433
Ref: KP MARK – D
Email: kprice@arnoldthomasbecker.com.au

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED *[insert date]*

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
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MAJOR TORTS LIST

No.

B E T W E E N

DRAGAN MARKOVIC

Plaintiff

-and-

**UNIFIED SECURITY GROUP (AUSTRALIA) PTY LTD
(ACN 138 976 397)**

First Defendant

-and-

MSS SECURITY PTY LTD (ACN 100 573 966)

Second Defendant

STATEMENT OF CLAIM

Date of Document: 21 September 2020
Filed on behalf of: The Plaintiff
Prepared by:
Arnold Thomas & Becker Lawyers
573 Lonsdale Street
Melbourne Victoria 3000

Solicitors Code: 38
DX: 318
Telephone: (03) 9614 1433
Ref: KP MARK – D
Email: kprice@arnoldthomasbecker.com.au

1. This proceeding is commenced as a representative proceeding pursuant to s33C of the *Supreme Court Act 1986 (Vic)*.

Preliminary

2. In or about late December 2019, novel coronavirus known as SARS-CoV-2 (**COVID-19**) was identified in humans in Wuhan, China.
3. By January 2020, COVID-19 was spreading rapidly throughout the world.
4. On 11 March 2020, the World Health Organisation declared COVID-19 a global pandemic after the disease caused by the novel coronavirus had spread to more than 100 countries

and led to more than 100,000 cases worldwide, with more than 4,000 deaths attributed to the disease.

5. On 16 March 2020, the Minister for Health in the State of Victoria declared a state of emergency in Victoria under section 198 of the *Public Health and Wellbeing Act 2008 (Act)*, activating a range of public health and emergency powers *inter alia* in section 200 of the Act.
6. On 16 March 2020, the Chief Health Officer of Victoria, Professor Brett Sutton issued a direction pursuant to the Act in the following terms:

“A person who arrives at an airport in Victoria on a flight that originated from a place outside of Australia, or on a connecting flight from such a flight, must go into immediate compulsory isolation for 14 days at a premises that is suitable for them to reside in for 14 days.

“Returnees must not leave their residence under any circumstances unless they have permission.

“Returnees must not permit any other person to enter their room, unless the person is authorised to be there for a specific purpose (for example food or medical reasons).”

7. On 28 March 2020, the Victorian Deputy Chief Health Officer issued a further direction pursuant to the Act advising travellers returning to Australia on or after 28 March that they will be detained for a period of 14 days in a room at a designated hotel (**Hotel Quarantine Program**).
8. In or around May and June 2020:
 - (a) travellers returning to Australia infected with COVID-19 were transported to the Rydges Hotel, 701 Swanston Street, Carlton (**Rydges Hotel**) and the Stamford Plaza Melbourne Hotel, 111 Little Collins Street, Melbourne, (**Stamford Plaza Hotel**) as part of the Hotel Quarantine Program;
 - (b) persons working in the Hotel Quarantine Program at Rydges Hotel and the Stamford Plaza Hotel subsequently became infected with COVID-19 (**infected persons**);
 - (c) some or all of the infected persons came into contact with members of the broader community in Victoria;
 - (d) some or all of the infected persons transmitted COVID-19 to members of the community in Victoria, who in turn transmitted the disease to other persons.

9. From May 2020:
- (a) genomic clusters of COVID-19 cases originating at Rydges Hotel and the Stamford Plaza Hotel and transmitted to the community in Victoria have been identified through genomic sequencing (**Hotel Quarantine clusters**);
 - (b) COVID-19 spread widely across the Victorian community through ongoing transmission of the Hotel Quarantine clusters (**Hotel Quarantine outbreak**);
 - (c) apart from the Hotel Quarantine clusters, there has been no ongoing transmission of any other known genomic clusters within Victoria.
10. On 30 August 2020, Nenad Markovic died after contracting COVID-19.

The Plaintiff

11. The plaintiff is the son of Nenad Markovic.
12. The plaintiff brings this proceeding on his own behalf and on behalf of the group members.

Group Members

13. The group members to whom this proceeding relates are:
- (a) the legal personal representatives of the estates of any deceased persons who died from COVID-19 as a result of the Hotel Quarantine outbreak;
 - (b) all those persons who suffered psychiatric injury (as defined below) as a result of the death of a person who died from COVID-19 as a result of the Hotel Quarantine outbreak;
 - where “psychiatric injury” in this group means nervous shock or another psychiatric or psychological injury, disturbance, disorder or condition which has been diagnosed as such in a diagnosis given to the person by a medical practitioner prior to 30 June 2021; and
 - (c) all those persons who suffered personal injury, loss and damage as a result of contracting COVID-19 as a result of the Hotel Quarantine outbreak;
 - (d) all those persons who were dependants of persons who died from COVID-19 as a result of the Hotel Quarantine outbreak; and
 - (e) the legal personal representatives of the estates of any deceased persons who came within one or more of paragraphs 5(a) to 5(d)
- (group members).**
14. As at the time of the commencement of this proceeding there are seven or more group members.

The Defendants

15. Each of the first defendant (**Unified**) and the second defendant (**MSS**) at all relevant times:
- (a) was and is a corporation capable of being sued;
 - (b) carried on business as a provider of security services in Victoria.

The Unified and MSS Contracts

16. By contracts made on or about 28 March 2020, the State of Victoria engaged Unified and MSS to provide security services for management of returned travellers within the Hotel Quarantine Program (**Unified and MSS Contracts**).

Particulars

Further particulars shall be provided following discovery.

17. Pursuant to the Unified and MSS Contracts, Unified and MSS were required to perform services, including the supply of security guards for management of returned travelers within the Hotel Quarantine Program at:
- (a) Rydges Hotel;
 - (b) Stamford Plaza Hotel (**Services**).

General Duty of Care

18. At all relevant times from on or about 28 March 2020, Unified and MSS:
- (a) had the right, to the exclusion of other private persons:
 - (i) to implement security and infection control measures within the Hotel Quarantine Program for returned travellers at Rydges Hotel and/or the Stamford Plaza Hotel to prevent spread of COVID-19; or
 - (ii) give directions to employees, contractors, agents and returned travellers as to security and infection control measures at Rydges Hotel and/or the Stamford Plaza Hotel to prevent spread of COVID-19;
 - (b) exercised the right referred to in (a) above; and
 - (c) in the premises, had control over persons at the Rydges Hotel and/or the Stamford Plaza Hotel.
19. At all relevant times:
- (a) COVID-19 was a respiratory disease, that is highly infectious, transmissible by face-to-face contact, and also contact with surfaces that an infected person has contacted (fomite transmission); and
 - (b) COVID-19 was a disease which is infectious whilst a person is asymptomatic;

- (c) travellers returning to Victoria from overseas had been identified by Victorian public health officials as posing the highest risk of COVID-19 infection to the community;
- (d) returned travelers in the Hotel Quarantine Program created a risk of unintended transmission of COVID-19 from infected persons to others;
- (e) the purpose of the directions made pursuant to the Act and the contractual arrangements entered into in relation to the Hotel Quarantine Program was either to eliminate or reduce the public health risk posed by COVID-19 by containing its spread from returned travellers into the community;
- (f) COVID-19 was highly dangerous in that it was capable of causing death or serious injury to persons, by:
 - (i) respiratory failure;
 - (ii) organ failure; further or alternatively
 - (iii) complications as a result of (i) and/or (ii);
- (g) in the premises (a) to (f) inclusive, the implementation of security and infection control measures in managing the Hotel Quarantine Program at Rydges Hotel and/or the Stamford Plaza Hotel was a dangerous activity; and
- (h) Unified and MSS, through their officers, employers or agents knew, or ought reasonably to have known from no later than 28 March 2020 the matters set out in (a) to (g) inclusive above.

20. At all relevant times it was reasonably foreseeable to Unified and MSS that:

- (a) persons in hotel quarantine infected with COVID-19 might infect other persons in hotel quarantine exposed to the disease if appropriate control measures were not in place and implemented correctly; and
- (b) if security guards employed or engaged by them working within the Hotel Quarantine Program for returned travellers at Rydges Hotel and/or the Stamford Plaza Hotel (**security guards**) were infected this might result in one or more family members of, and/or other persons within close personal contact with, that security guard contracting the disease; and
- (c) if one or more persons in the Victorian community contracted the disease, it might spread amongst other persons in Victoria, and throughout Australia; and
- (d) COVID-19 could cause death or injury to persons;
- (e) persons with a close relationship with a person who died from COVID-19 might suffer psychiatric injury; and
- (f) dependants of a person who died from COVID-19 might suffer loss and damage.

21. The Services were provided by Unified and MSS to the State of Victoria in order to eliminate or reduce the public health risk posed by COVID-19 by containing its spread from returned travellers into the community.
22. The purpose of the Contract thereby included the mitigation of risks associated with COVID-19, including the risks identified in paragraph 19 above (**risks**).
23. By performing the Services pursuant to the Unified and MSS Contracts, Unified and MSS had responsibility for and control over the risk that COVID-19 might spread from returned travellers at Rydges Hotel and/or the Stamford Plaza Hotel into the community.
24. At all relevant times, members of the public who might be in face-to-face contact with a person infected with COVID-19 from the Hotel Quarantine outbreak, or contact a surface(s) that that infected person had been in contact with (**Class**):
- (a) had no ability, or no practical and effective ability, to prevent or minimize the risk of the Hotel Quarantine outbreak occurring; and
 - (b) were vulnerable to the impact of such outbreak; and consequently
 - (c) were to a relevant degree dependent, for the protection of their persons, upon Unified and MSS:
 - (i) exercising reasonable care in carrying out the Services under the Unified and MSS Contracts;
 - (ii) exercising reasonable care to ensure that the Hotel Quarantine Program at Rydges Hotel and/or the Stamford Plaza Hotel was implemented safely and that COVID-19 was not spread from returned travellers into the community.

Particulars

Genomic sequencing by the Microbiological Diagnostic Unit Public Health Laboratory at the University of Melbourne for the Victorian Department of Health and Human Services indicates that at least 99.8% of COVID-19 cases in Victoria since May 2020 originated from the Hotel Quarantine Program.

25. In the premises, throughout the period during which it performed the Services, Unified and MSS owed to the Class a duty:
- (a) to take reasonable care, by its officers and servants; and
 - (b) to ensure that reasonable care was taken, by its agents or contractors;
- to eliminate or reduce the risk that COVID-19 was not spread from returned travellers at Rydges Hotel and/or the Stamford Plaza Hotel into the community (**Duty**).
26. At all material times, the plaintiff and group members were persons within the Class.

27. In the premises set out in the preceding paragraph, at all relevant times Unified and MSS owed the Duty to the plaintiff and the group members.

Breach of Duty

28. At all relevant times, the probability of the risks (alleged in paragraph 19 above) materialising was not insignificant by reason of the infectious nature of COVID-19.
29. In the circumstances:
- (a) the probability that the harm referred to in paragraph 20 would occur if Unified and MSS failed to take reasonable care to avoid the materialisation of the risks was not insignificant;
 - (b) in the event that the risks materialised, the harm was potentially catastrophic;
 - (c) any burden to Unified and MSS in taking precautions to avoid the risks was slight and not unreasonable having regard to the cost of taking precautions, the probability of the risks materialising and the seriousness of the harm;

Particulars

So far as Unified and MSS's performing obligations under the Unified and MSS Contracts are concerned, no additional burden would have arisen in undertaking them with due skill and care.

- (d) there was no social utility permitting COVID-19 to spread from returned travellers at Rydges Hotel and/or the Stamford Plaza Hotel into the community.
30. The Hotel Quarantine outbreak was caused by breaches by Unified and MSS of the Duty.

Particulars of Breach

- (a) Failing to prevent the transmission of COVID-19 from returned travellers to persons working in the Hotel Quarantine Program;
- (b) failing to make any, or any adequate, enquiry prior to May 2020 into the nature and extent of restrictions in Victoria, appropriate control measures in managing a hotel quarantine program for returned travellers, and the risk of exposure to and probable rate of spread of the disease;
- (c) failing to determine, prior to the relevant period, that the nature of COVID-19 was such that it was inevitable that security guards or other staff would contract the disease if appropriate control measures within the Hotel Quarantine Program for returned travellers at Rydges Hotel and/or the Stamford Plaza Hotel were not in place and implemented correctly;

- (d) failing to have any or any appropriate control measures in managing a hotel quarantine program for returned travellers at Rydges Hotel and/or the Stamford Plaza Hotel;
- (e) failing to manage infection control to prevent spread of COVID-19;
- (f) failing to implement appropriate control measures in managing a hotel quarantine program for returned travellers at Rydges Hotel and/or the Stamford Plaza Hotel;
- (g) failing to review the appropriateness of security arrangements from 28 March 2020 to May 2020 to eliminate or minimize the risk that COVID-19 was not spread from returned travellers into the community;
- (h) failing to provide security guards infection control training;
- (i) failing to provide adequate and ongoing education to security guards as to infection control measures;
- (j) failing to ensure security guards complied with protocols and requirements of *Infection Control Training - COVID 19* – (<https://www.health.gov.au/resources/apps-and-tools/covid-19-infection-control-training>);
- (k) failing to implement adequately or at all infection control guidelines;
- (l) failing to provide any or any adequate supervision of security guards;
- (m) failing to instruct and ensure security guards used personal protective equipment (**PPE**) correctly to prevent spread of COVID-19;
- (n) failing to supply any or any adequate PPE to security guards;
- (o) failing to direct security guards to tell superiors if experiencing any symptoms or if feeling unwell;
- (p) permitting quarantined guests to share elevators and toilets with other guests and staff;
- (q) failing to address complaints regarding the conduct of security guards as to infection control issues, including misuse of PPE, interaction and inappropriate contact between security guards and guests, cleaning and lack of social distancing;
- (r) failing to clean adequately or at all communal areas including elevators used to transport COVID positive cases;
- (s) failing to prevent fomite spread from poor cleaning products being utilised, inadequate PPE used by security guards, and a lack of education surrounding cleaning practices;
- (t) failing to prevent security guards from interacting with each other, other staff and hotel guests;

- (u) failing to ensure security guards were appropriately engaged, trained, managed and supervised.

31. As a result of the Hotel Quarantine outbreak, Nenad Markovic and other persons died, and other persons were injured.

Particulars

Further particulars of the death and injury of other persons shall be provided following the determination of the plaintiff's claim and the common questions referred to below.

Causation and Loss and Damage

32. By reason of the breaches of the Duty by Unified and/or MSS alleged above, the plaintiff and each of the group members suffered loss and damage of the kinds referred to in paragraph 20 above.

Particulars of loss and damage

The plaintiff suffered psychiatric injury, loss and damage.

Particulars of the plaintiff's loss and damage will be provided prior to trial.

Particulars relating to individual group members will be provided following the trial of common questions.

Common Questions of Law or Fact

33. The questions of law or fact common to the claims of the plaintiff and each of the group members are:
- (a) how COVID-19 was transferred from infected returned travelers in the Hotel Quarantine Program to the Victorian community;
 - (b) whether Unified and MSS owed a common law duty of care to the plaintiff and group members, and if so the content of the duty;
 - (c) if Unified and MSS owed such a common law duty of care, whether Unified and MSS breached that duty;
 - (d) if Unified and MSS breached a common law duty, was such breach a cause of any losses sustained by any claimants and/or class of claimants;
 - (e) what are the principles for identifying and measuring compensable losses suffered by the claimants resulting from the breaches alleged.

AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of the group members:

- A. Damages
- B. Interest
- C. Costs

Tim Tobin SC
Andrew Fraatz

Arnold Thomas & Becker

.....
Arnold Thomas & Becker
Solicitors for the Plaintiff

1. Place of trial— Melbourne
2. Mode of trial— Judge and jury of six.
3. This writ was filed— for the plaintiff by Arnold Thomas & Becker Lawyers of 573-577 Lonsdale Street, Melbourne VIC 3000
4. The address of the plaintiff is— 18A Lahy Street St Albans VIC 3021
5. The address for service of the plaintiff is— C/- for the plaintiff by Arnold Thomas & Becker Lawyers of 573-577 Lonsdale Street, Melbourne VIC 3000
6. The email address for service of the plaintiff is— kprice@arnoldthomasbecker.com.au
7. The address of the first defendant is— Level 5, 350 Kent Street, Sydney NSW 2000
8. The address of the second defendant is - Level 2, 63-79 Parramatta Road, Silverwater NSW 2128

Service and Execution of Process Act 1992**NOTICE TO DEFENDANT*1***

PLEASE READ THIS NOTICE AND THE ATTACHED DOCUMENT VERY CAREFULLY

IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE

Attached to this notice is a *Writ and Statement of Claim* ("the attached process") issued out of the *Supreme Court of Victoria*.

Service of the attached process outside (*State or Territory of issue*) is authorised by the Service and Execution of Process Act 1992.

YOUR RIGHTS

If a court of a State or Territory other than (*State or Territory of issue*) is the appropriate court to determine the claim against you set out in the attached process, you may be able to:

^{*2*}have the proceeding stayed by applying to the (*issuing court*).

^{*3*}apply to the Supreme Court in (*State or Territory of issue*) to have the proceeding transferred to another Supreme Court, or another superior court.

If you think the proceeding should be stayed or transferred you should get legal advice as soon as possible.

CONTESTING THIS CLAIM

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.

^{*4*}If you want to contest this claim, you must also file an appearance^{*5*} in the (*issuing court*). You have only 21^{*6*} days after receiving the attached process to do so.

The appearance^{*5*} must contain

^{*7*}an address in Australia where documents can be left for you or sent to you.

^{*8*}your address.

^{*1*}If the person to be served is not described in the process as a "defendant" substitute the correct description.

^{*2*}Omit if the court of issue is a Supreme Court.

^{*3*}Omit if court of issue is not a Supreme Court.

^{*4*}If the defendant need not enter an appearance (as defined in section 14 of the Act) in order to contest the claim, omit this paragraph and the remainder of the form.

^{*5*}If the document that must be filed is not called an appearance, substitute the correct name.

^{*6*}If the issuing court has allowed a shorter period than 21 days for filing an appearance, substitute that shorter period and disregard the next paragraph.

If the law of the State or Territory of issue would allow a longer period than 21 days for filing an appearance in the case of service within the State or Territory, substitute that longer period. If that law would allow different periods for service within the State or Territory, depending on the place of service, and at least one of those periods would be longer than 21 days, substitute the longest of those periods.

NB: This note is a summary, for guidance only, of subsections 17 (1) and (1A) of the Act. The applicable period under those provisions must be stated.

^{*7*}Omit if appearance is not required to set out an address for service.

^{*8*}Omit if appearance is required to set out an address for service.