

AMENDED COMMERCIAL LIST RESPONSE (DEFENCE) of the FIFTH DEFENDANT

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	The Commercial List
Registry	Sydney
Case number	2015 / 332497

TITLE OF PROCEEDINGS

Plaintiff	Ian Henry Mackinnon as plaintiff representative of 153 plaintiff group members
First defendant	The partnership of Anne Patricia Larter, Alan Jones, Miraleste Pty Ltd (trading as USG Partner) and Leigh Johnson, trading as "STC Sports Trading Club" (ABN 92 914 683 823) (First Defendant)
Number of defendants	12

FILING DETAILS

Filed for	Fifth defendant
Filed in relation to	Plaintiff's Commercial List Statement
Contact email	leighjohnsonlaw@gmail.com

A. Fifth Defendant's RESPONSE – Nature of Dispute

1. The fifth defendant denies membership of the first defendant and being materially involved with its activities.
2. The fifth defendant admits she resigned as a passive and non active member of an entity she understood to be a limited partnership styled "The Sports Trading Club Partnership" on or about 21 January 2014, following a dispute about governance with the second defendant, Ms Larter, but denies involvement in or knowledge of its activities during her membership of the limited partnership.
3. The fifth defendant denies any membership of and responsibility for, an entity styled "STC Sports Trading Club".
4. The fifth defendant denies running a purported sports betting and trading scheme styled "Sports Trading Club", either herself, or as an alleged member until 21 January 2014, of the first defendant.
5. So far as the fifth defendant is presently aware, "Sports Trading Club" was a business run entirely by the 12th defendant (Foster) and the second defendant (Larter).

6. The fifth defendant denies either herself, or as an alleged member until 21 January 2014 of the first defendant, making any representations which were relied on by the plaintiffs when contracting with the defendants.
7. The fifth defendant denies either herself or as an alleged member until 21 January 2014 of the first defendant, contracting with the plaintiffs, and has no knowledge of any contracts entered into by any of the plaintiffs with any defendants for any purpose.
8. The fifth defendant denies either herself, or as an alleged member until 21 January 2014 of the first defendant, soliciting or receiving directly or indirectly any money by way of investment loans or otherwise from the plaintiffs.
9. The fifth defendant was at all material times unaware of any involvement or activities by the twelfth defendant in relation to the Sports Trading Club and did not participate with him in any such activities.
10. The fifth defendant is a stranger to the Plaintiffs and denies communicating with any of the Plaintiffs in regard to the matters complained of or at all.
11. The fifth defendant on 2 June 2016 requested further Particulars from the Plaintiffs following their inadequate response to the fifth defendant's prior request.
12. The Plaintiffs by email on 14 June 2016 have declined to further respond, noting the absence of current orders requiring them to respond.

B. RESPONSE – Issues likely to arise

1. The true nature and extent of the fifth defendant's involvement in the matters complained of as causing loss to the Plaintiffs, in circumstances where the Plaintiffs were apparently loaning money to a sports betting syndicate for sports betting purposes.
2. Whether the fifth defendant should be a party to these proceedings at all.
3. The conduct of the fifth defendant on which reliance was allegedly placed by the individual Plaintiffs when allegedly investing on each occasion they invested.
4. The fact of each investment in circumstances where the Plaintiffs were apparently loaning money to a sports betting syndicate for sports betting purposes.
5. The terms of each investment or loan.
6. The fact of any breach of the terms thereof by the fifth defendant.
7. The fact of loss to individual Plaintiffs in circumstances where the Plaintiffs were apparently loaning money to a sports betting syndicate for sports betting purposes.
8. The causal nexus between the fifth defendant's conduct and any alleged loss to individual Plaintiffs, in circumstances where the Plaintiffs were apparently loaning money to a sports betting syndicate for sports betting purposes.

C. RESPONSE – to Plaintiff’s Contentions

1. Admitted
2. Admitted as to bring proceedings on his behalf. Denied as to the Plaintiff’s entitlement to represent other Plaintiffs where each invested individually presumably for their own reasons in a sports betting syndicate.
3. Denied, the Plaintiff was a passive and non active member of an entity, which she understood was a limited partnership styled “The Sports Trading Club Partnership,” until she resigned following a governance dispute with the second defendant on 21 January 2014. The fifth defendant was not at any time in a partnership styled “STC Sports Trading Club” and denies having any involvement with the sixth defendant.
4. The fifth defendant does not know and cannot admit the allegations.
5. The fifth defendant does not know and cannot admit the allegations.
6. The fifth defendant does not know and cannot admit the allegations.
7. The fifth defendant resigned from “The Sports Trading Club Partnership” on 21 January 2014 but denies membership of the partnership alleged.
8. The fifth defendant does not know and cannot admit the allegations.
9. The fifth defendant does not know and cannot admit the allegations.
10. The fifth defendant does not know and cannot admit the allegations.
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15. The fifth defendant does not know and cannot admit the allegations.
16. The fifth defendant does not know and cannot admit the allegations.
17. Admitted
18. The fifth defendant does not know and cannot admit the allegations.
19. The fifth defendant repeats the items under ‘Issues likely to arise’ as above.
20. The fifth defendant does not know and cannot admit the allegations.
21. The fifth defendant denies making the representations. The fifth defendant denies she was a party to, or aware of, the document entitled “Sports Trading Club Associate Member Proposal”, any circulation of that document to the Plaintiffs, and any alleged reliance by them upon it, until it was furnished to her by the plaintiffs’ solicitors in the course of these proceedings.
22. The fifth defendant does not know and cannot admit the allegations.
23. The fifth defendant does not know and does cannot admit the allegations.
24. The fifth defendant denies any communications with the Plaintiffs or involvement in any agreements or contracts with them and otherwise does not know and cannot admit the allegations.
25. The fifth defendant denies any communications with the Plaintiffs or involvement in any agreements or contracts with them and otherwise does not know and cannot admit the allegations.
26. The fifth defendant does not know and cannot admit the allegations.
27. The fifth defendant does not know and cannot admit the allegations.
28. The fifth defendant denies any involvement in the alleged offer and otherwise does not know and cannot admit the allegations.
29. The fifth defendant does not know and cannot admit the allegations.
30. The fifth defendant does not know and cannot admit the allegations.

31. The fifth defendant denies any fraud as alleged against her and otherwise does not know and cannot admit the allegations.
32. The fifth defendant denies making any representations to the Plaintiff and does not know and cannot admit the allegations.
33. The fifth defendant denies the allegations made in respect of the fifth defendant.
34. The fifth defendant denies fraud and does not know and cannot admit the allegations.
35. The fifth defendant denies making representations and does not know and cannot admit the allegations.
36. The fifth defendant denies making representations and does not know and cannot admit the allegations.
37. The fifth defendant denies making representations and does not know and cannot admit the allegations.
38. The fifth defendant does not know and cannot admit the allegations stated.
39. The fifth defendant denies any conspiracy and otherwise does not know and cannot admit denies the allegations.
40. The fifth defendant denies the allegations made in respect of the fifth defendant.
41. The fifth defendant does not know and cannot admit the allegations.
42. The fifth defendant does not know and cannot admit the allegations. The fifth defendant denies the allegations made in respect of the fifth defendant.
43. The fifth defendant denies the allegations made in respect of the fifth defendant.
44. The fifth defendant does not know and cannot admit the allegations stated.
45. The fifth defendant does not know and cannot admit the allegations stated.
46. The fifth defendant does not know and cannot admit the allegations stated.
47. Further or in the alternative the fifth defendant says that, if any of the plaintiff's allegations against any other defendant herein are found proven and constitute an event which made it unlawful for the business of a partnership of which the fifth defendant is found to have been a member to be carried on, or for the members of that firm to carry it on in partnership, that firm was automatically dissolved by force of s. 34 of the *Partnership Act 1892*.

Particulars of unlawful events in the Statement of Claim

- (a) The making of any of the "Representations" referred to in paragraph C22;
 - (b) Any act or omission constituting a breach of contract referred to in clause C30;
 - (c) Any act of fraud referred to in paragraph C31;
 - (d) Any act of conversion referred to in paragraph C38;
 - (e) Any act referred to in subparagraphs C39(c) or (d);
 - (f) Any receipt of loan amounts as referred to in paragraph C41, or any knowing assistance therein; or
 - (g) Any omission to register as a managed investment scheme as alleged in paragraph C45.
48. The fifth defendant says that by reason of any such dissolution she has no liability, as a partner of the firm, to the Plaintiff, or to any group member:
- (a) to pay any of the amounts claimed in paragraphs A3, A4 and A5 of the Statement of Claim;
 - (b) to pay restitution as claimed in paragraph C31 of the Statement of Claim; or
 - (c) for the loss and damage claimed in paragraph C40 of the Statement of Claim.

D. Fifth Defendant's Contentions:

1. The fifth defendant was not a member of the first defendant as alleged, she had no involvement in any "Sports Trading" styled entity beyond her short passive membership of "The Sports Trading Club Partnership" from which she resigned on 21 January 2014 following a governance dispute with the second defendant.
2. That dispute related to the fifth defendant's request for trading and commercial information as to the entity's activities, which information Ms Larter declined to provide, leading to the fifth defendant's resignation on 21 January 2014 from that partnership, and the cessation from that date of any further involvement with it or any similarly styled entities.
3. The Plaintiffs have declined to provide the further particulars requested, the answers to which would serve to focus their attention on the paucity of the case against the fifth defendant.
4. The Plaintiffs complain of losses suffered as a result of loaning money to an entity for the express purpose of participating in sports betting and have thus suffered loss from the materialisation of an inherent risk of the venture in which they chose to invest.
5. The fifth defendant has been and will be put to extreme trouble, suffering and expense in defending these proceedings and seeks security for her costs.

The relief claimed in the Summons is denied in its entirety as regarding the fifth defendant.

The Parties have not yet attempted to mediate, however the fifth defendant is willing to proceed to mediation at an appropriate time.

SIGNATURE

Signature [L.D. Johnson]

Capacity Fifth defendant

Date of signature 21 June 2016

Paragraphs C47 and C48
added by leave of Stevenson J 13 February 2018

Signature of legal representative



Capacity Fifth Defendant's solicitor

Date of signature 16th February 2018

[on separate page]

FURTHER DETAILS ABOUT FILING PARTY

Legal representative for filing party

Name Philip Nathan Argy

Practising certificate number 380

Firm Philip N Argy

Address

4 Drummoyne Avenue
DRUMMOYNE NSW 2047

DX address

Telephone 02 9719 8521

Mobile 0428 224 123

Email pargy@argystar.com

Electronic service address pargy@argystar.com