



FEDERAL CIRCUIT COURT OF AUSTRALIA

REGISTRY: MELBOURNE

File number: MLG2122/2014

COURT USE ONLY

Court

Location

Court date

Court time

DEMETRIOS VAKRAS

Applicant

ROBERT RAYMOND CRIPPS

First Respondent

REDLEG MUSEUM SERVICES PTY LTD (ACN 105 986 829)

Second Respondent

AFFIDAVIT

Name of deponent: Robert Raymond Cripps

Date sworn / affirmed: 21 July 2015

I, ROBERT RAYMOND CRIPPS of 132 Little Lonsdale Street, Melbourne 3000 in the State of Victoria, Company Director affirm:

1. I am the First Respondent in this proceeding.
2. I am the sole director and secretary of the Second Respondent and I am authorised to affirm this affidavit on its behalf.
(the First and Second Respondents collectively referred to as 'the Respondents')

Filed on behalf of ROBERT RAYMOND CRIPPS

Prepared by BUDDY LOW Lawyer's Code 7836

Name of law firm EFRON & ASSOCIATES

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3. I make this affidavit from my own knowledge, save as otherwise stated.
4. I affirm this affidavit in support of the Respondents' Application in a Case dated 21 July 2015 filed together with this affidavit.

Background

5. The Respondents and the Applicant were parties to a Supreme Court proceeding no. SCI 2011 1484 ("**the Proceeding**") in which the Respondents sued the Applicant for defamation. There were also proceedings alleging breach of contract brought by the Applicant against the Respondents.
6. The Proceeding was heard before Justice Kyrou in March 2014 with written submissions being received in April 2014. His Honour delivered his judgement on 20 June 2014. See Cripps & Anor v Vakras & Anor [2014] VSC 279.
7. The central event that relates to the Proceeding was an art exhibition held by the Applicant at the Respondents' art gallery, Guildford Lane Gallery, in June 2009.
8. During the course of the exhibition, the Applicant's artworks were accompanied by written materials which were in convoluted English language, and also in Greek. I was concerned that the written materials could be interpreted as being anti-Palestinian and racist. An example of such written material was an essay accompanying the Applicant's artwork entitled "Secular Muse" as contained in the Applicant's catalogue for the art exhibition.

Now produced and shown to me and marked with the letters "RRC-1" is a copy of the essay accompanying the Applicant's artwork entitled "Secular Muse".

9. I requested the Applicant to put the explanation of the artwork in simple English but disagreement ensued between us.
10. As a result of the Applicant's reluctance to explain his artwork in simple English after being requested to do so, I had no choice but to put up disclaimers adjacent to the artworks, which was not uncommon, to disassociate myself and my Gallery from the views and opinions expressed by the Applicant's artworks.

Now produced and shown to me and marked with the letters "RRC-2" is a copy of the disclaimer.

11. As a result of the disagreement about my request for explanation in simple English and my posting of the disclaimers, the Applicant posted defamatory articles on the internet of me and the Second Respondent.
12. In his decision Justice Kyrou noted "The Disclaimer was unobjectionable because it said no more than was obvious" (at [242] His Honour went on to note that there had



Contradicts
SCV
testimony

Contradicts
Submission
to HRC

Greek
into
"simple
English"

been no complaint made of the disclaimer at the time, rather, that the Applicant had noted that "signage is your prerogative". [242]

13. On 28 July 2014, Justice Kyrou made orders that the Applicant pays the Respondents damages in the amount of \$412,370.00 plus 80% of the Respondents' costs on an indemnity basis.

The Applicant's claim pursuant to *Racial Discrimination Act 1975*

14. The Applicant alleged in his Application that I have discriminated against him on the basis that he was of Greek origin. This was the first time I have heard of such allegations from the Applicant.
15. The Applicant claimed, inter alia, in his Application that:
 - (i) *"In March 2014, it was finally admitted that the actions taken against me were because I am Greek by race."*
 - (ii) *"In March 2014, Cripps admitted he did these acts because my art manifested my being Greek. This Greekness took the form of my use of Greek words to explain Greek myths in which the Greek words used were an intrinsic part of the piece(s)."*
 - (iii) *"In March 2014 the explanation given for Cripps action was: that I, Greek of race, used Greek words!"*
16. Not only are the above allegations untrue, there was no issue about the Applicant being a Greek or his use Greek words during the course of the Proceeding.
17. The Applicant's allegations made reference to March 2014, which was the time when the Proceeding was held. I verily believe that these allegations are no more than an afterthought on the part of the Applicant after having lost the Proceeding and ordered to pay substantial damages to me and the Second Respondent.
18. The reference to the Applicant being a Greek and his use of Greek words during cross-examination by my counsel, Christopher Dibb, was to illustrate that not only were the essays in convoluted English, but they also contained Greek words which could only be understood by a person who speaks and writes Greek such as the Applicant.

Now produced and shown to me and marked with the letters "RRC-3" is a copy of the transcript pages 261-262 of the Proceeding.
19. The Applicant's allegations above are based on his own misconstrued understanding of the questions posed to him by my counsel which he now relies upon as the bases of his claim of racial discrimination, which is not only untrue, but has no basis in fact or in law.



20. Further, based on the evidence given by parties; his Honour Justice Kyrou made, inter alia, the following finding of facts in the judgment handed down on 20 June 2014 that:
- (a) I have said words to the effect that I did not understand the essays that accompanied some of the paintings because they read like legalese – paragraph 146(g) of the judgment.
 - (b) I said that the Applicant's essays were difficult to understand because they were very long and complex and use foreign words – paragraph 146(h) of the judgment.
 - (c) I said that I was concerned that the Applicant's essays could be interpreted as being anti-Palestinian and racist – paragraph 146(i) of the judgment.

Now produced and shown to me and marked with the letters "RRC-4" is a copy of the judgment pages 39 - 41.

The full judgment of his Honour Justice Kyrou can be assessed at <http://www.austlii.edu.au/au/cases/vic/VSC/2014/279.html>.

21. It is clear that the reason I put up the disclaimer was because I could not understand the essays accompanying the Applicant's artwork, and not because of any reason of "Greek nationalism" or unlawful racial discrimination alleged by the Applicant.
22. I verily believe that the Applicant's Application has no reasonable prospect of success as none of his claims outlined in his Application identifies any breach of sections 9 or 18 of the *Racial Discrimination Act* 1975.
23. If anything, the Applicant's Application is merely a desperate attempt to recover the legal costs which he has spent in defending the Proceeding, in appealing the decision of the Proceeding and also for damages that he has paid me.
24. This is evident from the Applicant's unsubstantiated claim for \$400,000.00 in his Application dated 21 October 2014. The amount claimed then was increased to over \$1,000,000.00 as stated in his Points of Claim dated 28 May 2015.

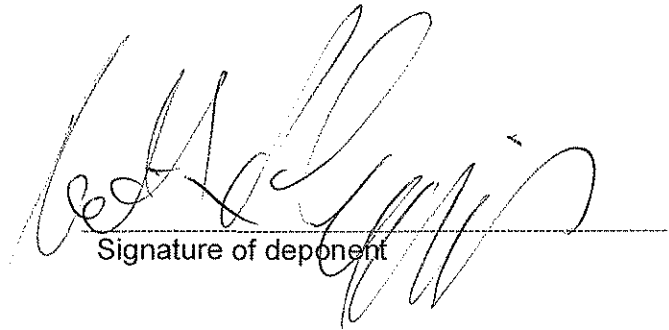
Applicant's claims pursuant to *Copyright Act* 1968 and *Competition and Consumer Act* 2010

25. The Applicant's purported claims that I have breached the *Copyright Act* 1968 and *Competition and Consumer Act* 2010 as stated in his Application dated 21 October 2014 and Points of Claim dated 28 May 2015 are without any foundation and were not a complaint before the Human Rights Commission.
26. It therefore follows that this honourable Court has no jurisdiction to hear these claims.



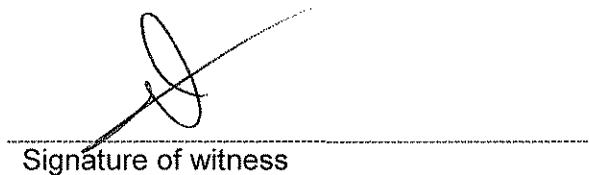
27. Based on the foregoing, I humbly request this honourable Court to dismiss the Applicant's Application and order that the Applicant pay the Respondents' costs.

Affirmed by the deponent
at Melbourne
on 21 July 2015



Signature of deponent

Before me:



Signature of witness

Full name of witness: Buddy Chia Chii Low

Qualification of witness: Australian Legal Practitioner

EPFON & ASSOCIATES
Suite 10, Level 1, 600 Lonsdale Street
Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.