

**AMENDED NOTICE OF MOTION**  
**(pursuant to leave granted 18 September 2019)**

**COURT DETAILS**

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Common Law                       |
| List        | Civil                            |
| Registry    | Sydney                           |
| Case number | 2014/223271                      |

**TITLE OF PROCEEDINGS**

|           |                                 |
|-----------|---------------------------------|
| Plaintiff | <b>David Moore</b>              |
| Defendant | <b>Scenic Tours Pty Limited</b> |

**FILING DETAILS**

|                                |   |
|--------------------------------|---|
| Person seeking orders          | <b>David Moore</b> , the plaintiff  |
| Filed in relation to           | Plaintiff's claim   |
| Legal representative           | Benjamin James Hemsworth<br>Somerville Legal<br>Level 10, 32 Walker Street<br>North Sydney NSW 2060 |
| Legal representative reference | 23951   |
| Contact name and telephone     | Cameron Graham, (02) 9923 2321  |
| Contact email                  | cgraham@somervillelegal.com.au  |

**PERSON AFFECTED BY ORDERS SOUGHT**

**Scenic Tours Pty Limited**, the defendant

**HEARING DETAILS**

This motion is listed at

## ORDERS SOUGHT

1. Pursuant to ss 168, 177(1)(a)-(b), and/or 183 of the *Civil Procedure Act* (hereafter 'the Act'), and r 28.2 of the *Uniform Civil Procedure Rules*, the Court determines separately the question of whether a sub-group of passengers are eligible group members within the meaning of paragraph 2 of the Third Further Amended Statement of Claim ~~on a date to be fixed~~.

For the purposes of order 1 (and orders 2 & 3 below), the 'sub-group' comprises all passengers who:

- i. travelled on any of cruises 1-9 (incl), 11 & 13 (as those cruises are identified in the table in paragraph 13 of the reasons for judgment dated 31 August 2017); and
- ii. booked and paid for those cruises from within any of the countries Canada, the United States, Thailand, ~~the United Kingdom~~ or the New Zealand to a 'Scenic Tours' incorporated entity affiliated with, or related, but separate to, the defendant; and
- ~~iii. entered into contracts with the defendant.~~
- iii. either or both:
  - a. on or prior to the payment of any deposit or payment in full for any of the cruises in (i), received the brochure ordinarily distributed in those countries in relation to that cruise year referring to the defendant as the contracting party;
  - b. signed a "terms and conditions" document supplied by the defendant or an entity described in (ii) and referring both to the entity described in (ii) and the defendant as the contracting parties.

2. In the event the answer to the question in order 1 is answered in the affirmative, pursuant to ss 176(3)(a) and 183 of the *Civil Procedure Act*, the defendant is to provide to the plaintiff's solicitor the names and address details of all members of the sub-group (and all guests from Vanuatu who had entered into contracts with the defendant in the relevant period (hereafter the 'Vanuatu Guests')), in its possession, by a date to be fixed by the Court.

For the purposes of Order 2:

- (a) the defendant's 'possession' of the information includes the documents and information that the defendant has a right to obtain or would be likely to obtain, if it made requests of its internationally based affiliate entities;
  - (b) the defendant is relieved of the obligation of providing the information where that information has been previously provided to the plaintiff's solicitor.
3. Further, and also in the event that the question in order 1 is answered in the affirmative:
- (a) pursuant to s 162(3) of the Act, \_\_\_\_\_ is fixed as the date by which a member of the said sub-group (and the Vanuatu Guests) may opt out of the proceeding (hereafter the 'opt out date').
  - (b) pursuant to ss 175(1)(a) and 176(1) of the Act, the Court approve the form and content of ~~the~~ a proposed notice of opt out to the sub-group members (and the Vanuatu Guests) (hereafter 'the notice') ~~attached to this motion~~.
  - (c) pursuant to s 176(2) of the Act, notice is to be given to the sub-group members (and the Vanuatu Guests) of the right to opt out in the following way:
    - i. On or before \_\_\_\_\_ the plaintiff (at his expense) is to send a copy of the notice by email to the persons in the sub-group (and the Vanuatu Guests) in respect to whom email addresses are known;
    - ii. On or before \_\_\_\_\_, the plaintiff (at his expense) is to send a copy of the notice by regular prepaid post to the persons in the sub-group (and the Vanuatu Guests) (or their agents) in respect to whom email addresses are not known, but postal addresses are known;
    - iii. By no later than \_\_\_\_\_, the plaintiff's solicitor is to cause the notice to be displayed on the firm's website, as is to cause the notice to remain displayed until the opt out date.
  - (d) direct that if the legal representatives for either party receive a document purporting to be an opt-out notice on or before the opt out date, the legal representative is to file the notice within 7 days of receipt whereupon the document is to be treated as a regularly received opt out notice pursuant to the Court's orders.
4. Such further or other orders (including, without limitation, any other questions for separate determination) as the Court thinks fit.

5. Costs.

**SIGNATURE**

Signature of legal representative



Capacity

Solicitor

Date of signature

16/10/19

**NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT**

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

**REGISTRY ADDRESS**

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