

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/06/2020 11:54:48 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 [Fair Work Div 2.4 Exemption] - Form 19 - Rule 9.32
File Number:	VID1492/2018
File Title:	ROBERT MUTCH v ISG MANAGEMENT PTY LTD
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 18/06/2020 12:01:32 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Further Amended Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

Amended pursuant to order of the Court dated ~~19 March 2019~~

No. VID1492 of 2018

Federal Court of Australia
District Registry: Victoria
Division: Fair Work Division

Robert Mutch

Applicant

ISG Management Pty Ltd (ACN 142 916 970)

Respondent

To the Respondent

The Applicant for himself and on behalf of each of the Group Members applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Robert Mutch (Applicant)
Prepared by (name of person/lawyer) Vicky Antzoulatos
Law firm (if applicable) Shine Lawyers Pty Ltd
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Address for service Level 6, 299 Elizabeth Street, Sydney, NSW, 2000
(include state and postcode)



Details of claim

On the grounds stated in the Second Further Amended Statement of Claim, the Applicant claims on his own behalf and on behalf of Group Members:

1. A declaration that:
 - (a) the Applicant was an employee of the Respondent in the period March 2014 to November 2016; and
 - (b) Each Group Member was an employee of the Respondent from the date of the first agreement entered into by the Group Member and the Respondent, pursuant to which agreement the Group Member received Tickets of Work from the Respondent.
2. A declaration that the Applicant and Group Members were was covered by the *Telecommunications Services Award 2010*.
3. A declaration that the Respondent contravened s 44 of the *Fair Work Act 2009* (Cth) (***Fair Work Act***) by reason of the matters set out in paragraphs 221-220 to 238-237 of the Second Further Amended Statement of Claim.
4. A declaration that the Respondent contravened s 45 of the *Fair Work Act*, by reason of the matters set out in paragraphs 221-220 to 232-231, and 239 to 254 238 to 253 of the Second Further Amended Statement of Claim.
5. A declaration that the Respondent contravened s 357 of the *Fair Work Act*, by reason of the matters set out in paragraphs 229-228 and 257-256 to 259-258 of the Second Further Amended Statement of Claim.
6. A declaration that the Respondent breached the *Telecommunications Services Award 2010*, by reason of the matters set out in paragraphs 221-220 to 232-231, and 239-238 to 254-253 of the Second Further Amended Statement of Claim.
7. An order, under s 545 of the *Fair Work Act*, that the Respondent pay compensation to the Applicant and Group Members.
8. An order, under s 546 of the *Fair Work Act*, that the Respondent pay a pecuniary penalty to the Applicant and Group Members in such sum as may be determined by the Court.
9. Further, and in the alternative to orders 1 to 8, an order, under s 16 of the *Independent Contractors Act 2006* (Cth), varying the ~~2013 Tickets of Work Agreement, the 2015 Tickets of Work Agreement, and the 2016 Agreement~~ any agreement pursuant to which a worker received Tickets of Work under one or more agreement(s) to which the Respondent was a party (as defined in the Statement of Claim) by inserting a term that ISG Management pay a sum to the Applicant and Group Members such that they he



would be placed in the position they he would have been in had they he been an employees of the Respondent.

10. Costs.
11. Interest.
12. Any further order appropriate to the nature of the case.

Common questions

1. Whether the Respondent controlled and directed, or had the capacity to control and direct, the manner in which the Applicant and Group Members performed work.
2. Whether the Respondent superintended the Applicant's and Group Members' finances.
3. Whether the economic activity carried out by the Applicant and Group Members was portrayed as that of the Respondent.
4. Whether the Applicant and Group Members were integrated into the business of the Respondent.
5. Whether any goodwill inured in activities carried out by the Applicant and Group Members.
6. Whether the Respondent negotiated rates of pay with the Applicant and Group Members.
7. Whether the Applicant and Group Members were economically dependent upon, and provided services exclusively, or to an extent that was almost exclusive, to the Respondent.
8. Whether, the relationship as between the Applicant and Group Members and the Respondent was one of employment.
9. Whether ISG Management was a "*national system employer*" within the meaning of s 14 of the *Fair Work Act*.
10. Whether the Applicant and Group Members were "*national system employees*" within the meaning of s 13 of the *Fair Work Act*.
11. Whether the Applicant and Group Members were "*casual employees*" within the meaning of s 86 of the *Fair Work Act*.
12. Whether the Respondent contravened s 44 of the *Fair Work Act*.
13. Whether the Respondent contravened s 45 of the *Fair Work Act*.
14. Whether the Respondent contravened s 357 of the *Fair Work Act*.



15. Whether the Respondent is liable to pay a pecuniary penalty under s 546 of the *Fair Work Act*.
16. Whether any of the agreements between the Group Members and ISGM as pleaded in the Second Further Amended Statement of Claim ~~2013 Tickets of Work Agreement, the 2015 Tickets of Work Agreement, and the 2016 Agreement~~ was “unfair” or “harsh” within the meaning of s 12 of the *Independent Contractors Act*.
17. Whether an order should be made under s 16 of the *Independent Contractors Act* and, if so, what form of order is appropriate.

Representative action

The Applicant sues in a representative capacity, pursuant to Part IVA of the Federal Court of Australia Act 1976 (Cth), being on behalf of more than 7 persons who (workers):

- a. in the period 2011 to the date of the filing of the Second Further Amended Statement of Claim, have provided services as telecommunications technicians to the Respondent;
- a1. received Tickets of Work issued pursuant to agreements to which the Respondent was a party ~~under one or of the 2013 Tickets of Work Agreement, 2015 Tickets of Work Agreement, and 2016 Tickets of Work Agreement;~~
- b. did not receive payments or benefits which would have been required to be made or provided had the Applicant and those persons been engaged by the Respondent as employees;
- c. have suffered loss by reason of the Respondent’s conduct set out in the Second Further Amended Statement of Claim.

Applicant’s address

The Applicant’s address for service is:

Place: Level 6, 299 Elizabeth Street, Sydney, NSW, 2000

Email: vantzoulatos@shine.com.au

The Applicant’s address is Level 6, 299 Elizabeth Street, Sydney, NSW, 2000.

Service on the Respondent

It is intended to serve this application on the Respondent.



Date: 25 March 2019

A handwritten signature in blue ink, appearing to read "Vicky Antzoulatos", with a long horizontal stroke extending to the right.

Signed by Vicky Antzoulatos
Lawyer for the Applicant