

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

S CI 2013

BETWEEN

MCDONALD'S AUSTRALIA LIMITED (ACN 008 496 928)

Plaintiff

and

JANINE WATSON AND ORS

Defendants

AFFIDAVIT OF KENNETH RONALD PRYOR

Date affirmed: 16 July 2013
Filed on behalf of: The plaintiff
Prepared by:
Norton Rose Fulbright Australia
RACV Tower, 485 Bourke Street
MELBOURNE VIC, 3000

Solicitor's Code: 370
DX: 445
Tel: (03) 8686 6000
Fax: (03) 8686 6505
Ref: 2773256
Attention: AM:CLS:2773256
Email:
abigail.mcgregor@nortonrosefulbright.com

I, Kenneth Ronald Pryor of 2 Smith Street, Collingwood, Development Manager, solemnly and sincerely affirm and say as follows:

1. I am a Development Manager for McDonald's Australia Limited (**McDonald's**). I am responsible for the construction of new McDonald's restaurants in Victoria.
2. I am authorised to make this affidavit on behalf of McDonald's. I make this affidavit from my own knowledge, save where otherwise stated. Where in this affidavit I give evidence on information and belief, I believe those matters to be true.

Land and Planning Permit

3. The Yarra Ranges Shire Council (**Council**) issued Planning Permit YR/2011/647 on 11 October 2012 (**Planning Permit**) over the land located at 1529, 1529A, 1531 Burwood Highway, Tecoma (**Land**). The Planning Permit is exhibit "PAV8" of the Affidavit of Paul Anthony Vallay affirmed 12 July 2013.



4. The Land currently has on it improvements of existing buildings that most recently were used for an Indian restaurant called Saffron Cottage and a shop called Hippy Haven.
5. I am responsible for the implementation of the Planning Permit and the construction of the new McDonald's restaurant on the Land and over the land located at 1533 Burwood Highway, Tecoma (**Licensed Land**).
6. In relation to the Licensed Land, McDonald's has been given permission by the owner of the Licensed Land, Freeman Tecoma Pty Ltd, to access and use that Licensed Land and to place site sheds during the construction of the Land and Licensed Land. Now produced, shown to me and marked "**KRP1**" is a copy of an email from Joel Freeman of Freeman Tecoma Pty Ltd to Paul Vally of McDonald's dated 3 April 2013 giving McDonald's permission to use the Licensed Land.

Permissions required to commence demolition works

7. In order to commence the demolition of the existing buildings on the Land, a number of subsidiary permissions were required. These include permissions from VicRoads to use traffic control devices and permissions from the Council in relation to the protection of Council assets while the construction works take place.
8. On 18 April 2013, Urbis on behalf of McDonald's, provided the Council with two cheques:
 - (a) A cheque for \$25, being payment of the engineering works bond pursuant to condition 49 of the Planning Permit; and
 - (b) A cheque for \$5,000, being payment of the maintenance bond specified in condition 53 of the Planning Permit, which provides that a maintenance bond to the value of \$5000 must be paid to the Council prior to the commencement of the works.
9. Now produced and shown to me and marked "**KRP2**" is a copy of the letter from Urbis to the Council.
10. Burwood Highway is a Road Zone Category 1 Road which is under the control of VicRoads. On 30 May 2013, VicRoads issued a Memorandum of Authorisation to Erect, Display, Place, Remove or Alter Traffic Control Devices. The Memorandum



gives permission for pedestrian access to occur along the Burwood Highway roadway and for control devices (reduction in speed, water filled barriers) to be implemented. The purpose of the Memorandum is to be able to direct pedestrian traffic onto Burwood Highway (within a line of water filled barriers) while the demolition and construction works take place on the Land.

11. Now produced and shown to me and marked "**KRP3**" is a copy of the VicRoads Memorandum of Authorisation that was applied for 29 May 2013.
12. On 21 June 2013, the Council's Municipal Building Surveyor gave written consent pursuant to Regulation 604 of the *Building Regulations* 2006 for the erection of precautions over the street alignment for the proposed building works, subject to a number of conditions, including:
 1. *An Asset Protection Permit is to be obtained from Council prior to the commencement of any works on the site...*
 5. *The installation of the hoarding is to be approved by the relevant building surveyor for the project prior to the commencement of buildings on the site.*
13. Now produced and shown to me and marked "**KRP4**" is a copy of the Regulation 604 consent dated 21 June 2013 and attached plan.
14. On 27 June 2013, Building Permit BS-U 1080/20130258 was issued. The Building Permit allows the demolition of single storey brick and weatherboard buildings. The Building Permit notes that:
 - (a) no planning permit was required for the demolition;
 - (b) the cost of the building work (for demolition only) was \$39,200;
 - (c) the Council is the prescribed reporting authority for regulation 604 of the *Building Regulations* 2006; and
 - (d) it is a condition of the Building Permit that the conditions of the Council's Asset Protection permit are to be complied with.
15. Now produced and shown to me and marked "**KRP5**" is a copy of Building Permit BS-U 1080/20130258 dated 27 June 2013. The Building Permit relates to both the Land and the Licensed Land.



16. The Council advised McDonald's that it would require the payment of a \$90,000 bond for the Asset Protection Permit. McDonald's disputed the requirement to pay a \$90,000 bond to the Council on the basis that it was excessive and did not reflect the potential quantifiable risk to Council assets. I and McDonald's contractors liaised with Gary Whitehead of the Council regarding a reduction in the required bond amount. On 2 July 2013, the Council agreed that a bond of \$55,000 was acceptable. McDonald's paid the bond amount on 2 July 2013.
17. On 3 July 2013, the Council issued Asset Protection Permit AP/9585/2013, subject to the bond of \$55,000.00. The Asset Protection Permit allows works including the erection of hoarding fencing, demolition of existing buildings and construction of the new building. Now produced and shown to me and marked "KRP6" is a copy of Asset Protection Permit AP/9585/2013 dated 3 July 2013.

Protestors and photographs

18. I do not know the name of every protestor who has entered the Land or who is protesting on the outside of the Land. In the following paragraphs I refer generally to the people who have been present at the Land and protesting, or who have been staying on the roof of the Hippy Haven or the Saffron Cottage, as "protestors". Where I know or have been informed of the name of a protestor then I specifically identify that person below.
19. In relation to the photographs that I refer to in the following paragraphs and have exhibited to my affidavit, I have not personally taken any photographs of the protest or protestors at the Land. The photographs have been taken at the Land by the security guards that have been engaged by McDonald's, being Southern Cross Security Group (**McDonald's Security**). I have been provided with these photographs by Nathan Lockyer, the State Operations Manager for Victoria for McDonald's Security and by Robert Dunger, the National Workplace Safety and Security Consultant for McDonald's. I have been informed by Nathan Lockyer and I believe that the photographs were taken at the time and date specified in the paragraphs below by employees of McDonald's Security.

Entry of Protestors to the Land prior to the commencement of construction

20. From on or around March 2013, I know that protestors had been entering the Land, and posters and pennant flags appeared at the Land and the Licenced Land



objecting to McDonald's and the proposed development. I saw these posters and pennant flags when I attended at the Land and Licenced Land to undertake various inspections at around this time, such as reviewing power and water meters.

21. At the time that McDonald's took vacant possession of the Hippy Haven and Saffron Cottage (approximately the end of May 2013), a chain wire fence was constructed around the Land and Licenced Land. It was a common occurrence that anti-McDonald's posters and pennant flags were posted on this fence. Every time I attended the Land and Licenced Land I would remove the posters and flags and dispose of them, but inevitably the posters reappeared.
22. In May 2013 there was a post on the website of Burger Off (www.burgeroff.org). "Burger Off" is the name of a protest group that is against the development of a McDonald's restaurant in Tecoma. The May 2013 post outlined that an SMS list had been created in order to inform when people were needed on the Land to "*block demolition*". I believe that this SMS alert system that has been developed by the protestors has been in use since at least this time. Whenever I have attended the Land prior to the commencement of construction, for example, to read the power and water meters, I am always asked by a stranger what I am doing on the Land and in less than five minutes of my presence on the Land, more strangers arrive at the Land, many to verbally harass me. In my experience, cars start arriving. There is not one occasion that I have attended the Land prior to the commencement of construction where this did not happen. Now produced and shown to me and marked "**KRP7**" is a print out of the post that was made on the Burger Off website on 19 May 2013 where I read about the SMS list that had been arranged by the protestors.
23. From as early as 11 June 2013, people have gone onto the roof of Saffron Cottage in order to place a substantial number of garden gnomes on the awning of Saffron Cottage and along flat edges of the roof and chimney. Now produced and shown to me and marked "**KRP8**" is a copy of photographs that were taken on or about 10 June 2013 of the exterior of Saffron Cottage that show garden gnomes, pennant flags and "Burger Off" signs posted on Saffron Cottage. The photographs were taken from a blog from the www.burgeroff.org website, on a blog entitled "*BREAKING NEWS - Gnomes barricade themselves on Saffron Cottage's roof*"



and dated 10 June 2013, accessed at <http://www.burgeroff.org/breaking-news-gnomes-barricade-themselves-on-saffron-cottages-roof/>.

Commencement of works on the Land

24. On both Monday 1 July 2013 and Tuesday 2 July 2013, I attended at the Land and Licenced Land from around 6:30 am in the morning until 4:45 pm. This was because I believed that it may be necessary for a representative from McDonald's to be present on the Land and Licenced Land. I was also present on the Land and Licenced Land for part of 3 July 2013 and on 12 July 2013.
25. I have been the only McDonald's company representative that has attended the Land and Licenced Land since 1 July 2013. Due to the active presence of protestors and the way in which they have verbally harassed those people associated with McDonald's, no other McDonald's employees or representatives have attended the Land and Licenced Land.
26. In order to commence the works on the Land and Licenced Land on 1 July 2013, McDonald's:
 - (a) engaged McDonald's Security to be present on the Land and Licenced Land; and
 - (b) placed Victoria Police on standby in relation to the potential for the situation at the Land and Licenced Land to require police involvement and the timing of the scheduled work.
27. As noted in paragraph 24, I attended on the Land and Licenced Land from approximately 6.30am on the morning of 1 July 2013. At around 6:30 am, 6 security guards as well as their supervisor from McDonald's Security arrived at the Land. Following the discussions that had occurred between the police and McDonald's in relation to the potential for development on the Land and Licenced Land to cause a law and order issue, the police had arranged for further officers to be rostered and available to attend the Land and Licenced Land if necessary. At about 7:00 am, between 8 and 10 police officers attended the Land and Licenced Land in order to ensure that law and order would be maintained at the start of work on the Land and Licenced Land.



28. At about 6:30 am on 1 July 2013, the contractors that McDonald's had engaged to complete the construction on the Land and Licenced Land, Lanskey Constructions Pty Ltd (ABN 66 010 636 512) (**Lanskeys**) arrived. Lanskeys is a construction firm that was engaged directly by McDonald's for the development of the Land and Licenced Land. Lanskeys were engaged for a scope of works that included fencing, demolition, asbestos removal and electrical work (and the construction of the new restaurant). The Lanskeys workers that were on the Land and Licenced Land from 1 July 2013 included a foreman, site labourer, two fencing contractors, a plumber, three electricians and a traffic management contractor. Later in the day there were delivery trucks that were arriving with fencing material and road safety barriers (all included under the contract with Lanskeys).
29. As planned, at around 7:00 am on 1 July 2013, Lanskeys commenced the installation of the hoarding on the Land and Licenced Land. The hoarding is to be constructed around the whole building site and includes the Land and the Licensed Land next door. The hoarding comprises 2.4 metre high solid timber walls. To date, approximately 85% of the Land's boundary and Licenced Land has been secured with the hoarding. The Burwood Highway frontage (all the way across the Land as well as across the front of the and Licenced Land), the western boundary of the Land and the northern boundary of the Land have had hoarding installed. Part of the eastern boundary and the northern boundary and Licenced Land do not yet have hoarding and only have chain wire mesh fencing installed. Now produced and shown to me and marked "**KRP9**" is a copy of an aerial view photo of the Land and the surrounding area, where I have marked in hand the perimeter of the Land and Licenced Land where hoarding has been completed.

Entry of Protestors to the Land in the past and Occupation of the Roof

30. Protestors have occupied the Land on an ongoing basis from the early hours of the morning of Monday 1 July 2013. I believe that the building activity on the Land and Licenced Land on the morning of 1 July 2013 had been observed by the protestors and was communicated to a number of other protestors, because by 7:30 am, the first protestors had climbed up to the roof of both Saffron Cottage and Hippy Haven.
31. Protestor activity at the site began to accelerate quite quickly from 7:30 am when the first protestors climbed onto the roof of both Saffron Cottage and Hippy Haven.



The protestors became quite agitated and vocal. Police reinforcements had to be called in from various stations in the Belgrave region and by 9:00 am on 1 July 2013 there were between 20 and 25 police officers on site.

32. On the morning of 1 July 2013, when the first protestors climbed up to the roofs, police requested that I, as the representative of McDonald's, being the owner of the Land, inform the protestors that they were trespassing and to get down from the roofs. I did this and made my request loud enough for the protestors on the roofs to hear. No one came down from either the roof of Saffron Cottage or the roof of Hippy Haven. The police then advised these people that they would be arrested when they came down from the roofs.
33. From 1 July 2013 until the date of affirming this affidavit, I believe that there has always been someone on one or both of the roofs of the existing buildings on the Land. I base this belief on the occasions that I have visited the Land on 1 July 2013, 2 July 2013, 3 July 2013 and 12 July 2013 as well as the regular verbal and photographic updates that I have received from Nathan Lockyer from McDonald's Security. The number of protestors that are on the roof of either Saffron Cottage or Hippy Haven varies but is generally three to four protestors at any one time.
34. However, when I attended on the Land and Licenced Land on 12 July 2013, only 1 person (who I was told by Senior Sergeant Doug Berglund was named "Carl", and who I believe is aged between 50 and 60, but who I could not otherwise identify), was visible on the roof. Whilst I do not know for certain, I believe that Carl may have been the only roof dweller who could be seen by me from my viewpoint and that other roof dwellers may have been concealed in different parts of the roof of the buildings on the Land. The difficulty in identifying the number of people on the roofs is because, given the slope of the Land, it can be difficult to see all areas of the roofs. Further, the roofs are pitched and it can be difficult to see behind the pitch of the roofs. I cannot be sure that there were not other people on the roofs when I attended on 12 July 2013.
35. In addition to the protestors that have been on the roof of the Saffron Cottage or Hippy Haven or otherwise coming onto the Land, there have been many other protestors, whose numbers fluctuate depending on what time of day it is and what activity is occurring on the Land. These protestors include persons who have been sitting on the footpaths and areas outside of the Land and Licenced Land and



sometimes singing anti-McDonald's songs or chants. Some have been banging on pots and pans. Sometimes these protestors stop at the fence or gates or circulate around the perimeter of the Land and Licenced Land and verbally harass McDonald's Security. Some protestors were parking their cars on the Land but were told by the police on 2 July 2013 that they were not allowed to park their cars on the Land (due to fencing works along the northern boundary).

36. During the first couple of days of construction at the Land and Licenced Land, on 1 July 2013 and 2 July 2013, these protestors outside the Land and Licenced Land had to be forcibly moved along the footpath to different areas by police. The only way that the erection of the hoarding was completed was through this police involvement as the police assisted in ensuring that the trucks delivering the hoarding were able to gain access to the Land and Licenced Land and also so that protestors could be moved out of the way from the areas where hoarding had to be constructed. On 2 July 2013, I saw that police involvement was also required in order to remove protestors out of danger who had attempted to block access to the Land and Licenced Land by one of the delivery trucks by laying on the ground in front of it. In addition, on both 1 July 2013 and 2 July 2013, I witnessed one protestor attempt to chain herself to the back of one of the trucks carrying the hoarding with a device that was attached to her arm. I refer to paragraphs 19 and 20 of the Affidavit of Zoë Adele Justice affirmed 16 July 2013, identifying this woman as Ava Freeland and exhibiting relevant media relating to this incident.
37. On both 1 July 2013 and 2 July 2013 I witnessed the protestors impeding the site labourer's access to and from the Land and Licenced Land. They did this by sitting in front of his car. Later in that week I was told by Nathan Lockyer from McDonald's Security that one woman had attempted to prevent a Coates hire truck from gaining access to the Land to deliver portaloos. I refer to paragraphs 6 to 8 (inclusive) of the Affidavit of Anthony Robert Imolesi affirmed on 15 July 2013, identifying a woman that he states is Marcia Stewart who jumped on to the back of a Coates hire truck that was reversing into the Site on 4 July 2013.
38. The construction of the hoarding at the Land and Licenced Land ceased on 3 July 2013 as a result of occupational health and safety concerns arising from the conduct of the protestors on the roof of the Hippy Haven and Saffron Cottage and in the immediate vicinity of the Land. Now produced and shown to me and marked "**KRP10**" is a Victorian Trades Hall Council Media Release dated 4 July 2013,



obtained from:

<http://www.cfmeuvic.com.au/sites/default/files/Tecoma%20Mcdonalds%20040713.pdf>. The Media Release is titled 'Tecoma Protest' and it includes the statement that "[b]oth in terms of access and egress from the site and in terms of operating large machinery, the work that is required cannot be done where there is a constant threat of intruders."

39. Protestors have been using the hoarding and nearby awning on Saffron Cottage in order to gain access to the roof of Saffron Cottage. I refer to the Affidavit of Anthony Robert Imolesi affirmed on 15 July 2013. Exhibit ARI5 to that affidavit shows how the protestors have been able to use the existing hoarding and awning of Saffron Cottage in order to gain access to the roof.
40. Protestors have also damaged the hoarding that has been erected on the footpath in front of the Land in order to gain access to the Land. I was told by Nathan Lockyer on 3 July 2013 that this hoarding was forced out from the inside of the hoarding through it being kicked out by protestors (the panel has been forced off from the fixing rails and timber posts onto which the panels are secured by metal brackets, screws and concrete blocks), and will need to be replaced at a cost of approximately \$100 to McDonald's. Now produced and shown to me and marked "KRP11" are copies of two photographs that show how part of the erected hoarding has been damaged by protestors who have been accessing the Land. I was provided with a copy of this photograph by Nathan Lockyer from McDonald's Security who informed me that he took the photographs on 4 July 2013.
41. Protestors continued to occupy the roof of Saffron Cottage throughout the first week and into the second week of July 2013 and I know this because of my attendance on the Land and Licenced Land on 12 July 2013.

Specific Incidents on the Land

Jumping in Car and Verbal Harassment

42. During the afternoon of 2 July 2013, I and McDonald's building contractors who had been on the Land and Licenced Land experienced consistent harassment and attempts by the protestors to engage with us. At approximately 4:45 pm, I decided to leave the compound where I had been working (by compound I mean the area of land which generally contains the existing buildings, but not the part of the Land



to the north which is currently used for car parking which will ultimately be surrounded by fencing around its perimeter). I had declined a security escort from McDonald's Security and the Police to my car that was parked on the Land (outside of the compound on the northernmost part of the Land, which has been allocated as the on-site car park for tradespersons). I declined the security escort because I did not expect the protestors to do anything more than perhaps continue with verbal harassment.

43. As I left the compound to get to my car the protestors were pushing cameras in front of my face and were stepping into my path with their hands held in the air and shouting that if I touched them I would be charged with assault. I proceeded to open the boot of my car to put my safety gear away and then unlocked the back car door to put my computer and other work gear on the back seat. At this point as I proceeded to try to open the driver's side door, a female protestor stood in front of me, blocking my access to my car and stated that if I touched her she would have me charged with assault. I told her that I would like to get in my car and would she move, which that protestor did and I then got into the driver's seat of my car.
44. At this point in time a male protestor jumped in the front seat of my car with a placard and proceeded to verbally harass me. Although I cannot remember the exact words, the protestor said things to me along the lines of "How proud is your Mother of you working for an organisation like McDonald's?" and "How do you sleep at night?" and "You know we are not going away". I asked him at least three times to get out of my car but he did not. The Police and McDonald's Security had seen what had happened by this time and they then came over to remove him from my car. However, at least five protestors had then sat on the bonnet of my car and a number of others were banging on the side and rear windows of my car and verbally harassing me. Further protestors then sat in front of my car so that I could not leave. It took several minutes for the police and McDonald's Security to remove all protestors from the vicinity of my vehicle so that I could drive away. I did not make a statement to the police in relation to this incident. My car suffered some minor scratches.

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a smaller, more complex signature.

Assault of McDonald's Security Guards

45. On the evening of 3 July 2013, I received a phone call from Nathan Lockyer (State Operations Manager for McDonald's Security who does not live too far from the Land) advising me that one of the protestors (who has since been identified as Janine Watson and who had been on the roof of Saffron Cottage), disembarked from the roof to offer some cake to two McDonald's Security guards who were working on the Land and Licenced Land. The two McDonald's Security guards declined the offer of cake but then sought to restrain Janine from re-gaining access to the roof of the Saffron Cottage. I was told by Nathan Lockyer that there was a small tussle that ensued where Janine tried to regain access to the roof. During this tussle it has been alleged that Janine assaulted a McDonald's security guard (Vicki Lee) before other McDonald's Security guards came to Ms Lee's aid. I was also told by Nathan Lockyer that he had been telephoned to attend the Land and Licenced Land and speak with Vicki Lee and Matthew Prosser after the incident occurred. Now produced and shown to me marked "**KRP12**" is a copy of Vicki Lee's witness statement that was given to police on 6 July 2013. Now produced and shown to me marked "**KRP13**" is a copy of the medical certificate that Vicki Lee obtained from Dr John Nguyen on 4 July 2013.
46. During this phone call and in a subsequent email that Nathan sent to me in relation to the incident, Nathan explained that during the same tussle, when Vicki Lee was seeking to restrain Janine Watson from regaining access to the roof, another McDonald's Security guard (Matthew Prosser) came to Vicki's assistance to help restrain Janine, prior to the arrival of the police. Before this occurred however, a male protestor intervened and also allegedly assaulted Matthew Prosser which made him lose his hold on Janine. Now produced and shown to me marked "**KRP14**" is a copy of the witness statement given by Matthew Prosser to the police on 4 July 2013. Now produced and shown to me marked "**KRP15**" is a copy of an email that I received from Nathan Lockyer at 12:18 am on 4 July 2013 that outlined the incident that occurred on the evening of 3 July 2013.
47. I am informed by Robert Dunger and believe that Janine Watson has not yet been charged by police. I understand that she has subsequently disembarked from her position on the roof of one of the existing buildings several times but that police have not been able to apprehend her at any of these times. As at the time of affirming this affidavit, I am informed by Robert Dunger and believe that Janine



Watson had not made any allegation of being assaulted by McDonald's Security to the police.

48. I have also been advised over the weekend via a text message from Nathan Lockyer from McDonald's Security that a female protestor that had been on the roof was arrested by Police at 3:30pm Saturday. I refer to paragraph 18 of the Affidavit of Anthony Robert Imolesi sworn 15 July 2013, identifying a woman that he states is Jude Alexander who was arrested on Saturday, 13 July 2013. Now produced, shown to me and marked "**KRP16**" is the incident report relating to that incident.
49. I am also informed by Robert Dunger and believe that the male protestor that allegedly assaulted Matthew Prosser is Mark Lawrence and that he will similarly be interviewed by the police when he disembarks from the roof of Saffron Cottage and possibly investigated in relation to similar offences.

Current Status of Protestors on the Land

50. The number of protestors that occupy the roof of the Saffron Cottage or the roof of the Hippy Haven is fluid with the number varying from 1 or 2 visible persons up to 4 or 5 visible persons.
51. When I attended the Land and Licenced Land on 12 July 2013, there were approximately:
- (a) 8 people generally around the Land and Licenced Land, some playing airhorns and trumpets;
 - (b) 8 people in the temporary walkway area fronting Burwood Highway;
 - (c) 5 people sitting on a log at the rear of the Licenced Land; and
 - (d) 6 people standing at the gates to the compound area.
52. McDonald's Security has been engaged by McDonald's to provide security at the Land and the areas surrounding the Land. I have been informed by Nathan Lockyer of McDonald's Security and believe that for the purposes of providing that security service, McDonald's Security has developed processes for the maintenance of both daily logs which are compiled into Daily Shift reports of what is generally occurring during each day at the Land and Licenced Land, as well as



the preparation of incident reports reporting any specific incidents that occur on the Land and Licenced Land, in order to keep myself and other McDonald's representatives up to date. Those daily logs and incident reports are completed by security guards engaged by McDonald's Security to work at the site and who work on the site maintaining security. Incidents at the Land and Licenced Land have included threats, verbal harassment, racial taunts, protestors blocking access to the Land and the traversing of hoarding, fencing and the roofs. The incident reports also include the incident where the path of the Coates hire truck was blocked (referred to in paragraph 8 of the Affidavit of Anthony Robert Imolesi affirmed 15 July 2013) and the incident concerning the assault of McDonald's Security guards (referred from paragraphs 45 to 49 above).

53. Now produced and shown to me marked "**KRP17**" is a bundle of McDonald's Security Daily Shift Reports from 1 July 2013 to 9 July 2013, prepared by a number of the McDonald's Security duty managers, including Matthew Prosser. Now produced and shown to me marked "**KRP18**" is a bundle of Incident Reports produced by McDonald's Security from 2 July 2013 to 9 July 2013, prepared by the McDonald's Security staff person whose name is recorded at the top of each Incident Report (next to "Staff Member Name"). I am informed by Nathan Lockyer that these reports are an accurate reflection of the various incidents that have occurred on the Land and Licenced Land.
54. I am aware that there is asbestos material in the structure of the existing buildings on the Land. I believe, although I do not know, that the protestors on the roofs of Saffron Cottage and Hippy Haven have been using a man hole that I know exists in the ceiling of the Hippy Haven building (above where a florist used to have a tenancy a number of years ago) in order to gain access to the building. I believe that sleeping bags and food storage areas have been set up either in the ceiling of the existing buildings or inside the buildings themselves and that the protestors would have access to the toilet that is located in the portion of the Hippy Haven building. I believe this to be the case because during 'walk throughs' of the buildings on the Land that I have done on a number of occasions, I have viewed and also seen that the access panel to the manhole has been removed, so I know its location. On 1 July 2013 when protestors first got up on to the roofs, I also saw other protestors throwing sleeping bags and food up to those protestors on the roofs.



55. The power has been disconnected to the building and gas has been shut off. The gas meter was scheduled to be disconnected at the street service but the AGL contractors were prevented from doing this work by the protesters. Water remains connected to the Land which also makes it a possibility that the protestors are using an existing toilet in the existing buildings.
56. McDonald's is concerned that people are occupying buildings on the Land without its permission in circumstances where the structure of those buildings contains asbestos. It is important that the demolition and construction is able to recommence on the Land so that the erection of the hoarding can be completed and so that all potentially hazardous asbestos and other material can be removed, including asbestos which is contained in parts of both the Hippy Haven and the Saffron Cottage building. I am concerned that it poses a risk to anyone who tampers with it and those in their vicinity.
57. On 12 July 2013, I attended at the Land with Sergeant Doug Berglund from the Belgrave Police Station. I stood within the hoarding on the south east corner adjacent to the Land, on top of a park bench that sits on the nature strip, and made the following announcement:
- Good afternoon, I am Ken Pryor from McDonald's.*
- As I said last week, those people on the site are trespassing on McDonald's land. Please immediately come down from the roof and leave the site.*
- We have recently become concerned that people may be entering the ceiling cavity and are inside the existing structures on the site. It is critical for you to appreciate that, as is common with many older buildings, asbestos material exists in both the hippy haven and saffron cottage structures. As I'm sure you will readily appreciate, if it is interfered with in any way, particularly by being broken, it will place those people in the vicinity of the asbestos at risk. For your own safety and for the safety of others, please refrain from any conduct that could result in damage to the structures or flooring in any way. If any damage has already occurred to any structure or flooring within the buildings, it is important that you leave the site immediately.*
- We again ask that you leave the site.*
58. "Carl", the only visible person on the Land, acknowledged that he heard my announcement. He did this by asking me to repeat a few words when there was sound interference by traffic noise from Burwood Highway.



Recommencement of works on the Land

59. McDonald's contractors cannot complete the erection of the hoarding on the Land and Licenced Land until the protesters have been removed from the Land and the immediate area surrounding the Land. After the hoarding has been completed, removal of hazardous materials and then demolition of the existing buildings on the Land will occur.

Construction timing

60. The development on the Land and Licenced Land is currently at the end of the second week of delay. The construction work was scheduled to commence on 1 July 2013 and had a 19 week construction timetable and a 1 week handover allowance.

Impact of Delay

61. When all of the building works are complete and when all equipment has been supplied and installed at the Land and Licenced Land, McDonald's will arrange the connection of services and all commissions that are required in order for the Building Surveyor to inspect the Land and Licenced Land and provide approval that occupancy can occur. The stage at which the building on the Land and Licenced Land is regarded as operational is termed "handover". Prior to the protests commencing it was budgeted that the opening of the restaurant would occur on 15 November 2013 (although it was planned that it would in fact open by 20 October 2013). As a result of the protests and the delay to work on the Land and Licenced Land, the handover date has been delayed by approximately two weeks to date.
62. Further protests and delays will inevitably impact further on the handover date.

Builder's Costs

63. At the present time the Land and Licenced Land is not yet fully operational as a construction site because the hoarding was only 85% complete before the construction had to be stopped as a result of the protests. Despite this, McDonald's is currently incurring halted building costs of approximately \$5,000 per week (which includes site costs for fencing, one site shed, one generator and three portaloos to keep the site maintained when it is not a fully operational construction



site) and a further \$8,000 per week (for the required site foreman and site labourer), totalling approximately \$13,000 per week. This amount is subject to negotiation with our builders at the time that work recommences. The process that would occur is that Lanskeys would prepare documentation to justify their claim for the halted building costs and we would sit down to discuss with Lanskeys what are appropriate figures for the additional charges, for example, of the extended hire of the shed. These costs would essentially be presented to McDonald's as a variation of costs to the main construction contract.

64. Through any further delays as a result of protest, McDonald's may be liable for all of Lanskeys "direct reasonable expenses" for every day of the delay at the non-operational site. These direct reasonable expenses would include, for example, the fact that site sheds would sit unoccupied and temporary power to the site sheds on the Land would need to continue. These expenses would form a variation to the fixed lump sum contract with Lanskeys.
65. In the event that construction on the Land and Licenced Land becomes interrupted again after the Land and Licenced Land is fully operational as a construction site, McDonald's will incur halted building costs of at least \$9,000 per week. This includes the costs for fencing, two site sheds, one foreman's shed, fully serviced toilet facilities for up to 30 people on site, site safe, a general lock-up shed and temporary services, as well as the \$8,000 per week for the required site foreman and labour, totalling \$17,000 per week.

Security Costs

66. Significant costs have been and are being incurred by McDonald's as a result of the McDonald's Security that has been necessary on the Land and Licenced Land. Whilst McDonald's initially considered, as a result of the protestors, it would need 6 security guards to be at the Land and Licenced Land at all times, this number has quickly escalated to, in general, between 7 and 10 security guards (by 3 July 2013) to be at the Land and Licenced Land at all times, as a result of the number, and behaviour, of the protestors that have been in attendance at the Land and Licenced Land. The cost of security for each guard is approximately \$34.50 per hour (excluding GST) during the day and \$40 per hour for overnight shifts and public holidays (excluding GST). The cost of McDonald's Security is ongoing and



will continue at least until the protesters have been removed from the Land and the immediate area surrounding the Land.

67. I have recently received an invoice from McDonald's Security for the first week of the provision of security service (from 1 July 2013 to 7 July 2013) which amounts to approximately \$55,605.04 (including GST). Now produced and shown to me marked "**KRP19**" is a copy of the tax invoice dated 7 July 2013 that has been received from Southern Cross Security Group.
68. McDonald's wishes to perform the works to construct the restaurant on the Land and Licenced Land in accordance with the Planning Permit and the Building Permit, unimpeded. The conduct of those occupying the Land and preventing access to and departures from the Land and Licenced Land as set out in my affidavit is making that impossible.
69. Now produced, shown to me and marked "**KRP20**" is an aerial photograph of the Land and the surrounding land. The area coloured red is the Land. It is owned by McDonald's and it wishes to build a restaurant on the land and accordingly it wishes that those who oppose the construction of the restaurant be prohibited from entering onto the Land.
70. The area coloured green south of the Land and Licenced Land is the footpath in front of the Land and Licenced Land. McDonald's wishes for those opposed to the construction of the restaurant to be prohibited from going onto that footpath in order that they cannot prevent access to the Land and Licenced Land by those engaged in constructing the restaurant.
71. The area coloured purple which is south of the green land is the Burwood Highway. McDonald's wishes for those opposed to the construction of the restaurant to be prohibited from going onto that roadway in order that they cannot prevent access to the Land and Licenced Land by those engaged in constructing the restaurant.
72. The area hatched blue which is part on the Land and part to the west of the Land is two easements which allow access to the Land. McDonald's is performing work on the easements and wishes for those opposed to the construction of the restaurant to be prohibited from going on the area hatched blue as well as the area

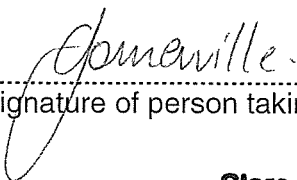


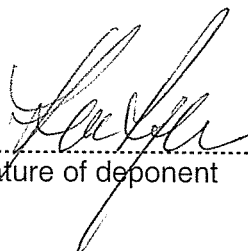
coloured orange so that they cannot prevent access to the easements on which McDonald's is planning to do works.

73. The area coloured blue to the east of the Land is the Licensed Land on which McDonald's is placing its site sheds during construction on the Land and Licenced Land. McDonald's wishes for those opposed to the construction of the restaurant to be prohibited from going onto that land as if they were to do so they would be able to disrupt the building process as the site sheds will be on that land.
74. The area hatched green is an area which will enable customers to access the McDonald's restaurant on the Land. That area comprises an easement that traverses the Land, an easement that is proposed to be created and registered over the Licensed Land next door and an easement over the site next door to the Licensed Land at 1535 Burwood Highway. McDonald's proposes to perform works on the area hatched green in order that the area subject to the easements and future easement can be used to access the restaurant. Accordingly McDonald's wishes that those opposed to the construction of the restaurant be prohibited from going onto the easements and future easement land as if they were to do so they would be able to disrupt the works on that land.
75. Now produced, shown to me and marked "KRP21" is another map of the Land and the surrounding land. The areas marked red on that map are the areas where McDonald's would wish that those opposed to the construction of the restaurant would be prohibited from going as set out above in order that McDonald's can proceed to build as it desires to do.

AFFIRMED at Melbourne
in Victoria
on 16 July 2013

Before me:


Signature of person taking affidavit

)
)
)
)

Signature of deponent

Clare Louise Somerville
RACV Tower, 485 Bourke Street
Melbourne Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004. 19