



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD516/2016

DOMINO'S PIZZA ENTERPRISES LTD

Applicant

PRECISION TRACKING PTY LTD and another/others named in the schedule

Respondent

ORDER

JUDGE: JUSTICE ROBERTSON

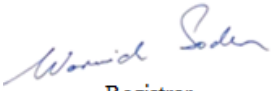
DATE OF ORDER: 25 May 2018

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

1. The First Respondent/Cross-Claimant (**Precision Tracking**) provide security in the amount of \$241,000 (the **Domino's Security Amount**) for the costs of the Applicant/First Cross-Respondent (**Domino's**) up to but not including the first day of trial on the basis set out in orders 2 and 3 below.
2. By 5 pm on 30 May 2018, Domino's and AmTrust Europe Limited (**AmTrust**) execute a deed of indemnity in relation to the Domino's Security Amount in the form within **Annexure A** to these orders.
3. Precision Tracking's cross-claim against Domino's in the proceeding be stayed if order 2 is not complied with.

Date that entry is stamped: 25 May 2018


Registrar



ANNEXURE A

REFERENCE NUMBER 120001201612 DI 1

THIS DEED OF INDEMNITY is made on the day of May 2018

BETWEEN

- (1) **AMTRUST EUROPE LIMITED** whose office is at No 2 Minster Court, Mincing Lane, London EC3R 7BB (“**AmTrust**”);
 - (2) **DOMINO’S PIZZA ENTERPRISES LIMITED** whose office is at 5/485 Kingsford Smith Drive, Hamilton, Queensland, Australia 4007 (“**the Respondent**”);
- individually a “**Party**” and together the “**Parties**”.

WHEREAS:

1. The **Claimant** has issued legal proceedings against the **Respondent**.
2. The **Claimant** has previously been ordered to provide security for costs to the **Respondent** up to the conclusion of the trial that was listed for hearing in November and December 2017. On 28 November 2017, the trial was adjourned to October and December 2018.
3. The **Claimant** has consented to provide additional security to the **Respondent** in the sum of two hundred and forty one thousand Australian dollars (AUD\$241,000) for costs up to, but not including, the first day of trial.
4. In order to meet this liability **AmTrust** has agreed to indemnify the **Respondent** in accordance with the terms of this **Deed**, up to a maximum of two hundred and forty one thousand Australian dollars (AUD\$241,000).

NOW THIS DEED WITNESSES as follows:



Definitions

1. In this **Deed** the following definitions shall have the following meanings:

“**Business Day**” means a weekday other than a public holiday in New South Wales, Australia.

“**Claim**” means the **Claimant's** legal claim against the **Respondent** in action number NSD 516/2016 in the Federal Court of Australia.

“**Claimant**” means Precision Tracking Pty Ltd.

“**Deed**” means this deed.

“**Demand to Claimant**” means a demand made by the **Respondent** to the **Claimant** for the payment of any sum or sums which the **Claimant** is legally liable to pay to the **Respondent** in respect of the **Respondent's** costs in the **Claim** pursuant to:

- (a) an order of the court including a summary assessment of costs, or
- (b) an order of the court following a detailed assessment or a final costs certificate issued by the court, or
- (c) an agreement in writing and executed between the **Claimant** and the **Respondent** as to the amount of costs to be paid in respect of any costs order made by the court in the **Claim** in favour of the **Respondent** and against the **Claimant** provided that **AmTrust** has provided its prior written approval to the **Claimant** entering into such an agreement (**AmTrust Written Approval**) (**AmTrust Approved Settled Costs Agreement**).

“**Funder**” means LCM Litigation Fund Pty Ltd.

“**Indemnity Demand**” means a written demand from the **Respondent** to **AmTrust** which is expressed to be made under this **Deed** and which:

- (a) is for a sum being the balance of any sum due from the **Claimant** to the **Respondent** pursuant to a specified court order, **AmTrust Approved Settled Costs Agreement** or final costs certificate, where that sum has been the subject of a **Demand to Claimant**,



- (b) is made, after the expiry of fourteen (14) days from the date of the **Demand to Claimant**, and
- (c) which is accompanied by:
 - i. a copy of the **Demand to Claimant**;
 - ii. written confirmation the **Demand to Claimant** or specified part of it remains outstanding after 14 days; and
 - iii. a certified copy of the relevant court order, **AmTrust Approved Settled Costs Agreement**, together with a copy of the **AmTrust Written Approval** and / or final costs certificate.

“**Notice**” means a notice in writing, including an **Indemnity Demand** given pursuant to this **Deed**.

Indemnity

2. Subject to clauses 3. and 4. below, **AmTrust** hereby unconditionally and irrevocably undertakes to pay to the **Respondent** any sum or sums which the **Claimant** is legally liable to pay in respect of the **Respondent**'s costs in relation to the **Claim**, pursuant to an order of the court.
3. It is a condition precedent to **AmTrust**'s liability under this **Deed** that the **Respondent** must first have made a valid **Indemnity Demand**.
4. **AmTrust**'s total liability to the **Respondent** hereunder shall not exceed two hundred and forty one thousand dollars (AUD\$241,000) plus any sum which may be due - solely in respect of simple interest at the judgment rate from the date seven (7) **Business Days** following receipt by **AmTrust** of the **Indemnity Demand** until payment by **AmTrust**.
5. The payment or payment(s) will be made by **AmTrust** within seven (7) **Business Days** of receipt by **AmTrust** of a valid **Indemnity Demand**.
6. A sealed copy of the relevant court order or a certified copy of the relevant final costs certificate or a copy of the **AmTrust Approved Settled Costs Agreement** shall be conclusive evidence of the liability of the **Claimant** and binding upon **AmTrust** without further enquiry or dispute by **AmTrust**.



7. **AmTrust** shall be deemed to be a principal debtor and not merely a surety and, accordingly, **AmTrust** shall not be discharged nor shall its liability be affected by any act or thing or means whatsoever (including, without limitation, any defences to payment asserted by, insolvency of, or unenforceability as against the **Claimant**).
8. For the **avoidance** of doubt and without prejudice to the foregoing, **AmTrust**'s liability under this Deed shall not be subject to avoidance on the grounds of fraud or misrepresentation by the **Claimant**, or the **Funder**, any purported cancellation of the policy of insurance between AmTrust and the **Funder** or the Claimant, whether by AmTrust, the **Funder** or the Claimant, nor shall it be affected by any lack of substance in the claim which has been brought by the **Claimant**.
9. **AmTrust** undertakes that it will not seek security for its costs in respect of any application made by the **Respondent** in the United Kingdom to enforce this **Deed** or an order of an Australian Court made pursuant to this **Deed**, or to register any costs order made in the **Respondent's** favour in relation to the **Claim**.

Notices

10. **Notices** under this Deed shall be served at the addresses set out below (or to such address as is notified in writing by one **Party** to the others from time to time) by hand or by pre-paid recorded delivery post.

Addresses for service:

AmTrust

Case Manager
AmTrust Law
AmTrust Europe Ltd
No. 2, Minster Court
Mincing Lane
London EC3R 7BB

The Respondent

Domino's Pizza Enterprises Limited
5/485 Kingsford Smith Drive



Hamilton Queensland
Australia 4007

11. Notices shall be deemed served:
- (a) if delivered by hand, at the time of delivery to the **Party**; or
 - (b) if sent by pre-paid recorded delivery post, at the expiration of 5 days from despatch.
 - (c) A **Notice to AmTrust** should be copied to the following email address for notification only, but for the avoidance of doubt, an email copy will not constitute service of a **Notice**.

case.management@amtrustgroup.com

General

12. This **Deed** shall be in addition to and not in substitution for (and shall not be prejudiced by) any rights which the **Respondent** may have against the **Claimant** or any other person in respect of the sums indemnified under this **Deed**, including but not limited to the enforcement of any costs orders that are made in favour of the **Respondent** in respect of the **Claim**.
13. Neither **AmTrust** nor the **Respondent** may assign or transfer any of their rights or obligations under this **Deed**.
14. (a) This **Deed** shall be governed by and construed in accordance with the Law of New South Wales.
- (b) This **Deed** shall be subject to the jurisdiction of the Federal Court of Australia, the Supreme Court of New South Wales or the District Court of New South Wales, and the **Parties** irrevocably submit to the jurisdiction of whichever of those Courts in which proceedings are commenced.



IN WITNESS WHEREOF this **Deed** has been executed as a **Deed** on the date set out above.

Signed by **AMTRUST EUROPE LIMITED**

acting by
an authorised signatory

in the presence of

Address

Occupation

Signed by **DOMINO'S PIZZA ENTERPRISES LIMITED**

.....
in the presence of

.....

Address

Occupation



Schedule

No: NSD516/2016

Federal Court of Australia
District Registry: New South Wales
Division: General

Second Respondent VLADIMIR LASKY
Third Respondent NATHAN PARROTT
Fourth Respondent ALEXANDER GREEN
Fifth Respondent DELIVERY COMMAND PTY LTD

CROSS CLAIM

Cross-Claimant PRECISION TRACKING PTY LTD
Cross Respondent DOMINO'S PIZZA ENTERPRISES LTD
Second Cross
Respondent NAVMAN WIRELESS AUSTRALIA PTY LTD ACN 123 981
457

CROSS CLAIM

Cross-Claimant NAVMAN WIRELESS AUSTRALIA PTY LTD ACN 123 981
457
Cross Respondent PRECISION TRACKING PTY LTD