



Form 59
Rule 29.02(1)

Affidavit

No. NSD103 of 2023

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

BRUCE LEHRMANN

Applicant

NETWORK TEN PTY LIMITED ACN 052 515 250 and another
Respondents

Affidavit of: **Conor Edward Austin O'Beirne**
Address: Level 23, 525 Collins Street, Melbourne VIC 3000
Occupation: Solicitor
Date: 22 April 2024

I Conor Edward Austin O'Beirne, of Level 23, 525 Collins Street, Melbourne VIC 3000, solicitor, affirm:

1. I am a Senior Associate at Thomson Geer, solicitors for the First Respondent.
2. I am authorised to make this affidavit on the First Respondent's behalf.
3. I have previously affirmed affidavits in this proceeding.
4. I make this affidavit from my own knowledge, except where I have stated otherwise.
Where I depose to matters on information given to me, I believe that information to be true and correct.

Filed on behalf of (name & role of party) First Respondent, being Network Ten Pty Limited

Prepared by (name of person/lawyer) Marlia Saunders

Law firm (if applicable) Thomson Geer

Tel 02 8248 5836 Fax _____

Email msaunders@tglaw.com.au

Address for service Level 14, 60 Martin Place, Sydney NSW 2000
(include state and postcode)

[Version 3 form approved 02/05/2019]

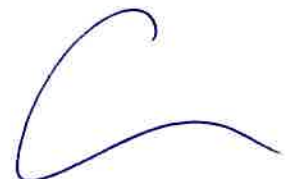
5. This affidavit is made:
- (a) in support of the First Respondent's application for indemnity costs; and
 - (b) in furtherance of submissions about the extent of duplication of, or overlap between, the costs of the First and Second Respondents.

Offer to resolve these proceedings

6. At 8:42am on 31 August 2023, I was copied to an email from Marlia Saunders, a Partner at Thomson Geer, addressed to the Applicant's solicitors. Ms Saunders' email attached a without prejudice letter making an offer to resolve the proceedings against both Respondents. A true copy of the email and letter are annexed to this affidavit and marked "**COB-8**".
7. At 10:17am that day, I received an email from the Applicant's solicitors. This email attached a without prejudice letter which rejected the Respondents' offer. A true copy of the email and letter are annexed to this affidavit and marked "**COB-9**".

The First Respondent's truth defence

8. Thomson Geer and the First Respondent's Counsel prepared and prosecuted the First Respondent's truth defence, which included:
- (a) the preparation and service of affidavits from 15 witnesses;
 - (b) the preparation and service of outlines of evidence in relation to 6 witnesses;
 - (c) the preparation and service of the expert reports of Dr Christopher Lennings, Dr Michael Robertson and Mr Tim Reedy; and
 - (d) reviewing all of the material received under the various subpoenas and notices to produce issued throughout the proceeding;
 - (e) cross-examining the Applicant in relation to all matters relating to the truth defence;
 - (f) calling each of the witnesses in relation to the truth defence and, in many cases, adducing viva voce evidence from them; and

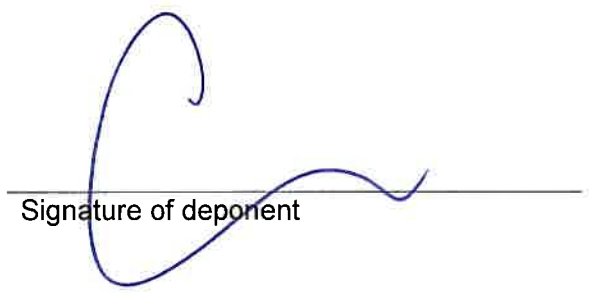


(g) the making and filing of extensive submissions in relation to the truth defence.

Affirmed by the deponent
at Melbourne
in Victoria
on 22 April 2024
Before me:

)
)
)
)
)

Signature of deponent



Signature of witness

Isabelle Rose Gwinner
Solicitor
Level 23, 525 Collins Street, Melbourne VIC 3000
An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law

Annexure Certificate

No. NSD103 of 2023

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

BRUCE LEHRMANN

Applicant

NETWORK TEN PTY LIMITED & ANOR

Respondent

This is annexure marked "**COB-8**" referred to in the affidavit of CONOR EDWARD AUSTIN O'BEIRNE affirmed on 22 April 2024 before me:



Signature of Isabelle Rose Gwinner

Solicitor

Level 23, 525 Collins Street

Melbourne VIC 3000

O'Beirne, Conor

From: Saunders, Marlia
Sent: Thursday, 31 August 2023 8:42 AM
To: Paul Svilans; Monica Allen
Cc: Anthony Jefferies; David Collinge; Nicola Sanchez; O'Beirne, Conor; CausleyTodd, Amelia; Meixner, Sophie
Subject: Lehrmann v Network Ten Pty Ltd and Anor (NSD103/2023) - Correspondence attached [TGLAW-Legal.FID3782978]
Attachments: Letter to MOBL - Calderbank - 31.08.2023 (83918982v1).PDF

Without prejudice

Dear Colleagues

Please see our correspondence **attached**.

Kind regards

Marlia Saunders | Partner

Thomson Geer

T +61 2 8248 5836 | M +61 417 435 251

Level 14, 60 Martin Place, Sydney NSW 2000 Australia

msaunders@tglaw.com.au | tglaw.com.au

Advice | Transactions | Disputes

Our ref MS:5263490
Your ref MOBL657

31 August 2023

**WITHOUT PREJUDICE
SAVE AS TO COSTS**

Paul Svilans and Monica Allen
Mark O'Brien Legal
Level 19
68 Pitt Street
SYDNEY NSW 2000

Dear Colleagues

**Bruce Lehrmann v Network Ten Pty Limited & Anor - Subpoenas to Produce
Federal Court of Australia Proceedings No. NSD 103 of 2023**

This letter contains an offer to resolve these proceedings against both Respondents on a walk away basis.

The reasons why such an offer is reasonable and should be accepted by your client are set out below.

Your client's case

Your client has previously stated he has nothing to lose. Indeed, your without prejudice communications repeat this as if to suggest your client is litigating from a position of strength. Frankly, he is not and he in fact has a great deal to lose if he proceeds to a trial in this proceeding.

In his interview with Channel Seven, Mr Lehrmann said words to the effect of:

"I accept that there's going to be 50% of the country, probably more, that think I'm a rapist, okay. But how about having a bit of an open mind and a bit of pragmatism about how you approach an issue, you know. There's two sides to every story. Let's look at the facts, let's look at the breadcrumbs, where do they lead. Let's look at motivations, let's look at credibility."
(emphasis added)

If our client's truth defence succeeds, the remaining "50% of the country" will have to accept that your client is a rapist. That much is plain. Such a finding would also almost certainly be fatal to your client's foreshadowed claim for compensation from the Commonwealth. That claim appears logically to depend upon there not having been any adjudication adverse to your client of Ms Higgins' allegations, yet in this proceeding your client invites the Respondents, who are highly motivated opponents, to secure precisely that adjudication.

In addition, this trial will be heavily reported on and scrutinised. There will be media favourable to your client and there will be media favourable to Ms Higgins.

It is difficult to imagine how Ms Higgins' version of events on 23 March 2019 could be scrutinised further than it has been already. She is arguably the most spoken about person in the country. Her version of events – not to mention her life – has been under intense scrutiny for over two and a half years.

By contrast, your client has, to date, never had to give his version under oath. At trial he will need to explain all of the inconsistencies and cracks that have emerged in his story since the night in question. Whatever

media scrutiny your client feels he has been subjected to thus far will only become more intense after he finally goes into evidence. Your client has already admitted, on oath, in the course of the extension of time application, to systematically telling untruths. The prospect of adverse credit findings being made against him looms very large indeed.

As you well know, even successful plaintiffs frequently obtain pyrrhic victories, whereby their reputations in the eyes of the public suffer as a result of evidence adduced at trial, despite the Court finding in their favour. Even if Mr Lehmann is successful in this proceeding (which we consider unlikely) he will not emerge from this exonerated. If he loses (which we consider likely), he will suffer a devastating blow from which he cannot realistically ever hope to recover.

The Respondents' defences

Our client's evidence in chief, as well as that of Ms Wilkinson, has now been served. Ms Higgins has been subpoenaed to attend and give evidence at the trial.

It is plain from the evidence that your client will not succeed at trial.

We do not intend to rehearse all of the strengths of our client's justification defence. Much of this evidence formed part of his criminal trial. However, what should be clear to your client is that, with the benefit of having reviewed and identified small gaps in the evidence given at the criminal trial, our client's case is stronger and more thorough. Further, our client does not need to make out its case beyond reasonable doubt and is confident that it can prove the imputations true to the *Briginshaw* standard.

You claim in your without prejudice correspondence that Mr Whybrow SC regards there is "potent material for cross examination" of Ms Higgins in the brief of evidence, including Ms Higgins' mobile phone. With respect, we have reviewed this material and consider there is no genuine basis to question her motive, reliability or credibility. Her story of the rape has remained entirely consistent since the night of the incident. The same cannot be said for your client. Any attempt to undermine Ms Higgins' credibility would be based on a "rape myth" and should be discounted for the reasons set out in the expert report of Dr Chris Lennings.

The Respondents also have an extremely strong qualified privilege defence.

You have now been provided with extensive affidavits, outlines and discovery which demonstrate the lengths and efforts of the Respondents' journalism. The totality of this evidence paints a very clear picture: The Project is not a salacious program, its journalism is careful, considered and robust.

There is perhaps no better example of this than the segment in issue in this case, which was approached with care and diligence. Despite attempts to discredit the Respondents' journalism, including through what we fear are breaches of the implied undertaking attached to material produced under subpoena (including the five-hour recording notably referred to in your without prejudice correspondence), his Honour will receive the evidence in its entirety and see for himself the volume and quality of work that went into investigating and producing this story, and the reasonableness of the decisions made prior to broadcast. The Respondents chose to broadcast Ms Higgins' allegations because they raised matters of significant public interest. They did not broadcast the allegations to shame or humiliate your client, which is evidenced by the fact that they did not name him or use his image.

Whether the Respondents' conduct satisfies s 30 of the Defamation Act is plainly a matter for trial, but the evidence demonstrates the extreme lengths that were gone to in the investigating and preparing of this story to ensure it was as careful, considered and robust as it was.

The Respondents have committed significant resources to this case, and remain willing and able to defend it at trial, notwithstanding the cost.

Offer to resolve this proceeding

Despite the strength of the Respondents' defences, for purely commercial reasons, the Respondents are willing to resolve this proceeding on a walk away basis. The Respondents propose that the parties agree to the following orders by consent:

- 1 The proceeding be dismissed.

2 There be no order as to costs.

In the circumstances, the Respondents' offer is very reasonable.

This offer involves significant compromise. Clearly, it involves the Respondents forgoing their costs to date (which are significant) as well as the opportunity to obtain a judgment which vindicates their journalism.

The Respondents are also forgoing the opportunity to recoup their costs of the extension of time application heard earlier this year. Given the confused and haphazard manner in which your client's application was prosecuted, including the late (and in some cases non-existent) production of relevant material, the Respondents' opposition to the application was reasonable and appropriate in all of the circumstances. Despite the fact your client obtained an extension of time, we expect some, if not all, of the Respondents' costs of preparing for and opposing your client's extension of time application to be recoverable, even if your client is ultimately successful in the proceeding (which is unlikely).

The offer is open for acceptance until 5pm, **Friday 15 September 2023**.

If the offer is not accepted by your client, the Respondents intend to rely on the failure to accept the offer for the purposes of section 40 of the *Defamation Act 2005* and, further or alternatively, in accordance with the principles held to apply in the decision of *Calderbank v Calderbank* [1976] Fam 93 and *Cutts v Head* [1984] 1 All ER 597, including on the question of indemnity costs.

Yours sincerely



Marlia Saunders

Partner

T +61 2 8248 5836

M +61 417 435 251

E msaunders@tglaw.com.au

Copy Anthony Jeffries, David Collinge and Nicola Sanchez
Gillis Delaney Lawyers

Annexure Certificate

No. NSD103 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General


BRUCE LEHRMANN

Applicant

NETWORK TEN PTY LIMITED & ANOR

Respondent

This is annexure marked "**COB-9**" referred to in the affidavit of CONOR EDWARD AUSTIN O'BEIRNE affirmed on 22 April 2024 before me:



Signature of Isabelle Rose Gwinner

Solicitor

Level 23, 525 Collins Street

Melbourne VIC 3000

O'Beirne, Conor

From: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>
Sent: Thursday, 31 August 2023 10:17 AM
To: Saunders, Marlia
Cc: Anthony Jefferies; David Collinge; Nicola Sanchez; O'Beirne, Conor; CausleyTodd, Amelia; Meixner, Sophie; Monica Allen
Subject: Lehrmann v Network Ten Pty Ltd and Anor (NSD103/2023)
Attachments: SKM_C558_123083110320.pdf

Dear Ms Saunders

Please find attached letter.

Regards

Paul Svilans
Principal | Mark O'Brien Legal

MARK O'BRIEN LEGAL
ABN 86 002 421 123
Level 19, 68 Pitt Street, Sydney NSW 2000 Australia
T +61 2 9216 9830 | M +61 410 687 900
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From: Saunders, Marlia <msaunders@tglaw.com.au>
Sent: Thursday, August 31, 2023 8:42 AM
To: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>; Monica Allen <Monica.Allen@markobrienlegal.com.au>
Cc: Anthony Jefferies <ajj@gdlaw.com.au>; David Collinge <dec@gdlaw.com.au>; Nicola Sanchez <nrs@gdlaw.com.au>; O'Beirne, Conor <cobeirne@tglaw.com.au>; CausleyTodd, Amelia <acausleytodd@tglaw.com.au>; Meixner, Sophie <smeixner@tglaw.com.au>
Subject: Lehrmann v Network Ten Pty Ltd and Anor (NSD103/2023) - Correspondence attached [TGLAW-Legal.FID3782978]

[Confidential]

Without prejudice

Dear Colleagues

Please see our correspondence **attached**.

Kind regards

Marlia Saunders | Partner
Thomson Geer
T +61 2 8248 5836 | M +61 417 435 251
Level 14, 60 Martin Place, Sydney NSW 2000 Australia
msaunders@tglaw.com.au | tglaw.com.au

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**MARK
O'BRIEN
LEGAL**

ABN 86 002 421 123

Level 19, 68 Pitt Street
Sydney NSW 2000
Australia

Our Ref: MOBL:694
Your Ref: MS:5263490

31 August 2023

Marlia Saunders
Partner
Thomson Geer
Level 14
60 Martin Place
SYDNEY NSW 2000

By email: msaunders@tqlaw.com.au

Without prejudice

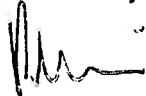
Dear Ms Saunders

**Bruce Lehrmann v Network Ten Pty Limited & Anor
Federal Court of Australia Proceedings No. NSD103/2023**

We refer to your letter to us of today's date containing the Respondents' settlement offer.

Our client rejects that offer.

Yours faithfully



Paul Svilans

Principal

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30035

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NOTICE OF FILING

Details of Filing

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File Title: BRUCE LEHRMANN v NETWORK TEN PTY LIMITED ACN 052 515 250
& ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.