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Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 20/06/2024 3:35:54 PM AEST
Date Accepted for Filing: 20/06/2024 3:36:02 PM AEST
File Number: NSD103/2023
File Title: BRUCE LEHRMANN v NETWORK TEN PTY LIMITED ACN 052 515 250
& ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads '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.

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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: **Marlia Ruth Saunders**
Address: Level 14, 60 Martin Place Sydney NSW 2000
Occupation: Lawyer
Date: 20 June 2024

I Marlia Ruth Saunders, of Level 14, 60 Martin Place Sydney NSW 2000, Lawyer, affirm:

1. I am a Partner 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 affirmed nine previous 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.
5. This affidavit is made in support of the First Respondent's application for a lump sum costs order pursuant to rule 40.02 of the *Federal Court Rules 2011* (Cth).

Filed on behalf of (name & role of party)	<u>First Respondent, being Network Ten Pty Limited</u>
Prepared by (name of person/lawyer)	<u>Marlia Saunders</u>
Law firm (if applicable)	<u>Thomson Geer</u>
Tel <u>02 8248 5836</u>	Fax _____
Email <u>msaunders@tglaw.com.au</u>	
Address for service (include state and postcode)	<u>Level 14, 60 Martin Place, Sydney NSW 2000</u>

[Version 3 form approved 02/05/2019]

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6. In referring to the First Respondent's legal costs in this proceeding, I do not intend to and am not instructed to waive the First Respondent's right to legal professional privilege.

Experience in running litigation

7. I was admitted as a solicitor of the Supreme Court of New South Wales in May 2005.
8. In the 19 years since my admission as a solicitor, I have practised in the areas of commercial litigation and dispute resolution in various jurisdictions, including the Federal Court of Australia, the Supreme Court of NSW, the District Court of NSW, the Supreme Court of the Australian Capital Territory, the Supreme Court of Queensland, the Supreme Court of South Australia, the District Court of South Australia and the Supreme Court of Western Australia.
9. During that time, I have been actively involved in the day-to-day running of over 40 defamation litigation matters. For each of those matters, I have reviewed the invoices issued for solicitor's costs and disbursements on a monthly basis. I have been involved in a number of costs assessment processes, both with and without the involvement of costs assessors.
10. Throughout this proceeding, I have closely reviewed each of the invoices issued to the First Respondent for solicitor's costs and disbursements on a monthly basis.
11. I am satisfied that all of the First Respondent's costs referred to in paragraph 21 of this affidavit (**Costs Summary**) have been reasonably incurred. This belief takes into account the scope and complexity of the issues raised throughout this proceeding.

Verification

12. I verify that:
- (a) I have read the Federal Court "Costs Practice Note (GPN-COSTS)" (**Costs Practice Note**).
 - (b) The First Respondent is entitled to claim input tax credits in respect of any GST relevant to the claims in the Costs Summary and has complied with Part 6 of the Costs Practice Note. Accordingly, the claims in the Costs Summary are exclusive of GST.
 - (c) In the Costs Summary:
 - (i) The First Respondent is not claiming more than it is liable to pay for costs and disbursements.
 - (ii) The calculations made are correct.

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- (iii) The matters noted are a fair and accurate summary of the costs and disbursements that the First Respondent is entitled to claim.
- (d) The amounts claimed are capable of further verification through source material (such as file records, tax invoices and receipts for payments) should such material be required by the Court to be produced.

Background

13. On 10 May 2024, Justice Lee ordered the Applicant pay the Respondents' costs of the proceeding as follows (**Costs Order**):
 - (a) the ordinary basis for the costs incurred in relation to the defence of statutory qualified privilege pursuant to s 30 of the *Defamation Act 2005* (NSW) (**Defamation Act**), other than costs in relation to affidavits specified in paragraph 2 of the Costs Order which are not recoverable; and
 - (b) the indemnity basis for any other costs of or incidental to the proceeding.
14. I have reviewed the tax invoices and receipts for payments of disbursements and categorised each of the line items into:
 - (a) excluded costs, including amounts relating to any pre-litigation correspondence; the notice to produce served on the Applicant by the Second Respondent (in respect of which a costs order was made against the Second Respondent in the Applicant's favour); the cross-claim by the Second Respondent against the First Respondent; the preparation of the affidavits set out in paragraph 2 of the Costs Order; and the further evidence and submissions relating to post-judgment comments;
 - (b) costs and disbursements which the First Respondent is entitled on an indemnity basis; and
 - (c) costs and disbursements which the First Respondent is entitled to recover on an ordinary basis, namely those relating to the statutory qualified privilege defence, which I calculated at 70 percent. In undertaking this task, I erred on the side of including more rather than less in this category. In particular, I treated all of the First Respondent's discovery costs and disbursements as being recoverable on an ordinary basis given the bulk of the First Respondent's discovery related to the qualified privilege defences.
15. In May 2024, Thomson Geer engaged in correspondence with Mark O'Brien Legal on a without prejudice basis in an attempt to resolve the costs issues in the proceeding in respect of the Applicant. The costs issues have not resolved.

16. On 31 May 2024, the Applicant filed a notice of appeal unrepresented. That evening, Thomson Geer sent an email to Mark O'Brien Legal asking whether they continued to act on the question of costs in this proceeding. No response was received.
17. On 6 June 2024, I sent another email to Mark O'Brien Legal asking whether they still have instructions to act for the Applicant in relation to the costs issues arising in this proceeding.
18. On 19 June 2024, I received an email from Mark O'Brien Legal confirming that they continue to act in this proceeding.

Costs summary

19. This affidavit has not been prepared with the assistance of an expert as to costs.
20. I calculated that up to and including 14 May 2024, the First Respondent's total recoverable costs of the proceeding calculated in accordance with the process described in paragraph 14 were approximately \$3,100,000.00 (exclusive of GST).
21. The First Respondent seeks a lump-sum costs order of \$2,000,000.00 (exclusive of GST), which represents a 35 percent discount on the First Respondent's total recoverable GST-exclusive costs, or such other proportion as the Court deems appropriate.
22. The categories of the work fairly and reasonably incurred in the conduct of the litigation on behalf of the First Respondent, including an estimate (in percentage terms) of the proportion that each category of work constitutes the total costs claimed, is:
 - (a) Reviewing originating materials and providing advice to clients regarding strategy in proceeding generally (1%);
 - (b) Briefing counsel at commencement of proceeding (1%);
 - (c) Exchanging correspondence with the solicitors for the Applicant and Second Respondent throughout entirety of proceeding (5%);
 - (d) Preparation and attendance at case management hearings, including updates to clients prior to and following hearings (3%);
 - (e) Communication with the Court throughout the proceeding, including preparation of consent orders and communications with other parties' solicitors regarding matters relating to communication with the Court (2%);
 - (f) Responding to the Applicant's extension of time application, including preparation of subpoenas, notices to produce, affidavits and submissions, and considering strategy with counsel and clients (3%);

- (g) Preparation of the First Respondent's defence (2%);
- (h) Preparation of submissions regarding the mode of trial (1%);
- (i) Preparation of subpoenas (1%);
- (j) Review of materials produced by third parties under subpoena (5%);
- (k) Preparation of the First Respondent's evidence, comprising affidavits, outlines of evidence and expert reports (8%) (excluding the First Respondent's affidavits relating to the statutory qualified privilege defence);
- (l) Review of the Applicant's evidence (3%);
- (m) Preparation of the First Respondent's discovery (6%);
- (n) Review of materials produced by the Applicant in discovery (5%);
- (o) Preparation of the First Respondent's interrogatories (1%);
- (p) Preparation of the First Respondent's tender documents (1%);
- (q) Preparation of the joint electronic court book for the trial (3%);
- (r) Preparation for and attendance at the trial, including preparation of closing written submissions (including reply submissions and submissions in response to requests from the trial judge) (23%);
- (s) Reopening application and evidence (5%);
- (t) Attendance at judgment, reviewing judgment and providing advice (1%);
- (u) Communication with counsel throughout proceeding, including attending conferences (5%);
- (v) Communications with clients throughout proceeding, including seeking instructions and providing updates (5%);
- (w) Communications with witnesses throughout proceeding, including during the trial (3%);
- (x) Various tasks in relation to considering settlement opportunities throughout proceeding (1%);
- (y) Miscellaneous internal communications regarding strategy in matter generally (3%); and
- (z) Preparation for and attendance at the costs hearing, including preparation of affidavit evidence and submissions (3%).



23. A summary of the fee earners who worked on this matter for the First Respondent, their rates (exclusive of GST) and an estimate of the amount of hours spent working on this matter is:

Name	Position	Years of experience	Hourly rate (AUD)	Total hours (approx.)	Proportion (% of costs claimed) (approx.)
Marlia Saunders	Partner	19 (Admitted in 2005)	\$730	1012.90	31.76%
Conor O'Beirne	Senior Associate	Admitted in 2018	\$530	716.00	22.45%
Amelia CausleyTodd	Associate	Admitted in 2020	\$435	821.70	25.76%
Sophie Meixner	Lawyer	Admitted in 2019	\$395	357.30	11.20%
Natasya Currie	Graduate	Admitted in 2024	\$275	263.80	8.27%
Rachel Stellas	Senior Paralegal	Not admitted	\$310	17.80	0.56%

24. The First Respondent briefed counsel to appear and advise in relation to this matter. The daily rates of the First Respondent's counsel (exclusive of GST) are:
- Senior Counsel: Matt Collins KC: \$11,000;
 - Junior Counsel: Tim Senior: \$4,000; and
 - Junior Counsel (costs issues): Zoe Graus: \$2,200.
25. The First Respondent was charged the following amounts by counsel between February 2023 and May 2024 (exclusive of GST):
- Senior Counsel: Matt Collins KC: \$768,750.00;
 - Junior Counsel: Tim Senior: \$407,900.00; and
 - Junior Counsel (costs issues): Zoe Graus: \$19,778.34.
26. The First Respondent also incurred disbursements for:
- Subpoena filing fees: \$5,970.00 (exclusive of GST).

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- (b) Transcripts of the case management hearings and trial: \$54,965.61(exclusive of GST).
- (c) Witness flights and accommodation: \$57,698.55 (exclusive of GST).
- (d) Other disbursements, including discovery management platform fees, searches, couriers, expert witness fees, subpoenaed party legal fees, process server fees and other court fees: \$327,199.32 (exclusive of GST).
27. The table below sets out the details of the invoices Thomson Geer has issued to the First Respondent for work completed in this proceeding (which, for the avoidance of doubt, includes costs that we have excluded in calculating the recoverable costs sum as described in paragraph 14 above):

Invoice date and number	Total invoice (\$) (incl GST)	Thomson Geer (\$) (excl GST)	Disbursements (\$) (excl GST)
28 February 2023 (1143842)	\$49,006.10	\$44,551.00	\$0.00
31 March 2023 (1154060)	\$283,959.07	\$138,297.00	\$119,859.93
30 April 2023 (1163221)	\$46,188.70	\$5,267.00	\$36,795.00
31 May 2023 (1173670)	\$81,424.20	\$56,522.00	\$17,500.00
30 June 2023 (1186495)	\$242,294.65	\$163,081.50	\$57,355.00
31 July 2023 (1195031)	\$291,407.35	\$217,064.00	\$47,917.87
31 August 2023 (1205266)	\$213,168.92	\$144,326.50	\$49,820.70
30 September 2023 (1216131)	\$65,645.45	\$22,565.50	\$37,164.00
18 October 2023 (1224790)	\$1,653.85	\$0.00	\$1,503.50
31 October 2023 (1226896)	\$71,226.38	\$62,940.00	\$1,811.25
15 November 2023 (1233946)	\$11,249.52	\$0.00	\$10,226.84
20 November 2023 (1234615)	\$213,400.00	\$0.00	\$194,000.00
30 November 2023 (1236263)	\$287,695.82	\$248,993.50	\$12,906.45
7 December 2023 (1242149)	\$28,527.16	\$0.00	\$25,956.52
13 December 2023 (1243567)	\$231,985.03	\$0.00	\$210,901.45
22 December 2023 (1244799)	\$352,319.26	\$278,841.50	\$42,370.56
17 January 2024 (1249818)	\$182,793.81	\$0.00	\$166,180.52
31 January 2024 (1254341)	\$130,141.98	\$117,857.50	\$453.39

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14 February 2024 (1286978)	\$23,935.18	\$0.00	\$23,203.68
29 February 2024 (1266357)	\$16,065.50	\$14,605.00	\$0.00
13 March 2024 (1273767)	\$404,559.49	\$0.00	\$367,781.35
31 March 2024 (1277220)	\$13,463.45	\$12,239.50	\$0.00
30 April 2024 (1289554)	\$252,180.88	\$133,272.50	\$96,008.75
20 May 2024 (1298942)	\$101,337.13	\$0.00	\$92,256.94
31 May 2024 (1304954)	\$72,791.95	\$66,174.50	\$0.00
TOTAL	\$3,668,420.83	\$1,726,598.50	\$1,611,973.70

28. The sums invoiced to the First Respondent do not include any loading for "skill, care and responsibility". There are also no special or unusual costs arrangements underpinning the costs claimed. Given the discount of 35 percent provided, the First Respondent considers the amounts claimed relevantly fall within:
- (a) the amounts permissible for any item under the Scale (as defined in paragraph 1(k)(i) of Part B of Annexure A to the Costs Practice Note);
 - (b) the Federal Court's National Guide to Discretionary Items in Bills of Costs.
29. There are no special features of the case which may impact the assessment of costs or any other relevant and important matters that are not mentioned above.

Affirmed by the deponent
at Sydney
in New South Wales
on 20 June 2024
Before me:

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Signature of deponent



Signature of witness

Sophie Helen Rose Meixner
Solicitor
Level 14, 60 Martin Place, Sydney NSW 2000
An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law