

IN THE AUSTRALIAN ARBITRATION CENTRE

No. MKM25 of 2025

BETWEEN

Margot Essex

Claimant

- and -

Windsor Mountain Estate Pty Ltd (ACN 927 153 288)

Respondent

JOINT REFERRAL TO ARBITRATION

- 1 By written agreement dated 28 March 2024, the Claimant (**Essex**) and the Respondent (**Windsor**) contracted for Essex to provide bespoke home-making classes with at a hotel operated by Windsor, in exchange for payment (the **Agreement**).
- 2 The Agreement is governed by New South Wales law.
- 3 By clause 21 of the Agreement, the parties agreed:
 - 3.1 to refer any dispute arising from or in connection with the Agreement to expert determination; and
 - 3.2 that, if either party was dissatisfied with the expert determination, it would have the right to apply to an arbitral tribunal to be dealt with *de novo*.
- 4 A dispute in relation to the Agreement was referred to an expert for determination in accordance with clause 21 of the Agreement. A copy of the expert's determination dated 5 May 2025 is at Annexure A (the **Determination**).

- 5 Both parties to the Agreement are dissatisfied with the conclusions reached in the Determination and hereby refer the dispute to arbitration by the Tribunal as now constituted.
- 6 The Determination correctly recites the facts and the parties' respective claims. The parties agree that they are not bound by the arguments put to the expert prior to making the Determination.
- 7 Neither party seeks to adduce any further evidence.
- 8 Neither party relies on any State or Commonwealth legislation.
- 9 No procedural issue arises in respect of the Determination and both parties accept the Tribunal's jurisdiction to hear and determine the dispute.
- 10 The issues are as follows.
- (a) Did Windsor breach the Agreement by failing to supply materials to Essex to enable her to conduct a masterclass pursuant to the Agreement?
 - (b) Did Windsor breach the Agreement by failing to pay Essex for her services?
 - (c) Did Essex breach the Agreement by failing to provide an "original" masterclass?
 - (d) Did Essex breach an implied term of the Agreement to conduct the masterclass in a way which was not dangerous?
 - (e) To what measure of damages is Windsor entitled for Essex's breach (or breaches) of the Agreement, if any?

Margot Essex
Claimant

Windsor Mountain Estate Pty Ltd
Respondent

ANNEXURE A

EXPERT DETERMINATION

5 MAY 2025

IN RESPECT OF THE DISPUTE ARISING BETWEEN

Margot Essex

and

Windsor Mountain Estate Pty Ltd

The Hon. Eleanor Plantagenet AC KC

FACTS

- 1 The Claimant, Margot **Essex**, is a citizen of the United States of America, with a fixed address in California. Essex first gained international fame in the late 2000s as a high-profile fashion model, appearing on the covers of major fashion magazines and walking for luxury brands in Paris, Milan, and New York.
- 2 In recent years, Essex has leveraged her public profile to build a substantial following online as a lifestyle influencer, focusing on elevated domestic living. Her curated homemaking content – ranging from floral arrangements to luxury cleaning rituals – has made her a sought-after guest at boutique hotels and private retreats, which pay her a large fee to deliver in-person homemaking masterclasses. Each year, Essex appears at only two select venues.
- 3 This dispute concerns Essex’s engagement to deliver masterclasses in June 2024 at a luxury hotel in New South Wales, owned and operated by the Respondent (**Windsor**) (the **Hotel**).
- 4 The Hotel, called the “Windsor Mountain Estate”, is a converted 19th-century manor house set on a private estate in the Blue Mountains National Park, approximately two hours west of Sydney. The Hotel is known for its elegant interiors, sprawling gardens, and heritage conservatory. The Hotel also has an established reputation for offering its guests specialist masterclasses. These masterclasses include artisanal butchery, biodynamic gardening, antique furniture restoration, and immersive baroque music workshops.
- 5 Among the Hotel’s celebrated gardens is a section of native flora cultivated by a renowned landscape designer. Of particular note is the *cerbera australis*, commonly referred to by locals as the “Blue Mountain Laurel.” While striking in appearance – with

waxy white blossoms streaked with deep purple – the flower emits a toxic resin when exposed to mild heat. The resin can cause severe skin irritation and, if inhaled, respiratory inflammation and breathing difficulties. The Hotel’s guest manual specifically advises that guests should not touch the flower.

- 6 The Hotel promoted Essex’s visit and her masterclasses in various print and online advertisements, drawing coverage from international lifestyle publications. Essex’s visit to the Hotel was billed as a highlight of the 2024 winter season.
- 7 Each masterclass attendee paid \$1,000 to attend each class.
- 8 Essex and Windsor executed a services agreement (the **Agreement**). Under clause 4.1 of the Agreement, Essex was required to provide two masterclasses over two consecutive days that featured “bespoke and original homemaking classes specifically designed for Australian homemakers”.
- 9 Under the clause 5.2 of the Agreement, Windsor was responsible for providing “all consumables and equipment reasonably requested by [Essex] in advance of the “Masterclasses”. “Masterclass” was defined in the Agreement to mean the masterclasses to be provided in accordance with clause 4.1.
- 10 Under clause 5.3 of the Agreement, Windsor agreed to pay Essex \$150,000 for the “Masterclasses”.
- 11 Before arriving at the Hotel, one of Essex’s assistants sent an email to an administrative employee of Windsor, relevantly stating that: *“Margot will do a candle making class on the first day and then a flower arranging class on the second day. Please have flowers available.”*

- 12 Essex arrived at the Hotel on 4 June 2024. Her first class was scheduled to occur on 5 June 2024.
- 13 The masterclass for the first day was a session entitled “Scented Light: Candle-Making for the Modern Manor.” That class involved teaching participants how to create bespoke beeswax candles infused with flower petals and herbs. According to Essex, these candles were intended to “carry the emotional essence of the landscape into the home” and was said to “combine aesthetic charm with aromatherapeutic benefits”.
- 14 On the morning of her first session, Essex arrived at the designated place for her masterclass to find that no flowers had been laid out. With no Hotel staff to be seen and the first guests already gathering, Essex took it upon herself to forage flowers from the Hotel’s gardens in order to proceed with the session as scheduled.
- 15 Essex filled three wicker baskets with Blue Mountain Laurel and white roses from the Hotel’s gardens.
- 16 During the masterclass, Essex taught the guests how to melt beeswax, how to strip the flower petals and how to mix them with the melted beeswax, and then how to form them into candles. Essex told the guests that they could wear gloves to protect their hands from the wax, but that she would recommend avoiding the gloves to be “more connected to the process”. Some of the participants used gloves.
- 17 After the class that morning, each guest returned to their room and lit their finished candle as part of Essex’s prescribed “midday ritual.” Shortly after the class finished, those guests who did not use gloves experienced painful blistering on their hands. Further, within minutes of lighting their candles, many guests reported headaches, burning eyes, and shortness of breath. Several guests rang reception complaining of nausea and

dizziness. By lunchtime, more than a dozen guests exhibited symptoms consistent with exposure to the Blue Mountain Laurel's poisonous resin.

- 18 On-site medical staff treated twelve guests for their symptoms. Two of the guests were evacuated by private transport to a Sydney hospital for further treatment.
- 19 By the afternoon, news of the resin poisoning reached social media. Given Essex's enormous social media following, the news spread widely and quickly. By the late afternoon, Windsor and the Hotel staff were inundated with calls from international media about the poisoning.
- 20 That evening, the Hotel announced that Essex's second masterclass would not proceed.
- 21 On the morning of 7 June 2024, it was revealed through social media that, unbeknownst to both the Hotel and its guests, much of Essex's masterclass content had been directly copied – without attribution – from an Australian lifestyle influencer's Instagram account, “@FlourishWithFern,” which focused on native botanicals, seasonal homemaking, and sustainable design.
- 22 Following widespread social media reports about guest illnesses at the Hotel, the influencer behind @FlourishWithFern contacted the main office of Windsor. The influencer alleged that Essex had plagiarised her content, specifically her candle-making method. The influencer wrote: “She copied my entire ritual without credit and didn't even know how dangerous our native plants can be. This was performative, careless mimicry.” The post went viral, drawing international media attention and igniting backlash across multiple social media platforms.
- 23 On the evening of 7 June 2024, the CEO of Windsor, Charles Terzo called Essex and said “you have done enormous damage to our reputation. We will not be paying you

anything. We have had 50% of our bookings for the rest of the year cancelled. You will be hearing from our lawyers.”

- 24 The total direct financial impact of the poisonings on 5 June 2024 was \$100,000. That amount includes refunds of the costs of the masterclasses and refunds of the accommodation costs of affected guests.
- 25 In the week following the poisonings, reservations at the Hotel totalling \$560,000 were cancelled.
- 26 Windsor has not paid Essex’s fee for the masterclasses.
- 27 After trading barbs in the press, and through solicitor correspondence, Essex commenced this proceeding.

CLAIM

Claim 1: breach of clause 5.2

- 28 Essex claims that Windsor has breached clause 5.2 of the Agreement by failing to provide her with appropriate materials (namely, flowers) for her first masterclass.
- 29 Windsor denies it breached clause 5.2 on the basis that it was not requested to provide flowers for the first masterclass.

Claim 2: breach of clause 5.3

- 30 Essex claims that Windsor breached clause 5.3 of the Agreement by failing to pay her \$150,000.
- 31 Windsor accepts that it has not paid Essex but denies the breach on the basis that Essex's breaches of the Agreement relieve Windsor from its obligation to pay.
- 32 The parties accept that if Windsor establishes Claims 3 or 4 (set out below), Windsor is not liable to pay Essex the \$150,000.

COUNTERCLAIM

Claim 3: breach of clause 4.1

- 33 Windsor claims that Essex breached clause 4.1 of the Agreement.
- 34 The claim is put on the basis that Essex did not provide an "original" candle-making masterclass because she copied the method developed by the "@FlourishWithFern" influencer.
- 35 In response, Essex denies a breach of the Agreement and contends that "original" does not mean "entirely novel". Further, Essex contends that, in any event, her class on 5 June 2025 *was* original because it used the Blue Mountain Laurel, which the influencer had never done.

Claim 4: Breach of implied term

36 Windsor contends that it is an implied term of the Agreement that Essex would provide the masterclass using methods and materials that were not dangerous and would not cause harm to participating guests. Windsor contends that Essex breached that term by using the poisonous flower in the masterclass.

37 In response, Essex rejects that Agreement contains such an implied term. Essex pointed to the other activities offered by the Hotel (such as butchery) and contended that such activities pose a risk of harm to participating guests.

38 The parties agree that if the Agreement contained such a term, the term was breached.

Claim 5: Quantum of damages

39 Windsor claims that it is entitled to damages in respect of (1) the \$100,000 paid out in refunds following the poisoning and (2) the \$560,000 in lost bookings.

40 In response, Essex contends that Windsor is entitled to no more than nominal damages because the losses claimed by Windsor are too remote. Further, Essex contends that Windsor was under no obligation to provide the refunds and so the loss is not attributable to her breach of contract (if a breach is established).

CONSIDERATION

Claim 1

- 41 Claim 1 turns on whether Windsor (through the Hotel staff) was obliged to provide Essex with flowers for the masterclass which took place on 5 June 2024. That in turn depends upon whether Essex made a request to do so.
- 42 The evidence is limited to the email correspondence from Essex's assistant. In context, I consider the request to be limited to the flower arranging class on the second day, given that no reference is made to flowers in respect of the first day's activity.
- 43 However, the evidence also records that Essex sought to ask Hotel staff for assistance before the first class started. There being no staff available, Essex was required to find materials herself.
- 44 I consider that cl 5.2 carries with it an implication that Hotel staff will be available to receive requests for materials. No Hotel staff were available to assist Essex. Accordingly, I hold that Windsor breached cl 5.2 of the Agreement.

Claim 2

- 45 Whether Claim 2 succeeds depends upon the result of Claims 3 and 4. For the reasons given in respect of Claim 4, Claim 2 is rejected.

Claim 3

- 46 Claim 3 concerns Windsor's claim that Essex breached clause 4.1 of the Agreement because the masterclass she delivered was copied from an "influencer" on Instagram. I am satisfied that the candle-making method taught in Essex's class at the Hotel was a copy of the Influencer's method.

47 The critical issue is the meaning of “original”. Applying orthodox principles,¹ I am not persuaded that “original” means completely novel. Having regard to the essential purpose of the Agreement – the provision by Essex of classes on “homemaking” at the Hotel in exchange for payment – it is unnecessary and improbable that “original” be construed to require Essex to teach methods which were entirely novel.

48 I dismiss Claim 3.

Claim 4

49 By Claim 4, Windsor contends that the Agreement contained an implied term that Essex’s masterclasses would not be dangerous and would not cause harm to participating guests. I am satisfied that such a term “goes without saying” and is rightly to be implied.²

50 Breach is readily established: the Blue Mountain Laurel is poisonous and its use in the class on the 6th of June 2024 caused substantial physical pain and suffering to those guests exposed to the poisonous resin. In any event, Essex does not dispute that she breached the implied term.

51 Because Windsor has established Claim 4, I find that Windsor is not liable to pay Essex the amount the subject of Claim 2.

Claim 5

52 Windsor claims damages in respect of (1) refunds it paid to guests and (2) lost revenue from future hotel guests.

¹ *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104 at 116-118.

² *BP Refinery (Westernport) Pty Ltd v Hastings Shire Council* (1977) 180 CLR 266 at 283.

53 I find that the first head of damages should be awarded. The need to compensate guests affected by the harm caused to them is a natural and probable consequence of Essex's breach of the implied term. However, the lost revenue is too remote to be compensable.

CONCLUSION

54 In view of my findings, I determine that Windsor is entitled to recover from Essex an amount equal to the refunds paid to Hotel guests, referred to in paragraph 24.

The Hon. Eleanor Plantagenet AC KC

Angevin Chambers