



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Case: S ECI 2020 03924
S ECI 2020 03924
Filed on: 16/09/2024 02:06 PM

B E T W E E N

DAIMIN NATHAN

First Plaintiff

TANIA NATHAN

Second Plaintiff

-and-

MACQUARIE LEASING PTY LTD (ACN 002 674 982)

Defendant

AMENDED REPLY

Pursuant to order 4 made by Dixon J on 30 August 2024

Date of Document:	<u>16 September 2024</u>	Solicitors Code:	564
	21 April 2022	DX:	N/A
Filed on behalf of:	The Plaintiffs	Telephone:	(03) 9605 2700
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As to the Defence to Amended Statement of Claim of the Defendant dated ~~14 April 2022~~12 September 2024, the Plaintiffs join issue with the whole of the Defence and say further:

1. as to paragraphs 8(a)(iv), 9(a), (b)(ii) and (c)(i), and 57(b), (c)(iii) and (d)(i):
 - (a) at all material times the Car Loan Process was part of a staged sales process whereby:
 - (i) the Plaintiffs and Group Members selected the automobile;
 - (ii) the Plaintiffs and Group Members and the Dealer negotiated the price of the automobile, any accessories or extras to be purchased, and the value of any trade-in;
 - (iii) the Dealer sold the automobile to the Plaintiffs and Group Members;

- (iv) negotiation (if any) between the Dealer Business Manager and the Plaintiffs and Group Members on the terms of the Car Loan did not commence until after step (ii) or, alternatively, step (iii) above;
 - (v) Car Loan Offers were not submitted by the Dealer Business Manager to the Defendant until after the Plaintiffs and Group Members had agreed to the terms of the Car Loan and had signed the Car Loan Offer; and
 - (vi) from the Plaintiffs and Group Members' perspective, the Dealer Business Manager was in complete control of the Car Loan negotiation with the Defendant;
- (b) the effect of the staged sales process pleaded in subparagraph (a) above was that:
- (i) the Dealers sold the automobile and the Car Loan to the Plaintiffs and Group Members as a package;
 - (ii) once the staged sales process was underway, the Plaintiffs and Group Members' ability to:
 - (A) negotiate the terms of the Car Loan including the Facility Rate;
 - (B) give effect to their individual preferences and circumstances; and
 - (C) seek to finance the purchase of their motor vehicle by other alternative finance methods of their choosing;were limited or precluded; further, or alternatively
 - (iii) the Plaintiffs and Group Members were unable in a practical sense to take out a Car Loan with a credit provider other than the one that was proffered and recommended by the Dealer Business Manager.

2. As to paragraph 46(b), in respect of any Group Member whose cause of action:

- (a) is governed by the law of New South Wales, Victoria, Queensland, Tasmania or the Australian Capital Territory and accrued more than six years prior to the commencement of this proceeding; or

(b) is governed by the law of the Northern Territory and accrued more than three years prior to the commencement of this proceeding,

the limitation period applicable to the action for relief from the consequences of mistake is postponed until the Group Member first discovered the mistake/s, or could with reasonable diligence have discovered the mistake/s, in accordance with the following (as applicable):

(c) section 56(1) of the *Limitation Act 1969* (NSW);

(d) section 27(c) of the *Limitation of Actions Act 1958* (Vic);

(e) section 38(1)(c) of the *Limitation of Actions Act 1974* (Qld);

(f) section 32(1)(c) of the *Limitation Act 1974* (Tas);

(g) section 34(1) of the *Limitation Act 1985* (ACT);

(h) section 43(1) of the *Limitation Act 1981* (NT).

Dated: ~~21 April 2022~~ 16 September 2024

J STOLJAR

D J FAHEY

L COLEMAN

S HOGAN

Maurice Blackburn

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Maurice Blackburn Lawyers
Solicitors for the Plaintiff