



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

Case: S ECI 2023 01521

Filed on: 24/05/2024 03:20 PM

No. S ECI 2023 01521

**B E T W E E N**

James Kendall McCoy

Plaintiff

-and-

Hino Motors Ltd, First Defendant

Hino Motor Sales Australia Pty Ltd (ACN 064 989 724), Second Defendant

Defendants

**REPLY**

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Date of Document:	24 May 2024	Solicitors Code:	564
Filed on behalf of:	The Plaintiff		
Prepared by:	Maurice Blackburn Lawyers	Telephone:	03 9605 2892
	Level 21 380 La Trobe Street	Ref:	3053081
	Melbourne, VIC 3000	Email:	rkoo@mauriceblackburn.com.au

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1. Except for the admissions contained within the defence or where specifically pleaded to below, the plaintiff joins issue with the defendants on the whole of the defence.
2. In answer to paragraph 109 of the defence, the plaintiff:
  - (a) says that:
    - (i) to the extent that the defendants rely upon s 14(1)(b) of the *Limitation Act 1969* (NSW), s 5(1)(a) of the *Limitation of Actions Act 1958* (Vic), s 10(1)(a) of the *Limitation of Actions Act 1974* (Qld), s 35(c) of the *Limitation of Actions Act 1936* (SA), s 38(1)(c)(vi) of the *Limitation Act 1935* (WA), s 4(1)(a) of the *Limitation Act 1974* (Tas), s 11(1) of the *Limitation Act 1985* (ACT) or s 12(1)(b) of the *Limitation Act 1981* (NT):

- (A) the cause of action at paragraphs 83 to 85, 86 to 90 and 105 of the statement of claim is based upon the fraud of Hino Japan or Hino Australia as Hino Japan's agent;
- (B) the cause of action at paragraphs 83 to 85, 85 to 90 and 105 of the statement of claim was concealed by the fraud of Hino Japan or Hino Australia as Hino Japan's agent;
- (C) the fraud was not discovered, or could not have been discovered with reasonable diligence, until 4 March 2022 at the earliest when Hino Japan made the announcement in paragraph 44 of the statement of claim;
- (D) by reason of the matters in (A) and/or (B) and (C) above, any limitation period did not run until 4 March 2022 at the earliest;

Particulars

- (i) *Limitation Act 1969 (NSW), s 55.*
  - (ii) *Limitation of Actions Act 1958 (Vic), s 27.*
  - (iii) *Limitation of Actions Act 1974 (Qld), s 38.*
  - (iv) *The general law applies in South Australia.*
  - (v) *The general law applies in Western Australia.*
  - (vi) *Limitation Act 1974 (Tas), s 32.*
  - (vii) *Limitation Act 1985 (ACT), s 33.*
  - (viii) *Limitation Act 1981 (NT), s 42.*
- (ii) further or in the alternative, to the extent that the defendant relies upon s 35(c) of the *Limitation of Actions Act 1936 (SA)* and/or s 12(1)(b) of the *Limitation Act 1981 (NT)*, the Court should (if necessary) extend the time for bringing the causes of action pleaded in paragraphs 83 to 85, 86 to 90 and 105 of the statement of claim because:
- (A) the material facts pleaded in paragraphs 48 to 53 were not ascertainable until the date of their announcement and these

proceedings were commenced within twelve months after the ascertainment of those facts; and/or

- (B) the failure to commence proceedings within the limitation period prescribed by s 35(c) of the *Limitation of Actions Act 1936* (SA) or s 12(1)(b) of the *Limitation Act 1981* (NT) resulted from the representation and conduct of the defendants in paragraphs 83 to 85, 86 to 90 and 105 of the statement of claim and was reasonable in view of those representations or that conduct; and
- (C) in all the circumstances it is just to grant the extension of time;

Particulars

- (i) *Limitation of Actions Act 1936* (SA), s 48.
- (ii) *Limitation Act 1981* (NT), s 44.
- (iii) to the extent that the defendants rely upon s 13(1) of the *Limitation Act 2005* (WA), the Court should (if necessary) extend the time for bringing the causes of action pleaded in paragraphs 83 to 85, 86 to 90 and 105 of the statement of claim because the failure to commence the action was attributable to fraudulent or other improper conduct of the defendants; and

Particulars

- (i) *Limitation Act 2005* (WA), s 38.
- (b) otherwise deny the allegations therein.

DATED: 24 May 2024

C Moore SC

R May

*Maurice Blackburn Lawyers*

**Maurice Blackburn Lawyers**  
Solicitors for the Plaintiff