

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

No. S E



Case: S ECI 2022 00739

Filed on: 31/01/2025 02:54 PM

BETWEEN:

TINA LOMBARDO and others according to the schedule

Plaintiffs

and

**DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD
(ACN 055 927 618) and others according to the schedule**

Defendants

AMENDED REPLY

Date of document: 31 January 2025

Filed on behalf of: The Plaintiffs

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Save for any admissions, the Plaintiffs join issue with the Defences of the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Defendants, and otherwise reply as follows (capitalised terms are as defined in the Amended Statement of Claim dated 7 November 2024 and filed 14 November 2024 (ASOC) unless otherwise indicated):

To the Amended Defence of the First Defendant (DCSS) dated 23 December 2024:

1. To the allegation at paragraph 113(c) and (d), the Plaintiffs:
 - a. say that the enhancement of their respective bodies' appearance was a substantial purpose for which they each acquired their respective cosmetic surgery services;
 - b. rely on section 4F(1)(b) of the *Competition and Consumer Act 2010* (Cth) (CCA) and say that whether they also acquired their respective cosmetic surgery services for additional or varied purposes is immaterial.

2A. To the allegation at paragraph 196A, the Plaintiffs:

- a. deny that there was no guarantee that the performance by one or more of Lanzer and the Associates of dermatological cosmetic surgery would in fact enhance the aesthetic appearance of the person; and
 - b. expressly plead the existence of such a guarantee at paragraph 115 of the ASOC.
2. To the allegation at paragraph 213, the Plaintiffs:
- a. admit that, insofar as it applies to their claims, section 137C of the CCA operates to disentitle the Plaintiffs and Group Members from recovering loss or damage caused by the Representation Contraventions (as that phrase is defined in the Amended Statement of Claim) that is, or results from, personal injury under s 236(1) of the ACL; and
 - b. deny that all of the loss or damage caused by the Representation Contraventions is disentitled by s 137C of the CCA (insofar as it applies) and say further that the cost of the Plaintiffs' respective Surgery Contracts is not loss or damage that is, or results from, personal injury; and
 - c. rely on paragraphs 204, 206, 208, 210 and 212 of the ASOC and the particulars thereto as setting out the heads of damage claimed. say further that:
 - i. ~~each of the Plaintiffs and Group Members expected that the cosmetic surgery services (as that phrase is defined in the Statement of Claim) obtained under their respective Surgery Contracts would improve their respective appearances;~~
 - ii. ~~it was an object of each of the Surgery Contracts that the cosmetic surgery services would improve the Plaintiffs' and Group Members' respective appearances;~~
 - iii. ~~the cosmetic surgery services failed to do so; and~~
 - iv. ~~the Plaintiffs and Group Members claim damages for distress and inconvenience and damages for loss of the enjoyment of the expected improvement to the appearance (*Baltic Shipping Company v Dillon* (1993) 176 CLR 344).~~

Particulars

As to paragraph 2(e):

- ~~Lombardo refers to the particulars to paragraph 191 of the Statement of Claim.~~

- ~~Bonniei refers to the particulars to paragraph 192 of the Statement of Claim.~~
- ~~Russell refers to the particulars to paragraph 193 of the Statement of Claim.~~
- ~~Morrison refers to the particulars to paragraph 194 of the Statement of Claim.~~

~~Further particulars may be provided prior to the trial of the plaintiffs' claims.~~

3. To the allegations at paragraph 219, the Plaintiffs admit the allegations and say further to subparagraphs (b), (c) and (d) that the law of the place includes Commonwealth law.
4. To the allegations at paragraph 220, the Plaintiffs:
 - a. admit the allegations insofar as they relate to the Plaintiffs' claims in negligence; and
 - b. otherwise deny the allegations and refer to paragraph 3 above and say further that the CCA applies to their substantive claims arising from breaches by DCSS, Lanzer and the Other Cosmetic Doctors of the ACL by operation of section 131 of the CCA.
5. To the allegations at paragraph 221, the Plaintiffs:
 - a. to the extent an action arises out of Victorian law, the Plaintiffs admit paragraph 221; and
 - b. otherwise deny paragraph 221 and say that for claims arising from misleading and deceptive conduct the applicable limitation period and assessment of damages is provided by section 236 of the ACL.
6. To the allegations at paragraph 222, the Plaintiffs:
 - a. to the extent an action arises out of New South Wales law, the Plaintiffs admit paragraph 222; and
 - b. otherwise deny paragraph 222 and say that for claims arising from misleading and deceptive conduct the applicable limitation period and assessment of damages is provided by section 236 of the ACL.
7. To the allegations at paragraph 223, the Plaintiffs:

- a. to the extent an action arises out of Western Australian law, the Plaintiffs admit paragraph 223; and
 - b. otherwise deny paragraph 223 and say that for claims arising from misleading and deceptive conduct the applicable limitation period and assessment of damages is provided by section 236 of the ACL.
8. To the allegations at paragraph 224, the Plaintiffs:
- a. to the extent an action arises out of Queensland law, the Plaintiffs admit paragraph 224; and
 - b. otherwise deny paragraph 224 and say that for claims arising from misleading and deceptive conduct the applicable limitation period and assessment of damages is provided by section 236 of the ACL.

To the Defence of the Second Defendant (Lanzer) dated 20 December 2024:

- 8A. To the pleading at paragraph 8, to the extent that the pleading constitutes a withdrawal of admissions made in Lanzer's Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.
9. To the allegations at paragraph 113(c) and (d), the Plaintiffs refer to and repeat paragraph 1 above.
10. To the allegations at paragraph 213, the Plaintiffs refer to and repeat paragraph 2 above.
- 10A. To the allegations at paragraph 215, the Plaintiffs deny the limitation periods alleged at subparagraphs (b), (c), (d) and (e) and say further that by operation of section 275 of the ACL:
- a. the limitation period applicable in New South Wales for Statutory Guarantee Non-Compliances is 6 years by operation of section 14(1)(a) of the *Limitation Act 1969 (NSW)*;
 - b. the limitation period applicable in Victoria for Statutory Guarantee Non-Compliances is 6 years by operation of section 5(1)(a) of the *Limitation of Actions Act 1958 (Vic)*;
 - c. the limitation period applicable in Queensland for Statutory Guarantee Non-Compliances is 6 years by operation of section 10(1)(a) of the *Limitation of Actions Act 1974 (Qld)*; and

- d. the limitation period applicable in Western Australia for Statutory Guarantee Non-Compliances is 6 years by operation of section 13(1) of the *Limitation Act 2005 (WA)*.

To the Defence of the Third Defendant (Aronov) dated 24 December 2024:

10B. To the pleading at paragraph 9(c) and (d), to the extent that the pleading constitutes a withdrawal of admissions made in Aronov's Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.

10C. Further to paragraph 9(c), the Plaintiffs say that, notwithstanding any employment relationship between Aronov and DCSS and/or Lanzer, Aronov's conduct was in trade and commerce and, to the extent that the alleged conduct is found to be misleading or deceptive, he is directly liable and/or liable as an accessory to the said conduct.

10D. To the pleading at paragraph 11, to the extent that the pleading constitutes a withdrawal of admissions made in Aronov's Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.

11. To the allegations at paragraph 21(a) Lombardo:

- a. as to subparagraph (i) refers to paragraph 10C above;
- b. as to subparagraph (i)(A) admits that she received a telephone call from Aronov as alleged but:
- i. denies that there was any discussion of recent adverse media coverage regarding the Defendants;
- ii. denies that Aronov sought to postpone the procedure as consequence of the alleged recent adverse media coverage regarding the Defendants;
- c. as to subparagraph (B), she denies that Aronov discussed the material risks inherent in the procedures stated and says further that whilst Aronov mentioned the possibility of scar tissue, numbness, lumps or unevenness, he advised that these issues could be rectified with subsequent treatment and otherwise does not admit subparagraph (B);
- d. as to subparagraph (C), she admits that Aronov marked her body prior to surgery, but denies that she reviewed, confirmed or consented to those areas being the areas she wanted treated;

- e. as to subparagraph (D), she denies the allegations therein and says further that at the time she did not know of the adverse media coverage, she says further that:
- i. Aronov told her that he normally had a meeting with a patient in person for a consult prior to surgery and he had not done so in this case;
 - ii. Lombardo told Aronov that she was already on the way to the surgery, had paid the fees, booked a hotel and taken time off work; and
 - iii. Aronov said in response to the matters at (ii) above that the surgery would proceed; and
- f. as to subparagraph (E), admits that Aronov marked parts of Lombardo's body, she Lombardo signed a pre-operative consent form, and there was some general discussion about risks, and that Lombardo said words to the effect that she was happy to proceed with the surgery.
12. To the allegations at paragraph 41(b), Lombardo admits that Aronov undertook an examination.
- 12A. To the pleading at paragraph 87(c), to the extent that the pleading constitutes a withdrawal of admissions made in Aronov's Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.
- 12B. To the allegations at paragraph 88(a) and (e), to the extent that the allegations constitute a withdrawal of admissions made in Aronov's Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.
13. To the allegations at paragraph 164(a)(iii) Lombardo admits that she signed consent forms on 9 November 2021 but denies the summary of risks as pleaded in the defence.
14. To the allegations at paragraph 164(a)(iv) Lombardo admits that shortly prior to the surgery Aronov and Lombardo had a discussion about risks as captured in the video entitled "Consent video – DCSS", a copy of said video being in the possession of the plaintiffs' lawyers, and that Aronov said that the outcome of the procedures would not be perfect. Lombardo further says there was no cooling off period, informed consent or adequate warning given to her of the risks by Aronov.
15. To the allegations at paragraph 164(ee) Lombardo admits that she signed a consent form but did not agree to her full face being shown.

16. To the allegations at paragraph 166(a)(ii) Russell admits that Aronov verbally warned her that the procedures carried the risk of scarring.
- 16A. To the allegations at paragraph 204, the Plaintiffs deny that either the *Civil Liability Act 2002* (NSW) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 204 of the ASOC and refers to paragraph 213 of the ASOC.
- 16B. To the allegations at paragraph 206, the Plaintiffs deny that either the *Civil Liability Act 2003* (Qld) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 206 of the ASOC and refers to paragraph 213 of the ASOC.
- 16C. To the allegations at paragraph 208, the Plaintiffs deny that the *Wrongs Act 1958* (Vic) has any application to the loss and damage claimed at paragraph 208 of the ASOC and refers to paragraph 213 of the ASOC.
- 16D. To the allegations at paragraph 210, the Plaintiffs deny that either the *Civil Liability Act 2002* (WA) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 210 of the ASOC and refers to paragraph 213 of the ASOC.
17. To the allegations in paragraph 213, the Plaintiffs refer to and repeat paragraph 2 above.
18. To the allegations at paragraph 220(c) Russell admits she signed the consent form but does not admit she accepted the risks as particularised on the consent form.

To the Defence of the Fourth Defendant (Darbyshire) dated 20 January 2025:

- 18A. As to paragraph 9(c), the Plaintiffs say that, notwithstanding any employment relationship between Darbyshire and DCSS and/or Lanzer, Darbyshire's conduct was in trade and commerce and, to the extent that the alleged conduct is found to be misleading or deceptive, he is directly liable and/or liable as an accessory to the said conduct.
- 18B. To the allegations at paragraph 171(d)(ii), 171(e)(ii), 171(g)(iv), 171(h)(ii), 171(i)(ii), 171(k), 171(l)(ii) and 171(m), the Third Plaintiff denies that she consulted Dr Darbyshire on 6 September 2021 and denies that she consulted with "BD".
- 18C. To the allegations at paragraph 204, the Plaintiffs deny that either the *Civil Liability Act 2002* (NSW) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 204 of the ASOC and refers to paragraph 213 of the ASOC.

- 18D. To the allegations at paragraph 206, the Plaintiffs deny that either the *Civil Liability Act* 2003 (Qld) or the *Wrongs Act* 1958 (Vic) have any application to the loss and damage claimed at paragraph 206 of the ASOC and also refers to paragraph 213 of the ASOC.
- 18E. To the allegations at paragraph 208, the Plaintiffs deny that either the *Wrongs Act* 1958 (Vic) has any application to the loss and damage claimed at paragraph 208 of the ASOC and refers to paragraph 213 of the ASOC.
- 18F. To the allegations at paragraph 210, the Plaintiffs deny that either the *Civil Liability Act* 2002 (WA) or the *Wrongs Act* 1958 (Vic) have any application to the loss and damage claimed at paragraph 210 of the ASOC and refers to paragraph 213 of the ASOC.
- 18G. To the allegations in paragraph 213, the Plaintiffs refer to and repeat paragraph 2 above.

To the Defence of the Fifth Defendant (Wells) dated 24 December 2024:

19. To the pleading at paragraph 9(c) and (d), to the extent that the pleading constitutes a withdrawal of admissions made in Wells' Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court. ~~To the allegations at paragraph 6(b), Bonnici on 8 April 2021 was told by Wells words to the effect that he was trained in plastics and was an associate of the second defendant.~~
- 19A. Further to the allegations at 9(c), the Plaintiffs say that, notwithstanding any employment relationship between Wells and DCSS and/or Lanzer, Wells' conduct was in trade and commerce and, to the extent that the alleged conduct is found to be misleading or deceptive, he is directly liable and/or liable as an accessory to the said conduct.
- 19B. To the pleading at paragraph 11, to the extent that the pleading constitutes a withdrawal of admissions made in Wells' Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.
- 19C. To the allegations at paragraph 26(b), Bonnici on 8 April 2021 was told by Wells words to the effect that he was trained in plastics and was an associate of the second defendant and denies that Wells provided advice regarding the material risks of the procedure.
20. To the allegations at paragraph 31(a) Bonnici admits that Wells marked areas on her body and that she signed a pre-operative consent form, but Bonnici otherwise denies that Wells provided advice regarding the material risks of the procedure.

- 20A. To the pleading at paragraph 87(c), to the extent that the pleading constitutes a withdrawal of admissions made in Wells' Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.
- 20B. To the allegations at paragraph 88(e), to the extent that the allegations constitute a withdrawal of admissions made in Wells' Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.
21. To the allegations at paragraph 176(a)(i) Bonnici admits she was warned of the risk of tenderness and bruising and that it was reasonable to expect that she would look better in clothes, and pain but not of the extent of pain.
22. To the allegations at paragraph 176(a)(ii) Bonnici admits that she was verbally warned by the risk of swelling and pain but not to the extent of pain.
- 22A. To the allegations at paragraph 204, the Plaintiffs deny that either the *Civil Liability Act 2002* (NSW) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 204 of the ASOC and refers to paragraph 213 of the ASOC.
- 22B. To the allegations at paragraph 206, the Plaintiffs deny that either the *Civil Liability Act 2003* (Qld) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 206 of the ASOC and refers to paragraph 213 of the ASOC.
- 22C. To the allegations at paragraph 208, the Plaintiffs deny that the *Wrongs Act 1958* (Vic) has any application to the loss and damage claimed at paragraph 208 of the ASOC and refers to paragraph 213 of the ASOC.
- 22D. To the allegations at paragraph 210, the Plaintiffs deny that either the *Civil Liability Act 2002* (WA) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 210 of the ASOC and refers to paragraph 213 of the ASOC.
23. To the allegations in paragraph 213, the Plaintiffs refer to and repeat paragraph 2 above.

To the Defence of the Sixth Defendant (Fallahi) dated 24 December 2024:

- 23A. To the pleading at paragraph 9(a), (c) and (d), to the extent that the pleading constitutes a withdrawal of admissions made in Fallahi's Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.
- 23B. Further to the allegations at 9(c), the Plaintiffs say that, notwithstanding any employment relationship between Fallahi and DCSS and/or Lanzer, Fallahi's conduct was in trade and

commerce and, to the extent that the alleged conduct is found to be misleading or deceptive, he is directly liable and/or liable as an accessory to the said conduct.

23C. To the pleading at paragraph 11, to the extent that the pleading constitutes a withdrawal of admissions made in Aronov’s Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.

24. To the allegations at paragraph 31:

- a. Bonnici says that Fallahi was present during the entire consultation on 15 June 2021.
- b. Wells introduced Fallahi and said words to the effect that he was “training and working under” him.
- c. Wells left the consultation after introducing Fallahi to Bonnici, and after Wells undertook some measurements and mark ups on Bonnici’s body.
- d. subsequent to Wells leaving the consulting room Fallahi remained in the consultation during which time Fallahi performed incisions where Wells had made marks upon Bonnici’s body and had further administered a local anaesthetic to Bonnici at a time when Wells was not present.
- e. Fallahi said to Bonnici during the consultation words to the effect that she would be fine and look great after the surgery.

24A. To the pleading at paragraph 87(c), to the extent that the pleading constitutes a withdrawal of admissions made in Fallahi’s Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.

24B. To the allegations at paragraph 88(e), to the extent that the allegations constitute a withdrawal of admissions made in Fallahi’s Defence dated 22 December 2023, the Plaintiffs object to that purported withdrawal made without leave of this Honourable Court.

24C. To the allegations at paragraph 204, the Plaintiffs deny that either the *Civil Liability Act 2002* (NSW) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 204 of the ASOC and refers to paragraph 213 of the ASOC.

24D. To the allegations at paragraph 206, the Plaintiffs deny that either the *Civil Liability Act 2003* (Qld) or the *Wrongs Act 1958* (Vic) have any application to the loss and damage claimed at paragraph 206 of the ASOC and refers to paragraph 213 of the ASOC.

24E. To the allegations at paragraph 208, the Plaintiffs deny that the *Wrongs Act 1958 (Vic)* has any application to the loss and damage claimed at paragraph 208 of the ASOC and refers to paragraph 213 of the ASOC.

24F. To the allegations at paragraph 210, the Plaintiffs deny that either the *Civil Liability Act 2002 (WA)* or the *Wrongs Act 1958 (Vic)* have any application to the loss and damage claimed at paragraph 210 of the ASOC and refers to paragraph 213 of the ASOC.

25. To the allegations in paragraph 213, the Plaintiffs refer to and repeat paragraph 2 above.

To the Defence of the Seventh Defendant (Wong) dated 20 December 2023 (the below reply is subject to the pending discontinuance application):

26. To the allegations at paragraph 117, the Plaintiffs:

- a. admit paragraph 117(d);
- b. say further that in respect of each of DCSS, Lanzer and the Other Cosmetic Doctor Defendants, the cosmetic surgery services that were supplied to the Plaintiffs and Group Members failed to improve the appearance of the Plaintiffs and Group Members.

Particulars

Lombardo refers to the particulars to paragraph 191 of the Statement of Claim.

Bonnici refers to the particulars to paragraph 192 of the Statement of Claim.

Russell refers to the particulars to paragraph 193 of the Statement of Claim.

Morrison refers to the particulars to paragraph 194 of the Statement of Claim.

Further particulars may be provided prior to the trial of the plaintiffs' claims.

27. To the allegations in paragraph 218(e), the Plaintiffs refer to and repeat paragraph 2 above.

T P Tobin

C Truong

~~G Costello~~

MF Sharkey

~~A Smietanka~~

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D Murphy

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Solicitors for the Plaintiffs

Schedule

TINA LOMBARDO	First Plaintiff
and	
TINA BONNICI	Second Plaintiff
and	
SIMONE RUSSELL	Third Plaintiff
and	
JULIE ROSE MORRISON	Fourth Plaintiff
and	
DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD (ACN 055 927 618)	First Defendant
and	
DANIEL LANZER	Second Defendant
and	
DANIEL ARONOV	Third Defendant
and	
JACQUELINE DARBYSHIRE and TONY DARBYSHIRE (in their capacity as the legal personal representatives of the estate of Daniel Darbyshire)	Fourth Defendant
and	
RYAN WELLS	Fifth Defendant
and	
ALIREZA FALLAHI	Sixth Defendant
and	
GEORGE SHU-KHIM WONG	Seventh Defendant
and	
CANDICE WAINSTEIN	Eighth Defendant