



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

Case: S ECI 2023 05830  
Filed on: 30/08/2024 09:48 AM

**No. S ECI 2023 05830**

**BETWEEN**

**Jeremey Clarke**

Plaintiff

-and-

**JB Hi-Fi Group Pty Ltd (ACN 093 114 286)**

Defendant

**REPLY**

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Date of Document:	30 August 2024	Solicitors Code:	564
Filed on behalf of:	The Plaintiff	DX:	N/A
Prepared by:	Maurice Blackburn Lawyers	Telephone:	(03) 9605 2700
	Level 21, 380 La Trobe Street	Ref:	JHE/3053128
	Melbourne VIC 3000	Email:	JEkstein@mauriceblackburn.com.au

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As to the defence to the amended statement of claim filed on 2 August 2024 (**Defence**), the Plaintiff joins issue with the whole of the Defence and says further:

1. as to paragraphs [7], [9], and [26]:
  - (a) these paragraphs of the Defence are embarrassing and mischaracterise the operation and effect of the statutory guarantees and remedies provided by the ACL;
  - (b) all consumers (within the meaning of the ACL), including the Plaintiff and each Group Member, automatically obtained the benefit of the guarantee of acceptable quality in section 54 of the ACL at the time of purchase of their goods;

- (c) the benefit provided by section 54 of the ACL included that the goods would be as “fit for purpose”, “free from defects”, and “durable” as a reasonable consumer would regard as acceptable;
  - (d) whether or not a good is of “acceptable quality”, and whether or not a consumer may have the right to claim a remedy for breach of the statutory guarantee, is something which may only become evident to a consumer at a date after the initial supply of the goods;
  - (e) the benefit and remedies provided by the statutory guarantee operated for the period of time which the reasonable consumer would regard as “acceptable” having regard to the matters in subsection 54(3) of the ACL; and
  - (f) all consumers obtained the benefit of the statutory guarantee, irrespective of whether they subsequently sought to invoke the remedies provided by the ACL;
2. as to paragraphs [18A] and [20A]:
- (a) these paragraphs of the Defence are embarrassing and misstate the contents of the Defendant’s Extended Warranty Brochures;
  - (b) each of the extracts pleaded and particularised at [20A] of the amended statement of claim appear in the Extended Warranty Brochures; and
  - (c) the representations made in the Extended Warranty Brochures, and terms of the Extended Warranties, are not confined in the manner pleaded in the Defence;
3. as to paragraph [57]:
- (a) the Plaintiff repeats *mutatis mutandis* paragraph 1(d) above;
  - (b) the question of whether or not a good will fail to be of “acceptable quality” is a matter that may only be capable of being known at some future time (including for reasons that the failure may arise from a hidden defect or from a failure of the good to be of such “durability” as a reasonable consumer would regard as acceptable) and is therefore a “future matter” within the meaning of the ACL;
  - (c) the question of whether or not the ACL will provide a remedy for a consumer for breach of the statutory guarantee is a matter that can only be determined at some future time, upon a consumer seeking to invoke those statutory provisions, and is therefore a “future matter” within the meaning of the ACL;
  - (d) the question of whether or not JB Hi-Fi’s Extended Warranties would provide a remedy or benefit for a consumer is a matter that can only be determined at some

future time, upon a consumer seeking to rely on those warranties, and is therefore a “future matter” within the meaning of the ACL;

- (e) representations made by the Defendant as to the matters identified in paragraph 3(b)-(d) (and related matters) are therefore representations as to a “future matter” within the meaning of the ACL;
- (f) further, the particulars to the Defence at [57] are non-responsive to the allegations pleaded at [57] of the amended statement of claim and are embarrassing;

4. as to paragraphs [77](b) and [85A]:

- (a) the premise of paragraphs 78-85 of the amended statement of claim is that the Defendant has unlawfully contravened sections 18, 20, 21, 29(1)(b), 29(1)(l), 29(1)(m) and 29(1)(n) of the ACL and sections 12CB, 12DA, 12DB(1)(a), 12DB(1)(h), 12DB(1)(i) and 12DB(1)(j) of the ASIC Act, and that the Plaintiff and at least some Group Members have been relevantly mistaken by that unlawful conduct in purchasing the Extended Warranties;
- (b) the Defendant essentially alleges a positive defence that the Plaintiff and Group Members could have “with reasonable diligence” discovered the Defendant’s unlawful conduct shortly after it occurred, and it would be “inequitable” for the Defendant to be held accountable for its own unlawful conduct (see Defence [85](b) and [85A](c));
- (c) that defence is not maintainable given the general principle underlying *ex turpi causa non oritur actio* (an action cannot be grounded on immorality or illegality);
- (d) further, in the circumstances pleaded at paragraphs 73-76 of the amended statement of claim (which plead the Defendant’s unconscionable conduct), it would also be unconscionable for the Defendant to rely on a purported analogy to a statutory bar which does not apply as a matter of law to these claims to avoid the liability which arises from its own unlawful conduct.

Dated: 30 August 2024

This pleading was settled by Rachel Francois and Kathleen Morris of counsel.

*R. Francois*

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Rachel Francois  
11<sup>th</sup> Floor St James Hall Chambers

*K. Morris*

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Kathleen Morris  
Level 22 Chambers

*Maurice Blackburn*

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Maurice Blackburn Lawyers  
Solicitors for the Plaintiff