

NOTICE OF FILING

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Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
File Number: QUD211/2013
File Title: John Charles Lee & Anor v Westpac Banking Corporation ABN 33 007 457
141
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 29/11/2016 1:20:26 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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JOHN CHARLES LEE and Another
Applicants

WESTPAC BANKING CORPORATION (ABN 33 007 457 141)
Respondent

Reply

- 1 The Applicants adopt the admissions and otherwise join issue with each of the allegations in the Respondent's Defence dated 4 November 2016, save to the extent they are expressly admitted below.
- 2 For ease of reference, this Reply adopts the defined terms in the Further Amended Statement of Claim (*FASOC*) and the Defence.
- 3 In reply to **sub-paragraph 66(b)** of the Defence, the Applicants deny that the Applicants and some or all of the Group Members are estopped as alleged, and repeat and rely upon the matters pleaded below in reply to paragraphs 137-142 and 154-158 of the Defence.
- 4 In reply to **paragraph 107** of the Defence, the Applicants:
 - (a) admit that the "fall in the market" referred to in particular (a) to paragraph 49 of the *FASOC* began no later than June 2008;
 - (b) say that in about October 2008, the market had fallen to a point such that the Applicants reached a position whereby they were required to sell their units in the Special Funds and repay the Applicants' Margin Loan;
 - (c) say that the loss and damage suffered by the Applicants crystallised in about October 2008;
 - (d) otherwise deny paragraph 107 of the Defence.

Filed on behalf of:	the Applicants	
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5 The Applicants admit **paragraph 108** of the Defence.

6 The Applicants deny **paragraph 109** of the Defence.

7 The Applicants do not admit **paragraph 110** of the Defence.

8 The Applicants do not admit **paragraph 111** of the Defence.

9 In reply to **paragraph 112** of the Defence, the Applicants:

- (a) do not admit the allegations in the paragraph;
- (b) repeat the matters pleaded in paragraph 89 of the FASOC;
- (c) say that the Applicants' Contractual Claims Against Westpac are brought by the Applicants as "consumers", within the meaning of section 29 of the QCLA;
- (d) say that, to the extent that the QCLA would otherwise apply in relation to the Applicants' Contractual Claims Against Westpac, Part 2 of Chapter 2 of the QCLA does not apply, by reason of section 28(3)(b).

10 The Applicants deny **paragraph 113** of the Defence.

11 In reply to **paragraph 114** of the Defence, the Applicants:

- (a) deny the paragraph;
- (b) repeat the matters pleaded in paragraph 89 of the FASOC;
- (c) say that the Applicants' Negligence Claim is brought by the Applicants as "consumers", within the meaning of section 29 of the QCLA;
- (d) say that, to the extent that the QCLA would otherwise apply in relation to the Applicants' Negligence Claim, Part 2 of Chapter 2 of the QCLA does not apply, by reason of section 28(3)(b);
- (e) say that the conduct the subject of the Applicants' Negligence Claim took place entirely in Queensland and, accordingly, the NSWCLA does not apply.

12 The Applicants deny **paragraph 118** of the Defence.

13 The Applicants do not admit **paragraphs 119 to 136** of the Defence.

14 In reply to **paragraph 137** of the Defence, the Applicants:

- (a) admit that they signed a document entitled "Personal Finance/Loan Application" on or about 19 September 2009;

- (b) say that the credit provided to the Applicants by the Respondent was for the Applicants, in accordance with Storm's recommendations in the Applicants' SOA, to:
 - (i) purchase units in the Special Funds;
 - (ii) repay their existing loan with the Respondent; and
 - (iii) pay Storm's fees;
- (c) say that, in the circumstances pleaded in paragraphs 11-23 and 37-47 of the FASOC, the Respondent was, at all times from at least about 13 August 2007 or, alternatively, 19 September 2007, aware of the purpose of the credit to be provided to the Applicants by the Respondent;
- (d) say that, in the circumstances, the signing of the document entitled "Personal Finance/Loan Application":
 - (i) did not amount to a representation to the effect alleged at paragraph 137 of the Defence;
 - (ii) was not relied upon by the Respondent as a representation to the effect alleged;
- (e) otherwise deny paragraph 137 of the Defence.

15 In reply to **paragraph 138** of the Defence, the Applicants:

- (a) do not admit that they signed a Personal Finance Application dated 11 October 2007;
- (b) repeat the matters pleaded above in reply to paragraph 137 of the Defence;
- (c) otherwise deny paragraph 138 of the Defence.

16 The Applicants deny **paragraph 139** of the Defence and repeat the matters pleaded in reply to paragraph 137 of the Defence.

17 The Applicants deny **paragraphs 140 to 142** of the Defence.

18 The Applicants admit **paragraphs 143 to 148** of the Defence and say further that the MBL Representative Action was settled without admission as to liability.

19 In reply to **paragraph 149** of the Defence, the Applicants:

- (a) admit that any damages recoverable by the Applicants may need to be reduced to the extent necessary to prevent double recovery by the Applicants;
- (b) deny that the amount received by the Applicants from MBL has satisfied all of the loss claimed by the Applicants in this proceeding;

(c) otherwise do not admit the paragraph.

20 The Applicants do not admit **paragraphs 151 to 163** of the Defence.

21 In reply to **paragraph 164** of the Defence, the Applicants:

- (a) admit that any damages recoverable by some or all of the Group Members may need to be reduced to the extent necessary to prevent double recovery by the Group Members;
- (b) deny that the amount received by the Group Members from MBL or from the CBA has satisfied all of the loss claimed by the Group Members in this proceeding;
- (c) otherwise do not admit the paragraph.

Date: 28 November 2016

Signed by Stewart A Levitt
 Levitt Robinson Solicitors
 Solicitor for the Applicants
 By his Special Counsel, Brett Imlay

This pleading was prepared by Daniel Meyerowitz-Katz of Levitt Robinson and settled by Brett Imlay of Levitt Robinson and Timothy Kane of Counsel.

Certificate of lawyer

I Stewart A Levitt certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 28 November 2016

Signed by Stewart A Levitt
 Levitt Robinson Solicitors
 Solicitor for the Applicants
 By his Special Counsel, Brett Imlay