

NOTICE OF FILING

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Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
File Number: VID811/2010
File Title: John Andrews & Ors v ANZ Banking Group Limited
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 15/08/2017 10:56:44 AM AEST

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

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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Reply

VID 811 of 2010

Federal Court of Australia
District Registry: Victoria
Division: General

JOHN ANDREWS and another
Applicants

AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD (ACN 005 357 522)
Respondent

1. The applicants join issue with the allegations in Part C of the respondent's Defence dated 28 April 2017 (**Defence**), save insofar as the same consists of admissions, or is the subject of specific comment in this Reply.
2. In reply to sub-paras [16.a] and [16.b.i] of the Defence, the applicants:
 - a. deny that any of their claims and / or those of the Group Members are barred by s 5 of the *Limitation of Actions Act 1958* (Vic) (**Victorian Limitation Act**);
 - b. say further that:
 - i. the charging of the PPN Fees by the respondent was not authorised (for the reasons set out in the Further Amended Statement of Claim (**FASOC**)), and therefore did not affect the balance of the applicants' and Group Members' accounts with the respondent;
 - ii. their claims include, therefore, claims for repayment of an amount standing to the credit of their accounts with the respondent (**Repayment Claim**);
 - iii. a demand by the applicants and Group Members was a precondition to the liability of the respondent under the Repayment Claim;

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- iv. accordingly, the applicants' and Group Members' cause of action did not accrue for the purposes of the Repayment Claim until such time as a demand was made; and
 - v. no such demand was made until 19 December 2016 (being the date on which the amendments to the FASOC are taken to have commenced);
 - c. *further, or in the alternative, say that:*
 - i. their claims and those of the Group Members include claims for relief from the consequences of a mistake (as set out in para [62] of the FASOC) within the meaning of s 27 of the Victorian Limitation Act;
 - ii. any period of limitation prescribed by the Victorian Limitation Act did not therefore begin to run against each of the applicants and Group Members until he / she / it discovered the mistake, or could with reasonable diligence have discovered it; and
 - iii. none of the applicants and Group Members did discover, or could with reasonable diligence have discovered, the mistake at any time prior to 19 December 2010 (being six years prior to the date on which the amendments to the FASOC are taken to have commenced).
3. In reply to sub-para [16.b.ii] of the Defence, the applicants:
- a. deny that any of the claims of the Group Members are barred by s 14 or s 15 of the *Limitation Act 1969* (NSW) (**NSW Limitation Act**);
 - b. repeat sub-paras [2.b.i]-[2.b.v] above;
 - c. *further, or in the alternative, say that:*
 - i. the claims of the Group Members include claims for relief from the consequences of a mistake (as set out in para [62] of the FASOC) within the meaning of s 56 of the NSW Limitation Act;
 - ii. the time which elapsed after any limitation period fixed by the NSW Limitation Act commenced to run and before the date on which each of the Group Members first discovered, or may with reasonable diligence have discovered, the mistake, does not count in the reckoning of the limitation period for an action by that person; and

- iii. none of the Group Members did discover, or might with reasonable diligence have discovered, the mistake at any time prior to 19 December 2010 (being six years prior to the date on which the amendments to the FASOC are taken to have commenced).
4. In reply to sub-para [16.b.iii] of the Defence, the applicants:
- a. deny that any of the claims of the Group Members are barred by s 11 or s 12 of the *Limitation Act 1985* (ACT) (**ACT Limitation Act**);
 - b. repeat sub-paras [2.b.i]-[2.b.v] above;
 - c. *further, or in the alternative*, say that:
 - i. the claims of the Group Members include claims for relief from the consequences of a mistake (as set out in para [62] of the FASOC) within the meaning of s 34 of the ACT Limitation Act;
 - ii. the time that elapsed after any limitation period fixed by the ACT Limitation Act began to run and before the date when each of the Group Members first discovered, or may with reasonable diligence have discovered, the mistake, does not count in the reckoning of the limitation period for an action by that person; and
 - iii. none of the Group Members did discover, or might with reasonable diligence have discovered, the mistake at any time prior to 19 December 2010 (being six years prior to the date on which the amendments to the FASOC are taken to have commenced).
5. In reply to sub-para [16.b.iv] of the Defence, the applicants:
- a. deny that any of the claims of the Group Members are barred by s 10 of the *Limitation of Actions Act 1974* (Qld) (**Queensland Limitation Act**);
 - b. repeat sub-paras [2.b.i]-[2.b.v] above;
 - c. *further, or in the alternative*, say that:
 - i. the claims of the Group Members include claims for relief from the consequences of mistake (as set out in para [62] of the FASOC) within the meaning of s 38 of the Queensland Limitation Act;
 - ii. any period of limitation prescribed by the Queensland Limitation Act did not therefore begin to run against each of the Group Members until he / she / it discovered the mistake, or could with reasonable diligence have discovered it; and

- iii. none of the Group Members did discover, or could with reasonable diligence have discovered, the mistake at any time prior to 19 December 2010 (being six years prior to the date on which the amendments to the FASOC are taken to have commenced).
6. In reply to sub-para [16.b.v] of the Defence, the applicants:
 - a. deny that any of the claims of the Group Members are barred by s 35 or s 38 of the *Limitation of Actions Act 1936* (SA);
 - b. repeat sub-paras [2.b.i]-[2.b.v] above.
7. In reply to sub-para [16.b.vi] of the Defence, the applicants:
 - a. deny that any of the claims of the Group Members are barred by s 4 of the *Limitation Act 1974* (Tas) (**Tasmanian Limitation Act**);
 - b. repeat sub-paras [2.b.i]-[2.b.v] above;
 - c. *further, or in the alternative*, say that:
 - i. the claims of the Group Members include claims for relief from the consequences of a mistake (as set out in para [62] of the FASOC) within the meaning of s 32 of the Tasmanian Limitation Act;
 - ii. any period of limitation prescribed by the Tasmanian Limitation Act did not therefore begin to run against each of the Group Members until he / she / it discovered the mistake, or could with reasonable diligence have discovered it; and
 - iii. none of the Group Members did discover, or could with reasonable diligence have discovered, the mistake at any time prior to 19 December 2010 (being six years prior to the date on which the amendments to the FASOC are taken to have commenced).
8. In reply to sub-para [16.b.vii] of the Defence, the applicants:
 - a. deny that any of the claims of the Group Members are barred by s 38 of the *Limitation Act 1935* (WA) and/or s 13 or s 26 of the *Limitation Act 2005* (WA);
 - b. repeat sub-paras [2.b.i]-[2.b.v] above.

9. In reply to sub-para [16.b.viii] of the Defence, the applicants:
- a. deny that any of the claims of the Group Members are barred by s 12 or s 13 of the *Limitation Act 1981* (NT);
 - b. repeat sub-paras [2.b.i]-[2.b.v] above.

Date: 25 May 2017



Signed by Steven Foale
Lawyer for the Applicants

This pleading was prepared by Steven Foale, lawyer, and settled by W. A. D. Edwards, counsel.

Certificate of lawyer

I Steven Mark Foale certify to the Court that, in relation to the reply filed on behalf of the Applicants, 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: 25 May 2017



Signed by Steven Foale
Lawyer for the Applicants