

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/08/2021 4:05:04 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID1010/2019
File Title: MATTHEW HALL v ARNOLD BLOCH LEIBLER (A FIRM)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 30/08/2021 4:07:34 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 33
Rule 16.32

**DEFENCE OF THE FIRST AND THIRD CROSS-RESPONDENTS
TO FURTHER AMENDED STATEMENT OF CROSS-CLAIM**

No. VID 1010 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Matthew Hall

Applicant

Arnold Bloch Leibler (a firm)

Respondent

Arnold Bloch Leibler (a firm)

Cross-Claimant

Slater & Gordon Ltd & Ors named in the Schedule

Cross-Respondents

By way of Defence to the Further Amended Statement of Cross-Claim dated 19 August 2021 ~~11-December-2020~~, the First Cross-Respondent (**S&G**) and Third Cross-Respondent (**Brown**) say as follows.

1. They do not plead to paragraph 1 as it makes no allegations against them.

| | |
|--|---|
| Filed on behalf of (name & role of party) | Slater & Gordon Limited (First Cross-Respondent) and Wayne Brown (Third Cross-Respondent) |
| Prepared by (name of person/lawyer) | Richard Murphy; Elizabeth Yick |
| Law firm (if applicable) | MinterEllison |
| Tel | 03 8608 2000 |
| Fax | (03) 8608 1000 |
| Email | Richard.Murphy@minterellison.com ; Elizabeth.Yick@minterellison.com |
| Address for service (include state and postcode) | MinterEllison, Level 20, Collins Arch, 447 Collins Street, Melbourne VIC 3000 |

[Form approved 01/08/2011]

A. Background facts

2. They admit paragraphs 2 to 5.
3. As to paragraph 6, they:
 - a. admit that S&G retained the Cross-Claimant (**ABL**) to provide legal advice and services in relation to an equity raising, including undertaking due diligence, the preparation of a management questionnaire, preparation of a due diligence committee report, verification of an investor presentation and rights issue booklet and preparation and review of ASX announcements;

PARTICULARS

The Retainer was partly in writing and partly to be implied.

To the extent it was in writing, it was contained in the documents referred to in paragraph 6 of the [Further Amended Statement of Cross-Claim](#).

To the extent it was to be implied, it was to be implied in law, alternatively to give business efficacy to the Retainer and as a necessary incident of the Retainer.

- b. say further that, pursuant to the Retainer, ABL had obligations and duties to:
 - i. undertake the terms of the Retainer including:
 1. overseeing and conducting the due diligence process;

2. ensuring that the due diligence process was consistent with the objectives of the Due Diligence Planning Memorandum (**DDPM**) and implemented according to the DDPM;
 3. review of S&G's board materials;
 4. preparation of a management questionnaire;
 5. review of the responses to the management questionnaire and preparation of its due diligence committee report;
 6. preparation of its DDC Report and DDPM;
 7. preparation of the rights issue booklet, cleansing notices and ancillary capital raising documents;
 8. preparation of the verification report;
 9. verification of an investor presentation and rights issue booklet; and
 10. preparation and review of ASX announcements -

with all the care and skill of competent solicitors;
- ii. identify any concerns including in its review of S&G's board materials and responses to the management questionnaire and engage with S&G in relation to those concerns;
 - iii. identify and correct any errors in the Offer Documents; and

- iv. ensure that the contents of the ABL Signed Legal Opinion Letter were accurate and correct;
- c. say further that pursuant to the terms of the DDC Report, ABL agreed to ensure and confirm that:
 - i. where ABL relied upon any other person to carry out a task or on information provided by such a person, its reliance was reasonable;
 - ii. it was satisfied that the Offer Documents do not contain a statement that is false or misleading in a material particular or misleading in a material respect by way of omission;
 - iii. it believed that the Offer Documents do not contain any statement that is misleading or deceptive or any statement that is likely to mislead or deceive;
 - iv. there are no omissions from the Offer Documents of information required by the Corporations Act or other applicable law; and
 - v. the Offer Documents contain all information required to satisfy the requirements of the Corporations Act or other applicable law;
- d. say further that, pursuant to the terms of the DDPM, ABL was required and obliged to:
 - i. recommend and provide advice on an appropriate due diligence system;

- ii. provide Australian legal advice on the AREO, Offer Documents and legal matters arising in connection with the due diligence process;
- iii. undertake due diligence in relation to legal matters in accordance with the work program agreed with the Due Diligence Committee, the Underwriters and Greenhill, and report to [S&G Slater & Gordon](#) and the Due Diligence Committee (including the Underwriters and Greenhill as observers) on that review;
- iv. maintain a register of material issues;
- v. conduct a review of [S&G Slater & Gordon](#)'s continuous disclosure system, and a review of [S&G Slater & Gordon](#)'s Board minutes since 5 February 2014 in conjunction with a review of ASX disclosures and all correspondence between [S&G Slater & Gordon](#) and ASIC and ASX during that time, and, where necessary, highlighting matters and receiving confirmation from [S&G Slater & Gordon](#) that those matters were not of a nature that [S&G Slater & Gordon](#) was relying on any carve-outs to the ASX Listing Rule 3.1 that would require disclosure under section 708AA of the Corporations Act, and report to the Due Diligence Committee on that review;
- vi. review responses from [S&G Slater & Gordon](#) management to the Due Diligence Questionnaire;
- vii. review and comment on successive drafts of the Offer Documents, including the final drafts;
- viii. coordinate the verification process; and

- ix. provide a written Legal Due Diligence Report and a written opinion/signoff on the Offer Documents and the due diligence process relating to the AREO (which will also be provided to, and may be relied upon by, the Underwriters), except ABL will express no opinion on any acquisition advice provided in relation to S&G~~Slater & Gordon~~'s proposed acquisition of Quindell;
- e. say further that pursuant to the terms of the DDPM, ABL agreed that:
 - i. being a member of the DDC;
 - ii. participating in meetings, decisions and inquiries of the DDC;
 - iii. participating in the drafting of the Offer Documents; and
 - iv. signing the final reports of the DDC,

would not give rise to any liability as between S&G and ABL;

- f. say further that, pursuant to the terms of the DDPM, ABL was required to undertake a random audit of the verification materials (in relation to at least 15 material statements in the Offer Documents) to ensure the integrity of the verification process and report to the Due Diligence Committee on the results of that audit and to ascertain:
 - i. whether responses have been provided;
 - ii. whether those responses (on their face) appear to be appropriate responses to verify the underlying statement;

- iii. where a document was stated to be attached, a document was attached and that document (on its face) appears to be an appropriate document to verify the underlying statement;
 - iv. whether there is doubt as to the verification materials, and if so to liaise with the person responsible for verifying the statement to produce satisfactory verification materials; and
- g. otherwise deny paragraph 6.
- 4. As to paragraph 7, they refer to and repeat paragraph 3 above and otherwise deny paragraph 7.
 - 5. They admit paragraph 8.
 - 6. As to paragraph 9, they admit that ABL provided drafts of the ABL Management Questionnaire to [the Second Cross Respondent \(Grech\)](#) and Brown and otherwise deny paragraph 9.
 - 7. As to paragraph 10, they admit that a DDC comprised of representatives of S&G and ABL was formed and otherwise deny paragraph 10.
 - 8. They admit paragraph 11.
 - 9. They do not plead to paragraph 12 as it contains no allegations against them.
 - 10. Save that they say that from 2004, Brown's role was Chief Financial Officer, they admit paragraph 13.
 - 11. They admit paragraph 14.

12. As to paragraphs 15 and 16, they:
 - a. admit that responses were provided to the ABL Management Questionnaire;
 - b. will rely upon all of the responses to the ABL Management Questionnaire at trial; and
 - c. otherwise deny paragraphs 15 and 16.
13. They do not plead to paragraph 17 as it contains no allegations against them.
14. They do not plead to paragraph 18 as it contains no allegations against them.
15. They admit paragraph 19.
16. They admit paragraph 20 and say further that they will refer to and rely upon the full terms of the Brown Sign-Off at trial.
17. They admit paragraph 21.
18. As to paragraphs 22 to 24, they will rely upon the full terms of the Verification Report at trial and otherwise deny paragraphs 22 to 24.
19. They admit paragraph 25.
20. They deny paragraph 26 and say further that if any of the Representations was or were made (which is denied):
 - a. such representation or representations was or were not misleading or deceptive to or likely to mislead or deceive ABL;

- b. further or alternatively, ABL was not misled or deceived by such representation or representations;
 - c. further or alternatively, ABL did not rely upon, or act to its detriment in reliance upon, such representation or representations;
 - d. further or alternatively, if ABL had discharged its obligations and duties with reasonable care, it would have identified any extent to which any such representation or representations was or were misleading or deceptive or likely to mislead or deceive; and
 - e. in the premises of each of subparagraphs (a) to (d) immediately above , if such representation or representations was or were causative of any loss to the Applicant and Group Members (which is denied), and/or exposed ABL to any of the liability or costs alleged (which is denied), ABL was and is responsible for such loss, liability and/or costs.
21. They deny paragraphs 27 and 28.
22. They do not plead to paragraph 29 as it contains no allegations against them.
23. They deny paragraphs 30 to 32.
24. They admit paragraph 33.
25. As to paragraph 34, they:
- a. refer to and repeat paragraphs 3 and 20 above; and
 - b. otherwise deny paragraph 34.

B. Alleged misleading or deceptive conduct

26. They deny paragraphs 35 to 40, and say further that:

(a) ABL's claim to recover loss and damage and/or compensation under s 1041I(1) of the *Corporations Act 2001* (Cth) is statute-barred by s 1041I(2) of the *Corporations Act 2001* (Cth);

(b) ABL's claim to recover loss and damage and/or compensation under s 12GF(1) of the *Australian Securities and Investments Act 2001* (Cth) is statute-barred by s 12GF(2) of the *Australian Securities and Investments Act 2001* (Cth); and

(c) ABL's claim to recover loss and damage and/or compensation under s 236(1) of the *Australian Consumer Law* is statute-barred by s 236(2) of the *Australian Consumer Law*.

C. Alleged breach of the Retainer

27. They do not plead to paragraph 41 as it contains no allegations against them.

28. They deny paragraph 42.

29. They do not plead to paragraph 43 as it contains no allegations against them.

30. They deny paragraph 44.

31. As to paragraph 45, they deny the paragraph and say further that

(a) if S&G breached the Retainer (which is denied) then, by reason of ABL's duties and obligations referred to in paragraph 3 above,

such breach of the Retainer was not causative of any loss or damage to ABL

(b) ABL's claim that S&G breached the Retainer is statute-barred by s 5(1) of the *Limitation of Actions Act 1958 (Vic)*.

32. They deny paragraph 46.

33. They deny paragraph 47, and refer to and repeat paragraph 31(b) above.

Date: 30 August 2021~~27 April 2021~~

A handwritten signature in blue ink, appearing to read 'Richard Murphy', with a large, stylized flourish at the bottom.

Signed by Richard Murphy
MinterEllison
Lawyer for the First and Third Cross-
Respondents

This defence to further amended statement of cross-claim~~pleading~~ was prepared by David Batt QC, ~~and~~ Caryn van Proctor and Nicholas Baum of Counsel.

Certificate of lawyer

I, Richard Murphy, certify to the Court that, in relation to the Defence filed on behalf of the First and Third Cross-Respondents, 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: 30 August 2021~~27 April 2021~~



Signed by Richard Murphy
MinterEllison
Lawyer for the First and Third Cross-
Respondents

Schedule

No. VID 1010 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

First Cross-Respondent

Slater & Gordon Ltd

Second Cross- Respondent

Andrew Alexander Grech

Third Cross- Respondent

Wayne Brown