

**FAST TRACK
IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY**

VID 811 of 2010

BETWEEN

JOHN ANDREWS
First Applicant

ANGELO JULIAN SALIBA
Second Applicant

EZI DOES IT PTY LTD
(ACN 123 862 402)
Third Applicant

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

FAST TRACK REPLY

*For the purposes of this Fast Track Reply, the applicants adopt (where the context permits) the abbreviations and defined terms used in their application under Part IVA of the Federal Court of Australia Act 1976 (Cth) and Fast Track Statement (**Statement**) filed in this proceeding .*

Unless otherwise indicated, references to paragraphs include their sub-paragraphs, and references to sub-paragraphs include their chapeau and sub-paragraphs.

Filed on behalf of the applicants

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1 The applicants join issue with the allegations in Part C of the respondent's Fast Track Response dated 22 October 2010 (**Response**), save insofar as the same consists of admissions, or is the subject of specific comment in this Fast Track Reply.

2 In reply to sub-paragraph 98(f)(i) of the Response, the applicants:

(a) deny that any of their claims and / or those of the Group Members are barred by section 5 of the *Limitation of Actions Act 1958 (Vic)* (**Victorian Limitation Act**), and say further that:

- i. the charging of the Exception Fees by the respondent was not authorised (for the reasons set out in the Statement), 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;
- 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 22 September 2010 (being the date on which this proceeding was commenced);

(b) *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 paragraph 62 of the Statement) within the meaning of section 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 22 September 2004 (being 6 years prior to the commencement of this proceeding).

3 In reply to sub-paragraph 98(f)(ii) of the Response, the applicants:

(a) deny that any of their claims and / or those of the Group Members are barred by section 14 or 15 of the *Limitation Act 1969* (NSW) (**NSW Limitation Act**), and repeat sub-paragraphs 2(a)(i) – (v) above;

(b) *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 paragraph 62 of the Statement) within the meaning of section 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 applicants and 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 applicants and Group Members did discover, or might with reasonable diligence have discovered, the mistake at any time prior to 22 September 2004 (being 6 years prior to the commencement of this proceeding).

4 In reply to sub-paragraph 98(f)(iii) of the Response, the applicants:

(a) deny that any of their claims and / or those of the Group Members are barred by section 11 or 12 of the *Limitation Act 1985* (ACT) (**ACT Limitation Act**), and repeat sub-paragraphs 2(a)(i) – (v) above;

(b) *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 paragraph 62 of the Statement) within the meaning of section 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 applicants and 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 applicants and Group Members did discover, or might with reasonable diligence have discovered, the mistake at any time prior to 22 September 2004 (being 6 years prior to the commencement of this proceeding).

5 In reply to sub-paragraph 98(f)(iv) of the Response, the applicants:

(a) deny that any of their claims and / or those of the Group Members are barred by section 10 of the *Limitation of Actions Act 1974* (Qld) (**Queensland Limitation Act**), and repeat sub-paragraphs 2(a)(i) – (v) above;

(b) *further, or in the alternative, say that:*

- i. their claims and those of the Group Members include claims for relief from the consequences of mistake (as set out in paragraph 62 of the Statement) within the meaning of section 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 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 22 September 2004 (being 6 years prior to the commencement of this proceeding).

6 In reply to sub-paragraph 98(f)(v) of the Response, the applicants:

(a) deny that any of their claims and / or those of the Group Members are barred by section 35 of the *Limitation of Actions Act 1936 (SA)* (**SA Limitation Act**), and repeat sub-paragraphs 2(a)(i) – (v) above;

(b) *further, or in the alternative*, say that:

- i. a fact material to their claims and those of the Group Members was not ascertained by them until the period commencing on 22 September 2009 (namely, that they did not in truth have a legal obligation to pay or suffer to be charged the Exception Fees);
- ii. the fact referred to in sub-paragraph (i) forms an essential element of their causes of action, and / or has major significance on an assessment of their loss; and
- iii. in all of the circumstances, it is just that the the applicants and Group Members be granted an extension of time, until 22 September 2010, to institute this proceeding under section 48 of the SA Limitation Act, and the applicants seek an order accordingly.

7 In reply to sub-paragraph 98(f)(vi) of the Response, the applicants:

(a) deny that any of their claims and / or those of the Group Members are barred by section 4 of the *Limitation Act 1974 (Tas)* (**Tasmanian Limitation Act**), and repeat sub-paragraphs 2(a)(i) – (v) above;

(b) *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 paragraph 62 of the Statement) within the meaning of section 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 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 22 September 2004 (being 6 years prior to the commencement of this proceeding).

8 In reply to sub-paragraph 98(f)(vii) of the Response, the applicants deny that any of their claims and / or those of the Group Members are barred by section 38 of the *Limitation Act 1935 (WA)* (**WA Limitation Act**), and repeat sub-paragraphs 2(a)(i) – (v) above.

9 In reply to sub-paragraph 98(f)(viii) of the Response, the applicants:

(a) deny that any of their claims and / or those of the Group Members are barred by section 12 or 13 of the *Limitation Act 1981 (NT)* (**NT Limitation Act**), and repeat sub-paragraphs 2(a)(i) – (v) above;

(b) *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 paragraph 62 of the Statement) within the meaning of section 43 of the NT Limitation Act;

ii. the time which elapsed after any limitation period fixed by the NT Limitation Act commenced to run and before the date on which each of the applicants and 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 applicants and Group Members did discover, or might with reasonable diligence have discovered, the mistake at any time prior to 22 September 2007 (being 3 years prior to the commencement of this proceeding);

(c) *further, or in the alternative*, say that:

i. a fact material to their claims and those of the Group Members was not ascertained by them until the period commencing on 22 September 2009 (namely, that they did not in truth have a legal obligation to pay or suffer to be charged the Exception Fees); and

- ii. in all of the circumstances, it is just that the applicants and Group Members be granted an extension of time, until 22 September 2010, to institute this proceeding under section 44 of the NT Limitation Act, and the applicants seek an order accordingly.

Date: 1 November 2010

A handwritten signature in black ink, reading "Maurice Blackburn", written over a horizontal dotted line.

MAURICE BLACKBURN

Solicitors for the Applicants