

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33  
File Number: VID1093/2018  
File Title: NOEL MURRAY UREN v RMBL INVESTMENTS LTD & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 13/12/2018 4:56:17 PM AEDT

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 1093 of 2018

Federal Court of Australia  
District Registry: Victoria  
Division: General

### NOEL MURRAY UREN

Applicant

**RMBL INVESTMENTS LTD (ACN 004 493 789)** and another  
Respondents

*For the purposes of this Reply, the Applicant adopts (where the context permits) the abbreviations and defined terms used in the Originating Application Starting a Representative Proceeding under Part IVA of the Federal Court of Australia Act and the Statement of Claim (SOC) filed in this proceeding.*

1. The Applicant joins issue with the allegations in the Defence dated 30 November 2018 (**Defence**), save insofar as it consists of admissions, or is the subject of specific response in this Reply.
2. In reply to paragraph 3.2 of the Defence, the Applicant says:
  - (a) He denies that the claims and/or those of the Group Members, in so far as they relate to Collection Charges paid prior to 4 September 2012, are barred by section 5 of the *Limitation of Actions Act 1958* (Vic) (**LAA**) as:
    - (i) the Loan Agreement (as varied by the Variations) (and the equivalent loan agreements and variations entered into between Group Members and RMBL) were specialties, namely deeds; and

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Filed on behalf of (name & role of party) Noel Murray Uren (Applicant)  
Prepared by (name of person/lawyer) Steven Foale  
Law firm (if applicable) Maurice Blackburn  
Tel (07) 3016 0300 Fax (07) 3236 1966  
Email SFoale@mauriceblackburn.com.au  
**Address for service** Level 8, 179 North Quay  
(include state and postcode) Brisbane Qld 4000

- (ii) by reason of the foregoing the applicable period of limitation prescribed by section 5(3) of the LAA is 15 (fifteen) years.
- (b) Further or alternatively:
- (i) by reason of the matters set out in the SOC, the charging and receipt by RMBL of the Collection Charges (and the equivalent Collection Charges under the loan agreements and variations entered into between Group Members and RMBL) were not authorised;
  - (ii) by reason of the foregoing the claims are for repayment of amounts standing to the credit of the account of the Applicant and the Second Respondent (and the Group Members' respective accounts) with RMBL (**Repayment Claim**);
  - (iii) it is a precondition of the Repayment Claim that the Applicant and/or the Second Respondent (and each of the Group Members) make demand of RMBL;

#### **Particulars**

The term is implied at law as an incident of the relationship of lender and borrower.

- (iv) accordingly, the Applicant's Repayment Claim (and those of the Group Members) did not accrue until demand was made of RMBL; and
  - (v) prior to the issue of this proceeding the Applicant and/or the Second Respondent had not (and the Group Members have not) made demand of RMBL in respect of the Repayment Claim.
- (c) Further or alternatively:
- (i) pursuant to the Loan Agreement and the Variations (and the equivalent loan agreements and variations entered into between Group Members and RMBL) monies received by RMBL were to be applied (relevantly) in order of priority to:
    - A. payment to the Lender of all Moneys Hereby Secured in the nature of interest; and
    - B. payment to the Lender of all Moneys Hereby Secured other than Moneys Hereby Secured in the nature of interest, including money advanced by RMBL.

#### **(the application of money clause)**

#### **Particulars**

The application of money clause is in writing and contained in the Loan Agreement at clause 16.

Lender is defined as RMBL.

Moneys Hereby Secured is defined at clause 1 of the Loan Agreement.

- (ii) by operation of the application of money clause, any money paid to RMBL in excess of the amounts due and payable in the nature of interest under the Loan Agreement and the Variations (and the equivalent loan agreements and variations entered into between Group Members and RMBL) was to be applied in reduction of the amount of money advanced by RMBL under the Loan Agreement and the Variations (and the equivalent loan agreements and variations entered into between Group Members and RMBL);
  - (iii) in the premises, the Applicant's claim against RMBL did not accrue until the Applicant and the Second Respondent discharged the Loan Agreement and paid RMBL an amount in excess of capital properly due and payable (and likewise, the claims of the Group Members did not accrue until they discharged their respective loan agreements and paid RMBL an amount in excess of capital properly due and payable); and
  - (iv) the Applicant and the Second Respondent discharged the Loan Agreement on or about 16 March 2016.
- (d) Further or alternatively:
- (i) the claim of the Applicant and those of the Group Members are claims for relief from the consequences of a mistake (as pleaded in paragraph 29 of the SOC) within the meaning of section 27 of the LAA;
  - (ii) any period of limitation prescribed by the LAA did not begin to run against the Applicant or Group Members until each had discovered the mistake, or could with reasonable diligence have discovered it; and
  - (iii) neither the Applicant, the Second Respondent nor any of the Group Members did discover, or could with reasonable diligence have discovered, the mistake at any time prior to 5 September 2012, being six years prior to the issue of this proceeding.
3. If, which is not admitted, loan agreements entered into by some Group Members contained the clause set out in paragraph 19.1 of the Defence, then the Applicant refers to and repeats paragraphs 21 to 38 (inclusive) of the SOC as applying to any loan agreements containing that clause.
4. In reply to paragraph 19.2 of the Defence, the Applicant refers to and repeats paragraph 2 hereof.

5. In reply to paragraph 27 of the Defence, the Applicant refers to and repeats paragraph 2 hereof.
6. In reply to paragraph 30.2 of the Defence, the Applicant refers to and repeats paragraph 2 hereof.
7. In reply to paragraph 35 of the Defence, the Applicant refers to and repeats paragraph 2(b) and (c) hereof.
8. In reply to paragraph 36.2 of the Defence, the Applicant refers to and repeats paragraph 2(b) and (c) hereof.
9. In reply to paragraphs 40 to 43 (inclusive) of the Defence, if, which is denied, RMBL is entitled to a claim for *quantum meruit* and/or *quantum valebat*, then insofar as such claim is for financial services alleged to have been provided by RMBL prior to 6 years before its claim for set-off, such claim is statute-barred by operation of section 5(1) of the LAA.
10. In reply to paragraphs 44 to 50 (inclusive) of the Defence, if, which is denied, RMBL is entitled to a claim for restitution, then insofar as such claim is for financial services alleged to have been provided by RMBL prior to 6 years before its claim for set-off, such claim is statute-barred by operation of section 5(1) of the LAA.

Date: 13 December 2018



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Signed by Steven Foale  
Lawyer for the Applicant

This pleading was prepared and settled by J.F. Richardson and B.F. Quinn QC of counsel

### **Certificate of lawyer**

I Steven Mark Foale 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 each allegation in the pleading.

Date: 13 December 2018

A handwritten signature in black ink, appearing to read 'Steven Foale', written in a cursive style.

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Signed by Steven Foale  
Lawyer for the Applicant