



IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS LIST

No.

Case: S ECI 2022 00739

Filed on: 09/03/2022 11:33 AM

BETWEEN:

**TINA LOMBARDO**

Plaintiff

and

**DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD (ACN 055 927 618)  
AND OTHERS  
(ACCORDING TO THE ATTACHED SCHEDULE)**

First Defendant

### WRIT

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Date of document: 9 March 2022

Filed on behalf of: The Plaintiff

Prepared by:

Maddens Lawyers

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### TO THE DEFENDANTS

**TAKE NOTICE** that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

**IF YOU INTEND TO DEFEND** the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.**

**\*THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;

- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

**FILED** 9 March 2022

Prothonotary

**THIS WRIT** is to be served within one year from the date it is filed or within such further period as the Court orders.

## GENERAL INDORSEMENT OF CLAIM

### A. PRELIMINARY

#### A.1. Group Proceeding

1. The Plaintiff brings this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1984* (Vic) on behalf of herself and:
  - a. all persons who have suffered loss or damage as a result of cosmetic surgery being performed on them by one or more of the Defendants; as well as
  - b. all persons who have suffered loss or damage as a result of cosmetic surgery being performed on them at one of the Lanzer Clinics (as defined in paragraph 3) pursuant to a contract between the person and the First Defendant (**DCSS**);

**(Group Members).**

2. As at the date of the commencement of this proceeding, there are more than seven Group Members.

#### A.2. The First Defendant

3. At all relevant times, DCSS was:
  - a. a corporation incorporated under the *Corporations Act 2001* (Cth) (***Corporations Act***), and capable of being sued;
  - b. engaged in trade or commerce;
  - c. in the business of providing cosmetic surgery;
  - d. operated its business from one or more of the medical clinics located at:
    - i. 30-32 Glenferrie Road, Malvern, Victoria;
    - ii. 3/276-278 Pitt Street, Sydney, New South Wales;
    - iii. 11 Hayling Street, Salisbury, Queensland;

iv. 1A/1 Roydhouse Street, Subiaco, Western Australia;

(together, the **Lanzer Clinics**);

e. subject to the *Australian Consumer Law (Cth)*, *Australian Consumer Law (Vic)*, *Australian Consumer Law (NSW)*, *Australian Consumer Law (Qld)* and the *Australian Consumer Law (WA)* (together, the **ACL**).

### **A.3. The Second Defendant**

4. At all relevant times, the Second Defendant (**Lanzer**):

- a. was a director and an officer of DCSS;
- b. together with Lanzer's wife, were the only directors and secretaries of DCSS;
- c. by reason of the composition of the board of DCSS referred to above, controlled DCSS;  
and
- d. was a servant and/or agent of DCSS.

5. By reason of the matters above:

- a. the knowledge of Lanzer in relation to the conduct described in this Statement of Claim is to be attributed to DCSS; and
- b. the knowledge of DCSS in relation to the conduct described in this Statement of Claim is to be attributed to Lanzer.

6. At all relevant times, Lanzer was:

- a. in the business of providing cosmetic surgery;
- b. provided cosmetic surgery from one or more of the Lanzer Clinics.

7. Further, at all relevant times Lanzer:

- a. was engaged in trade or commerce;
- b. was subject to the *Australian Consumer Law (Vic)*, *Australian Consumer Law (NSW)*, *Australian Consumer Law (Qld)* and the *Australian Consumer Law (WA)*.

**A.4. The other Defendants**

8. Each of the Third, Fourth, Fifth and Sixth Defendants (**the Other Defendants**) were:
- a. associates of;
  - b. directed by; and
  - c. trained by;
- Lanzer.
9. At all relevant times, each of the Other Defendants:
- a. were in the business of providing cosmetic surgery;
  - b. provided cosmetic surgery to the Group Members:
    - i. from one or more of the Lanzer Clinics; and
    - ii. at the direction of DCSS, alternatively, Lanzer.
10. In the alternative to paragraph 9.b, each of the Other Defendants were servants and agents of DCSS, alternatively, Lanzer.
11. Further, at all relevant times, each of the Other Defendants was:
- a. engaged in trade or commerce;
  - b. subject to the *Australian Consumer Law (Vic)*, *Australian Consumer Law (NSW)*, *Australian Consumer Law (Qld)* and the *Australian Consumer Law (WA)*.

**B. MISLEADING OR DECEPTIVE CONDUCT**

**B.1. Written Expertise Representation**

12. DCSS and/or Lanzer represented, in standard paperwork provided to the Plaintiff and each of the Group Members, that Lanzer and the Other Defendants were expert to perform cosmetic surgery procedures (**Relevant Procedures**) (**Written Expertise Representation**).

### Particulars

The specific cosmetic surgery procedures include abdominoplasty, liposuction and otoplasty. Further particulars may be provided after discovery.

13. Further, at no time after the making of the Written Expertise Representation to the Plaintiff and the Group Members did DCSS or Lanzer withdraw or modify the representation, which was accordingly a continuing representation.
14. Lanzer and the Other Defendants were not expert to perform the Relevant Procedures.
15. By reason of the matters in paragraphs 12, 13 and 14, DCSS and Lanzer:
  - a. each engaged in conduct which was misleading or deceptive or likely to mislead or deceive;
  - b. each contravened s 18 of the ACL;

**(Written Expertise Representation Contravention).**

### **B.2. Pre-Surgery Expertise Representations**

16. DCSS operated a system under which prior to the performing of a Relevant Procedure, the surgeon who was to perform the procedure would have a consultation with the Plaintiff or Group Member, as the case may be (**Pre-Surgery Consultation**).
17. Pursuant to the system set out in the paragraph above, in each of the Pre-Surgery Consultations for the Plaintiff and the Group Members, Lanzer or the Other Defendants or an associate of Lanzer, as the case may be, and in each case acting as an agent or servant of DCSS, represented that the doctor was expert to perform the Relevant Procedure (**Pre-Surgery Expertise Representations**).
18. By reason of the matters in 14, 16 and 17, DCSS:
  - a. engaged in conduct which was misleading or deceptive or likely to mislead or deceive;
  - b. contravened s 18 of the ACL;

**(Pre-Surgery Expertise Representation Contravention).**

19. Further, by reason of the matters in paragraphs in 14 and 17:

- a. Lanzer (in the circumstances in paragraphs 4 and 5) or whichever of the Other Defendants (in the circumstances in paragraphs 9.b.ii and 10) was involved in the particular Pre-Surgery Expertise Representation Contravention for the Plaintiff or some of the Group Members as the case may be;
- b. accordingly, Lanzer or whichever of the Other Defendants as the case may be was involved in a contravention of s 18 of the ACL.

### **B.3. Pre-eminence Representation**

20. At all relevant times, DCSS and/or Lanzer published the website ‘www,drlanzer.com.au’ (**Lanzer Website**).
21. DCSS and/or Lanzer, by way of advertising on the Lanzer Website, represented that Lanzer and the Other Defendants were pre-eminent in the provision of the Relevant Procedures (**Pre-eminence Representation**).

#### **Particulars**

The Pre-eminence Representation is inferred from the reference on the Lanzer Website to:

- (a) Lanzer being ‘an Australian expert’, ‘at the forefront of innovation’, having ‘extensive experience and expertise’ and being a ‘recognised world pioneer’ in cosmetic surgery;
  - (b) Lanzer carrying on a ‘mission now embodied by his handpicked, exclusively trained team of surgical associates’; and
  - (c) the ‘Lanzer Way processes’.
22. The Pre-eminence Representation was false in that Lanzer and the Other Defendants were not pre-eminent and their qualifications did not involve any recognised specialist qualifications in the field of cosmetic surgery.
  23. By reason of the matters in paragraphs 20 and 22, DCSS and Lanzer:
    - a. engaged in conduct which was misleading or deceptive or likely to mislead or deceive;
    - b. contravened s 18 of the ACL;

**(Pre-eminence Representation Contravention).**

**C. STATUTORY GUARANTEES**

24. Further or in the alternative to Part B, DCSS, Lanzer and the Other Defendants were suppliers, within the meaning of the ACL, of the Relevant Procedures to the Plaintiff and the Group Members, as the case may be.
25. DCSS, Lanzer and the Other Defendants guaranteed pursuant to the ACL that the Relevant Procedures would be:
- a. reasonably fit for purpose (**Fitness for Purpose Guarantee**); and
  - b. rendered with due care and skill of a medical practitioner expert in such procedure (**Due Care and Skill Guarantee**).
26. The Relevant Procedures:
- a. were not reasonably fit for purpose; and
  - b. were not rendered with due care and skill.
27. By reason of the matters in paragraph 26, DCSS, Lanzer and the Other Defendants:
- a. did not comply with the Fitness for Purpose Guarantee; and
  - b. did not comply with the Due Care and Skill Guarantee;
- (Statutory Guarantee Non-Compliances).**
28. The Statutory Guarantee Non-Compliances were major failures.

**D. NEGLIGENCE**

29. Further or in the alternative to Parts B and C, there was negligence by DCSS, Lanzer and the Other Defendants when providing the Relevant Procedures to the Plaintiff and the Group Members.

**Particulars of negligence in respect of Plaintiff**

- (a) Failing to undertake appropriate pre-treatment examination;
- (b) Failing to obtain informed consent from the Plaintiff for the Relevant Procedures;



- (c) Failing to properly plan the Relevant Procedures;
- (d) Performing excessive treatment in the circumstances;
- (e) Failing to provide any or any adequate anaesthesia for the Relevant Procedures;
- (f) Failing to achieve adequate haemostasis;
- (g) Performing a magnitude of treatment that was likely to cause shock and uncontrolled bleeding;
- (h) Performing excessive procedures in the circumstances;
- (i) Failing to provide any or any adequate post-surgical care.

## **E. CAUSATION, LOSS AND DAMAGE**

### **E.1. Written Expertise Representation Contravention**

30. In reliance on the Written Expertise Representation, the Plaintiff and some of the Group Members each entered into contracts with DCSS for the Relevant Procedures to be performed by Lanzer, alternatively DCSS, which contracts would not have been entered into but for the representation.

#### **Particulars**

The Plaintiff in December 2020 induced by the Pre-eminence Representation attended upon the Clinic located at 3/276-278 Pitt Street, Sydney, New South Wales to obtain advice as to treatments that were appropriate to her (the **First Attendance**).

At the First Attendance the Plaintiff was advised that Lanzer was busy attending to some other matter and as a consequence she underwent a consultation with a nurse employed by Lanzer (the **Nurse Consultation**).

During the Nurse Consultation the nurse, apparently at the direction of Lanzer, took photographs of the Plaintiff and showed them to Lanzer. The nurse then advised the Plaintiff that Lanzer recommended certain procedures to be performed upon the Plaintiff.

Subsequent to the First Attendance the Plaintiff received an advice from Lanzer dated 18 March 2021 regarding the Relevant Procedures to be provided and which included the Written Expertise Representation, together with a quote for the cost of the Relevant

Procedures being in total \$30,000, which was to be paid to DCSS. The advice, quote and payment constituted the contract and its acceptance.

Particulars of the claims of the Group Members will be provided after the initial trial of the Plaintiff's claim.

31. The Plaintiff and some of the Group Members have suffered loss and damage because of the Written Expertise Representation Contravention.

### **Particulars**

The Plaintiff has suffered:

- (a) extensive internal and external bleeding requiring multiple transfusions leading to inter alia loss of consciousness, kidney failure and resulting in 5 days hospitalisation in intensive care and additional 7 days in an acute ward;
- (b) extensive internal damage caused by excessive liposuction;
- (c) disfigurement;
- (d) lymphatic damage;
- (e) significant psychological injury due to the trauma of and associated with the treatment and the consequences thereof.

But for the Written Expertise Representation, the Plaintiff would not have entered into the contract for the Relevant Procedures, which caused the injuries described above.

Particulars of the claims of the Group Members will be provided after the initial trial of the Plaintiff's claim.

### **Particulars pursuant to Order 13 Rule 10(4)**

#### Medical and like expenses

The Plaintiff in addition to incurring the cost of the treatment being approximately \$30,000 has incurred post-surgery, hospital medical and like expenses full particulars of which will be provided prior to the initial trial of her individual claim.

#### Loss of earnings and loss of earnings capacity

The Plaintiff is now aged 43 having been born on 17<sup>th</sup> January 1979. The Plaintiff as a consequence of her injuries has been and remains incapacitated for employment. Full particulars of the Plaintiff's claim for loss of earnings and loss of earning capacity will be provided prior to the trial of this proceeding.

Particulars of the claims of the Group Members will be provided after the initial trial of the Plaintiff's claim.

32. In the circumstances set out above and by reason of the matters in paragraph 15, DCSS and Lanzer are liable for the loss and damage that the Plaintiff and some of the Group Members suffered because of the Written Expertise Representation Contravention, pursuant to s 236 of the ACL.

## **E.2. Pre-Surgery Expertise Representation Contravention**

33. In reliance on the Pre-Surgery Expertise Representation, the Plaintiff and each of the Group Members each maintained or did not withdraw their consent to the Relevant Procedures being performed on them.

### **Particulars**

The Plaintiff on 15 November 2021 in accordance with the instructions received from the Lanzer Clinics attended upon Aronov at the Surrey Hills Day Hospital in Sydney for the Relevant Procedures to be undertaken in accordance with the advice of 18 March 2021.

Upon attendance on 15 November 2021, Aronov orally made the Pre-Surgery Expertise Representation to the Plaintiff. In reliance on the representation, the Plaintiff maintained her consent to the Relevant Procedures (namely liposuction in multiple areas and an abdominoplasty ('tummy tuck')) being performed on her.

Particulars of the claims of the Group Members will be provided after the initial trial of the Plaintiff's claim.

34. The Plaintiff and each of the Group Members have suffered loss and damage because of the Pre-Surgery Expertise Representation Contravention.

### **Particulars**

But for the Pre-Surgery Expertise Representation, the Plaintiff would not have maintained her consent for the Relevant Procedures, which caused the injuries described above.

The Plaintiff otherwise repeats the particulars to paragraph 31.

Particulars of the claims of the Group Members will be provided after the initial trial of the Plaintiff's claim.

35. In the circumstances set out above and by reason of the matters in paragraph 18, DCSS is liable for the loss and damage of the Plaintiff and each of the Group Members caused by the Pre-Surgery Expertise Representation Contravention, pursuant to s 236 of the ACL.
36. Further, in the circumstances set out above and by reason of the matters in paragraph 19, Lanzer and the Other Defendants are also liable for the loss and damage of the Plaintiff and some of the Group Members because of Lanzer and the Other Defendants being involved in the Pre-Surgery Expertise Representation Contravention, pursuant to s 236 of the ACL.

### **E.3. Pre-eminence Representation Contravention**

37. Further or in the alternative to the paragraphs above, in reliance on the Pre-eminence Representation, the Plaintiff and some of the Group Members each entered into contracts with DCSS for the Relevant Procedures to be performed by Lanzer, alternatively DCSS, which contracts would not have been entered into but for the representations.

#### **Particulars**

The Plaintiff refers to the particulars to paragraph 30.

38. The Plaintiff and some of the Group Members have suffered loss and damage because of the Pre-eminence Representation Contravention.

#### **Particulars**

But for the Pre-eminence Representation, the Plaintiff would not have entered into her contract for the Relevant Procedures, which caused the injuries described above.

The Plaintiff otherwise repeats the particulars to paragraph 31.

Particulars of the claims of the Group Members will be provided after the initial trial of the Plaintiff's claim.

39. In the circumstances set out above and by reason of the matters in paragraph 23, DCSS and Lanzer are liable for the loss and damage of the Plaintiff and some of the Group Members caused by the Pre-eminence Representation Contravention, pursuant to s 236 of the ACL.

### **E.4. Statutory Guarantee Non-Compliances**

40. The Plaintiff and the Group Members have suffered loss and damage because of the Statutory Guarantee Non-Compliances.

### **Particulars**

The Plaintiff repeats the particulars to paragraph 31.

41. In the circumstances set out above and by reason of the matters in paragraph 27, DCSS, Lanzer and the Other Defendants are liable for the loss and damage of the Plaintiff and the Group Members because of the Statutory Guarantee Non-Compliances, pursuant to s 267 of the ACL.

#### **E.5. Negligence**

42. As a consequence of the negligence of DCSS, Lanzer and the Other Defendants, the Plaintiff and the Group Members have suffered loss and damage, for which DCSS, Lanzer and the Other Defendants are liable.

### **Particulars**

The Plaintiff repeats the particulars to paragraph 31.

#### **F. COMMON QUESTIONS**

43. The common questions of fact and law are:
- a. whether any or all of Lanzer and the Other Defendants were servants or agents of DCSS;
  - b. whether DCSS and/or Lanzer made the Written Expertise Representation;
  - c. if the answer to the above is yes, whether the Written Expertise Representation was misleading or deceptive or likely to mislead or deceive;
  - d. whether DCSS operated a system of Pre-Surgery Consultations;
  - e. whether DCSS and/or Lanzer made the Pre-eminence Representation;
  - f. if the answer to the above is yes, whether the Pre-eminence Representation was misleading or deceptive or likely to mislead or deceive;
  - g. which of DCSS, Lanzer and the Other Defendants were suppliers of the Relevant Procedures, within the meaning of the ACL;
  - h. which of DCSS, Lanzer and the Other Defendants were required to comply with the Fitness for Purpose and Due Care and Skill Guarantees;
  - i. which of DCSS, Lanzer and the Other Defendants owed the Plaintiff and the Group Members a common law duty of care;
  - j. what are the principles for establishing whether any of the Written Expertise Representation Contravention, Pre-Surgery Expertise Representation Contravention, Pre-eminence Representation Contravention, Statutory Guarantee Non-compliances

and breaches of common law duty were a cause of the loss and damage of the Plaintiff and the Group Members.

**AND THE PLAINTIFF CLAIMS** on her own behalf and on behalf of the Group Members:

- A. Damages, pursuant to s 236 of the ACL in respect of the Written Expertise Representation Contravention, the Pre-Surgery Expertise Representation Contravention and the Pre-eminence Representation Contravention; pursuant to s 267 of the ACL in respect of the Statutory Guarantee Non-Compliances; and pursuant to common law in respect of the breach of common law duty.
- B. Interest.
- C. Costs.
- D. Such further or other orders as the Court may deem appropriate.

9 March 2022

T P Tobin  
M W Guo

Maddens Lawyers  
**Solicitors for the Plaintiff**

1. Place of trial—Melbourne.
2. Mode of trial—Judge and jury.
3. This writ was filed for the Plaintiff by Maddens Lawyers, 219 Koroit Street, Warrnambool VIC 3280.
4. The address of the Plaintiff is 4/15 Carter Street, Seven Hills NSW 2147.
5. The address for service of the Plaintiff is Maddens Lawyers, 219 Koroit Street, Warrnambool VIC 3280.
6. The email address for service of the Plaintiff is [kae@maddenslawyers.com.au](mailto:kae@maddenslawyers.com.au).
7. The address of the First Defendant is 30-32 Glenferrie Road, Malvern, Victoria, 3144.
8. The address of the Second Defendant is 30-32 Glenferrie Road, Malvern, Victoria, 3144.
9. The address of the Third Defendant is 30-32 Glenferrie Road, Malvern, Victoria, 3144.
10. The address of the Fourth Defendant is 30-32 Glenferrie Road, Malvern, Victoria, 3144.
11. The address of the Fifth Defendant is 30-32 Glenferrie Road, Malvern, Victoria, 3144.
12. The address of the Sixth Defendant is 30-32 Glenferrie Road, Malvern, Victoria, 3144.

**SCHEDULE OF PARTIES**

<b>TINA LOMBARDO</b>	Plaintiff
and	
<b>DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD (ACN 055 927 618)</b>	First Defendant
and	
<b>DANIEL LANZER</b>	Second Defendant
and	
<b>DANIEL ARONOV</b>	Third Defendant
and	
<b>DANIEL DARBYSHIRE</b>	Fourth Defendant
and	
<b>RYAN WELLS</b>	Fifth Defendant
and	
<b>ALIREZA FALLAHI</b>	Sixth Defendant