



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

Case S 591/2020 03282  
S E C P 2020 03282

Filed on: 04/07/2022 02:59 PM

BETWEEN

**SEBASTIAN AGNELLO**

Plaintiff

-and-

**HERITAGE CARE PTY LTD (ACN 106 873 796)**

Defendant

**REPLY**

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Date of Document: 4 July 2022

Filed on behalf of: The Plaintiff

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Unless otherwise stated, the plaintiff adopts the defined terms used in the further amended statement of claim dated 7 February 2022 (**Statement of Claim**).

The plaintiff joins issue with the allegations contained in the dated 29 April 2022 (**Defence**), save for the admissions therein, and say by way of reply:

1. As to subparagraph 1(d)(iii) of the Defence, the plaintiff says that “services” within the meaning of the *Quality of Care Principles 2014* (Cth) means the “hotel services” and “care and services” specified in Schedule 1 of the Quality of Care Principles.
2. As to paragraph 7 of the Defence, the plaintiff admits that the Department document titled “COVID-19 outbreaks in Australian Residential aged care facilities” states that “[i]n Victoria, a death is reported when a person with COVID-19 dies during an active outbreak at an aged care facility, irrespective of the cause of death”.
3. The plaintiff admits the allegations in subparagraph 21(b) of the Defence.

4. As to paragraph 23 of the Defence, the plaintiff:
  - (a) refers to and repeats the particulars to paragraph 23 of the Statement of Claim and otherwise admits the allegations in subparagraph 23(d)(i); and
  - (b) admits the allegations in subparagraph 23(d)(ii), subject to reference to the full terms and effect of CDNA National Guidelines (as varied on 30 April 2020 and 14 July 2020).
5. As to paragraph 26 of the Defence, the plaintiff admits that “human coronavirus with pandemic potential” was added as a “listed human disease” on 21 January 2020.
6. As to paragraph 30 of the Defence, the plaintiff admits that diarrhea is stated to be a rare, and not sometimes, symptom of COVID-19 in the Department document titled “Coronavirus (COVID 19) – Identifying the symptoms”.
7. The plaintiff admits the allegations in subparagraph 31(b) of the Defence.
8. As to paragraph 32 of the Defence, the plaintiff refers to and repeats paragraph 33 of the Statement of Claim and otherwise:
  - (a) admits the allegations in subparagraph 32(b)(i); and
  - (b) admits the allegations in subparagraph 32(b)(ii).
9. The plaintiff admits the allegations in subparagraph 36(b) of the Defence.
10. As to paragraph 37 of the Defence, the plaintiff:
  - (a) admits the allegations in subparagraph 37(c)(i); and
  - (b) admits the allegations in subparagraph 37(c)(ii).
11. As to paragraph 38 of the Defence, the plaintiff:
  - (a) as to subparagraph 38(a), says that some of the Family may have been notified of the matters in the 22 March letter by Residents, Family and friends who were the direct recipient of the letter;
  - (b) admits the allegations in subparagraph 38(b)(i); and
  - (c) admits the allegations in subparagraph 38(b)(ii).
12. As to paragraph 47 of the Defence, the plaintiff:
  - (a) as to subparagraph 47(a)(iii), admits that the document titled “Heritage Care – COVID-19 Update Victoria”, dated 10 July 2020, states in response to the question

“Should I wear a face mask?” “Yes, the use of surgical masks for all staff, contractors, visitors and other personnel where safe physical distancing is not feasible whilst on site is mandatory”;

- (b) as to subparagraph 47(a)(iv), the plaintiff refers to and repeats paragraph 53 of the Statement of Claim;
  - (c) as to subparagraph 47(a)(v)(A), admits that on or about 22 July 2020 the Victorian Government introduced the Restricted Activity Directions (Restricted Areas) (No3); and
  - (d) as to subparagraph 47(a)(v)(B), admits that on or about 22 July 2020 the Victorian Government introduced the Stay at Home Directions (Restricted Areas) (No4).
13. Save that the Victorian DHHS Media Release states the outbreak was “linked to the Northern Hospital emergency department”, not “confined”, the plaintiff otherwise admits the allegations in paragraph 50 of the Defence.
14. As to subparagraph 53(b) of the Defence, the plaintiff:
- (a) admits the Hon Greg Hunt MP issued a Media Release titled “Face masks required for aged care workers in Melbourne hotspots” dated 13 July 2020;
  - (b) says further that the Media Release included the following statements:
    - (i) “Aged care staff who work in residential facilities or provide home care support across Victoria’s lock down zones will be required to wear surgical masks following recommendations from the Australian Health Protection Principal Committee”; and
    - (ii) “Aged care providers in Melbourne and Mitchell Shire can contact AgedCareCOVIDPPE@health.gov.au to request masks for in home and residential aged care workers delivering close personal care and clinical care, and other PPE like gloves and gowns to aged care services with a potential or confirmed COVID-19 outbreak”.
15. As to paragraph 56 of the Defence, the plaintiff:
- (a) admits the allegations in subparagraph 56(a)(i);
  - (b) admits the allegations in subparagraph 56(a)(iii); and
  - (c) admits the 16 July Minutes of Meeting contains statements to the effect alleged in subparagraph 56(b).

16. As to paragraph 65 of the Defence, the plaintiff:
- (a) as to subparagraph 65(b)(i):
    - (i) admits that the Department published a document titled “Fact Sheet Coronavirus (COVID-19) National Health Plan: Aged Care – Pathology Testing in Aged Care”;
    - (ii) admits that the Department published a document titled “FAQS Aged Care Workforce Measures” dated 6 May 2020; and
    - (iii) relies on the full terms and effect of these documents; and
  - (b) as to the allegations in subparagraph 65(b)(ii), it admits that the Department had engaged Mable on or about 12 April 2020.
17. To paragraph 131 of the Defence, the plaintiff says that some of the Residents and Family may have been notified of the matters in the 23 April 2020 letter by Residents, Family and friends who were the direct recipients of the letter.

Dated: 4 July 2022

**A. T. Broadfoot**

**B. L. Hutchins**

**S.C.B Brenker**

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