



**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

Case: S ECI 2021 00930

Filed on: 17/12/2021 09:32 AM

No. S ECI 2021 00930

BETWEEN

ZOEY ANDERSON-VAUGHAN

Plaintiff

and

AAI LIMITED (ACN 005 297 807) and others according to the schedule

Defendants

REPLY

Date of Document:	17 December 2021	Solicitors Code: 564
Filed on behalf of:	The Plaintiff	DX: N/A
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As to the defence to the further amended statement of claim filed on 17 November 2021 (**Defence**), the Plaintiff joins issue with the whole of the Defence and says further:

A. Circumstances of the sale of the Add-On Insurance did not allow for the process pleaded by the Defendants

1. as to paragraphs 24 and 25:
 - (a) at all material times the Add-On Insurance was sold to the Plaintiff and Group Members as part of a complex sales process whereby:
 - (i) the Plaintiff and Group Members attended the Dealer:
 - A. for the purpose of purchasing or leasing a Vehicle, alternatively purchasing or leasing a Vehicle using Finance;
 - B. not for the purpose of purchasing Add-On Insurance; and

- (ii) the Dealer:
 - A. sold or leased the Vehicle to the Plaintiff and Group Members;
 - B. arranged the Finance for the purchase or lease of the Vehicle for the Plaintiff and Group Members;
 - C. at some stage during the processes referred to in A and/or B above, sold one or more Add-On Insurance products to the Plaintiff and Group Members; and
 - D. had a financial incentive to sell the Add-On Insurance to the Plaintiff and Group Members by reason of the commissions structure pleaded at paragraph 19(b) of the Further Amended Statement of Claim;

- (b) the effect of the sales process pleaded in subparagraph (a) above was that:
 - (i) the Dealers sold the Vehicle, the Finance and the Add-On Insurance to the Plaintiff and Group Members together;
 - (ii) once the sales process was underway, the Plaintiff and Group Members were not given any, alternatively any sufficient, opportunity to:
 - A. review, understand and/or obtain independent advice on the policy terms and conditions in the relevant PDSs, policy documents, policy schedules and/or FSGs (see Defence 25(i)(vi) and (ix), 25(j));
 - B. negotiate the amount of commission payable to the Dealer in respect of the Add-On Insurance products (see Defence 24(b));
 - C. consider the appropriateness of the information contained in the PDSs in regard to their own circumstances (see Defence 24(f)(iv)(B));
 - D. consider any language in the PDSs to the effect that the purchase of the Add-On Insurance was optional and that they may have been able to arrange similar insurance through a different insurer (see Defence 24(f)(iv)(C)); further or alternatively
 - E. determine whether they required, desired or would be likely to benefit from some or all of the Protections (see Defence 25(i)(vii)); and

- (iii) the Plaintiff and Group Members were sold Add-On Insurance in circumstances where it was not the primary purchase at the Dealer, further or alternatively, they were not aware that they purchased it at all.

B. The Defendants essentially seek to take the benefit of their own unlawful conduct to avoid the consequences of that conduct – *ex turpi causa non oritur actio*

2. as to paragraphs 82(c) & (d), 82A to 82D:

- (a) the premise of these paragraphs is that the Defendants (in the alternative) have unlawfully contravened sections 961L and 1041H of the Corporations Act and sections 12DA and 12DB of the ASIC Act (being the Personal Advice Contraventions, the Misleading Conduct Contraventions, the False Reassurance Contraventions or the Alternative False Reassurance Contraventions, or the False Precondition Contraventions) and the Plaintiff and Group Members have been relevantly mistaken by that unlawful conduct into purchasing the Add-On Insurance;
- (b) based upon that foundation the Defendants then essentially allege positive defences that:
 - (i) any loss and damage which *prima facie* arises from their unlawful conduct was instead due to the Plaintiff's and Group Members' own "failure to cancel their Add-On Insurance policy" despite accepting that the Plaintiff and Group Members at that time had no knowledge of the unlawful basis upon which the Defendants had caused them to purchase the Add-On Insurance (see Defence 82(c) & (d));
 - (ii) the Defendants acted in "good faith" (despite accepting that the Defendants behaved unlawfully) and that the Defendants then "changed their position" based upon the benefit they received from their own unlawful conduct in causing the Plaintiff and Group Members to purchase the Add-On Insurance (see Defence 82A);
 - (iii) they gave "good consideration" in exchange for unlawfully causing the Plaintiff and Group Members to purchase the Add-On Insurance (see Defence 82B);
 - (iv) the Plaintiff may have made claims on her Add-On Insurance policies which has no basis in fact (being an objective fact which was also readily

ascertainable by the Defendants) (see Defence 82C);

- (v) in so far as any Group Members have made a claim on their Add-On Insurance policy they have “elected” to “take the benefit of those policies” despite accepting that the Plaintiff and Group Members at that time had no knowledge of the unlawful basis upon which the Defendants had caused them to purchase the Add-On Insurance (see Defence 82C); and
 - (vi) the Plaintiff and Group Members could have “with reasonable diligence” discovered the Defendants’ unlawful conduct shortly after it occurred, and it would be “inequitable” for the Defendants to be held accountable for their own unlawful conduct (see Defence 82D);
- (c) the unlawful conduct of the Defendants relied upon by them in the positive defences set out at paragraphs 82(c) & (d), 82A to 82D renders those defences not maintainable due to the general principle underlying *ex turpi causa non oritur actio* (an action cannot be grounded on immorality or illegality);
- (d) there is no windfall benefit to the Plaintiff and Group Members by reason of paragraph 2(c) above because the relief sought is the same or similar to that intended to be available to the Plaintiff and Group Members under the statutory schemes which the Defendants have contravened: see sections 961M(2) & (4) and 1041I(1) of the Corporations Act and sections 12GF(1) and 12GM(1) of the ASIC Act.

Dated: 17 December 2021

R Francois

Maurice Blackburn Lawyers

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Maurice Blackburn Lawyers
Solicitors for the Plaintiff

SCHEDULE OF PARTIES

ZOEY ANDERSON-VAUGHAN

Plaintiff

and

AAI LIMITED (ACN 005 297 807)

First Defendant

TAL LIFE LIMITED (ACN 050 109 450)

Second Defendant

MTA INSURANCE PTY LTD (ACN 070 583 701)

Third Defendant