

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



No. S ECI 2022 03433

Case: S ECI 2022 03433

Filed on: 02/02/2024 03:10 PM

B E T W E E N

GERALD FULLER

Plaintiff

-and-

FLETCHER BUILDING LIMITED (ARBN 096 046 936)

Defendant

REPLY

Date of Document: 2 February 2024

Solicitors Code: 37478

Filed on behalf of: Plaintiff

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1 In response to the Defence filed on 20 November 2023 (**Defence**), the Plaintiff says as follows and otherwise joins issue with the Defence save for any admissions therein:

D. RELEVANT PROJECTS UNDERTAKEN BY BUILDING + INTERIORS

2 As to paragraph 13 of the Defence, the Plaintiff:

- (a) admits paragraph 13(a)(i);
- (b) admits paragraph 13(a)(ii) and says further that Part B: Other Conditions of Contract, clause 2.4A.1(b) did not apply where the entire price payable for the Contract Works had been converted into the Fixed-Price Lump-Sum Amount;
- (c) admits in answer to paragraph 13(a)(iii) that the CJESP Building Contract contains the statement of intention appearing at Part B: Other Conditions of Contract, clause 2.4A.3(a);
- (d) admits paragraph 13(a)(iv) on the understanding that the reference to clauses 5.4(a) and (b) is intended as a reference to clauses 5.4.1(a) and (b) of the Specific Conditions of Contract; and
- (e) admits paragraph 13(c).

3 As to paragraph 17 of the Defence, the Plaintiff admits the terms of the NZICC Contract pleaded at paragraphs 17(a) to 17(j).

K. LIMITATION ON ACTIONS

4 As to paragraph 105 of the Defence, the Plaintiff admits that the Defendant did not intend to cause the losses claimed by the Plaintiff or Group Members pursuant to the provisions pleaded in paragraph 105(a) or cause such losses fraudulently and otherwise denies the paragraph.

5 The Plaintiff admits paragraph 106 of the Defence.

6 As to paragraph 107 of the Defence, the Plaintiff:

- (a) denies the paragraph; and
- (b) says that the date on which the loss or damage alleged to have been caused by the Defendant contrary to s 9 of the Fair Trading Act NZ, or the likelihood of such loss or damage, is not discovered or reasonably discoverable by the Plaintiff and Group Members until the determination of paragraphs 99 to 101 of the ASOC.

7 As to paragraph 108 of the Defence, the Plaintiff:

- (a) admits paragraph 108(a);
- (b) admits that the part of the claim pursuant to s 19 of the FMC Act NZ relying on acts or omissions occurring before 2 September 2016 (**Late FMC Act NZ Claim**) is made outside the primary period in the meaning of s 11(1) of the Limitation Act NZ and otherwise denies paragraph 108(b); and

- (c) says that the Plaintiff and Group Members have late knowledge of the Late FMC Act NZ Claim in the meaning of ss 11(2) and 14 of the Limitation Act NZ in that each have not gained knowledge or ought to reasonably have gained knowledge of all of the following facts until the determination of paragraphs 75 to 77 and 99 to 101 of the ASOC:
- (i) the fact that the act or omission on which the Late FMC Act NZ Claim is based had occurred;
 - (ii) the fact that the act or omission on which the Late FMC Act NZ Claim is based was attributable (wholly or in part) to, or involved, Fletcher; or
 - (iii) the fact that the Plaintiff and Group Members had suffered damage or loss by reason of the Late FMC Act NZ Claim.

Dated: 2 February 2024

This Reply was prepared by Alexander H Edwards of counsel and settled by William A D Edwards of King's Counsel.

Mayweathers

Mayweathers
Solicitors for the Plaintiff