

NOTICE OF FILING

Details of Filing

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File Title: REBECCA LEE GATT v TAYLORS BUSINESS PTY LTD ACN 107 445 723
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Sia Lagos".

Registrar

Important Information

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.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 17
Rule 8.05(1)(a)

Amended Statement of claim

No. VID 891 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

Rebecca Lee Gatt
Applicant

Taylor's Business Pty Ltd (ACN 107 445 723)
Respondent

A. PRELIMINARY

1. ~~The Applicant (**Ms Gatt**) brings this proceeding on her own behalf and on behalf of represented persons pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth), being natural persons (**Group Members**) who entered into one or more contracts styled as 'pawn contracts' with the Respondent (**Taylor's**) between 15 November 2022 and the time of filing (**Pawn Contracts**).~~

A.1. The parties

2. The Applicant (**Ms Gatt**) is a natural person and a resident in Victoria.
3. The Respondent (**Taylor's**):
 - a. is and was at all material times incorporated pursuant to the *Corporations Act 2001* (Cth) and capable of being sued;

Filed on behalf of (name & role of party)	Rebecca Lee Gatt		
Prepared by (name of person/lawyer)	Galit Aflalo, Lawyer		
Law firm (if applicable)	Consumer Action Law Centre		
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- b. was, at all times between 15 November 2022 up to around July 2023, carrying on business as a second-hand dealer and pawnbroker from premises at 191 Kings Road, Delahey in the State of Victoria (**Taylor's Store**).

A.2. Representative proceeding

4. Ms Gatt brings this proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on behalf of all persons who entered into one or more contracts styled as 'pawn contracts' (**Pawn Contracts**) with Taylor's on or from 15 November 2022 to the commencement of this proceeding (**Group Members** **Pawn Contracts**).
5. As at the commencement of this proceeding, there are at least seven Group Members.

B. CONTRACT

B.1. The Pawn Contracts

6. The Pawn Contracts are agreements between Taylor's and Ms Gatt and the Group Members under which Taylor's agreed to loan an amount of money (**Loan Amount**) to Ms Gatt or the Group Member (as the case may be) in exchange for the pawning of one or more goods (**Pawned Goods**).

Particulars

Ms Gatt entered into the following Pawn Contracts on 24 July 2023:

- (a) the written contract entitled 'TBL2224652 – PAWN CONTRACT 2023002782' under which Taylor's lent \$375 in exchange for Ms Gatt pawning:
- i. 'UNISEX 9CT YELLOW GOLD NECKLACE 9.6GMS STAMPED 375 – DENSITY TESTED 9K YELLOW GOLD NECKLACE 9.56G TESTED';
 - ii. 'UNISEX 9CT YELLOW GOLD BRACELET 11.7GMS STAMPED 375 – DENSITY TESTED 9K YELLOW GOLD BRACELET 11.74G TESTED';
 - iii. 'MENS 9CT YELLOW GOLD RING 3.0GMS STAMPED 375 9K YELLOW GOLD RING W/ 1 WHITE STONE 3.04G TESTED'; and

iv. 'LADIES 18CT YELLOW GOLD NECKLACE 3.5GMS
18K YELLOW GOLD NECKLACE 3.5G TESTED';

(b) the written contract entitled 'TBL2224653 – PAWN
CONTRACT 2023002783' under which Taylors lent a further
\$375 in exchange for Ms Gatt pawning:

i. 'UNISEX 9CT YELLOW GOLD NECKLACE 25.1GMS
STAMPED 375 – DENISTY [sic] TESTED 9K YELLOW
GOLD NECKLACE 25.07G TESTED'; and

ii. 'MENS 9CT YELLOW GOLD RING 3.8GMS STAMPED
10K MICHAEL HILL 9K YELLOW GOLD RING 3.8
TESTED'.

(c) Particulars in respect of the Group Members will be provided
after the trial of Ms Gatt's claim.

7. The Pawn Contracts were in standard written form and contained terms that:
- a. the loan period is one month;
 - b. the interest charge is 40% of the Loan Amount per month or part thereof
(Interest Charge);
 - c. in order to redeem the Pawns Goods, the Group Member is required to repay
the Loan Amount and the Interest Charge by the end of the loan period;
 - d. if the Group Member requires more time to redeem the Pawns Goods, the
Group Member can extend the loan period by paying the Interest Charge, with
each payment of one month's Interest Charge extending the loan period by a
further one month; and
 - e. if the Group Member does not redeem the Pawns Goods or extend the loan
period by the due date for repayment, Taylors can sell the Pawns Goods.
8. In respect of Ms Gatt and each Group Member, Taylors provided the Loan Amount to
the Group Member wholly or predominantly for personal, domestic or household
purposes.

Particulars

The nature of the Respondent's business was one of lending to
natural persons who were in financial difficulty and needed
short-term credit wholly or predominantly for personal, domestic
or household purposes.

Further, the quantum of the Loan Amount in each case is small such that the Loan Amount was provided wholly or predominantly for personal, domestic or household purposes.

Particulars in respect of the Group Members will be provided after the trial of Ms Gatt's claim.

B.2. Requirement to be registered in order to carry on business as a pawnbroker

9. From the period 15 November 2022 to the commencement of this proceeding, Taylors was not registered as a second-hand dealer nor authorised to carry on business as a pawnbroker, because on and from 15 November 2022 it ceased to be registered under Part 2 of the *Second-Hand Dealers and Pawnbrokers Act 1989* (Vic) (**SHDP Act**).

Particulars

- (a) Until 15 November 2022, the Respondent was registered under Part 2 of the SHDP Act with registration number SHD-0011312.
- (b) The Respondent's registration was cancelled from 15 November 2022 for reasons not presently known to Ms Gatt.
10. Under paragraph 5(1A)(b) of the SHDP Act, a person is prohibited from carrying on a business as a pawnbroker unless they are authorised to carry on business as a pawnbroker by endorsement of their registration under Part 2 of the SHDP Act.
11. By reason of the matters pleaded at paragraphs 9 and 10 above, from 15 November 2022 onwards, it was unlawful for Taylors to:
- a. carry on business as a pawnbroker in Victoria;
 - b. enter into Pawn Contracts.

B.3. The Pawn Contracts are credit contracts

12. Under each of the Pawn Contracts:
- a. Taylors provided the Loan Amount to Ms Gatt and the Group Members;
 - b. Ms Gatt and the Group Members became liable to repay a debt to Taylors, namely the Loan Amount plus the Interest Charge; and
 - c. the payment of that debt was deferred.
13. By reason of the matters in paragraph 12:

- a. the loans provided by Taylors to Ms Gatt and the Group Members under the Pawn Contracts are “credit” for the purposes of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) and the *National Credit Code* (**Code**);

Particulars

NCCP Act s 5(1) (definition of “credit”) and Code s 3(1).

- b. Ms Gatt and the Group Members are “debtors” for the purposes of the NCCP Act and the Code;

Particulars

NCCP Act s 5(1) (definition of “debtor”) and Code ss 3(1) and 204(1) (definition of “debtor”).

- c. Taylors is a “credit provider” for the purposes of the NCCP Act and the Code.

Particulars

NCCP Act s 5(1) (definition of “credit provider”) and Code ss 3(1) and 204(1) (definition of “credit provider”).

14. The Code applies to the provision of credit by Taylors to Ms Gatt and the Group Members under the Pawn Contracts because:

- a. Ms Gatt and the Group Members are natural persons;

Particulars

Code s 5(1)(a).

- b. the credit was provided or intended to be provided wholly or predominantly for personal, domestic or household purposes;

Particulars

Code s 5(1)(b).

- c. a charge was made for providing the credit, namely the Interest Charge;

Particulars

Code 5(1)(c).

- d. Taylors provided the credit in the course of a business of providing credit carried on in Australia.

Particulars

Code s 5(1)(d).

15. Subsection 6(9) of the Code provides that the Code does not apply to the provision of credit on the security of pawned or pledged goods by a pawnbroker in the ordinary course of the pawnbroker's business, provided that the business is being lawfully conducted by the pawnbroker (**Pawnbroker's Exemption**).
16. By entering into the Pawn Contracts with Ms Gatt and the Group Members after the cancellation of its Second-Hand Dealer and Pawnbroker Registration, Taylors was:
- a. contravening s 5(1A) of the SHDP Act;
- Particulars**
- Ms Gatt refers to paragraphs 13-17.
- b. in those circumstances, not conducting its business lawfully for the purposes of the Pawnbroker's Exemption.
17. By reason of the matters in paragraphs 12 to 16 above, the Pawn Contracts are "credit contracts" for the purposes of the NCCP Act and the Code.

B.4. Pawn Contracts are unenforceable

B.4.I. Statutory unenforceability

18. The annual percentage rate of each of the Pawn Contracts is, on a simple interest basis, 480%.

Particulars

The Interest Charge is 40% per month, which is 480% per annum (on a simple interest basis).

19. By reason of the matters in paragraph 18, the Pawn Contracts are unenforceable by force of statute.

Particulars

Ms Gatt refers to subsection 39(1) of the *Consumer Credit (Victoria) Act 1995* (Vic) (**CCV Act**),

B.4.II. Unenforceability by reason of excessive rates of interest proscribed by statute

20. Further, the Pawn Contracts contained terms charging rates of interest that were so high that the Pawn Contracts are and at all times have been void and unenforceable, by reason of them being illegal or contrary to public policy.

Particulars

By reason of the matters in paragraph 18:

- (a) Taylors was prohibited from entering into the Pawn Contracts, pursuant to subsection 39(3) of the CCV Act;
- (b) Taylors was prohibited from entering into the Pawn Contracts, pursuant to subsection 32A(1) of the Code.

B.4.III. Unenforceability by reason of unlicensed credit activity

21. Further, Taylors engaged in the following activities, which are “credit activities” within the meaning of the NCCP Act:
- a. being a credit provider under a credit contract, namely the Pawn Contracts;
 - b. carrying on a business of providing credit, being credit to which the provision of which the Code applies to, by entering into Pawn Contracts with Ms Gatt and the Group Members;
 - c. performing the obligations, and exercising the rights, of a credit provider in relation to a credit contract by:
 - i. providing credit to Ms Gatt and the Group Members under the Pawn Contracts;
 - ii. receiving payments made by Group Members pursuant to the Pawn Contracts; and
 - iii. holding the Pledged Goods under the Pawn Contracts as security for the repayment of the debts owing under the Pawn Contracts.

Particulars

NCCP Act s 6(1) (item 1).

22. Under subsection 29(1) of the NCCP Act, a person must not engage in a credit activity if the person does not hold an Australian Credit Licence authorising the person to engage in the credit activity.
23. Taylors did not hold an Australian Credit Licence at the time it engaged in the credit activities set out in paragraph 21.

24. By reason of the matters at paragraphs 21 to 23:
- a. Taylors' entry into the Pawn Contracts was in contravention of subsection 29(1) of the NCCP Act;
 - b. the Pawn Contracts are and at all times have been void and unenforceable by reason of being illegal or contrary to public policy.

C. UNJUST TRANSACTION—NATIONAL CREDIT CODE

25. Further or alternatively, at the time of entry into each of the Pawn Contracts:
- a. Ms Gatt and the Group Members did not have any bargaining power over Taylors, nor any ability to negotiate with Taylors, as to the terms of the Pawn Contracts;

Particulars

The Pawn Contracts were in standard written form and offered on a 'take it or leave it' basis.

- b. it was not reasonably necessary for the protection of any legitimate interest of Taylors to charge the Interest Rate of 40% per month;
 - c. Ms Gatt and the Group Members did not obtain, nor were they offered an opportunity to obtain, any independent legal advice about the terms of the Pawn Contracts; and
 - d. the Interest Rate was not justified in light of the credit risk of Ms Gatt and the Group Members assumed by Taylors.
26. By reason of the matters in paragraph 25 and paragraphs 31 to 35, the Pawn Contracts were unjust within the meaning of section 76 of the Code.

D. UNFAIR TERMS—ASIC ACT

27. Further or alternatively, each of the Pawn Contracts were consumer contracts, within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

Particulars

Ms Gatt refers to the matters in paragraph 8.

28. Each of the Pawn Contracts were standard form contracts, within the meaning of the ASIC Act.
29. The Pawn Contracts were financial products, within the meaning of the ASIC Act.

Particulars

The Pawn Contracts were financial facilities. Ms Gatt refers to paragraph 12BAA(7)(k) of the ASIC Act.

30. By reason of the matters in paragraph 25 and paragraphs 31 to 35, the Interest Charge is a term in the Pawn Contracts that:
 - a. causes a significant imbalance in the parties' rights and obligations arising under the contract;
 - b. is not reasonably necessary in order to protect the legitimate interests of Taylors;
 - c. would cause financial detriment to Ms Gatt and the Group Members if it were to be applied or relied on;
 - d. in the circumstances in the subparagraphs above, is unfair, within the meaning of section 12BG of the ASIC Act.

E. UNCONSCIONABLE CONDUCT—ASIC ACT

31. Further or alternatively, at the time of entry into each of the Pawn Contracts:
 - a. Taylors was engaged in trade or commerce;
 - b. the prospective entry into any of the Pawn Contracts was the possible supply by Taylors of financial services to Ms Gatt and the Group Members.
32. In addition to the matters in paragraph 25, at the time of entry into each of the Pawn Contracts:
 - a. Ms Gatt and the Group Members were commonly:

- i. vulnerable consumers; and
 - ii. unsophisticated consumers of loan contracts;
 - iii. low-income earners;
 - iv. experiencing financial hardship and needed money to pay for their living expenses;
 - v. in pawning goods for the Pawn Contracts, pawned goods that were of sentimental value;
 - b. Taylors was carrying on the business of a second-hand dealer and pawnbroker whilst unregistered.
33. Further, the Taylors Store closed its premises in about July 2023.
34. It was a term of each of the Pawn Contracts that Ms Gatt and the Group Members could extend their contracts by paying the monthly Interest Charge, which was able to be paid in person at the Taylors Store.
35. Taylors took no or no adequate steps to inform Ms Gatt and Group Members that at the time of entry into each of the Pawn Contracts, the Taylors Store was to close.
36. By reason of the matters in paragraphs 31 to 35, the offering of the Pawnbroking Contracts was unconscionable conduct, in contravention of section 12CB of the ASIC Act.

F. LOSS AND DAMAGE

37. By reason of the matter pleaded at paragraphs 19, 20, 24, 26, 30 and/or 36, Ms Gatt and the Group Members have suffered loss and damage in the form of:
- a. the amounts paid in respect of the Interest Charge for the initial loan period and any extensions of the loan period under the Pawn Contracts;
 - b. the value of the Pawned Goods in relation of the Pawn Contracts; and
 - c. the loss of enjoyment and use of the Pawned Goods of the Pawn Contracts over the period of possession by Taylors.

Date: ~~25 October~~ 15 December 2023

Consumer Action Law Centre

Signed by Consumer Action Law Centre
Lawyers for Ms Gatt

This pleading was prepared by Galit Aflalo, Lawyer, and settled by Min Guo and Philippa Kelly of counsel.

Certificate of lawyer

I, Galit Aflalo, certify to the Court that, in relation to the statement of claim 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: 25 October 2023



Signed by Galit Aflalo
Lawyer for Ms Gatt