



Federal Court of Australia
District Registry: Victoria
Division: General

No: VID891/2023

REBECCA LEE GATT

Applicant

TAYLORS BUSINESS PTY LTD (ACN 107 445 723)

Respondent

ORDER

JUDGE: JUSTICE O'CALLAGHAN

DATE OF ORDER: 23 August 2024

WHERE MADE: Melbourne

THE COURT ORDERS BY CONSENT THAT:

Opt Out

1. Pursuant to s 33J of the *Federal Court of Australia Act 1976 (Cth)* (**FCA Act**), the time and date for Group Members to opt out of the Proceeding be 4:00pm on 27 September 2024.
2. Pursuant to s 33Y of the FCA Act, the form of notice in Annexure A to these orders (**Opt Out Notice**) be approved.
3. The Opt Out Notice be distributed by the following procedure:
 - (a) the Applicant's solicitors post on their website a copy of the Opt Out Notice;
 - (b) the Applicant's solicitors post on their Facebook and Twitter accounts a link to their website post with a copy of the Opt Out Notice;
 - (c) the Applicant's solicitors apply to the administrator of the 'Brimbank Community' group on Facebook to post a link to their website post with a copy of the Opt Out Notice;
 - (d) the Respondent provide to the Applicant's solicitors by 4:00pm on 6 September 2024:
 - i. the name, address and (where this has been recorded by the Respondent) mobile phone number of each customer who entered into a Pawn Contract between 15 November 2022 and 26 October 2023; and
4. By 6 September 2024, the Applicant's solicitors:



- (a) to the extent that any Group Member has contacted the Applicant's solicitors and provided their email address to the Applicant's solicitors, email a copy of the Opt Out Notice to any such Group Member; and
- (b) for all remaining Group Members:
- i. where the Respondent has provided mobile phone numbers in accordance with the paragraph above, send an SMS text message to each Group Members mobile phone number with a link to a website containing a digital copy of the Opt Out Notice; and
 - ii. for all other Group Members, post a copy of the Opt Out Notice to each address for service of notices or alternative address for service of notices provided by the Respondent or if no such address is provided, to the residential address provided by the Respondent, pursuant to the paragraph above.

Separate Question

5. Pursuant to rule 30.01 of the *Federal Court Rules 2011*, the Court hear the questions at Annexure B separately from any other questions on a date to be determined at a subsequent case management hearing.
6. By 6 September 2024, the Respondent give discovery of the documents directly relevant to the allegation at paragraph 2(e) of the Applicant's Reply dated 11 April 2024.

Mediation

7. Pursuant to section 53A of the FCA Act, the proceeding be referred to a senior judicial registrar for mediation to be concluded by 11 October 2024 on an estimate of up to two (2) days.
8. Pursuant to section 37P of the FCA Act, the solicitors and counsel for the parties confer about information and documents to be produced to the Applicant by the Respondent on a without-prejudice basis for the purposes of facilitating a mediation, by 30 August 2024.
9. The parties provide the Court any agreed orders for production of information and documents to facilitate mediation, or in the absence of agreement, competing orders, written submissions limited to 3 pages, and any supporting evidence, following the conferral in the paragraph above, by 3 September 2024.



10. Subject to further order, the determination of any dispute about what orders should be made for production of information and documents to facilitate mediation occur on the papers.

Other

11. There be liberty to apply.

Date orders authenticated: 23 August 2024

Sia Lagos
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

Schedule A



OPT OUT AND CLAIM REGISTRATION NOTICE

FEDERAL COURT OF AUSTRALIA NOTICE

TAYLORS BUSINESS CLASS ACTION

Rebecca Lee Gatt v Taylors Business Pty Ltd
(VID 891 of 2023)

**THIS NOTICE IS IMPORTANT
PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR
LEGAL RIGHTS**

WHAT IS THIS NOTICE?

This notice relates to a class action brought by Rebecca Lee Gatt (**the Applicant**) against Taylors Business Pty Ltd (**Taylors Business**) in the Federal Court of Australia (**Taylors Business Class Action**).

The Federal Court of Australia (**the Court**) has ordered that this notice be sent to anyone that might be a member of the class and might be affected by the Taylors Business Class Action

If you entered into one or more pawn contracts with Taylors Business between 15 November 2022 and 26 October 2023 (inclusive), you should read this notice carefully as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.

AM I A GROUP MEMBER?

You are a group member in the Taylors Business Class Action if you entered into one or more pawn contracts with Taylors Business between 15 November 2022 and 26 October 2023 (inclusive).

If you are unsure whether you are a group member, you should contact Consumer Action Law Centre on (03) 9670 5088 or seek your own legal advice as a priority.

INFORMATION ABOUT THE CLASS ACTION

1. KEY INFORMATION TO BE AWARE OF

(A) IF YOU DO **NOT** WANT TO PARTICIPATE

- If you do **not** wish to be involved in the Taylors Business Class Action you must, before 4pm on 27 September 2024, complete an Opt Out Notice in the form attached to this notice and submit it directly to the Court.



(B) IF YOU **DO** WANT TO PARTICIPATE

- If you wish to participate in the Taylors Business Class Action, you can sign up at: <https://consumeraction.org.au/class-action-against-pawnbroker-taylors-business-pty-ltd/> by 4pm on 27 September 2024. If you are unable to register, online please contact Consumer Action Law Centre on (03) 9670 5088.
- If you do not register in time, you will still be part of the class action. However, it might mean significant consequences for you in terms of any outcomes because the Applicant may not have the necessary contact or document details to ensure that any outcome of a court order will apply to your circumstances or that any compensation or other orders are distributed to you.

Other information

- If you do register, Consumer Action Law Centre will advise you if any further steps or information is needed from you in order for you to receive a payment from any settlement or judgment.

2. WHAT IS A CLASS ACTION?

A class action is a proceeding that is brought by one or more persons (the applicant) on their own behalf and on behalf of a group of people (group members/class members) against another person/s (respondent) where the applicant/s and the class members have similar claims against the respondent/s.

Class members are not individually responsible for the legal costs of bringing the class action. Only the applicant is responsible for the costs.

Class members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen either by a judgment following a trial, or a settlement at any time.

If there is a judgment or a settlement of a class action, class members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the respondent in other legal proceedings.

Class members should note that:

- in a *judgment* following trial, the Court will decide various common factual and legal issues about the claims made by the applicant and class members. Unless those decisions are successfully appealed, they bind the applicant, class members and the respondent. Importantly, if there are other proceedings between a class member and the respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- in a *settlement* of a class action, where the settlement provides for compensation to class members it may extinguish *all* rights to compensation which a class member might have against the respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against a respondent which are based on your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential



binding effects of the class action before the deadline for opting out (see below).

The applicant in a class action does not need to seek the consent of class members to commence a class action on their behalf. However, class members can stop being group members by “opting out” of the class action. An explanation of how class members can opt out is set out below in the section headed ‘Your Options’ (Option 3).

3. WHAT IS THE TAYLORS BUSINESS CLASS ACTION?

The Taylors Business Class Action is brought on behalf of group members who entered into one or more pawn contracts with Taylors Business between 15 November 2022 and 26 October 2023 inclusive (the “**Relevant Period**”).

The Applicant in the Taylors Business Class Action is represented by Consumer Action Law Centre.

The Taylors Business Class Action alleges in the Amended Statement of Claim dated 15 December 2023 that, during the Relevant Period, Taylors Business:

- Was not registered with the Business Licensing Authority (**BLA**) to carry on business as a pawnbroker;
- Was not subject to the pawnbroker exemption to the operation of *National Consumer Credit Protection Act 2009* (Cth) and the National Credit Code, found in section 6(9) of the National Credit Code;
- Engaged in unlicensed credit activity because it undertook credit activities without holding a valid Australian Credit Licence;
- Charged prohibited interest at an equivalent rate of 480% per annum, being 432% higher than the highest permitted rate of 48% specified in the National Credit Code and the *Consumer Credit (Victoria) Act 1995*;
- Entered into pawnbroking contracts that contained an unfair contract term in the nature of the interest charged; and
- Engaged in unconscionable conduct and entered into unjust transactions.

The Applicant is seeking, amongst other things:

- orders that Taylors Business return any pawned goods that it continues to hold;
- orders that Taylors Business refund the Applicant and the Group Members for any amounts paid in respect of the interest charges under their pawn contracts;
- declarations that the Applicant and the Group Members are not liable for any further charges in respect of the interest charges under their pawn contracts; and
- orders that the pawn contracts are and have been at all times void and unenforceable.

The allegations made in the Taylors Business Class Action are set out in full in the Amended Statement of Claim filed in the Court (see the next section).

Taylors denies the allegations, denies that the Applicant is entitled to the relief sought or any relief, and is defending the claims made against it in the Taylors Business Class



Action.

4. WHAT WILL HAPPEN IF YOU CHOOSE TO REMAIN A CLASS MEMBER?

Unless you opt out, you will be bound by any settlement or judgment of the class action. If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and class members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against the respondent in other legal proceedings.

5. WHERE CAN I OBTAIN MORE INFORMATION?

Copies of relevant documents filed in the Taylors Business Class Action, may be obtained by:

- downloading them from the Consumer Action Law Centre Website webpage via the links at <https://consumeraction.org.au/>; or
- contacting a District Registry of the Federal Court (contact details are available at <https://www.fedcourt.gov.au/>) and paying the appropriate inspection fee.

Please consider the above matters carefully. If there is anything about this notice you do not understand, or which you are unsure of, you should seek your own legal advice or contact Consumer Action Law Centre on (03) 9670 5088. You should not delay making your decision.

Where to Seek Independent Legal Advice

You could contact:

- (a) Your local community legal centre, you can find the contact details here: https://www.fclc.org.au/find_a_community_legal_centre;
- (b) A private lawyer through the Law Institute of Victoria's private lawyer referral service on **(03) 9607 9550**.
- (c) Victoria Legal Aid's Helpline on **1300 792 387**.

YOUR OPTIONS

WHAT ARE MY OPTIONS?

If you are a group member, and have not already registered your claim, you now have three options:

1. **Continue to be part of the class action by either:**
 - a) Registering for the Taylors Business Class Action and remaining a group member; or



- b) Doing nothing and remaining a group member.

2. Stop being a group member by opting out

There may be different consequences depending on which option you choose as follows:

OPTION 1 – Register and remain a group member

Register: If you wish to remain a group member and participate in the proceeding, you may register by 4pm on 27 September 2024.

There is no cost to register, and you can do so at <https://consumeraction.org.au/class-action-against-pawnbroker-taylors-business-pty-ltd/>

If you are unable to register online, please, contact Consumer Action Law Centre on (03) 9670 5088.

If you register for the Taylors Business Class Action, you will not be liable to pay any ‘out of pocket’ costs to Consumer Action Law Centre.

If the orders which the Applicant obtains are less than what you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against Taylors in other legal proceedings.

OPTION 2 – Do nothing and remain a group member

If you do nothing (i.e. you do not register (Option 1, above) or opt out (Option 3, below) before 4pm on 27 September 2024, you will remain a group member in the class action and be bound by any orders made in it, including any judgment or approved settlement agreement in the proceeding.

However, if you don’t register at <https://consumeraction.org.au/class-action-against-pawnbroker-taylors-business-pty-ltd/> by 4pm on 27 September 2024, it might mean significant consequences for you in terms of any outcomes because the Applicant may not have the necessary contact or document details to ensure that any outcome of a court order will apply to your circumstances or that any compensation or other orders are distributed to you.

OPTION 3 – Opt out and cease to be a group member

If you are currently a group member and you choose to opt out, you will stop being a group member in the Taylors Business Class Action.

By opting out of the Taylors Business Class Action, you will:

- stop being a group member in the Taylors Business Class Action and will not be affected by, or entitled to the benefit of, any judgment or orders made in the Taylors Business Class Action;
- not be entitled to receive any compensation for any damages, award or settlement secured by the Applicant in the Taylors Business Class Action; and
- be able to bring your own separate claim against Taylors Business provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against Taylors Business, you should seek your own independent legal advice about your claim and the applicable time limit prior to opting out.

If you opt-out and the Court makes an order that compensation should be paid to all group



members or any other orders about the pawned goods, you will **not** receive any compensation, or the benefit of any other orders made.

If you do not wish to remain a group member in the Taylors Business Class Action, you must complete the Opt Out Notice attached to this notice, and return it to the Victoria Registry of the Federal Court of Australia by no later than 4pm on 27 September 2024.

Each group member seeking to opt out should fill out a separate form.

IMPORTANT: The opt out notice must reach the Court by no later than 4pm on 27 September 2024, otherwise it will not be effective.

COSTS

WILL I BE LIABLE TO PAY LEGAL COSTS IF I REMAIN A GROUP MEMBER?

You will **not become liable for any legal costs** simply by remaining a group member. You will not need to pay any upfront or out-of-pocket costs in relation to the Taylors Business Class Action as it progresses in relation to common issues.

However, if you become entitled to any compensation because of any order, judgment or settlement in the Taylors Business Class Action, the Court may make an order requiring you to pay some of that amount by way of a contribution to the costs incurred by the Applicant in running the Taylors Business Class Action.

In addition, if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage the Consumer Action Law Centre or other lawyers to do that work for you.

Any of these amounts will only need to be paid if there is a successful outcome and they will only be required as a deduction from any compensation payable to you. These amounts **will never** exceed the amount of compensation to which you may otherwise become entitled.

The Court will assess whether any amounts proposed to be deducted are fair and reasonable.



Form 21
Rule 9.34

Opt Out Notice

Only complete this form if you wish to opt out of the Taylors Business Class Action

No. VID 891 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

REBECCA LEE GATT

Applicant

TAYLORS BUSINESS PTY LTD (ACN 107 445 723)

Respondent

To: The Registrar
Federal Court of Australia
Victoria District Registry
Level 7, Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

..... (print name), a group member
in this representative proceeding, gives notice under section 33J of the *Federal Court of
Australia Act 1976*, that [he, she, they or it] (circle as applicable) is opting out of the
representative proceeding.

Date:

Signature:

Signed by (print name):

Group Member/Lawyer for the Group Member (delete as appropriate)



Group member details

Telephone:

Email:

Address:
.....
.....

If you are signing as the solicitor or representative of the Group Member:

Name:

Capacity in which you are signing:

Telephone:

Email:

Address:



Annexure B – Separate Questions

This document adopts the definitions used in the amended statement of claim dated 18 December 2023.

1. Throughout the period 15 November 2022 to 26 October 2023 (**Relevant Period**) was Taylors authorised to carry on business as a pawnbroker pursuant to the *Second-Hand Dealers and Pawnbrokers Act 1989* (Vic) (**SHDP Act**)?
2. If the answer to 1 is “no” in whole or part, during the periods in which Taylors was not authorised, did Taylors lawfully:
 - (a) carry on business as a pawnbroker in Victoria;
 - (b) enter into Pawn Contracts?
3. If the answer to 2 is “no”, did Taylors contravene s 5(1A) of the SHDP Act?
4. For the purpose of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) and s 3(1) of the *National Credit Code* (**Code**):
 - (a) are the amounts provided by Taylors to Ms Gatt and the Group Members under the Pawn Contracts “credit”?
 - (b) are Ms Gatt and the Group Members debtors?
 - (c) was Taylors a “credit provider”?
 - (d) does the Code apply to the provision of credit by Taylors to Ms Gatt and the Group Members under the Pawn Contracts?
 - (e) are the Pawn Contracts “credit contracts”?
5. If the Pawn Contracts are “credit contracts”:
 - (a) what is the annual percentage rate of the Pawn Contracts and if the annual percentage rate in respect of the contracts exceeds 48, are the Pawn Contracts unenforceable pursuant to s 39 of the *Consumer Credit (Victoria) Act 1995* (Vic) (**CCV Act**)?
 - (b) was Taylors prohibited from entering into the Pawn Contracts because of subsection 39(3) of the CCV Act?
 - (c) was Taylors prohibited from entering into the Pawn Contracts because of subsection 32A(1) of the Code?
 - (d) did Taylors engage in “credit activities”, and, if so, did Taylors contravene



subsection 29(1) of the NCCP Act?

6. If any of the answers to the questions in 5 is “yes”, what relief should the Court issue?