



Federal Court of Australia  
District Registry: Victoria Registry  
Division: General

No: VID891/2023

**LISA GAY SIMPSON**  
Applicant

**TAYLORS BUSINESS PTY LTD (ACN 107 445 723)**  
Respondent

### ORDER

**JUDGE:** Justice E Bennett

**DATE OF ORDER:** 13 February 2025

**WHERE MADE:** Melbourne

#### THE COURT NOTES THAT:

1. On 24 January 2025, an interlocutory application was filed, purportedly on behalf of Ms Rebecca Lee Gatt (the **Original Applicant**) seeking to substitute the representative applicant under s 33T of the *Federal Court of Australia Act 1976* (Cth). On the same date, an affidavit of Nhirushni Somasundaram was filed setting out, in brief, background to the application.
2. At a case management hearing on 31 January 2025, the Court required that further evidence be filed to support the application for an order under s 33T.
3. An affidavit of Ms Lisa Gay Simpson (the **Proposed Substituted Applicant**) dated 30 January 2025 was filed in this Court.
4. On 3 February 2025, an affidavit of Nhirushni Somasundaram was filed. Taken together, the affidavits made clear that:
  - a. various unsuccessful attempts had been made to contact the Original Applicant;
  - b. the Original Applicant had been out of contact intermittently, and then continuously since instructions were obtained to seek a freezing order in the proceedings; and



- c. the Proposed Substituted Applicant has had the potential consequences of becoming the lead applicant explained to her, including as it concerns possible adverse costs orders.
5. I have considered the material in light of the factors identified in a range of cases, including by Justice Murphy in *Lewis v Philips Electronics Australia Ltd trading as Philips Healthcare* [2023] FCA 1486, [31] and following. I am satisfied that the Original Applicant is not able adequately to represent the interests of the group members. In addition, I am satisfied that it is just and appropriate to make the substitution order. In particular, this is because:
- a. it is apparent that the Original Applicant is unable or unwilling to continue to undertake her role as lead applicant in the proceeding;
  - b. it is apparent that the Proposed Substituted Applicant is willing and able to do so, having been properly appraised of the risks;
  - c. it is in the interests of group members that a willing and able lead applicant take on the role, particularly at the present juncture in the proceeding; and
  - d. the Proposed Substituted Applicant is (or appears to be) a group member in the proceeding, and she is legally represented by those lawyers who have had carriage of the matter to date.
6. The balance of the procedural orders sought were the subject of correspondence between the parties. No objection has been raised to them. In any event, I have independently considered them and consider them to be appropriate. I have determined it is appropriate to refer Mr Grainger for pro bono legal representation only in relation to the question of his cross examination. The Court does **not** include in that reference the company or the proceedings more broadly.

## **THE COURT ORDERS THAT:**

### **Substitution of representative applicant**

1. Pursuant to s 33T of the *Federal Court of Australia Act 1976* (Cth), the Original Applicant be substituted for the Proposed Substituted Applicant as the representative



party, and the title of the proceeding be amended accordingly to “Lisa Gay Simpson v Taylors Business Pty Ltd (ACN 107 445 723)”.

2. Any question as to the apportionment of any liability for the Respondent’s costs between the Original Applicant and the Proposed Substituted Applicant is reserved.

### **Amendment of pleadings**

3. Leave be granted to the Applicant to file within two days of these orders:
  - a. an amended originating application substantially in the form at Annexure NS-1 to the affidavit of Nhirushni Somasundaram affirmed on 30 January 2025; and
  - b. a further amended statement of claim substantially in the form at Annexure NS-1 to the affidavit of Nhirushni Somasundaram affirmed on 30 January 2025.
4. By 4 pm on 25 February 2025, the Respondent file and serve any amended defence to the Applicant’s further amended statement of claim.

### **Further limited discovery**

5. Pursuant to r 20.21 of the *Federal Court Rules 2011* (the **Rules**), by 4 pm on 25 February 2025, the Respondent give discovery of the documents referred to in the orders dated 5 September 2024 which were provided by the Respondent on a confidential and without prejudice basis on 17 September 2024.

### **Inspection of exhibits in bankruptcy proceedings**

6. Pursuant to r 24.24(3)(b)(ii) of the Rules, a Registrar produce to the parties the exhibits produced by the Federal Circuit and Family Court of Australia that were shown to Graeme John Grainger in the examination of him in the matter of Robert Anthony Ferguson in his capacity as trustee of the bankrupt estate of Noel David Borruso proceeding no AGD 81/2023, for the parties to inspect and copy.

### **Application to cross examine Mr Grainger**

7. A referral certificate be issued referring Mr Grainger for legal assistance in connection with the limited question of whether he ought to be cross examined in relation to his affidavit affirmed on 28 January 2025, and if leave is granted, in respect of the cross examination.



8. Any written submissions in relation to the application to cross examine Mr Grainger be filed by the Applicant by 4 pm on 24 February 2025.
9. The Applicant's application to cross examine Mr Grainger be listed at 10.15 am on 27 February 2025, with examination to proceed that day, if successful.

### **Trial of separate questions**

10. The separate questions in Annexure B to the orders of Justice O'Callaghan dated 24 August 2024, varied by substituting the name of the Original Applicant with the words 'the Applicant', be listed for trial commencing on 15 April 2025 on an estimate of 2 days **(Initial Trial)**.

### **Lay evidence**

11. The Applicant file and serve any lay evidence on which she intends to rely at the Initial Trial by 4 March 2025.
12. The Respondent file and serve any lay evidence on which it intends to rely at the Initial Trial by 18 March 2025.
13. The parties notify each other of objections to evidence by 25 March 2025.
14. The parties confer for the purpose of resolving objections to evidence by 27 March 2025.
15. The parties file schedules of unresolved objections by 31 March 2025.
16. Any notice requiring witnesses to attend for cross-examination at the Initial Trial be served by 1 April 2025.
17. The parties file and serve outlines of opening submissions limited to 10 pages in 12-point font and 1.5 line spacing by 1 April 2025.



18. The Applicant is to prepare, file and serve a paginated joint court book for the Initial Trial by 8 April 2025.

19. Costs reserved.

Date orders authenticated: 13 February 2025

*Sia Lagos*  
Registrar

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