

Further Amended Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

No. VID 891 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

Lisa Gay Simpson ~~Rebecca Lee Gatt~~

Applicant

Taylors Business Pty Ltd (ACN 107 445 723)

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000

The Court ordered that the time for serving this application be abridged to

Date:

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Signed by an officer acting with the authority
of the District Registrar

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Filed on behalf of (name & role of party) The Applicant ~~Rebecca Lee Gatt~~
Prepared by (name of person/lawyer) Stephen Nowicki
Law firm (if applicable) Consumer Action Law Centre
Tel (03) 9670 5088 Fax Not applicable
Email Nhirushni@consumeraction.org.au
Address for service Level 6, 179 Queen Street, Melbourne VIC 3000
(include state and postcode)

Details of claim

Terms defined in the accompanying Statement of Claim carry the same meaning when used in this Originating Application.

On the grounds stated in the Second Further Amended Statement of Claim, the Applicant claims on her own behalf, and on behalf of Group Members:

1. Pursuant to section 177 of the NCCP Act, or section 12GD of the ASIC Act, an injunction restraining the Respondent from enforcing any term of any of the Pawn Contracts, or exercising any right said to accrue from any of the Pawn Contracts.
2. Pursuant to section 39B(1) of the CCV Act, sections 179 or 180 of the NCCP Act, or section 12GM of the ASIC Act, a declaration that the Pawn Contracts are and have at all times been void and unenforceable.
3. Pursuant to section 23 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 178, 179 and 180 of the NCCP Act, sections 23, 112, 113, 114, 118 or 124 of the Code, or section 12GF and 12GM of the ASIC Act:
 - a. orders that Taylors return the Pawned Goods at its own expense to the Applicant Ms Gatt and the Group Members;
 - b. orders that Taylors refund the Applicant Ms Gatt and the Group Members any amounts paid in respect of the ~~Interest Charge for the~~ Pawn Contracts (including for any extensions of the Pawn Contracts);
 - c. declarations that the Applicant Ms Gatt and the Group Members are not liable for any further charges in respect of the Interest Charge for the Pawn Contracts.
4. Pursuant to section 77 of the Code, or section 12GM of the ASIC Act, orders setting aside the Pawn Contracts.
5. Pursuant to sections 113 and 115 of the Code:
 - a. a declaration that Taylors has contravened a key requirement in connection with the Pawn Contracts;
 - b. orders that Taylors pay penalties to the Applicant Ms Gatt and the Group Members.
6. Pursuant to sections 12BF and 12GND of the ASIC Act, a declaration that the Interest Charge is an unfair term, and are and have at all times been void and unenforceable.
- 6A. Pursuant to s 33Z(1)(f) of the FCA Act, damages in an aggregate amount.

6B. Pursuant to s 33Z(1)(g) of the FCA Act, orders establishing a scheme for the return of the Pawned Goods to the Applicant and Group Members.

6C. A declaration that the persons entitled to possession of the Pawned Goods are the Applicant and the Group Members.

7. Costs.

8. Such further or other order as the Court thinks fit.

Questions common to claims of group members

The questions of law or fact common to the claims of the Group Members are:

1. Whether the Pawn Contracts are and have at all times been void or unenforceable by reason of the amount of interest sought to be levied pursuant to the Interest Charge, because of subsection 39(3) of the CCV Act, or subsection 32A(1) of the Code.
2. Whether Taylors was required to hold an Australian Credit Licence when offering the Pawn Contracts, and if so, whether the Pawn Contracts are and have at all times been void or unenforceable by reason of them being entered into because of Taylors not holding such a licence.
3. Whether the Pawn Contracts were unjust transactions, and if so, whether the Court ought to reopen them and what remedies should issue.
4. Whether the Interest Charge is a term in the Pawn Contracts that is unfair, and if so, what remedies should issue.
5. Whether the entry into the Pawn Contracts was unconscionable conduct on part of Taylors.
6. Whether the Respondent has abandoned possession of the Pawned Goods and if so, whether the Applicant and the Group Members are entitled to possession.

The Applicant claims interlocutory relief, on her own behalf, and on behalf of Group Members:

1. Pursuant to section 177(1) of the NCCP Act and section 23 of the *Federal Court of Australia Act 1976* (Cth), or rule 7.32 of the *Federal Court Rules 2011*, an injunction restraining the Respondent from dealing with any of the Pawned Goods until the determination of this proceeding, subject to further order.

Representative action

The Applicant sues in a representative capacity under Part IVA of the *Federal Court of Australia Act 1976* (Cth). The Group Members to whom this proceeding relates are all persons who entered into one or more contracts styled as 'pawn contracts' with the Respondent on or from 15 November 2022 to the commencement of this proceeding.

Applicant's address

The Applicant's address for service is:

Place: Level 6, 179 Queen Street, Melbourne VIC 3000

Email: nhirushni@consumeraction.org.au

The Applicant's address is c/- Consumer Action Law Centre, Level 6, 179 Queen Street, Melbourne VIC 3000

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: ~~22 May 2025~~ 14 February 2025



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Signed by Stephen Nowicki
Lawyer for the Applicant