

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/08/2021 4:01:16 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID1010/2019
File Title: MATTHEW HALL v ARNOLD BLOCH LEIBLER (A FIRM)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 1/09/2021 8:49:17 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 33
Rule 16.32

**DEFENCE OF THE SECOND CROSS-RESPONDENT TO
FURTHER AMENDED STATEMENT OF CROSS-CLAIM**

No. VID 1010 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Matthew Hall

Applicant

Arnold Bloch Leibler (a firm)

Respondent

Arnold Bloch Leibler (a firm)

Cross-Claimant

Slater & Gordon Ltd & Ors named in the Schedule

Cross-Respondents

By way of Defence to the [Further](#) Amended Statement of Cross-Claim dated [19 August 2021](#) ~~11 December 2020~~, the Second Cross Respondent (**Grech**) says as follows.

1. He does not plead to paragraph 1 as it makes no allegations against him.

Filed on behalf of (name & role of party) Andrew Alexander Grech (Second Cross-Respondent)
Prepared by (name of person/lawyer) Richard Murphy; Elizabeth Yick
Law firm (if applicable) MinterEllison
Tel 03 8608 2000 Fax (03) 8608 1000
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(include state and postcode)

[Form approved 01/08/2011]

A. Background facts

2. He admits paragraphs 2 to 5.
3. As to paragraph 6, he:
 - a. admits that [the First Cross-Respondent \(S&G\)](#) retained the Cross-Claimant (**ABL**) to provide legal advice and services in relation to an equity raising, including undertaking due diligence, the preparation of a management questionnaire, preparation of a due diligence committee report, verification of an investor presentation and rights issue booklet and preparation and review of ASX announcements;

PARTICULARS

The Retainer was partly in writing and partly to be implied.

To the extent it was in writing, it was contained in the documents referred to in paragraph 6 of the [Further Amended Statement of Cross-Claim](#).

To the extent it was to be implied, it was to be implied in law, alternatively to give business efficacy to the Retainer and as a necessary incident of the Retainer.

- b. says further that, pursuant to the Retainer, ABL had obligations and duties to:
 - i. undertake the terms of the Retainer including:
 1. overseeing and conducting the due diligence process;

2. ensuring that the due diligence process was consistent with the objectives of the Due Diligence Planning Memorandum (**DDPM**) and implemented according to the DDPM;
 3. review of S&G's board materials;
 4. preparation of a management questionnaire;
 5. review of the responses to the management questionnaire and preparation of its due diligence committee report;
 6. preparation of its DDC Report and DDPM;
 7. preparation of the rights issue booklet, cleansing notices and ancillary capital raising documents;
 8. preparation of the verification report;
 9. verification of an investor presentation and rights issue booklet; and
 10. preparation and review of ASX announcements -

with all the care and skill of competent solicitors;
- ii. identify any concerns including in its review of S&G's board materials and responses to the management questionnaire and engage with S&G in relation to those concerns;
 - iii. identify and correct any errors in the Offer Documents; and

- iv. ensure that the contents of the ABL Signed Legal Opinion Letter were accurate and correct;
- c. says further that pursuant to the terms of the DDC Report, ABL agreed to ensure and confirm that:
 - i. where ABL relied upon any other person to carry out a task or on information provided by such a person, its reliance was reasonable;
 - ii. it was satisfied that the Offer Documents do not contain a statement that is false or misleading in a material particular or misleading in a material respect by way of omission;
 - iii. it believed that the Offer Documents do not contain any statement that is misleading or deceptive or any statement that is likely to mislead or deceive;
 - iv. there are no omissions from the Offer Documents of information required by the Corporations Act or other applicable law; and
 - v. the Offer Documents contain all information required to satisfy the requirements of the Corporations Act or other applicable law;
- d. says further that, pursuant to the terms of the DDPM, ABL was required and obliged to:
 - i. recommend and provide advice on an appropriate due diligence system;

- ii. provide Australian legal advice on the AREO, Offer Documents and legal matters arising in connection with the due diligence process;
- iii. undertake due diligence in relation to legal matters in accordance with the work program agreed with the Due Diligence Committee, the Underwriters and Greenhill, and report to [S&G Slater & Gordon](#) and the Due Diligence Committee (including the Underwriters and Greenhill as observers) on that review;
- iv. maintain a register of material issues;
- v. conduct a review of [S&G Slater & Gordon](#)'s continuous disclosure system, and a review of [S&G Slater & Gordon](#)'s Board minutes since 5 February 2014 in conjunction with a review of ASX disclosures and all correspondence between [S&G Slater & Gordon](#) and ASIC and ASX during that time, and, where necessary, highlighting matters and receiving confirmation from [S&G Slater & Gordon](#) that those matters were not of a nature that [S&G Slater & Gordon](#) was relying on any carve-outs to the ASX Listing Rule 3.1 that would require disclosure under section 708AA of the Corporations Act, and report to the Due Diligence Committee on that review;
- vi. review responses from [S&G Slater & Gordon](#) management to the Due Diligence Questionnaire;
- vii. review and comment on successive drafts of the Offer Documents, including the final drafts;
- viii. coordinate the verification process; and

- ix. provide a written Legal Due Diligence Report and a written opinion/signoff on the Offer Documents and the due diligence process relating to the AREO (which will also be provided to, and may be relied upon by, the Underwriters), except ABL will express no opinion on any acquisition advice provided in relation to S&G~~Slater & Gordon~~'s proposed acquisition of Quindell;
- e. says further that pursuant to the terms of the DDPM, ABL agreed that:
- i. being a member of the DDC;
 - ii. participating in meetings, decisions and inquiries of the DDC;
 - iii. participating in the drafting of the Offer Documents; and
 - iv. signing the final reports of the DDC,

would not give rise to any liability as between S&G and ABL;

- f. say further that, pursuant to the terms of the DDPM, ABL was required to undertake a random audit of the verification materials (in relation to at least 15 material statements in the Offer Documents) to ensure the integrity of the verification process and report to the Due Diligence Committee on the results of that audit and to ascertain:
- i. whether responses have been provided;
 - ii. whether those responses (on their face) appear to be appropriate responses to verify the underlying statement;

- iii. where a document was stated to be attached, a document was attached and that document (on its face) appears to be an appropriate document to verify the underlying statement;
 - iv. whether there is doubt as to the verification materials, and if so to liaise with the person responsible for verifying the statement to produce satisfactory verification materials; and
- g. otherwise denies paragraph 6.
- 4. As to paragraph 7, he refers to and repeats paragraph 3 above and otherwise denies paragraph 7.
 - 5. He admits paragraph 8.
 - 6. As to paragraph 9, he admits that ABL provided drafts of the ABL Management Questionnaire to Grech and [the Third Cross-Respondent \(Brown\)](#) and otherwise denies paragraph 9.
 - 7. As to paragraph 10, he admits that a DDC comprised of representatives of S&G and ABL was formed and otherwise denies paragraph 10.
 - 8. He admits paragraph 11.
 - 9. He admits paragraph 12.
 - 10. He does not plead to paragraph 13 as it contains no allegation against him.
 - 11. He admits paragraph 14.
 - 12. As to paragraphs 15 and 16, he:

- a. admits that responses were provided to the ABL Management Questionnaire;
 - b. will rely upon all of the responses to the ABL Management Questionnaire at trial; and
 - c. otherwise denies paragraphs 15 and 16.
13. He admits paragraph 17.
14. He admits paragraph 18 and says further that he will refer to and rely upon the full terms of the Grech Sign-Off at trial.
15. He does not plead to paragraph 19 as it contains no allegation against him.
16. He does not plead to paragraph 20 as it contains no allegation against him.
17. He admits paragraph 21.
18. As to paragraphs 22 to 24, he will rely upon the full terms of the Verification Report at trial and otherwise denies paragraphs 22 to 24.
19. He admits paragraph 25.
20. He denies paragraph 26 and says further that if any of the Representations was or were made (which is denied):
 - a. such representation or representations was or were not misleading or deceptive to or likely to mislead or deceive ABL;
 - b. further or alternatively, ABL was not misled or deceived by such representation or representations;

- c. further or alternatively, ABL did not rely upon, or act to its detriment in reliance upon, such representation or representations;
 - d. further or alternatively, if ABL had discharged its obligations and duties with reasonable care, it would have identified any extent to which any such representation or representations was or were misleading or deceptive or likely to mislead or deceive; and
 - e. in the premises of each of subparagraphs (a) to (d) immediately above, if such representation or representations was or were causative of any loss to the Applicant and Group Members (which is denied), and/or exposed ABL to any of the liability or costs alleged (which is denied), ABL was and is responsible for such loss, liability and/or costs.
21. He denies paragraphs 27 and 28.
22. He does not plead to paragraph 29 as it contains no allegations against him.
23. He denies paragraphs 30 to 32.
24. He admits paragraph 33.
25. As to paragraph 34, he:
- a. refer to and repeat paragraphs 3 and 20 above; and
 - b. otherwise denies paragraph 34.

B. Alleged misleading or deceptive conduct

26. He denies paragraphs 35 to 40, [and says further that:](#)

- (a) ABL's claim to recover loss and damage and/or compensation under s 1041I(1) of the Corporations Act 2001 (Cth) is statute-barred by s 1041I(2) of the Corporations Act 2001 (Cth);
- (b) ABL's claim to recover loss and damage and/or compensation under s 12GF(1) of the Australian Securities and Investments Act 2001 (Cth) is statute-barred by s 12GF(2) of the Australian Securities and Investments Act 2001 (Cth); and
- (c) ABL's claim to recover loss and damage and/or compensation under s 236(1) of the Australian Consumer Law is statute-barred by s 236(2) of the Australian Consumer Law.

C. Alleged breach of the Retainer

- 27. He denies paragraph 41.
- 28. He does not plead to paragraph 42 as it contains no allegation against him.
- 29. He denies paragraph 43.
- 30. He does not plead to paragraph 44 as it contains no allegation against him.
- 31. He does not plead to paragraph 45 as it contains no allegation against him.
- 32. He denies paragraph 46.
- 33. He denies paragraph 47.

Date: 30 August 2021~~29 April 2021~~

A handwritten signature in blue ink, appearing to read 'Richard Murphy', with a large, stylized flourish at the end.

Signed by Richard Murphy~~James Naughton~~

MinterEllison~~Gordon Legal~~

Lawyer for the Second Cross Respondent

This defence to further amended statement of cross-claim was prepared by David Batt QC, Caryn van Proctor and Nicholas Baum of Counsel.

Certificate of lawyer

I, Richard Murphy~~James Naughton~~, certify to the Court that, in relation to the Defence filed on behalf of the Second Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 30 August 2021~~29 April 2021~~

A handwritten signature in blue ink, appearing to read 'Murphy', with a large, stylized flourish underneath.

Signed by Richard Murphy~~James Naughton~~

MinterEllison~~Gordon Legal~~

Lawyer for the ~~First~~ Second Cross
Respondent

Schedule

No. VID 1010 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

First Cross-Respondent

Slater & Gordon Ltd

Second Cross- Respondent

Andrew Alexander Grech

Third Cross- Respondent

Wayne Brown