

DEFENCE TO AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	General
Registry	Sydney
Case number	2021/00010183

TITLE OF PROCEEDINGS

First plaintiff	Christopher John Dunne
Second plaintiff	Linda Margaret Waters

Defendant	Moin & Associates Pty Ltd ACN 098 920 971
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FILING DETAILS

Filed for	Moin & Associates Pty Ltd ACN 098 920 971, Defendant
Filed in relation to	Plaintiff's Claim
Legal representative	Alex Haslam, Gilchrist Connell
Legal representative reference	ABH:KES:312676
Contact name and telephone	Alex Haslam, (02) 8024 8028
Contact email	ahaslam@gclegal.com.au

HEARING DETAILS

If the proceedings do not already have a listing date, they are to be listed at [time, date and place to be inserted by the registry]

PLEADINGS AND PARTICULARS

The Defendant denies the Plaintiffs are entitled to the relief claimed in the Amended Statement of Claim filed on 29 November 2022 (**Amended Statement of Claim**) and relies on the following facts and assertions:

- 1 In answer to paragraph 4 of the Amended Statement of Claim, the Defendant:
 - (a) admits sub-paragraphs a, b, d, and e;
 - (b) does not admit sub-paragraphs c;
 - (c) admits sub-paragraph f, insofar as "First Defendant" is intended to refer to the Defendant; and
 - (d) otherwise admits the paragraph.

2 In answer to paragraph 5 of the Amended Statement of Claim, the Defendant:

- (a) does not admit sub-paragraph c; and
- (b) otherwise admits the paragraph.

3 In answer to paragraph 6 of the Amended Statement of Claim, the Defendant:

- (a) as to sub-paragraph a:
 - i. says Moin & Associates is the only Defendant; and
 - ii. otherwise denies the sub-paragraph.
- (b) admits sub-paragraphs b, c, and e;
- (c) as to sub-paragraphs f:
 - i. says Northern Star Conveyancing was a business name under which the Defendant conducted some of its conveyancing work;
 - ii. otherwise admits the sub-paragraph.
- (d) as to sub-paragraph g:
 - i. admits Mrs Edmonds was employed by the Defendant as a conveyancer from the period of 1 July 2005 to 28 January 2018;
 - ii. says the Defendant terminated Ms Edmonds employment on 28 January 2018; and
 - iii. otherwise admits the sub-paragraph.
- (e) otherwise admits the paragraph.

4 In answer to paragraph 8 of the Amended Statement of Claim, the Defendant:

- (a) as to sub-paragraph a:
 - i. denies Brian Keith Parson, Julianne Marie Parsons and Patricia Mary Talbert were clients of the Defendant during the period of June 2014 to October 2017; and
 - ii. otherwise admits the paragraph.
- (b) as to sub-paragraph b:
 - i. admits Ms Edmonds made representations to the Plaintiffs;
 - ii. relies on the judgment in *R v Sandra Henri Edmonds* on 3 September 2021 (**Sentencing Judgment**) as if pleaded fully herein; and
 - iii. otherwise does not admit the sub-paragraph.

- (c) as to sub-paragraph ba:
 - i. says the paragraph is embarrassing and liable to be struck out as the Plaintiffs have not clearly identified the alleged "*interactions*" and when the alleged interactions occurred;
 - ii. says the Plaintiffs have not identified the representations alleged to have been made to them by Mrs Edmonds, to the group members and those alleged to have been made by the third party;
 - iii. relies on the Sentencing Judgment as if pleaded fully herein; and
 - iv. otherwise does not admit the paragraph.
- (d) as to sub-paragraph bc:
 - i. says the paragraph is embarrassing and liable to be struck out as the Plaintiffs have not identified to whom the Mrs Edmonds purported to sell shares in Base Suspension to; and
 - ii. otherwise does not admit the sub-paragraph.
- (e) does not admit sub-paragraph c;
- (f) does not admit sub-paragraph d; and
- (g) otherwise does not admit the paragraph.

5 In answer to paragraph 9 of the Amended Statement of Claim, the Defendant:

- (a) as to sub-paragraph a:
 - i. admits Mrs Edmonds was a licensed conveyancer; and
 - ii. otherwise does not admit the sub-paragraph.
- (b) admits sub-paragraph b;
- (c) as to sub-paragraph c:
 - i. repeats paragraph 3(d i-ii) of this Defence; and
 - ii. otherwise admits the sub-paragraph.
- (d) as to sub-paragraphs d, e, f, g,h and i:
 - (a) relies on the ASIC Document No.9EAA00679, Change to Company Details lodged on 8 May 2018 as if pleaded fully herein; and
 - (b) otherwise admits the sub-paragraph; and
- (e) otherwise admits the paragraph.

6 The Defendant admits paragraph 10 of the Amended Statement of Claim.

7 The Defendant admits paragraph 11 of the Amended Statement of Claim.

8 In answer to paragraph 12 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein;
- (b) admits Mrs Edmonds purchased 454 shares in Base Suspension in 2014; and
- (c) otherwise does not admit the paragraph.

9 The Defendant does not admit paragraph 13 of the Amended Statement of Claim.

10 In answer to paragraph 14 of the Amended Statement of Claim, the Defendant:

- (a) relies on the ASIC Document No.9EAA00679, Change to Company Details lodged on 8 May 2018 as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

11 The Defendant does not admit paragraph 15 of the Amended Statement of Claim.

12 The Defendant does not admit paragraph 16 of the Amended Statement of Claim.

13 The Defendant does not admit paragraph 17 of the Amended Statement of Claim.

Mrs Edmonds' Conduct

14 In answer to paragraph 18 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein;
- (b) otherwise admits the paragraph.

15 In answer to paragraph 19 of the Amended Statement of Claim, the Defendant:

- (a) says the paragraph is embarrassing and liable to be struck out as the Plaintiffs have not identified the quantum of each of the payments asserted to be made by cheque and it is unclear which payments are alleged to have been made by which Plaintiff; and
- (b) otherwise does not admit the paragraph.

16 In answer to paragraph 19A of the Amended Statement of Claim, the Defendant:

- (a) says the Defendant was not aware, at the time, or at any material time, that Mrs Edmonds was meeting with, or interacting with, the Plaintiffs at the Defendant's office or by phone about the sale of the Purported Base Shares;
- (b) otherwise does not admit the paragraph.

17 The Defendant denies paragraph 19B of the Amended Statement of Claim.

- 18 In answer to paragraph 20 of the Amended Statement of Claim, the Defendant:
- (a) says the paragraph is embarrassing and liable to be struck out as the Plaintiffs have not identified the "*course of interactions*";
 - (b) relies on the Sentencing Judgment as if pleaded fully herein; and
 - (c) otherwise does not admit the paragraph.
- 19 In answer to paragraph 20A of the Amended Statement of Claim, the Defendant:
- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
 - (b) otherwise does not admit the paragraph.
- 20 In answer to paragraph 20B of the Amended Statement of Claim, the Defendant:
- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
 - (b) otherwise does not admit the paragraph.
- 21 In answer to paragraph 20C of the Amended Statement of Claim, the Defendant:
- (a) says the paragraph is embarrassing and liable to be struck out as out as the Plaintiffs have not identified the "*course of interactions*";
 - (b) further says that the provision of advice on investment opportunities is outside the ordinary duties, or scope of work, of a solicitor or conveyancer; and
 - (c) otherwise does not admit the paragraph.
- 22 In answer to paragraph 20D of the Amended Statement of Claim, the Defendant:
- (a) says the paragraph is embarrassing and liable to be struck out as it is unclear what is meant by "*course of interactions*"; and
 - (b) otherwise does not admit the paragraph.
- 23 In answer to paragraph 20E of the Amended Statement of Claim, the Defendant:
- (a) denies, insofar as it alleged, that Mrs Edmonds was authorised to undertake work beyond what she was licensed to do so as a licensed conveyancer;
 - (b) further says the selling of shares and/or provision of advice on investment opportunities is outside the scope of what a licensed conveyancer is licensed to do; and
 - (c) otherwise does not admit the paragraph.
- 24 In answer to paragraph 20F of the Amended Statement of Claim, the Defendant:

(a) denies, insofar as it is alleged, that Mrs Edmonds was authorised by the Defendant to:

- i. assist in the management of Northern Star Conveyancing and/or the Defendant;
- ii. make business decisions for Northern Star Conveyancing and/or the Defendant; and

(b) otherwise does not admit the paragraph.

25 In answer to paragraph 23 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein and
- (b) otherwise does not admit the paragraph.

26 In answer to paragraph 24 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

27 In answer to paragraph 25 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

28 In answer to paragraph 26 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

29 In answer to paragraph 27 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

30 In answer to paragraph 28 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

31 In answer to paragraph 28A of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

32 In answer to paragraph 28B of the Amended Statement of Claim, the Defendant:

- (a) repeats paragraph 21(b) of this Defence;
- (b) relies on the Sentencing Judgment as if pleaded fully herein; and
- (c) otherwise does not admit the paragraph.

33 In answer to paragraph 28C of the Amended Statement of Claim, the Defendant:

- (a) repeats paragraph 23 (b) of this Defence;
- (b) relies on the Sentencing Judgment as if pleaded fully herein; and
- (c) otherwise does not admit the paragraph.

34 In answer to paragraph 29 of the Amended Statement of Claim, the Defendant:

- (a) says the paragraph is embarrassing and liable to be struck out as the plaintiffs have not pleaded the material facts to support the assertion Mrs Edmonds "*intended the plaintiffs would rely on those representations*";
- (b) repeats paragraphs 18 to 24 of this Defence;
- (c) otherwise admits the paragraph.

35 In answer to paragraph 30 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

36 In answer to paragraph 32 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

37 In answer to paragraph 33 of the Amended Statement of Claim, the Defendant:

- (a) relies on the Sentencing Judgment as if pleaded fully herein; and
- (b) otherwise does not admit the paragraph.

38 In answer to paragraph 34 of the Amended Statement of Claim, the Defendant:

- (a) admits the plaintiffs suffered loss and damage;
- (b) denies, insofar as it is alleged, that the Plaintiffs' loss and damage was caused by the Defendant's conduct; and
- (c) otherwise does not admit the paragraph.

Alleged Vicarious Liability

39 In answer to paragraph 35A of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 3(d i-ii); and

(b) otherwise does not admit the paragraph.

40 The Defendant does not admit paragraph 35B of the Amended Statement of Claim.

41 In answer to paragraph 35C of the Amended Statement of Claim, the Defendant:

(a) denies that Mrs Edmonds was in a position of power, trust and/or control insofar as any of these relates to the Defendant; and

(b) does not admit the paragraph.

42 The Defendant denies paragraph 35D of the Amended Statement of Claim.:

43 In answer to paragraph 36 of the Amended Statement of Claim, the Defendant:

(a) says the paragraph is embarrassing and liable to be struck out as the Plaintiffs have not clearly identified what the Plaintiffs assert the "*course or scope of her employment*" is;

(b) admits that it is aware from the Sentencing Judgment that, Mrs Edmonds made certain fraudulent representations during the period she worked for the Defendant; denies, insofar as it is alleged, that the Defendant had any knowledge of any loans that Mrs Edmonds had arranged with the Plaintiffs;

(c) further says, insofar as it is alleged, that the Defendant had no knowledge of the representations alleged in paragraphs 20 to 20F of the Amended Statement of Claim, at the time the alleged representations were made or at any material time; and

(d) otherwise denies the paragraph.

44 In answer to paragraph 37 of the Amended Statement of Claim, the Defendant:

(a) repeats paragraphs 43 (b)-(d) of this Defence; and

(b) otherwise denies the paragraph.

45 In answer to paragraph 38 of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 44 of this Defence;

(b) otherwise does not admit the paragraph.

Mrs Edmonds Conduct toward Group Members

46 In answer to paragraph 38A of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 4(a)(i) of this Defence;

(b) relies on the Sentencing Judgment as if pleaded fully herein;

- (c) otherwise admits the paragraph.
- 47 In answer to paragraph 38B of the Amended Statement of Claim, the Defendant:
- (a) repeats paragraph 4(a)(i) of this Defence;
- (b) relies on the Sentencing Judgment as if pleaded fully herein;
- (c) otherwise admits the paragraph.
- 48 In answer to paragraph 38C of the Amended Statement of Claim, the Defendant:
- (a) repeats paragraphs 4(a) of this Defence;
- (b) says the paragraph is embarrassing and liable to be struck out as the Plaintiffs have not identified the Group Members it is alleged Mrs Edmonds "*interacted with*";
- (c) denies, in so far as it is alleged, the Defendant had any knowledge the alleged interactions between the Group Members and Mrs Edmonds about the Purported Base Shares at the time of the alleged interaction, or at any material time; and
- (d) otherwise does not admit the paragraph.
- 49 In answer to paragraph 38D of the Amended Statement of Claim, the Defendant:
- (a) repeats paragraphs 4(a) of this Defence;
- (b) admits, in so far as it is alleged, Mrs Edmond performed conveyancing work as a licensed conveyancer for some of the Group Members during the period of June 2014 to October 2017; and
- (c) otherwise denies the paragraph.
- 50 In answer to paragraph 38E of the Amended Statement of Claim, the Defendant:
- (a) repeats paragraph 4(a)(i) of this Defence;
- (b) says the paragraph is embarrassing and liable to be struck out as the Plaintiffs have not identified the "*course of interactions*";
- (c) relies on the Sentencing Judgment as if pleaded fully herein; and
- (d) otherwise does not admit the paragraph.
- 51 In answer to paragraph 38F of the Amended Statement of Claim, the Defendant:
- (a) repeats paragraph 4(a) of this Defence;
- (b) relies on the Sentencing Judgment as if pleaded fully herein;

(c) otherwise does not admit the paragraph.

52 In answer to paragraph 38G of the Amended Statement of Claim, the Defendant:

(a) repeats paragraphs 4(a), 25, 27, 31 and 33 of this Defence; and

(b) otherwise does not admit the paragraph.

53 In answer to paragraph 38H of the Amended Statement of Claim, the Defendant

(a) relies on the Sentencing Judgment as if pleaded fully herein; and

(b) otherwise does not admit the paragraph.

54 In answer to paragraph 38J of the Amended Statement of Claim, the Defendant:

(a) relies on the Sentencing Judgment as if pleaded fully herein; and

(b) otherwise does not admit the paragraph.

55 In answer to paragraph 38K of the Amended Statement of Claim, the Defendant:

(a) relies on the Sentencing Judgment as if pleaded fully herein; and

(b) otherwise does not admit the paragraph.

56 In answer to paragraph 38L of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 4(a)(i) of this Defence;

(b) relies on the Sentencing Judgment as if pleaded fully herein and

(c) otherwise does not admit the paragraph.

57 In answer to paragraph 38M of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 4(a)(i) of this Defence;

(b) relies on the Sentencing Judgment as if pleaded fully herein;

(c) admits the Group Members transferred money to Mrs Edmonds to purchase the Purported Base Shares; and

(d) otherwise does not admit the paragraph.

58 In answer to paragraph 38N of the Amended Statement of Claim, the Defendant:

(a) relies on the Sentencing Judgment as if pleaded fully herein; and

(b) otherwise does not admit the paragraph.

59 In answer to paragraph 38O of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 4(a)(i) of this Defence;

(b) relies on the Sentencing Judgment as if pleaded fully herein;

(c) otherwise does not admit the paragraph.

60 In answer to paragraph 38P of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 4(a)(i) of this Defence;

(b) relies on the Sentencing Judgment as if pleaded fully herein; and

(c) otherwise does not admit the paragraph.

61 In answer to paragraph 38Q of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 4(a)(i) of this Defence;

(b) relies on the Sentencing Judgment as if pleaded fully herein;

(c) denies, insofar as it is alleged, that the Defendant's conduct caused the plaintiffs and/or group members to suffer the loss claimed or at all; and

(d) otherwise does not admit the paragraph.

62 The Defendant does not admit paragraph 38R of the Amended Statement of Claim.

63 As to paragraph 38S of the Amended Statement of Claim the Defendant:

(a) repeats paragraph 4(a)(i) of this Defence and

(b) otherwise does not admit the paragraph.

64 In answer to paragraph 38T of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 4(a) of this Defence; and

(b) otherwise does not admit the paragraph.

65 In answer to paragraph 38U of the Amended Statement of Claim, the Defendant:

(a) repeats paragraph 4(a) of this Defence;

(b) says the paragraph is embarrassing and liable to be struck out as it is unclear which interactions the Plaintiffs are referring to and the Plaintiffs have not clearly identified the alleged "*legal work*";

(c) denies, insofar as it is alleged, that Mrs Edmonds performed any work that was within the scope of her employment and usual duties as a conveyancer at the Defendant, unsupervised;

(d) says, to the extent that Mrs Edmonds interacted with the plaintiffs or group members about matters which did not relate to conveyancing work that the Defendant, or Northern Star Conveyancing, performed, or was retained to perform for the group members or plaintiffs, the Defendant did not have any

knowledge of those interactions as those interactions were outside the scope of Mrs Edmonds' employment with the Defendant; and

(e) otherwise denies the paragraph.

66 In answer to paragraph 38V of the Amended Statement of Claim, the Defendant:

(a) says, insofar as it is alleged, that the Defendant had no knowledge of the conduct alleged in paragraphs 38A to 38M of the Amended Statement of Claim, at the time the alleged conduct or at any material time; and

(b) otherwise denies the paragraph.

67 The Defendant denies paragraph 38W of the Amended Statement of Claim.

68 In answer to paragraph 38X of the Amended Statement of Claim, the Defendant:

(a) repeats paragraphs 4(a) of this Defence;

(b) denies the Defendant's conduct has caused the group members to suffer the loss and damage claimed, or at all; and

(c) otherwise does not admit the paragraph.

69 The Defendant does not admit paragraph 43 of the Amended Statement of Claim.

Contributory Negligence

70 In answer to paragraphs of the Amended Statement of Claim, the Defendant says that, if it is liable to the Group Members in damages or at all (which is denied), the loss and damage said to be suffered by those Group Members arising from the Defendant's conduct was wholly caused and/or contributed to by reason of those Group Members contributory conduct for the following reasons:

(a) Dean Ross Waters obtained advice from his accountant Brett Constable of Forsyth's in Armidale who advised Mr Waters that the share prices provided by Mrs Edmonds were not accurate;

(b) Paul Harmer obtained advice from his accountant, Lisa Eaton, about the purchase of shares in DSJE Pty Ltd.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature

A handwritten signature in blue ink, appearing to be 'A. J. ...' with a long horizontal stroke at the end.

Capacity

Solicitor for the Defendant

Date of signature

27 March 2023

AFFIDAVIT VERIFYING

Name Gregory Moin
 Address 111 Faulkner Street Armidale
 Occupation Solicitor
 Date 23 March 2023

I say on oath:

- 1 I am the director of the Defendant.
- 2 I believe that the allegations of fact contained in the defence are true.
- 3 I believe that the allegations of fact that are denied in the defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN at

ARMIDALE

Signature of deponent

G. Moin

Name of witness

Georgina Amy Lamond

Address of witness

111 Faulkner Street, ARMIDALE NSW 2350

Capacity of witness

~~Justice of the peace~~ #Solicitor #Barrister #Commissioner
 for affidavits #Notary public]

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
~~#I have confirmed the deponent's identity using the following identification document:~~

Identification document relied on (may be original or certified copy) †

Signature of witness

Georgina Amy Lamond

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]