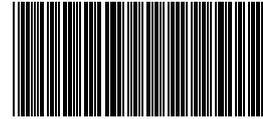




Filed: 2 April 2019 10:33 AM



D0001478AD

Form 3A/B UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2019/00101980

TITLE OF PROCEEDINGS

First Plaintiff	GREENSHADES PASTORAL CO. PTY LTD ACN 003951933
First Defendant	Hardi Australia Pty Ltd ACN 076150617

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	Peter John Long
Legal representative reference	
Telephone	0477 419 164
Your reference	181632

NOTICE OF LISTING

This matter has been listed for Directions (Equity Registrar) at Supreme Court Sydney on 7 May 2019 at 09:30 AM.

AFFIDAVIT

Deponent Name	Stephen Hicks
Sworn/Affirmed on	1 April 2019

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Statement of Claim (UCPR 3A/3B) (02 04 19 Statement of Claim.doc-F70817.doc-F70947.pdf)

[attach.]

Form 3A (version 7)
UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General (Class Action)
Registry	Sydney
Case number	

TITLE OF PROCEEDINGS

Plaintiff	GREENSHADES PASTORAL CO. PTY LTD ACN 003 951 933
Defendant	HARDI AUSTRALIA PTY LTD ACN 076 150 617

FILING DETAILS

Filed for	Greenshades Pastoral Co Pty Ltd, Plaintiff
Legal representative	Peter John Long, RURAL LAW with Peter
Legal representative reference	Long 181632
Contact name and telephone	Peter Long, 0477 419 164
Contact email	peter@rurallawyer.com.au

TYPE OF CLAIM

Other (Equity General List)

Representative proceeding under Part 10 of the *Civil Procedure Act 2005* (NSW)

HEARING DETAILS

This matter is listed for an Initial Case Conference on 6 May 2019 at 9.00 a.m.

RELIEF CLAIMED

- (a) A declaration that the Defendant, in trade or commerce, engaged in conduct that was misleading and deceptive or likely to mislead or deceive in breach of Section 18 of the *Australian Consumer Law*.
- (a) Further or in the alternative, a declaration that the Defendant, in trade or commerce, in connection with the supply of goods, made false and/or misleading representations about the standard, quality, composition, model and/or or use of goods in breach of Section 29(1)(a) of the *Australian Consumer Law*.
- (b) Further or in the alternative, a declaration that the Defendant, in trade or commerce, in connection with the supply of goods, made false and/or misleading representations that the goods were new in breach of Section 29(1)(c) of the *Australian Consumer Law*.
- (c) Further or in the alternative, a declaration that the Defendant, in trade or commerce, in connection with the supply of goods, made a false and/or misleading representation that the goods had performance characteristics and uses in breach of Section 29(1)(g) of the *Australian Consumer Law*.
- (d) Damages at common law for negligence.
- (e) Damages pursuant to Sections 236 and 237 of the *Australian Consumer Law*.
- (f) Interest pursuant to Section 100 of the *Civil Procedure Act 2005* (NSW).
- (g) Costs.

COMMON QUESTIONS, PLEADINGS AND PARTICULARS

A. COMMON QUESTIONS

The questions of law or fact common to the claims of Group Members, or to potential subgroup members, in this proceeding are:

- (a) whether the Defendant manufactured the Unit (as defined in paragraph 4 of the Pleadings) for the Purpose (as defined in paragraph 5 of the Pleadings);
- (b) whether the Defendant designed the Unit for the Purpose;
- (c) whether the Defendant assembled the Unit for the Purpose;

- (d) whether the Defendant sold the Unit to the machinery dealers from whom the Group Members purchased their respective Units for the Purpose;
- (e) whether the Defendant made representations (as defined in paragraphs 12 and 14 of the Pleadings) and the nature of any such representations;
- (f) whether the Defendant knew or ought to have known the Unit would not perform for the Purpose and/or function in the manner for which it was acquired;
- (g) whether the Defendant had a duty to warn the Group Members of the inability of the Unit to perform for the Purpose and/or function in the manner for which it was acquired;
- (h) whether the Defendant breached its said duty;
- (i) whether the Unit failed to perform for the Purpose and/or function in the manner for which it was acquired;
- (j) whether the Defendant was negligent in the circumstances alleged;
- (k) whether the representations were misleading or deceptive, or likely to mislead or deceive, in contravention of Section 18 of the *Australian Consumer Law*;
- (l) whether the representations were false or misleading in contravention of Sections 29(1)(a), 29(1)(c) and/or 29(1)(g) of the *Australian Consumer Law*;
- (m) whether the Group Members are entitled to relief pursuant to the *Australian Consumer Law* by reason of any representations; and
- (n) whether the damages that the Group Members have suffered are common to each and the assessment of the damages applicable to the same.

B. PLEADINGS

The Proceedings and the Parties

1. The Plaintiff brings this proceeding in the General (Class Action) List of the Equity Division of the Supreme Court of New South Wales against the Defendant as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW):
 - (a) in its own right; and
 - (b) on behalf of owners of the Unit (as defined in paragraph 8 of the Pleadings):
 - (i) who purchased the Unit during the period between 1 April 2013 and 1 December 2018 for use in farming activities;
 - (ii) who incurred costs and expenses and suffered loss of the purchase price paid on the acquisition of, and loss of income arising out of the subsequent attempted use and use of, a Unit; and
 - (iii) who have each executed a Retainer Agreement with the law firm, RURAL LAW with Peter Long.

(collectively “**Group Members**”).
2. The claims of the Group Members are in respect of, or arise out of, the same, similar or related circumstances being the failure of the Unit to function properly or in accordance with representations made or at all.
3. The said claims are in negligence and under the Australian Consumer Law.
4. The Group Members claim the relief set out above.
5. Some of the damages that the Group Members have suffered are common to them all and require common assessment whereas the relief sought also includes claims for damages that require individual assessment.
6. At all material times, the Defendant was a corporation incorporated under the *Corporations Act 2001* and able to be sued in its corporate name and style.
7. At all material times, the Defendant was a corporation engaged in trade or commerce within the meaning of Schedule 2 to the *Competition and Consumer Act 2010* being the Australian Consumer Law (“**ACL**”).

8. At all material times, the Defendant:
 - (a) designed,
 - (b) manufactured,
 - (c) imported,
 - (d) assembled, and/or
 - (e) soldfarm machinery to machinery dealers in Australia, including the Hardi Presidio 2700 Self-propelled spray unit (“**the Unit**”).
9. The Unit was designed for the purpose of applying agricultural chemicals to farmlands whilst traversing the same to control unwanted herbage and pests (“**the Purpose**”).
10. The Defendant sold the Unit to machinery dealers in Australia as new and supplied them thereto in trade or commerce, who thereafter sold it to the Group Members.
11. As at the date of the commencement of this proceeding, seven or more Group Members have claims in the nature of those described in this Statement of Claim.

Representations

12. Prior to Group Members each purchasing their own Unit, the Defendant produced a brochure in relation to the Unit (“**the Brochure**”) which stated, inter alia, that the Unit:
 - (a) was rugged and built for demanding conditions with optimised design strength;
 - (b) had class leading field performance and flotation;
 - (c) had a Bosh Rexroth 4WD transmission with axial piston pump and bent axis piston motors;
 - (d) had 4WD drive, 3-speed hydrostatic transmission;
 - (e) had 4WD hydrostatic transmission;
 - (f) had a heavy duty chassis;
 - (g) delivered climatically controlled air throughout the cabin;
 - (h) the fluid system was easy to use;

- (i) had electronic control of the hydrostatic transmission and diff lock which optimised performance;
- (j) had intelligent electronics, which prevents wheel slippage for superior tractive power; and
- (k) had a rear axle which oscillates to maintain traction on all four driving wheels;

(collectively “**the Representations in the Brochure**”).

13. The Defendant produced the Brochure with the intention that it would be used for the purpose of advertising the Unit to potential purchasers of self-propelled spray units.
14. Prior to the Group Members purchasing the Unit, the Defendant caused advertisements for the Unit to be published in agricultural farming magazines (“**the Advertisements**”) which stated, inter alia, that the Unit had 4WD hydrostatic transmission (“**the 4WD Representation in the Advertisements**”).

Particulars

- (a) An advertisement on the 35th page of the *Power Farming* magazine Volume 125 Number 5 published in 2015.
 - (b) Further particulars will be provided to the Defendant after it has provided discovery.
15. The Defendant placed the Advertisements for the purpose of advertising the Unit to potential purchasers of self-propelled spray units.

Four Wheel Drive (“4WD”)

16. A four-wheel drive vehicle is a vehicle in which:
 - (a) all four wheels are connected to the source of power;
 - (b) there exists a transmission system which provides power directly to all four wheels; and
 - (c) has a capacity to travel more easily over difficult ground than a vehicle with two-wheel drive.

Hydraulic Power

17. Hydraulic power (kW) is a function of oil flowrate and pressure and is expressed by the following formula:

$$\text{Power (kW)} = \frac{\text{Flowrate (L/min)} \times \text{Pressure (bar)}}{600}$$

In relation to vehicles that incorporate a four wheel drive system using hydraulic power, power is transmitted simultaneously to each hydraulic wheel motor at the controlled amount.

Defendant's Knowledge

18. At all material times, the Defendant knew or ought to have known that purchasers of the Unit, including the Group Members, who acquired the Unit for the Purpose would suffer loss if the Unit failed to perform for the Purpose or failed to perform in the manner in which it was designed.

Particulars

- (a) The Unit was specifically designed for the Purpose.
- (b) The Purpose was known to the Defendant.
- (c) The Unit was sold by the Defendant for the Purpose.
- (d) The Unit was sold by the Defendant as new.
- (e) The Defendant knew and intended that the Group Members would rely upon the expertise of the Defendant.
- (f) The Defendant knew, and it was a fact, that good agricultural practice requires timely application of agricultural chemicals to farmlands to control unwanted herbage and pests, before their number and size caused detriment to the farmlands or crops standing thereon through:
 - (i) using nutrients or moisture that would otherwise be used to the benefit of the farmlands; and/or
 - (ii) attacking such crops;reducing yield and quality of the farmlands and/or crops (“**the Detriment**”).

- (g) If the Unit failed to:
 - (i) perform for the Purpose;
 - (ii) perform for the Purpose in a timely way; and/or
 - (iii) perform in the manner in which it was designed;unwanted herbage or pests would cause the Detriment and/or the Group Members would suffer loss of productivity.
- (h) The Defendant could reasonably foresee the Detriment and loss of productivity, should the Unit fail to perform as pleaded in (g) above.
- (i) If the Unit failed to:
 - (i) perform for the Purpose;
 - (ii) perform for the Purpose in a timely way; and/or
 - (iii) perform in the manner in which it was designed;any owners of the Units who contracted their spraying services to other farmland owners would suffer loss of business and reputation as a result thereof.
- (j) The Defendant could reasonably foresee the said loss of business and reputation pleaded in (i) above.
- (k) If the Unit was not new, any owners of the Units who subsequently sell their Unit would suffer loss of sale value as a result thereof.
- (l) The Group Members were vulnerable to loss from the conduct of the Defendant.

Acquisition

- 19. At all material times, the Defendant was advised, in writing, by each such machinery dealer of the name of any intending purchaser and the specific options which that purchaser had selected to be incorporated into the specific Unit.

Particulars

- (a) The purchaser's name was entered by the machinery dealer under the heading *Customer Name* on a document entitled *PRESIDIO Special limited offer* or *PRESIDIO 2700* produced by the Defendant and provided by it to machinery dealers through whom it sold, or intended to sell, the Units.
 - (b) When completed, each document entitled *PRESIDIO Special limited offer* or *PRESIDIO 2700* was returned by the machinery dealer to the Defendant.
20. After reading the Brochure and/or the Advertisements and relying upon any and/or all of the Representations in the Brochure and/or the 4WD Representation in the Advertisements, each of the Group Members purchased the Unit, including the specific options they had selected to be incorporated into their respective Units by the Defendant between 1 January 2013 and 1 December 2018 for the Purpose.

Particulars

- (a) The Plaintiff was provided with Proposal dated 15 December 2016 by Carruthers Machinery Co., machinery dealer of Temora Road, Young for the supply of the Unit with its specific options for the sum of \$324,27300 inclusive of GST.
- (b) The Plaintiff was provided with Tax Invoice No. 1464 dated 18 January 2016 (sic) by Carruthers Machinery Co., machinery dealer of Temora Road, Young for the sale of the Unit with its specific options delivered to the Plaintiff's farm for the sum of \$275,000.00 inclusive of GST.
- (c) In or about January 2017, the Plaintiff paid the purchase price as follows:
 - (i) delivery up of its used Croplands Pinto 3000L 21 m trailing sprayer to the Defendant for an agreed value of \$31,900.00 inclusive of GST;
 - (ii) delivery up of its used CASE IH 8210 21 inch windrower with side knife to the Defendant for an agreed value of \$6,600.00 inclusive of GST; and
 - (iii) payment of the balance of \$215,000.00 to Carruthers Machinery Co.
- (d) In or about January 2017, the Defendant delivered the Unit to the Plaintiff at its farm.
- (e) Particulars in relation to the other Group Members will be provided after the opt out period has expired.

Duty

21. In the circumstances, the Defendant owed a duty to the Group Members to:
- (a) exercise reasonable care to ensure that the Unit operated in accordance with the Representations in the Brochure and the 4WD Representation in the Advertisements; and/or
 - (b) exercise reasonable care to ensure that the Unit operated in the manner for which it was designed; and/or
 - (c) warn the Group Members, in relation to the Unit, of:
 - (i) any deficiency in the design or manufacture of the Unit such as:
 - (A) whether it was under-designed for the 2,700 litre liquid load its tank would carry;
 - (B) whether it was under-designed for the width of the spray boom it would carry;
 - (C) whether it was under-designed for the height its body stood above ground level;
 - (D) whether its factory welding was sub-standard and lacked penetration; and/or
 - (ii) any inability to function for the Purpose, including if it did not have 4WD functionality when the rear wheels lost traction with the surface of the ground;

of which the Defendant knew or ought to have known.

22. In breach of the duty referred to in paragraph 21, the Defendant failed to exercise reasonable care as referred to in paragraph 21(a) and 21(b) and failed to warn the Group Members of the matters referred to in paragraph 21(c) of which it was aware or ought to have been aware.

PARTICULARS OF NEGLIGENCE

The Defendant:

- (a) sold the Unit to machinery dealers for on-sale to the Group Members, which did not have four wheel drive functionality;

- (b) sold the Unit to machinery dealers for on-sale to the Group Members, which was not new;
- (c) failed to design the Unit such that it would perform the Purpose;
- (d) failed to manufacture the Unit such that it would perform the Purpose; and
- (e) failed to assemble the Unit such that it would perform the Purpose;

Particulars of failures

The Defendant:

- (i) failed to fit a four wheel drive transmission with axial pump and bent axis piston motors to each wheel;
- (ii) fitted to the front left and front right wheels of the Unit with a wheel hub with a radial piston motor incorporated, which device lacks any mechanical reduction, dynamic or parking brake and precludes the Unit from functioning properly in four wheel drive and/or in order to perform the Purpose;
- (iii) failed to fit a wheel hub with an axial piston motor incorporated and including a planetary gear box for mechanical reduction dynamic and parking brake to the front wheels of the Unit which would permit the Unit to function properly in four wheel drive and/or in order to perform the Purpose;
- (iv) incorporated only two valves in the Unit to distribute hydraulic oil to the motors on all four wheels;
- (v) incorporated in the Unit a design whereby the hydraulic oil from each valve in the transmission system was split without control through a simple "T" adaptor joint;
- (vi) connected the front left motor and rear right motor of the Unit in parallel to one port and their respective hydraulic oil return circuits in parallel and the front right motor and rear left motor in parallel to one port and their respective hydraulic oil return circuits in parallel with the result that the parallel hydraulic circuit connection between each rear wheel fitted with mechanical reduction and each front wheel absent of mechanical reduction allowed hydraulic oil flow to follow the path of least resistance and mostly divert to the rear wheel motors, which diversion of oil

increased as torque demand on the front wheel under high load conditions increased with the result that the oil flow rate to the front wheel motors was reduced to zero or effectively zero on occasions;

- (vii) connected front left motor and rear right motor of the Unit in parallel to one port and their respective hydraulic oil return circuits in parallel and the front right motor and rear left motor in parallel to one port and their respective hydraulic oil return circuits in parallel with the result that it allowed 100% of the available hydraulic oil exiting the ports to flow solely to the rear wheel axial piston motors with the result that the residue oil pressure is insufficient to force the front wheel motors to rotate;
- (viii) incorporated a Preciculture 2540 tractor with only one hydraulic pump of variable capacity into the design, manufacture and assembly of the Unit;
- (ix) failed to incorporate in the Unit a separate second hydraulic pump of variable capacity to the Unit to provide hydraulic oil under pressure to the front wheels;
- (x) failed to incorporate in the Unit speed feedback sensors fitted to the front wheels;
- (xi) failed to incorporate in the Unit either a single four way hydraulic valve block or dual two way hydraulic valve blocks that force oil to each wheel motor in response to each wheel's speed feedback sensor;
- (xii) failed to incorporate in the Unit software capable of registering four speed feedback sensors and controlling four valves, one for each wheel;
- (xiii) failed to fit a rear axle to the Unit which oscillates to maintain traction on all four wheels and/or fit sufficient bump stops to stop the rear axle retainer bolts damaging the chassis sub-frame when oscillating;
- (xiv) failed to fit four driving wheel such that the rear axle to the Unit could oscillate to maintain traction on all four driving wheels;
- (xv) failed to incorporate in the Unit a Preciculture PR3240 tractor that had a separate second hydraulic pump of variable capacity to the Unit to provide hydraulic oil under pressure to the front wheels;

- (xvi) incorporated a Preciculture 2540 tractor with only slow motors on its front wheels into the design, manufacture and assembly of the Unit;
- (xvii) failed to fit rapid motors with variable capacity to the front wheels of the Unit to provide proper four wheel drive functionality;
- (xviii) failed to incorporate in the Unit a Preciculture PR3240 tractor that had rapid motors with variable capacity to the front wheels of the Unit to provide proper four wheel drive functionality;
- (xix) advertised and sold the Unit as a four wheel drive vehicle when it did not meet the definition of four wheel drive;
- (xx) advertised and sold the Unit as a four wheel drive vehicle when it was solely designed to be a two wheel drive vehicle with some hydraulic front wheel assistance to overcome rolling resistance;
- (xxi) failed to install intelligent electronics which prevent wheel slippage for superior tractive power;
- (xxii) failed to ensure that the Unit has class leading field performance;
- (xxiii) failed to ensure that the Unit had class leading flotation;
- (xxiv) failed to ensure that the Unit was rugged;
- (xxv) failed to ensure that the Unit had a heavy duty chassis;
- (xxvi) failed to ensure that the Unit was built for demanding conditions with optimised design strength;
- (xxvii) failed to incorporate the 2,500 litre tank into the Unit's design and/or manufacture and/or assembly that was the tank size for which its Preciculture 2540 tractor had been designed to carry;
- (xxviii) incorporated a 2,700 litre tank into the Unit's design and/or manufacture and/or assembly, despite the fact that the tank size for which its Preciculture 2540 tractor had been designed to carry was 2,500 litres;
- (xxix) failed to incorporate in the Unit a Preciculture PR3240 tractor that was capable of bearing the load of a 2,700 litre tank when full;

- (xxx) when incorporating two RHS members attached to the SHS axle member, failed to include a top plate to support the cyclic tensile forces acting along the top surface;
- (xxxi) failed to incorporate a mechanical stop on the Unit to limit the rotation of the front steering pivot housing;
- (xxxii) failed to incorporate in the Unit a vertical two pattern, in particular an equi-spaced 4 bolt pattern, at each end to retain the double acting cylinder;
- (ab) failed to incorporate a tie rod geometry that allowed the tie rod to pass without coming into contact with the kingpin upright assemblies;
- (ac) failed to incorporate in the Unit a strengthening plate between the rear axle bracket and the SHS axle member to support the vertical and horizontal cyclic loading;
- (ad) failed to incorporate in the Unit rear limit cables of sufficient size to support the cyclic tensile load as the cable hit their taut position;
- (ae) failed to ensure that, when assembled, the Unit had a grease nipple in the front and rear axle spherical ball joint;
- (af) failed to position the pump sufficiently below the surface of the liquid in the spray tank for it to be able to prime;
- (ag) failed to ensure that the welding on the Unit had achieved proper penetration at all points where welding had been carried out;
- (ah) sold the Unit to machinery dealers with sub-standard factory welding, in particular on the front axle support structure and the rear axle bracket;
- (ai) failed to incorporate light arrays in the Unit that illuminated the Unit;
- (aj) failed to incorporate in the Unit an air-conditioning system that delivered climatically controlled air throughout the cabin which did not fog up the windows of the cabin at night or on cold days and that functions when the temperature exceeds 26 degrees Celsius;
- (ak) failed to ensure there was no major rattle in the rear right hand cabin pillar of the Unit;

- (al) failed to securely tighten the turbo hose clamp on the Unit;
- (am) failed to properly wire and/or connect the on-board computer screen in the Unit;
- (an) failed to ensure that the fluid system was easy to use, including ensuring that the right hand outer section of the spray boom on the Unit fully turns off;
- (ao) failed to ensure that the cabin door on the Unit did not constantly squeak;
- (ap) failed to incorporate into the Unit a steering system with the correct boom parameters that was able to undertake a turn at the end of a run in a paddock and immediately return to the GPS line for the next run;
- (aq) failed to test the Unit prior to delivery to ensure that it would function in order to perform the Purpose;
- (ar) failed to test the components of the Unit prior to supply to machinery dealers;
- (as) failed to warn the Group Members of the inability of the Unit to function properly and/or in order to perform the Purpose; and
- (at) failed to properly install the integrated Agleader controller and the Agleader GPS properly.

23. By reason of all and/or any of the Defendant's breaches of its duty pleaded above, the Group Members have suffered loss and damage.

PARTICULARS

- (a) Payment of the purchase price for the Unit.
- (b) Loss of value on re-sale due to the Unit not being new at the time of its acquisition by each Group Member.
- (c) Loss of Income
 - (i) The Group Members have suffered yield loss in their own crops due to them not controlling unwanted herbage and pests as required because the Unit could not provide four wheel drive functionality to all four wheels.

- (ii) The Group Members who use their respective Units to undertake spraying tasks for other farmers on a contract basis have suffered income loss from lost contracts to spray crops for those third parties due to either an inability to attend to such tasks in a timely manner due to delays experienced in spraying their own crops because the Unit could not provide four wheel drive functionality to all four wheels, or from reputational damage because of the Unit's inability to perform for the Purpose or both.
- (iii) The Group Members have suffered yield loss in their own crops and, for those who use their respective Units to undertake spraying tasks for other farmers on a contract basis, income loss due to failures of sub-standard factory welding on their respective Units and/or metal fatigue of under-designed componentry rendering such Units inoperable until repaired.
- (iv) Several light arrays on the Unit did not illuminate the Unit and the Unit does not have a light on the external pressure gauge, which has resulted in the Unit not being able to be operated efficiently thereby causing the delays experienced in spraying referred to in (b)(ii) above.
- (v) The air-conditioning system in the cabin of the Unit fogs up the windows of the cabin at night or on cold days making night spraying in winter extremely difficult and, at times, impossible, which has resulted in the Unit not being able to be operated efficiently thereby causing the delays experienced in spraying referred to in (b)(ii) above.
- (vi) For the first 150 hours to 180 hours of operation of the Plaintiff's Unit, the on-board computer screen in the Unit continually crashed up to a dozen times a day which resulted in the Plaintiff losing all data and the Unit having to cease operation until its computer rebooted after each such crash, resulting in loss of yield and income due to the delays experienced in spraying referred to in (b)(ii) above.
- (vii) The pump on the Units belonging to the Group Members will not prime when there is less than 500L in the tank resulting in loss of yield and income due to the delays experienced in spraying referred to in (b)(ii) above.
- (viii) The Plaintiff's Unit was unable to undertake a turn at the end of a run in a paddock and return to the GPS line for the next run at normal speed

thereby requiring the Unit to be slowed down so that the navigation system could catch up, resulting in loss of yield and income due to the delays experienced in spraying referred to in (b)(ii) above.

- (ix) The far right hand boom section on the Plaintiff's Unit does not always turn on causing the Unit to not apply chemical on part of the right hand side when that happens and to suffer loss of yield and income due to the failure to apply chemical to unwanted herbage or pests.

(d) Additional Expenditure

- (i) Because the Unit could not provide four wheel drive functionality to all four wheels, it got bogged in some areas or became stationary when traversing terrain that resulted in one wheel being lifted off the ground, or could not climb up slopes or had difficulty doing so and/or could not maintain traction on thick green vegetation, with the result that Spraying tasks have taken the Group Members longer than they would have had the Unit possessed four wheel drive functionality, which has incurred losses from extra fuel and wages.
- (ii) Because the Unit could not provide four wheel drive functionality, the Plaintiff and some of the Group Members have experienced their respective Units getting bogged in some areas, with the Unit being unable to be driven forward, or reversed, out of the bog and requiring large tractors to be used or hired to pull the Unit from where it has become bogged, thereby causing further damage to the surface of their farmlands leading to the expense of hiring such tractors and/or repairing the damage to such surface to make it trafficable.
- (iii) The turbo hose clamp on the Plaintiff's Unit fell off within days of delivery unbeknown to the Plaintiff and the Unit was operated without its turbo functioning for its first 190 hours of operation, which resulted in extra fuel being burned.
- (iv) The far left hand boom section on the Plaintiff's Unit does not fully turn off and the far right hand boom section does not always turn on causing the Unit to lose chemical on the left hand side and to incur the expense of such wasted chemical.

Misleading and Deceptive Conduct

24. In the circumstances where the Unit was not reasonably fit for the Purpose, the Representations in the Brochure and the 4WD Representation in the Advertisements and the Defendant's failure to warn the Group Members of the matters referred to in paragraph 21(c) were conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of Sections 18 and 29 of the ACL.

Particulars

- (a) The Plaintiff repeat the Particulars to paragraph 22 above.
25. In reliance upon any and/or all of the Representations in the Brochure and/or and the 4WD Representation in the Advertisements and the Defendant's silence in relation to the matters referred to in paragraph 21(c) and induced thereby, the Group Members purchased the Unit and suffered loss and damage.

Particulars

- (a) The Plaintiff repeats paragraph 23 hereof.
- (b) But for any and/or all of the Representations in the Brochure and/or and the 4WD Representation in the Advertisements and the Defendant's silence in relation to the matters referred to in paragraph 21(c), Group Members would not have purchased the Unit and they suffered loss in the payment of the purchase price for the same.

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 claim for damages in these proceedings has reasonable prospects of success.

I have advised the Plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on Record

Date of signature

2 April 2019

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the Plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.**
- 2 If money is claimed, and you believe you owe the money claimed, by:**

- Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
- Filing an acknowledgement of the claim.
- Applying to the court for further time to pay the claim.

3 If money is claimed, and you believe you owe part of the money claimed, by:

- Paying the plaintiff that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales Law Courts Building 184 Phillip Street SYDNEY NSW 2000
Postal address	GPO Box 3, Sydney NSW 2000
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Stephen Hicks
Address [REDACTED]
Occupation Farmer and Grazier
Date 1 April 2019

I say on oath:

- 1 I am the Managing Director of the Plaintiff.
- 2 I believe that the allegations of fact in the Statement of Claim are true.

SWORN at Cootamundra

Signature of deponent

Name of witness

DARYN WAYNE SEEWICK
LITTLE HURLEY LANE, COOTAMUNDRA
[#Justice of the peace #Solicitor #Barrister #Commissioner
for affidavits #Notary public]

Address of witness

Capacity of witness

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~~ ~~is~~. [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:~~

N/A.
Identification document relied on (may be original or certified copy) †

Signature of witness

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

Daryn Wayne Seewick JP
Little Hurley Lane Cootamundra 144411

[* 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.]

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiff

Greenshades Pastoral Co Pty Ltd
ACN 003 951 933

Defendant

Hardi Australia Pty Ltd
ACN 076 150 617

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name Greenshades Pastoral Co Pty Ltd
ACN 003 951 933
Address C/- Peter J Hunt, 242 Parker Street, Cootamundra NSW
2590

Legal representative for Plaintiff

Name Peter John Long
Practising certificate number 8742
Firm RURAL LAW with Peter Long
Address PO Box 501
Gunnedah NSW 2380
DX address 6203 GUNNEDAH
Telephone 0477 419 164
Fax 02 6780 9113
Email peter@rurallawyer.com.au
Electronic service address peter@rurallawyer.com.au

DETAILS ABOUT DEFENDANT

Defendant

Name Hardi Australia Pty Ltd ACN 076 150 617
Address having its Registered Office at
536 Cross Keys Road
CAVAN SA 5094

The NSW Online Registry provides secure services for all parties to cases in the NSW Supreme, District and Local Courts including legal representatives, agents and clients who are representing themselves.

- File court forms online
- Download court sealed documents
- View information about your case
- File multiple forms at once
- Publish & Search probate notices

You may respond to this Statement of Claim by filing a Defence, Statement of Cross Claim or Acknowledgment of Liquidated Claim online.

To respond online, you will need the Case Number (located in the Court Details section of the court approved Statement of Claim). If you are representing yourself, you will also need the document barcode (normally located on the top right hand side of the Statement of Claim).

If this Statement of Claim does not have a document barcode, you will need to attend a Court Registry to obtain the document barcode. You will need to provide identification (e.g. drivers license) before the Court Registry staff can give you a form relating to this case.

Save time and money

- File online from your home or office
- View your case information online
- Most online forms processed within minutes.
- Option to attach and file your own pre-prepared form online for many forms
- Court sealed documents available online ready to download and serve
- Forms pre-filled with existing case and party information where known
- Filing fees calculated for you online
- Pay for up to 100 forms in one transaction
- View and download tax invoices online

Simple to Use

- Free to register
- Easy to use website
- Step-by-step guidance and links to useful information provided throughout the online filing process
- Preview function to review forms before submitting

For help using the Online Registry

- Call 1300 679 272 Mon-Fri (business hours)
- Email onlineregistry_support@agd.nsw.gov.au

Register now

www.onlineregistry.lawlink.nsw.gov.au