

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 9 August 2022**

**2019/00101980-001 / Statement of Claim: GREENSHADES PASTORAL CO. PTY LTD v
Hardi Australia Pty Ltd**

This matter is listed for Directions on 3 February 2023 9:30 AM before the Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 30 Minutes

Orders made in chambers in accordance with the Consent Order, initialled by me, dated today and placed with the papers.

The Court orders that:

- 1 The answers to the common questions raised by this proceeding are as specified in Schedule A to these orders.
- 2 Pursuant to section 179 of the Civil Procedure Act 2005 (NSW) all persons who are group members (as defined in paragraph 1(b) of the Third Further Amended Statement of Claim (Group Members)) in this proceeding, including the Plaintiffs, are bound by the answers to the common questions set out in Schedule A to these orders.
- 3 The First Plaintiff's claim for damages brought in its own right is dismissed.
- 4 The Second Plaintiff's claims are dismissed.

The Court declares that:

5 By including, in brochures that were published from time to time during the period from 1 April 2013 to December 2018 (Relevant Period), the statements that the Hardi Presidio 2700 (Presidio):

- a. was "rugged and built for demanding conditions";
- b. had "optimised design strength"; and
- c. had a "heavy duty chassis"

the defendant (Hardi) has, in trade or commerce, engaged in conduct that is misleading or deceptive or likely to mislead or deceive in contravention of s 18 of the Australian Consumer Law (ACL) which is Sch 2 to the Competition and Consumer Act 2010 (Cth) (CCA) by representing that the Presidio would not, in all reasonably foreseeable circumstances, exhibit fatigue cracking when, in fact, Presidios did exhibit fatigue cracking.

6 By including, in brochures that were published from time to time during the Relevant Period and in videos which were published on You Tube on 8 April 2014 and 3 February 2015 (Videos), statements that the Presidio had:

- a. "a Bosh Rexroth 4WD transmission";
- b. "a 4WD 3-speed hydrostatic transmission";
- c. "intelligent electronics, which prevents wheel slippage for superior tractive power";
- d. a "traction control valve on the front and rear axles which supplies reliable power to the wheels regardless of the field conditions and slopes"; and
- e. "a 4WD system with plenty of power to get down on the ground when needed", Hardi has in trade or commerce:

(i) engaged in conduct that is misleading or deceptive or likely to mislead or deceive in contravention of s 18 of the ACL; and

(ii) in connection with the supply or possible supply of goods made a false or misleading representation that the Presidio has performance characteristics, or benefits, in contravention of s 29(1)(g) of the ACL,
by representing that power would be supplied to all four wheels of the Presidio at all times when sometimes power was not delivered to all four wheels of the Presidio.

7 By including, in brochures that were published from time to time during the Relevant Period and in the Videos, statements that the Presidio had:

f. "intelligent electronics, which prevents wheel slippage for superior tractive power"; and
g. a "traction control valve on the front and rear axles which supplies reliable power to the wheels regardless of the field conditions and slopes",

Hardi has in trade or commerce:

(i) engaged in conduct that is misleading or deceptive or likely to mislead or deceive in contravention of s 18 of the ACL; and

(ii) in connection with the supply or possible supply of goods made a false or misleading representation that the Presidio has performance characteristics, or benefits, in contravention of s 29(1)(g) of the ACL,
by representing that the Presidio had four wheel drive functionality which was enhanced by those features when it did not have those features.

The Court directs that:

8 If no appeal and, or, application for leave to appeal from orders 1 to 4 and, or, the declarations recorded at paragraphs 5 to 7 above is filed within 28 days from the date of these orders, then the claims for damages by the remaining Group Members (including questions as to reliance and causation) are to be determined at a single hearing on a date to be fixed and subject to the following directions:

h. the Plaintiffs are to notify the Defendant by no later than 14 September 2022 of the topics and questions in respect of which any Group Member proposes to lead expert evidence;

i. Group Members are to serve any further affidavits or experts reports on which they intend to rely by 19 October 2022;

j. the Defendant is to serve any further affidavits or experts reports on which it intends to rely by 30 November 2022;

k. Group Members are to serve any affidavits or experts reports in reply on which they intend to rely by 14 December 2022;

l. these Proceedings are listed for further directions and allocation of a hearing date, if appropriate, before his Honour Justice Stevenson at 9.30am on 3 February 2023.

9 Reserve all questions of costs until the final determination of any appeal or the claims of Group Members.

10 The parties have liberty to apply to restore the proceedings on 7 days' notice.

Justice J Stevenson

Signed

Date

Schedule A

A. PRELIMINARY QUESTIONS

1. Do Greenshades and the Group Members have claims against Hardi which:
 - a. are in respect of, or arise out of, the same, similar or related circumstances; and
 - b. give rise to a substantial common question of law or fact?

Greenshades and the Group Members have claims which are common to the extent that they each allege that Hardi engaged in conduct which contravened section 18 of the Australian Consumer Law (being Schedule 2 to the CCA) by making certain representations in print and video form as to:

- (a) *the strength of the Presidio chassis (the “Chassis Issue”);*
- (b) *whether the Presidio was four wheel drive (the “4WD Issue”); and*
- (c) *the braking capabilities of the Presidio (the “Braking Issue”).*

Separate claims raised by the Second Plaintiff (Ritter Investments) in respect of the Presidio spray rate controller are not common to any other Group Member.

See J [6]-[7].

2. If the answer to question 1 is “yes”, do the facts, matters and circumstances of Greenshades’ claim against Hardi in this proceeding give rise to each of the questions asserted to be “common questions” below?
Such questions as are capable of a common answer are identified below.

Agreed Answers to the Common Questions

B. DEFINITIONS

CCA means Competition and Consumer Act 2010 (Cth).

Greenshades means Greenshades Pastoral Co. Pty Limited.

Group Member means a person who:

- (a) purchased the Unit during the period between 1 April 2013 and 1 December 2018 for use in farming activities;
- (b) 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

- (c) have each executed a Retainer Agreement with the law firm, RURAL LAW with Peter Long on or before 18 October 2019.

Hardi means Hardi Australia Pty Limited.

J means the Court's judgment in *Greenshades Pastoral Co Pty Ltd v Hardi Australia Pty Ltd* [2022] NSWSC 755.

Purpose means applying agricultural chemicals to farmlands whilst traversing the same to control unwanted herbage and pests.

Unit means the Hardi Presidio 2700 self-propelled spray unit.

C. COMMON QUESTIONS

Hardi's role with respect to the Unit

3. Did Hardi:
- a. design;
 - b. manufacture; and or
 - c. sell the Unit to machinerydealers in Australia?

Yes, Hardi designed and manufactured agricultural equipment in Australia, and sold the Unit through a dealer network across Australia.

See J [3].

4. Was Hardi's assembly of the Unit in Australia undertaken:
- a. to enable distribution of the Unit to an established network of dealer groups with agricultural equipment retail expertise and agricultural machinery service expertise in Australia (**dealer groups**); and
 - b. pursuant to orders placed by those dealer groups on behalf of specific customers?

No findings made and therefore the question cannot be answered.

Purpose of the Unit

5. Was the Unit designed for the alleged Purpose, being to apply agricultural chemicals

to farmlands whilst traversing the same to control unwanted herbage and pests?

The Court has accepted that the representations the subject of this proceeding were made to a class of persons who were considering purchasing the Unit for the alleged Purpose.

See J [105], including footnote 12, and [113].

6. [QUESTION SIX NOT USED]

7. [QUESTION SEVEN NOT USED]

Characteristics of the Unit

8. Did the Unit have four wheel drive?

The Units have four wheel drive functionality in that all four wheels are connected to sources of power, and there exists a transmission system which is able to provide power to all four wheels. However, the Units do not have “intelligent electronics” of any sort, let alone “intelligent electronics” that would prevent wheel slippage, or a “traction control valve” of any sort, let alone one “on the front and rear axles” and which played any role in supplying reliable power to the wheels regardless of field conditions or slopes”. There have been occasions when the Units’ transmission systems did not cause power to be supplied to all four wheels, and where one set of wheels spun freely resulting in no power at all being delivered to the other two wheels. The Greenshades and Ritter Investments Units had experience of not operating as a 4WD vehicle. There were occasions when those Units did not provide power to all four wheels. The Unit was not always 4WD.

See J [118], [119], [121], [135], [137], [138].

9. Did the Unit have threespeed hydrostatic transmission?

This issue was not pressed at trial by the plaintiffs.

10. Did the Unit have a Bosh Rexroth four wheel drive transmission?

This issue was not pressed at trial by the plaintiffs.

Statutory claims

11. ~~For the period from first supply until 1 December 2018,~~ Did Hardi make any of the following representations with respect to the Unit:

a. that the Unit was rugged and built for demanding conditions with

optimised design strength and weight distribution;

Yes. See J [81(a)].

- b. had class leading field performance and flotation;

Yes. See J [81(c)].

- c. had a HARDI OnRate fluid system that:

In accordance with the answer to Question 1 above, to the extent that the representations at 11(c) are found to have been made, they concern the claim by Ritter Investments only and therefore do not raise a common question to be answered because this issue is not common to any other Group Member.

- i. delivered precision application every time;

No common issue arises.

- ii. allowed the operator to retain the target rate through changing spraying speeds, with variable rate application and auto boom section control active at the same time;

No common issue arises.

- iii. held the target rate whether sections are switched on or off, varying speed, changing rate or turning in or out of headlands;

No common issue arises.

- iv. was easy to use; and

This alleged representation was not pressed at trial.

- v. had an infinitely variable proportional hydraulic valve which is up to 20 times faster than conventional flow meter controlled regulation systems.

This alleged representation was not pressed at trial.

- d. had a Bosh Rexroth 4WD transmission with axial piston pump and bent axis piston motors which deliver high power, economy and reliability;

Yes, in respect of the words "had a Bosh Rexroth 4WD transmission". See J [112(a)]. No claim was pressed at trial by the Plaintiffs in respect of the balance.

- e. had 4WD drive, 3-speed hydrostatic transmission;

Yes. See J [112(b)].

- f. had 4WD hydrostatic transmission;

Yes. It follows from J [112(b)].

- g. had a heavy duty chassis;

Yes. See J [81(b)].

- h. delivered climatically controlled air throughout the cabin;

This alleged representation was not pressed at trial.

- i. had electronic control of the hydrostatic transmission and diff lock which optimised performance;

No findings were made in respect of this question.

- j. had intelligent electronics, which prevents wheel slippage for superior tractive power;

Yes. See J [112(c)].

- k. had a rear axle which oscillates to maintain traction on all four driving wheels;

No findings were made in respect of this question.

- l. had a 4 pillar cab that is operator friendly, comfortable and quiet;

This alleged representation was not pressed at trial.

- m. weighed 7,700kg when its spray tank was empty;

No findings were made in respect of this question.

- n. the Unit was standard equipped with 4WD and 3 speed hydrostatic drive;

Yes. It follows from J [112(b)].

- o. the Unit had a traction control valve on the front and rear axles of the Unit that supplies reliable power to the wheels regardless of the field conditions and slopes;

Yes. See J [112(d)].

- p. the Unit had electronic control of hydrostatic transmission which optimised performance of the Unit;

No findings were made in respect of this question.

- q. the April 14 Video superimposed a static image showing that each of the front wheels and each of the rear wheels was equipped with a Rexroth axial piston motor fitted with a planetary gearbox;
- r. Yes.that the Unit had a 4WD system with plenty of power to get down on the ground when needed.

Yes. See J [112(e)].

12. If the answer to any part of question 11 is “yes”, were any of the representations (in question 11) found to have been made:
- a. misleading or deceptive or likely to mislead or deceive; or
 - b. false or misleading; and
 - c. made in contravention of ss 18, 29(1)(a), 29(1)(c) and/or 29(1)(g) of the *Australian Consumer Law* in Schedule 2 of the CAA (**ACL**)?

Yes, the following representations were misleading or deceptive contrary to s 18 and s 29(1)(g) of the ACL:

- *the representations at 11(a) and (g), as the Unit was not “rugged and built for demanding conditions”, did not have “optimised design strength” and did not have a “heavy duty chassis” (see J [111]);*
- *the representations at 11((j) and (o), as the Unit did not have “intelligent electronics” and a “traction control valve” supplying “reliable power to the wheels regardless of the field conditions and slopes” (see J [158]-159)];*
- *the representations at 11(e), (f), (n) and (r), as sometimes power was not delivered to all four wheels and therefore the Unit was not always a four wheel drive (see J [160]-[161]).*

13. [QUESTION 13 NOT USED.]
14. [QUESTION 14 NOT USED]
15. [QUESTION 15 NOT USED]
16. [QUESTION 16 NOT USED]

Reasonable care by Group Members to avoid or mitigate loss or damage

17. Was it made known to the Plaintiffs who purchased the Unit at all material times that:
- a. they were able to obtain maintenance services from dealer networks for the Units; and

As neither plaintiff established that they suffered any loss or damage, this question has not been determined. See J [214]-[215].

- b. Hardi was able to assist in respect of issues associated with the Units that could be remedied by way of the provision by the dealers network of maintenance services?

As neither plaintiff established that they suffered any loss or damage, this question has not been determined. See J [214]-[215].

18. Was any loss or damage suffered by the Plaintiffs avoidable, or could it have been mitigated, by utilising maintenance services from dealer networks at all material times?

No loss or damage has been established by the Plaintiffs. Accordingly, it does not arise for consideration in the First or Second Plaintiffs' case whether any loss or damage suffered was avoidable or could have been mitigated.

19. [QUESTION 19 NOT USED]

20. Should the Defendant's liability to either Plaintiff, and if so in what proportion, be reduced under section 137B of the CCA?

Neither Plaintiff has established that it suffered any loss or damage. Accordingly, this question does not arise for determination at this time. See J [214]-[215].