

FILED

02 OCT 2018



Form 8 (version 5)
UCPR 14.4

REPLY

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court of Sydney
Case number	2017/00378526

TITLE OF PROCEEDINGS

Plaintiff	Akuratiya Kularathne
Defendant	Honda Australia Pty Ltd ABN 66 004 759 611

FILING DETAILS

Filed for	Akuratiya Kularathne, Plaintiff
Filed in relation to	Defendant's Defence to Amended Statement of Claim
Legal representative	Damian Scattini, Quinn Emanuel Urquhart & Sullivan LLP
Legal representative reference	07435-00001
Contact name and telephone	Damlan Scattini, 02 9146 3888
Contact email	Damianscattini@quinnemanuel.com

PLEADINGS AND PARTICULARS

In this Reply, capitalised terms have the same meaning as defined in the Plaintiff's Further Amended Statement of Claim filed 10 September 2018 (**FASOC**), unless otherwise indicated.

- 1 In reply to subparagraph 2(f) of the Defence to the Further Amended Statement of Claim (Defence), the Plaintiff:
 - (a) admits subparagraph (iii);
 - (b) says that the Plaintiff sold the Plaintiff's Second Vehicle on or around 16 May 2018.
- 2 In reply to subparagraph 2(k) of the Defence, the Plaintiff:
 - (a) admits subparagraph (iii);

(b) says that the Plaintiff sold the Plaintiff's Third Vehicle on or around 11 May 2018.

3 In reply to subparagraph 7(a)(i) of the Defence, the Plaintiff:

- (a) admits subparagraphs 7(a)(v)(i)(5), (vi)(6) and (viii)(7) of the Defence;
- (b) admits, insofar as it is alleged, that long term exposure to repeated high temperature cycling in the presence of moisture contributes to the degradation of ammonium nitrate used as a propellant in Takata Airbags;
- (c) admits, insofar as it is alleged, that long term exposure to persistent high absolute humidity and high temperatures contribute to the degradation of the propellant in Takata Airbags;
- (d) says that ammonium nitrate used as a propellant in Takata Airbags will inevitably degrade due to temperature cycling;
- (e) says further that:
 - (i) the absorption of moisture accelerates the rate at which the ammonium nitrate propellant will degrade;
 - (ii) moisture from any source may be absorbed by the ammonium nitrate propellant;
 - (iii) any moisture that is absorbed will contribute to the degradation of the ammonium nitrate propellant;
 - (iv) degradation of the ammonium nitrate is not dependant on long term exposure to persistent high absolute humidity and high temperatures;
 - (v) says that the ammonium nitrate used as a propellant in Takata Airbags degrades with the presence of a desiccant;
- (f) otherwise denies the allegations therein.

4 In reply to subparagraph 33(b) of the Defence, the Plaintiff:

- (a) denies the allegations therein;
- (b) says that the Defendant's non-compliance was not only because of an act, default or omission of, or representation made by, Takata, and as such the Defendant cannot rely on section 271(2)(a) of the ACL

Particulars

The Defendant manufactured the Defective Vehicles, and imported the Defective Vehicles, as pleaded in paragraphs 4(e) and 4(f) of the FASOC,

respectively, and carried out the conduct alleged in paragraphs 12(a), 12(b) and 12(c) of the EASOC. In those circumstances, the Defendant ought to have had the capacity to assess the design and quality of the airbags of the Defective Vehicles.

The Plaintiff reserves the right to plead further matters following discovery and evidence.

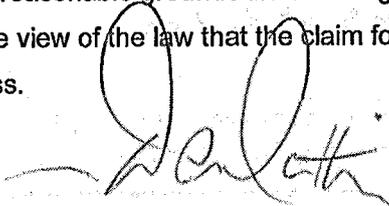
5 In reply to paragraph 53 of the Defence, the Plaintiff:

- (a) denies the allegations therein; and
- (b) says that the Defendant has not pleaded any action of Takata giving rise to a cause of action of the Plaintiff against Takata; ~~and~~
- (c) ~~says further that the Defendant cannot rely on section 87CB of the TPA and/or section 87CB of the Competition and Consumer Act 2010 (Cth).~~

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 this reply has reasonable prospects of success.

Signature



Capacity

Solicitor on record

Date of signature

27 September 2018

AFFIDAVIT VERIFYING

Name Akuratiya Kularathne
 Address 77 Mirbelia Street, Kenmore QLD 4069
 Occupation Cricket Coach
 Date 28 September 2018

I affirm:

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

AFFIRMED at ^{77 Mirbelia Street} Kenmore, QLD

Signature of deponent

Name of witness Sean Patrick Cullen

Address of witness 115 111 Elizabeth Street, Sydney

Capacity of witness Solicitor

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:

DRIVER LICENCE No. 097 687 766

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.

[* 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.]