

FILED

26 JUL 2018



REPLY

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court of Sydney
Case number	2018/00042244

TITLE OF PROCEEDINGS

Plaintiff	Camilla Coates
Defendant	Mazda Australia Pty Limited ABN 78 004 690 804

FILING DETAILS

Filed for	Camilla Coates, 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	Damian 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 Amended Statement of Claim filed 7 May 2018 (**ASOC**), unless otherwise indicated.

- 1 In reply to subparagraph 7(d) of the Defence, the Plaintiff:
- (a) admits, insofar as it is alleged, that a climate zone of high temperatures and high humidity, can contribute to the rate of degradation of ammonium nitrate used as a propellant in Takata Airbags;
 - (b) says that ammonium nitrate used as a propellant in Takata Airbags will inevitably degrade due to temperature cycling;
 - (c) says further that all Takata Airbags which use ammonium nitrate as a propellant have the propensities pleaded in subparagraph 7(a) of the ASOC;

(d) says further in reply to subparagraph (i) of subparagraph 7(d) of the Defence that:

- (i) the presence or absorption of moisture by the ammonium nitrate propellant is not a necessary condition for the ammonium nitrate propellant to degrade;
- (ii) the absorption of moisture accelerates the rate at which the ammonium nitrate propellant will degrade;
- (iii) moisture from any source may be absorbed by the ammonium nitrate propellant;
- (iv) any moisture that is absorbed will contribute to the degradation of the ammonium nitrate propellant;
- (v) factors contributing to the ammonium nitrate propellant degrading are not otherwise limited to the factors identified in subparagraph 7(d);
- (vi) degradation of the ammonium nitrate is not dependant on long term exposure to persistent high absolute humidity and high temperatures;

(e) says further in reply to subparagraph (ii) of subparagraph 7(d) of the Defence:

- (i) the propensities pleaded in subparagraph 7(a) of the ASOC begin at the time when the ammonium nitrate propellant begins to degrade; and
- (ii) the period in which the Takata Airbag is exposed to temperature cycling need not be for a sustained period;

(f) otherwise denies the allegations pleaded.

2 In reply to subparagraph 7(e) of the Defence, the Plaintiff:

- (a) repeats the matters pleaded in paragraph 1 above;
- (b) admits, insofar as it is alleged, that the factors identified in subparagraph 7(e) of the Defence can contribute to the rate of degradation of ammonium nitrate used as a propellant in Takata Airbags;
- (c) admits, insofar as it is alleged, that factors that contribute to the rate of degradation of ammonium nitrate used as a propellant in Takata Airbags are not limited to the factors identified in subparagraph 7(e) of the Defence; and
- (d) otherwise denies the allegations pleaded.

3 In reply to subparagraph 17(b)(ii) of the Defence, the Plaintiff:

- (a) denies the allegations therein;

- (b) without limiting the foregoing denial, says further that insofar as it is alleged, replacing a Takata Airbag with a Takata Airbag containing a desiccant does not mean that a Defective Vehicle no longer has the characteristics pleaded in subparagraph 10(c) of the ASOC;
- (c) repeats the matters pleaded in paragraph 1 above;
- (d) repeats the matters pleaded at paragraphs 7 and 8 of the ASOC.

4 In reply to paragraph 26 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 ASOC, and carried out the conduct alleged in paragraphs 12(a), 12(b) and 12(c) of the ASOC. 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.

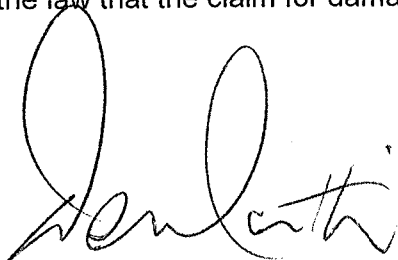
5 In reply to paragraphs 40, 41, 42 and 43 of the Defence, the Plaintiff:

- (a) denies the allegations therein;
- (b) says that the Defendant has not pleaded any action of Takata giving rise to a cause of action of the Plaintiff against Takata;
- (c) says further that the Defendant cannot rely on sections 34 of the *Civil Liability Act 2002* (NSW), 87CB of the TPA, and/or 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

A handwritten signature in black ink, appearing to read 'D. L. Smith', written in a cursive style.

Capacity

Solicitor on record

Date of signature

26 July 2018

AFFIDAVIT VERIFYING

Name Camilla Coates
 Address 19 McTaggart Place, Carrara QLD 4211
 Occupation Zookeeper
 Date 25 July 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 Carrara, QLD.

Signature of deponent

Name of witness

Address of witness

Capacity of witness


 Bianca Montgomery-Thubar
 Level 15, 111 Elizabeth Street, Sydney
 Solicitor

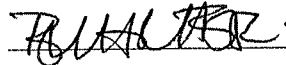
And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 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. 040201865

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.]