

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/12/2017 9:43:25 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NSD1016/2014
File Title:	Rebecca Louise Dillon v Rbs Group (Australia) Pty Ltd
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	Please check Daily Court List for details



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 12/12/2017 9:54:48 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Second Further Amended Originating application starting a representative
proceeding under Part IVA of the Federal Court of Australia Act 1976**

Filed pursuant to orders made by Lee J on 6 December 2017

No. NSD 1016 of 2014

Federal Court of Australia
District Registry: New South Wales
Division: General

REBECCA LOUISE DILLON

First Applicant

REBECCA JANE DOBSON

Second Applicant

RBS GROUP (AUSTRALIA) PTY LIMITED (ABN 78 000 862 797)

First Respondent

RBS ALTERNATIVE INVESTMENTS (AUSTRALIA) PTY LTD (ACN 154 251 671; ABN 85 164 251 671)

Second Respondent

RBS NOMINEES (AUSTRALIA) PTY LIMITED (as trustee) (ACN 094 599 989; ABN 35 094 599 989)

Third Respondent

To the Respondents:

The Applicants apply for the relief set out in this further amended application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Filed on behalf of (name & role of party)	Applicants
Prepared by (name of person/lawyer)	Counsel for the Applicants and Shine Lawyers
Law firm (if applicable)	Shine Lawyers
Tel	02 8754 7229
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Address for service (include state and postcode)	Level 6, 299 Elizabeth St, Sydney NSW 2000



Time and date for hearing:

Place: Federal Court of Australia
Law Courts Building
Queens Square
Sydney

Date: ~~27 October 2016~~

Signed by an officer acting with the authority of
the District Registrar

Details of claim

On the grounds stated in the accompanying ~~Second~~ Third Amended Statement of Claim, the Applicants claim:

1. Damages ~~for breach of contract~~.
2. An order pursuant to section 12GF, or alternatively, section 12GM of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) that the Respondents (**RBS**) pay damages or compensation to the Applicants and the Group Members by reason of RBS's breach of section 12CA, 12CB, 12CC, 12DA, 12DB, 12DF, 12ED of the ASIC Act.
3. An order pursuant to section 82, or in the alternative, section 87 of the *Trade Practices Act 1974* (Cth) (**TPA**) that RBS pay damages or compensation to the Applicants and the Group Members by reason of RBS's breach of section 51AA, 51AB, 51AC, 52, 53, 71, 74, 74C of the TPA and by reason of section 75B(1) and or 73 of the TPA.
4. An order pursuant to section 237, or alternatively 236, or alternatively, section 243, or alternatively section 271 of the *Competition and Consumer Act 2010 – Schedule 2 – Australian Consumer Law* (**ACL**) that RBS pay damages or compensation to the Applicants and the Group Members by reason of RBS's breach of sections 18, 20, 21, 22, 22A, 29, ~~54~~, 55, 60, 61, 278 of the ACL and by reason of section 2 of the ACL.



5. An order pursuant to section 73 of the TPA that RBS pay damages to the Applicants and the Group Members on the grounds that RBS and Navra Financial Services Pty Limited (**Navra Financial Services**) are jointly and severally liable to the Applicants and the Group Members for the amount of loss or damage suffered by the Applicants and the Group Members as a result of the breaches of contract and or misrepresentations by Navra Financial Services pleaded in the ~~Second~~ Third Amended Statement of Claim.
6. An order pursuant to section 278 of the ACL that RBS pay damages to the Applicants and the Group Members on the grounds that RBS and Navra Financial Services are jointly and severally liable to the Applicants and the Group Members for the amount of loss or damage suffered by the Applicants and the Group Members as a result of the breaches of contract and or misrepresentations by Navra Financial Services pleaded in the Statement of Claim.
- 6A. An order pursuant to section 991A(2) of the Corporations Act 2001 (Cth) (**CA**) that RBS pay the Applicants and the Group Members loss or damage caused by RBS' breaches of section 991A(1) of the CA.
- 6B. An order pursuant to section 1041I of the CA that RBS pay the Applicants and the Group Members loss or damage caused by RBS' breaches of section 1041H of the CA and by reason of section 79 of the CA.
- 6C. A declaration that the Contracts and the Trust Deeds and their material terms were unfair and unjust pursuant to section 9 of the Contracts Review Act 1980, Part 2-3 of the ACL, Part 2, Sch 2 of the TPA, Part 2, Div 2, Subdiv BA of the ASIC Act, ss 68-70 of the Consumer Credit Code and s 147 of the Credit Act 1984 to section 7 and Schedule 1 of the Contracts Review Act 1989 (NSW), section 243 of the ACL, section 250 of the ACL, section 87 of the TPA. The declaration being pursuant to section 250 of the ACL, section 87AC of the TPA, section 12GM of the ASIC Act, section 12HD of the ASIC Act and or, sections 21Part 3 Div 1, or 33Z of the Federal Court of Australia Act 1976 (Cth) (FCAA) and or pursuant to the Court's inherent power.
- 6D. Further and in the alternative, a declaration that the Contracts and Trust Deeds be set aside, or are void or void *ab initio* and the money paid to RBS by the Applicants be held on trust for the Applicants pursuant to section 7 and Schedule 1 of the *Contracts Review Act 1989*(NSW), section 243 of the ACL, section 87 of the TPA, section 71 of the *Consumer Credit Code*, section 12GM of the ASIC Act and or section 146 of the *Credit Act 1984*.
- 6E. Further and in the alternative, an order that RBS pay to the Applicants damages or compensation in the amount of their loss and damage, pursuant to section 7 and Schedule 1 of



the *Contracts Review Act* 1989 (NSW), sections 236, 237 and or 243(e) of the ACL, ~~Part 3 Div 1~~sections 21 or 33Z of the FCAA (or pursuant to the Court's inherent power), sections 82 or 87 of the TPA, section 12GM of the ASIC Act and or section 12GF of the ASIC Act.

6F. Further and in the alternative, an order that RBS repay to the Applicants any payment or payments made to it by the Applicants, pursuant to section 243 of the ACL, section 87 TPA and section 12GM of the ASIC Act.

7. Interest, pursuant to

- a. section 73(11) of the TPA;
- b. section 284 of the ACL;
- c. section 51A of the FCAA;
- d. Federal Court Rule 39.06.

8. Costs.

9. Such further or other order that the Court thinks fit.

~~Questions common to claims of group members~~

~~Capitalised terms have the same meaning as contained in the Second Amended Statement of Claim (SASOC). References to paragraph numbers are paragraph numbers in the SASOC.~~

~~The questions of law or fact common to the claims of the group members are:~~

~~1. — In relation to Navra Financial Services, whether Navra Financial Services operated its business by providing advice in the form of the Navra Investment Model (SASOC [18]).~~

~~1A. — [Blank].~~

~~1B. — Whether the Claimants are consumers within the meaning of the Relevant Consumer Law and Facts (SASOC [14]–[16]).~~

~~1C. — Whether all Claim Warrants issued by RBS in relation to the Navra Managed Funds (defined in 18(b) of the SASOC), Navra Blue Chip Australian Share Retail Fund and or any other fund of Navra Financial Services, comprise the same, similar or related circumstances to the Claim Warrants held by each of the Applicants (SASOC [3]).~~



- 1D. — Whether RBS provided the Claimants with financial products and or services, including the creating, issuing and manufacturing of financial products (SASOC [4] [5]).
- 1E. — Whether the Claimants were each consumers (SASOC [14] [16], [108], [127], [133], [170], [186], [187] and [188]).
- 1F. — Whether the Claim Warrants posed the Claim Warrants Risk (as defined in the SASOC) to each of the Claimants and RBS knew of the Claim Warrants Risk imposed on each of the Claimants (SASOC [21] [24], [27] and [97]).
2. — Whether, in or about February 2008, Navra Financial Services advised the Claimants to acquire the Claim Warrants (SASOC [26] [25] [27]).
- 2A. — Whether some or all of the Claimants held Double Geared Investments (SASOC [28]).
- 2B. — Whether the claimants each had little or no experience in investing in financial products or services (SASOC [30] [30A]).
3. — Whether the Claim Warrants had the features identified in SASOC [32] — [39].
- 3A. — Whether the Contracts or Product Disclosure Statements had the material terms identified in SASOC [40] [47] and [81].
- 3B. — Whether the purported Trust Deeds had the material terms identified in SASOC [48] [56].
- 3C. — Whether RBS had the knowledge (or ought to have had the knowledge) identified in SASOC [57] [63M], [63O], [106] [108], [110], [111], [113], [114], [116], [120], [125], [126] and [135].
4. — Whether, in or about June 2008, Navra Financial Services advised the Applicant and the Group Members to roll over from the 'NRFUZ' series of Claim Warrants to the 'NRFKZ' series of Claim Warrants (SASOC [29]).
5. — The circumstances in which the 'NRFUZ' series of Claim Warrants were terminated by RBS (SASOC [80]).
6. — Whether the 'NRFUZ' series of Claim Warrants differed from the 'NRFKZ' series of Claim Warrants in the ways identified in SASOC [37] [38], SOC [34], or otherwise, how they differed (SASOC [81]).
7. — Whether the Stop Loss Events in respect of the Claim Warrants occurred as identified in SASOC [90].



~~Breach of contract claims~~

~~7A. Whether the Claimants entered into contracts for financial services and or products with RBS (SASOC [91] and [95]).~~

~~8. Whether the Sale Contracts contained the Due Care and Skill Warranty (SASOC [92 (a)] and [104]).~~

~~9. Whether the Sale Contracts contained the Fitness for Purpose Warranty (SASOC [92(b)] and [104]).~~

~~9A. Whether the Sale Contracts contained implied terms (SASOC [96], [98] and [104]).~~

~~10. Whether RBS breached the Due Care and Skill Warranty (SASOC [93], [102A], [137] and [104]).~~

~~11. Whether RBS breached the Fitness for Purpose Warranty (SASOC [94], [102A], [137] and [104]).~~

~~11A. Whether RBS breached the implied terms (the Common Law Implied Breaches) (SASOC [101] to [102], [137] and [104]), and the circumstances of the breach (SASOC [99] [100]).~~

~~12. The quantum of loss or damage arising from RBS's breach of contract.~~

~~Unconscionable conduct~~

~~12A. Whether RBS was on notice of the Claimants' vulnerability (SASOC [109], [110] and [112]).~~

~~12B. Whether RBS worked with Navra Financial Services to tailor the Claim Warrants to suit Navra clients (SASOC [115]).~~

~~12C. Whether RBS did not make the enquiries identified in SASOC [117].~~

~~13. Whether at all material times during the Claim Period, RBS knew, did the things, or omitted to do the things pleaded in ASOC [106] and referred to SASOC [118] and [120].~~

~~14. Whether RBS enjoyed the advantages pleaded in ASOC [121] SASOC [119] to [124] to the detriment of the Claimants.~~

~~15. Repeat [3C] herein. Whether RBS was aware or ought to have been aware of the matters pleaded in SOC [51] SASOC [126].~~

~~16. Whether the Claimants were in a position of vulnerability or special disadvantage in relation to RBS (ASOC [119]) (SASOC [108] [109A], [110] and [116] to [117]).~~



~~16A. Whether the Contracts and or purported Trust Deeds and or the circumstances surrounding them were unjust, unfair and or unconscionable (SASOC 122).~~

~~17. Whether RBS engaged in unconscionable conduct in breach of:~~

~~(a) section 12CA, 12CB and or 12CC of the ASIC Act;~~

~~(b) section 51AA, 51AB and or 51AC of the TPA;~~

~~(c) sections 20 to 22A, 21 and or 22 of the ACL; and or~~

~~(d) section 991A of the CA.~~

~~18. The quantum of the Claimants' loss or damage arising from RBS's unconscionable conduct in breach of one or more of the provisions referred to in 17, above.~~

~~Linked credit provider claims~~

~~18A. The circumstances set out in paragraphs [129] to [130] of the SASOC.~~

~~19. Whether the Navra Retainer Agreements that Navra Financial Services entered into were provided to the Claimants as 'retail clients' within the meaning of section 761A of the CA (SASOC [131]).~~

~~20. Whether the Navra Retainer Agreements contained an implied term pursuant to section 945A of the CA (SASOC [131]).~~

~~21. Whether the services acquired by the Claimants pursuant to the Navra Retainer Agreements were services acquired by the Claimants that were of a kind ordinarily acquired for personal, domestic or household use or consumption (SASOC [132(a)]).~~

~~22. Whether the services acquired by the Claimants pursuant to the Navra Retainer Agreements included the provision of "personal advice" within the meaning of section 766B(3) of the CA (SASOC [132(b)]).~~

~~23. Whether the services acquired by the Claimants pursuant to the Navra Retainer Agreements were acquired by the Claimants as "consumers" within the meaning of section 12BC of the ASIC Act (SASOC [133] [134]).~~

~~24. Whether Navra Financial Services knew or ought to have known of the matters pleaded in SASOC [135(a)-(h)].~~



25. — ~~Whether Navra Financial Services provided the Warrant Acquisition Advice to the Claimants (SASOC [136]).~~

26. — ~~Whether, in providing the Warrant Acquisition Advice to the Claimants, Navra Financial Services failed to act with due care and skill in breach of the Navra Retainer Agreements Navra Due Care and Skill Warranty, Navra Fitness for Purpose Warranty and the Section 945A Implied Term (SASOC [137]).~~

27. — ~~Whether, in providing the Warrant Acquisition Advice to the Claimants, Navra Financial Services failed to provide the Claimants with advice that was reasonably fit for their purposes, in breach of the Navra Retainer Agreements (SASOC [138]).~~

27A. — ~~Whether Navra Financial Services did the things or failed to do the things set out in SASOC [139] [140] and [142].~~

27B. — ~~Whether the Claimants relied on one or more of the Warrant Rollover Advice and the Warrant Acquisition Advice or other advice pleaded, in procuring, rolling over or purchasing financial products and services (SASOC [145] [146]).~~

27C. — ~~Whether Navra Financial Services breached the Navra Due Care and Skill and Navra Fitness for Purpose Warranties and the Section 945A Implied Term (SASOC [141], [143] and [144]).~~

27D. — ~~Whether certain express oral terms were implied into each of the Contracts (SASOC [146A] [146C]).~~

27E. — ~~Whether the express terms the subject of SASOC [146A] [146C] were breached (SASOC [146D]).~~

28. — ~~Whether Navra Financial Services made the Claim Warrant Acquisition Representations (SASOC [148]).~~

29. — ~~Whether the Claim Warrant Acquisition Representations were made:~~

~~(a) — In trade or commerce;~~

~~(b) — In relation to financial services within the meaning of section 12DA(1) of the ASIC Act;~~

~~(c) — In relation to a financial product or service within the meaning of section 1041H of the CA;~~

~~(SASOC [149] and [153]).~~

30. — ~~Whether the Claim Warrant Acquisition Representations:~~



~~(a) — To the extent that they included representations as to present matters, were misleading or deceptive or likely to mislead or deceive;~~

~~(b) — To the extent that they included representations as to future matters, were made without any reasonable basis;~~

~~{SASOC [151] [150] [152]}.~~

~~31. — Whether Navra Financial Services made the Claim Warrant Rollover Representations {SASOC [158]}.~~

~~32. — Whether the Claim Warrant Rollover Representations were made:~~

~~(a) — In trade or commerce;~~

~~(b) — In relation to financial services within the meaning of section 12DA(1) of the ASIC Act;~~

~~(c) — In relation to a financial product or service within the meaning of section 1041H of the CA;~~

~~{SASOC [159] and [162]}.~~

~~33. — Whether the Claim Warrant Rollover Representations:~~

~~(a) — To the extent that they included representations as to present matters, were misleading or deceptive or likely to mislead or deceive;~~

~~(b) — To the extent that they included representations as to future matters, were made without any reasonable basis;~~

~~{SASOC [159] and [160]}.~~

~~33A. — Whether Navra Financial Services engaged in innocent or negligent misrepresentation {SASOC [154] and [163]}.~~

~~33B. — Whether the Claimants relied on the representations of Navra Financial Services as referred to in SASOC [155], [156], [164] and [165].~~

~~34. — Whether RBS was a corporation within the meaning of the TPA or the ACL which provided in the course of carrying on a business by RBS, credit to consumers in relation to the acquisition of goods and services {SASOC [167]}.~~



35. ~~Whether at all material times during the Claim Period, RBS and Navra Financial Services had an arrangement or understanding relating to the business carried on by Navra Financial Services of supplying financial services (SASOC [168]).~~

36. ~~The circumstances set out in SASOC [168]. Whether at all material times during the Claim Period, Navra Financial Services, by arrangement with RBS, regularly referred its clients to RBS for the purposes of obtaining credit (SOC [85(b)]).ASOC [168]).~~

37. ~~[Blank.] Whether at all material times during the Claim Period Navra Financial Services by arrangement with RBS made available to its clients RBS's contracts, application forms and offers of credit (SOC [85(c)]).ASOC [168]).~~

38. ~~[Blank.] Whether at all material times during the Claim Period, by arrangement or understanding between Navra Financial Services and RBS, RBS's contracts, application forms and offers of credit could be signed by clients of Navra Financial Services at the premises of Navra Financial Services or via email through representatives of Navra Financial Services (SOC [85(d)]).ASOC [168]).~~

38A. ~~[Blank.]~~

39. ~~Whether at all material times during the Claim Period RBS was a linked credit provider in relation to Navra Financial Services within the meaning of section 73 of the TPA or section 278 of the ACL (SASOC [168] and [169]).~~

40. ~~Whether RBS and Navra Financial Services are jointly and severally liable to the Claimants for the amount of loss or damage suffered by the Claimants as a result of the breaches of contract and misrepresentations by Navra Financial Services (SASOC [172]).~~

41. ~~The quantum of loss and damage suffered by the Claimants.~~

~~Contracts Review Act~~

42. ~~Whether the Sale Contracts contained terms which were unreasonably difficult for the Applicants and Group Members to comply with (SASOC [178]).~~

43. ~~Whether the Sale Contracts contain terms which were not reasonably necessary for the protection of the legitimate interests of RBS (SASOC [178]).~~

44. ~~Whether the Applicants' and Group Members' economic circumstances, educational background and financial, commercial and legal literacy was far inferior to Navra Financial Service and RBS (SASOC [173] to [174], [179] and [180]).~~



45. — ~~Whether the language of the Sale Contracts was difficult to understand and not transparent (SASOC [181]).~~

46. — ~~Did RBS require the Applicants and Group Members to seek independent legal and financial advice and whether it was sought (SASOC [182]).~~

47. — ~~Whether unfair tactics or pressure was used against the Applicants and Group Members in order for them to enter in the Sale Contracts (SASOC [183]).~~

48. — ~~Whether there was a significant imbalance of rights and obligations between RBS and the Applicants and Group Members in the Sale Contracts and the Trust Deeds (SASOC [175] to [176] and [185]).~~

49. — ~~Whether the law of the Sale Contracts and the Trust Deeds was the law of New South Wales (SASOC [192]).~~

49A. — ~~Whether the Contracts and Trust Deeds were for the provision of financial products, services and or credit (SASOC [193]).~~

50. — ~~Whether there an inequality of bargaining power between the Applicants and RBS and the Third Respondent as trustee (SASOC [177] and [194]).~~

51. — ~~Whether the Sale Contracts and the Trust Deeds and the circumstances in which they were made were unjust or unfair pursuant to section 9 of the Contracts Review Act 1980 or other legislation (SASOC [194]).~~

52. — ~~The quantum of loss and damages that should be awarded should the Sale Contracts and/or the Trust Deeds be found to be unfair and unjust.~~

52A. — Whether the Contracts were unfair or unjust to the Applicants and Group Members given the commercial reality and setting of the Contracts (SASOC [184]).

52B. — Whether RBS acted unconscionably (SASOC [185A]).

Limitations

53. — Whether RBS can rely on its alleged limitations defence, given the matters set out in Reply [57]-[67].

Proportionate Liability



~~54. Whether s35 of the Civil Liability Act 2002 (NSW) applies to each pleaded cause of action (Reply [78] and [80]).~~

~~55. Whether Navra Financial Services is a concurrent wrongdoer (denied, except insofar as is pleaded in relation to linked credit provider) (Reply [80]).~~

Representative action

The Applicants bring this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are identified in paragraph 2 of the Second Amended Statement of Claim.

Applicant's address

The Applicants' address for service is:

Place: C/- Shine Lawyers

Level 6

299 Elizabeth Street

SYDNEY NSW 2000

Email: lwhiffen@shine.com.au vantzoulatos@shine.com.au

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: ~~27 October 2016~~ 8 December 2017

A handwritten signature in blue ink, appearing to read 'Simon Morrison', is written over a dotted line.

Signed by Vicky Antzoulatos by Simon Morrison
Lawyer on record (~~By his authorised delegate~~
~~Ashok Yogachandra~~)