

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)  
VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA  
GENERAL DIVISION**

**No: VID196/2013**

**NOTICE OF FILING**

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/07/2013.

**DETAILS OF FILING**

**Document Lodged:** Reply - Form 34 - Rule 16.33  
**File Number:** VID196/2013  
**File Title:** Lucio Robert Paciocco & Anor v Australia and New Zealand Banking Group Limited  
**District Registry:** VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



★ Dated: 23/07/2013

Registrar

A handwritten signature in blue ink, which appears to read "Warwick Soden".

**Note**

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



Form 34  
Rule 16.33

## Reply to the Amended Defence dated 20 June 2013

VID 196 of 2013

Federal Court of Australia  
District Registry: Victoria  
Division: General

**LUCIO ROBERT PACIOCCO and another**  
Applicants

**AUSTRALIA AND NEW ZEALAND BANKING  
GROUP LIMITED (ACN 005 357 522)**  
Respondent

*For the purposes of this Reply, the applicants adopt (where the context permits) the abbreviations and defined terms used in their Originating Application Starting a Representative Proceeding Under Part IVA of the Federal Court of Australia Act 1976 and Amended Statement of Claim (ASOC) filed in this proceeding.*

*Unless otherwise indicated, references to paragraphs include their sub-paragraphs, and references to sub-paragraphs include their chapeau and sub-paragraphs.*

Filed on behalf of (name & role of party)	Lucio Robert Paciocco & Anor – Applicants		
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[Form approved 01/08/2011]

- 1 The applicants join issue with the allegations in the Amended Defence dated 20 June 2013 (**Defence**), save insofar as the same consists of admissions, or is the subject of specific comment in this Reply.
- 2 In reply to sub-paragraphs 8(a) and (b) of the Defence, the applicants admit that the term stated in sub-paragraph 12(c) of the ASOC relates to payments upon a cheque and not to payments more generally.
- 3 In reply to sub-paragraph 16(b) of the Defence, the applicants admit that the Conditions of Use did not apply to the ANZ Visa PAYCARD and the Telstra Visa PAYCARD.
- 4 In reply to sub-paragraphs 24(a) and (b) of the Defence, the applicants admit ANZ's allegations in respect of the terms stated in sub-paragraphs 28(m), (n) and (o) of the ASOC.
- 5 In reply to sub-paragraph 30(b) of the Defence, the applicants admit that ANZ did not charge the first applicant Saving Dishonour Fees during the Relevant Period agreed for the purposes of the initial trial.
- 6 In reply to sub-paragraph 39(c) of the Defence, the applicants:
  - (a) deny that the occurrence of the events that gave rise to each Exception Fee charged to each applicant and group member constituted the supply of one or more services by ANZ for the benefit of the applicant or group member (as applicable); and
  - (b) say further that, even if the occurrence of those events did constitute the supply of one or more services by ANZ for the benefit of the applicant or group member, the amount of the Exception Fee was in each case disproportionate to the cost to ANZ of supplying those services, to such an extent that the charging of the Exception Fees and/or the terms of the Contracts pursuant to which the Exception Fees were charged constituted:
    - i. unconscionable conduct within the meaning of the statutory provisions referred to in Section C.6 of the ASOC;
    - ii. unjust transactions within the meaning of the statutory provisions referred to in Section C.7 of the ASOC; and
    - iii. unfair terms within the meaning of the statutory provisions referred to in Section C.8 of the ASOC.
- 7 In reply to paragraph 84 of the Defence, read together with paragraphs 7, 15 and 23 of the Defence, the applicants say that section 70(1) of the Code applies also to Code Contracts at the time they were changed.

8 In reply to paragraph 87 of the Defence, read together with paragraphs 7, 15 and 23 of the Defence, the applicants say that section 76(1) of the New Code applies also to New Code Contracts at the time they were changed.

9 In reply to sub-paragraph 98(e)(i) of the Defence, the applicants:

(a) deny that any of their claims and/or those of the group members are barred by section 5 of the *Limitation of Actions Act 1958* (Vic) (**Victorian Limitation Act**), and say further that:

- i. the charging of the Exception Fees by the respondent was not authorised (for the reasons set out in the ASOC), and therefore did not affect the balance of the applicants' and group members' accounts with the respondent;
- ii. their claims include, therefore, claims for repayment of an amount standing to the credit of their accounts with the respondent (**Repayment Claim**);
- iii. a demand by the applicants and group members was a precondition to the liability of the respondent under the Repayment Claim;
- iv. accordingly, the applicants' and group members' cause of action did not accrue for the purposes of the Repayment Claim until such time as a demand was made; and
- v. no such demand was made until 14 March 2013 (being the date on which this proceeding was commenced);

(b) *further, or in the alternative*, say that:

- i. their claims and those of the group members include claims for relief from the consequences of a mistake (as set out in paragraph 65 of the ASOC) within the meaning of section 27 of the Victorian Limitation Act;
- ii. any period of limitation prescribed by the Victorian Limitation Act did not therefore begin to run against each of the applicants and group members until he/she/it discovered the mistake, or could with reasonable diligence have discovered it; and
- iii. none of the applicants and group members did discover, or could with reasonable diligence have discovered, the mistake at any time prior to 14 March 2007 (being 6 years prior to the commencement of this proceeding).

10 In reply to sub-paragraph 98(e)(ii) of the Defence, the applicants:

- (a) deny that any of their claims and/or those of the group members are barred by section 14 or 15 of the *Limitation Act 1969* (NSW) (**NSW Limitation Act**), and repeat sub-paragraphs 7(a)(i) – (v) above;
- (b) *further, or in the alternative*, say that:
  - i. their claims and those of the group members include claims for relief from the consequences of a mistake (as set out in paragraph 65 of the ASOC) within the meaning of section 56 of the NSW Limitation Act;
  - ii. the time which elapsed after any limitation period fixed by or under the NSW Limitation Act commenced to run and before the date on which each of the applicants and group members first discovered, or may with reasonable diligence have discovered, the mistake, does not count in the reckoning of the limitation period for an action by that person; and
  - iii. none of the applicants and group members did discover, or might with reasonable diligence have discovered, the mistake at any time prior to 14 March 2007 (being 6 years prior to the commencement of this proceeding).

11 In reply to sub-paragraph 98(e)(iii) of the Defence, the applicants:

- (a) deny that any of their claims and/or those of the group members are barred by section 11 or 12 of the *Limitation Act 1985* (ACT) (**ACT Limitation Act**), and repeat sub-paragraphs 7(a)(i) – (v) above;
- (b) *further, or in the alternative*, say that:
  - i. their claims and those of the group members include claims for relief from the consequences of a mistake (as set out in paragraph 65 of the ASOC) within the meaning of section 34 of the ACT Limitation Act;
  - ii. the time that elapsed after any limitation period fixed by or under the ACT Limitation Act began to run and before the date when each of the applicants and group members first discovered, or may with reasonable diligence have discovered, the mistake, does not count in the reckoning of the limitation period for an action by that person; and
  - iii. none of the applicants and group members did discover, or might with reasonable diligence have discovered, the mistake at any time prior to 14 March 2007 (being 6 years prior to the commencement of this proceeding).

12 In reply to sub-paragraph 98(e)(iv) of the Defence, the applicants:

- (a) deny that any of their claims and/or those of the group members are barred by section 10 of the *Limitation of Actions Act 1974* (Qld) (**Queensland Limitation Act**), and repeat sub-paragraphs 7(a)(i) – (v) above;
- (b) *further, or in the alternative*, say that:
  - i. their claims and those of the group members include claims for relief from the consequences of mistake (as set out in paragraph 65 of the ASOC) within the meaning of section 38 of the Queensland Limitation Act;
  - ii. any period of limitation prescribed by the Queensland Limitation Act did not therefore begin to run against each of the applicants and group members until he/she/it discovered the mistake, or could with reasonable diligence have discovered it; and
  - iii. none of the applicants and group members did discover, or could with reasonable diligence have discovered, the mistake at any time prior to 14 March 2007 (being 6 years prior to the commencement of this proceeding).

13 In reply to sub-paragraph 98(e)(v) of the Defence, the applicants deny that any of their claims and/or those of the group members are barred by section 35 of the *Limitation of Actions Act 1936* (SA), and repeat sub-paragraphs 7(a)(i) – (v) above.

14 In reply to sub-paragraph 98(e)(vi) of the Defence, the applicants:

- (a) deny that any of their claims and/or those of the group members are barred by section 4 of the *Limitation Act 1974* (Tas) (**Tasmanian Limitation Act**), and repeat sub-paragraphs 7(a)(i) – (v) above;
- (b) *further, or in the alternative*, say that:
  - i. their claims and those of the group members include claims for relief from the consequences of a mistake (as set out in paragraph 65 of the ASOC) within the meaning of section 32 of the Tasmanian Limitation Act;
  - ii. any period of limitation prescribed by the Tasmanian Limitation Act did not therefore begin to run against each of the applicants and group members until he/she/it discovered the mistake, or could with reasonable diligence have discovered it; and

- iii. none of the applicants and group members did discover, or could with reasonable diligence have discovered, the mistake at any time prior to 14 March 2007 (being 6 years prior to the commencement of this proceeding).

15 In reply to sub-paragraph 98(e)(vii) of the Defence, the applicants deny that any of their claims and/or those of the group members are barred by section 38 of the *Limitation Act 1935* (WA) (**WA Limitation Act**), and:

- (a) repeat sub-paragraphs 7(a)(i) – (v) above; and
- (b) say further that the WA Limitation Act does not, in any event, apply to causes of action that accrued to the applicants and/or group members on or after 15 November 2005.

16 In reply to sub-paragraph 98(e)(viii) of the Defence, the applicants:

- (a) deny that any of their claims and/or those of the group members are barred by section 12 or 13 of the *Limitation Act 1981* (NT) (**NT Limitation Act**), and repeat sub-paragraphs 7(a)(i) – (v) above;
- (b) *further, or in the alternative*, say that:
  - i. their claims and those of the group members include claims for relief from the consequences of a mistake (as set out in paragraph 65 of the ASOC) within the meaning of section 43 of the NT Limitation Act;
  - ii. the time which elapsed after any limitation period fixed by or under the NT Limitation Act commenced to run and before the date on which each of the applicants and group members first discovered, or may with reasonable diligence have discovered, the mistake, does not count in the reckoning of the limitation period for an action by that person; and
  - iii. none of the applicants and group members did discover, or might with reasonable diligence have discovered, the mistake at any time prior to 14 March 2010 (being 3 years prior to the commencement of this proceeding).

Date: 23 July 2013



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Signed by Steven Foale  
Lawyer for the Applicants

This pleading was prepared by Steven Foale, lawyer

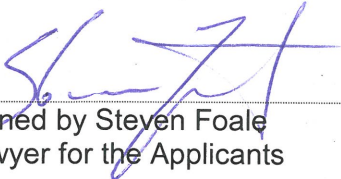


**Certificate of lawyer**

I Steven Mark Foale certify to the Court that, in relation to the reply filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 23 July 2013



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Signed by Steven Foale  
Lawyer for the Applicants