

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/10/2021 3:00:38 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
File Number: VID498/2020
File Title: EQUITY FINANCIAL PLANNERS PTY LTD v AMP FINANCIAL PLANNING PTY LTD
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 8/10/2021 4:11:44 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

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 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.



Amended Reply to Points of Defence

No. VID 498 of 2020

Federal Court of Australia
District Registry: Victoria
Division: Commercial

Equity Financial Planners Pty Limited

Applicant

AMP Financial Planning Pty Limited

Respondent

The applicant makes the following reply to the Points of Defence filed 5 August 2021 (**Points of Defence**), adopting the terms defined in the amended statement of claim or points of claim.

1. As to AMPFP's repetition of paragraphs 28A(b), 30(b), 33, 42, 46(c) of the defence to the amended statement of claim in paragraph 5 of the Points of Defence – if (which is denied) any of the 8 August 2019 Changes took effect from 8 September 2020, then WealthStone, which had an exercise date of 8 December 2019, is entitled to damages for breach of contract as pleaded in paragraph 36 of the amended statement of claim.
2. As to paragraph 5 (and, in particular, AMPFP's repetition of paragraphs 36(b) and 46(d) of the defence to the amended statement of claim) and paragraph 35(b) of the Points of Defence:
 - (a) As pleaded in paragraph 24 of the Points of Claim, the condition precedent to the Purported Release in cl 5 of WealthStone's BBA (being payment by AMPFP of the BOLR Benefit) has not been satisfied in circumstances where the amount paid by AMPFP has been calculated having regard to the 8 August 2019 Changes.
 - (b) As pleaded in paragraph 44 of the Points of Claim, the Purported Release in WealthStone's BBA is void in light of the matters pleaded in paragraphs 31, 32, 33 and 43 of the Points of Claim.

Filed on behalf of	Equity Financial Planners Pty Ltd, the applicant
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- (c) The question of whether AMPFP's misleading and deceptive conduct pleaded at paragraphs 52-56 of the amended statement of claim was a cause of WealthStone entering into the Buy-Back Agreement containing the release and, if so, whether WealthStone is thereby entitled to resist AMPFP's enforcement of the release in respect of that claim is a question individual to WealthStone and must be determined at a separate hearing of WealthStone's claim (if the allegations pleaded at paragraphs 36(a) and 45 of the amended statement of claim are established).
3. As to paragraph 32 of the Points of Defence, the applicant:
- (a) does not know and therefore cannot admit sub-paragraphs (a) or (d);
 - (b) admits sub-paragraph (c);
 - (c) says further that AMPFP had all or most of the bargaining power in relation to the terms of WealthStone's BBA;
 - (d) says further that WealthStone's BBA was substantially prepared by AMPFP before any discussion relating to the transaction had occurred between AMPFP and WealthStone;
 - (e) says further that WealthStone was, in effect, required either to accept or reject the terms of WealthStone's BBA in the form in which they were presented;
 - (f) otherwise denies the paragraph.
4. As to paragraph 35(c) of the Points of Defence, the applicant:
- (a) says that in circumstances where the Purported Release was ineffective or void for one or more of the reasons pleaded in paragraph 2 above, there has been no accord in respect of the claims pleaded in paragraph 35 of the Points of Claim;
 - (b) says further and in the alternative, that AMPFP did not provide valuable consideration for the purchase of the Purported Release in WealthStone's BBA and so there was no satisfaction in respect of any accord reached between AMPFP and WealthStone in respect of the claim pleaded in paragraph 35 of the Points of Claim (which accord is denied);
 - (c) says further and in the alternative, that if the act of payment of the BOLR Benefit formed the agreed satisfaction in respect of any accord reached between AMPFP and WealthStone in respect of the claim pleaded in paragraph 35 of the Points of Claim (which accord is denied), then that satisfaction was never performed in

circumstances where the amount paid by AMPFP to WealthStone has been calculated having regard to the 8 August 2019 Changes;

(d) otherwise denies the paragraph.

5. As to paragraph 41 of the Points of Defence, the applicant:

(a) denies the paragraph;

(b) says further that in circumstances where AMPFP was obliged to make a payment to WealthStone in accordance with the BOLR Policy, the release in cl 5 of WealthStone's BBA was not reasonably necessary to protect AMPFP's legitimate interests;

(c) says further that the threat of litigation does not without more give rise to a legitimate commercial interest in obtaining a release from such litigation.

6. The applicant otherwise joins issue with the Points of Defence.

Amended: 8 October 2021



Signed by Chris Pagent
Lawyer for the Applicant

This pleading was prepared by Stuart Lawrance and Kate Lindeman of counsel.

Certificate of lawyer

I Chris Pagent certify to the Court that, in relation to the reply filed on behalf of the Applicant, 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: 8 October 2021



Signed by Chris Pagent
Lawyer for the Applicant