

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL & EQUITY DIVISION

No S CI 2014 03482

B E T W E E N:

TIMBERCORP FINANCE PTY LTD (In Liquidation)
(ACN 054 581 190)

Plaintiff

- and -

PETER GRUYTERS

Defendant

(by original proceeding)

REJOINDER

(Amended pursuant to leave granted by His Honour Justice Judd on 30 August 2016)

Date of Document:	30 August 2016
Filed on behalf of:	The Defendant
Prepared by:	Solicitors' code: 339
Slater & Gordon	DX: 229 Melbourne
Solicitors	Fax: 9600 0290
485 Latrobe Street	Tel: 9602 4855
Melbourne Vic 3000	Ref: MJW1:M400026

To the Reply dated 9 April 2015, the defendant says by way of rejoinder:

1. As to paragraph 1 thereof, he denies he is precluded from raising the pleaded defences and says further that:
 - (a) The defendant was at all relevant times the beneficiary of the trusts referred to in the statement of claim, and insofar as those trusts are concerned the defendant was not a group member in in proceeding no. SCI 9807 of 2009 ("the group proceeding") because the definition of group member excluded the beneficiaries of any trust, the trustee of which is or at any time during the relevant period was, inter alia, the plaintiff herein or Timbercorp Securities Limited;
 - (b) The provisions of Part IVA of the *Supreme Court Act 1986 (Vic)* do not prevent a person who was a group member in the group proceeding from making claims in this Honourable Court against the persons who were defendants in the group proceeding where the claims differ from those made in the group proceeding if it is just and equitable that those other claims be heard and determined by the Court;
 - (c) The defendant was not a party to the group proceeding;

- (d) The matters raised in his defence herein are substantively different from the allegations made by the plaintiffs in the group proceeding;
 - (e) None of the questions posed and answered in the group proceeding were questions for determination arising from the defendant's defence herein;
 - (f) The matters now relied upon by the defendant concern property subject to a trust and under section 33B(2)(b)(ii) of the *Supreme Court Act 1986* could not have formed part of the group proceeding claims;
 - (g) The defendant only became aware of the matters in the defence in 2014 which was after Judgment in the group proceeding had been delivered;
 - (h) In the premises, and having regard to the circumstances of the group proceeding, the defendant is reasonably justified in raising the defences herein and is not precluded by law from doing so.
2. The defendant says further that the allegations in the statement of claim contain no cause of action because ANZ is not a party to this proceeding and yet is as best the defendant can currently tell the assignee of the alleged indebtedness of the defendant to the plaintiff.

Particulars

Further particulars will be provided after discovery and before trial.

3. As to paragraph 2 thereof, he denies he is barred by s.21 of the *Limitations of Actions Act 1958 (Vic)* and says further that by reason of the matters set out in the defence herein, s.21(1) of that Act applies.

Dated: 30 August 2016

D J FARRANDS

M GARRETT

R KRUSE



Slater & Gordon
Solicitors for the defendant