



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: M22/2024  
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#### Important Information

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## Form 27F – Outline of oral submissions

Note: see rule 44.08.2.

M22/2024

IN THE HIGH COURT OF AUSTRALIA  
MELBOURNE REGISTRY

BETWEEN:

**ADAM ELISHA**

Appellant

and

**VISION AUSTRALIA LIMITED**

Respondent

### APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

#### PART I: CERTIFICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

#### PART II: OUTLINE OF ORAL SUBMISSIONS

**(1) Notice of contention ground 1: 2015 Disciplinary Procedure was incorporated**

2. There are concurrent findings below that the 2015 Disciplinary Procedure was incorporated. Those concurrent findings are correct: **AS [41]; Reply [13]–[18]; CA [89]–[110] (CAB 210–4).**

**(2) Appeal ground 2: damages were (and are) recoverable in contract**

3. *Addis v Gramophone Co Ltd* is not authority precluding damages for psychiatric injury consequent on wrongful dismissal: **AS [23]–[32]; Reply [3].**

*Addis v Gramophone Co Ltd* [1909] AC 488 at 489–1, 492–3, 496–7, 500, 501–2, 504–5 (**JBA Vol 3 Tab 18 p 611**)

*Johnson v Unisys Ltd* [2003] 1 AC 518 at [3], [15]–[17], [44], [69]–[70] (**JBA Vol 4 Tab 26 p 1127**)

4. Recovery should be assessed in accordance with ordinary principles. There is no reason for a rule preventing recovery of damages for psychiatric injury consequent on wrongful dismissal: **AS [32]–[36], [38]; Reply [5]–[6]**.

*Baltic Shipping Co v Dillon* (1993) 176 CLR 344 at 362, 405 (**JBA Vol 2 Tab 13 p 294**)

*Kozarov v Victoria* (2022) 273 CLR 115 at [4], [100]–[103] (**JBA Vol 2 Tab 15 p 408**)

5. Mr Elisha’s damages were not too remote: **AS [39]–[40]; Reply [2] cf CA [163], [176], [180]–[188] (CAB 224–9)**.

J Edelman, *McGregor on Damages* (Sweet & Maxwell, 21st Edition, 2021) at [8-176], [8-183] (**JBA Vol 5 Tab 38 p 1495**) (equivalent paragraphs in the 22nd Edition are [9-185], [9-192])

**(3) Appeal ground 1: the Respondent owed the duty of care**

6. The duty is an aspect of the non-delegable duty to provide a safe system of work: **AS [21]–[22], [34], [44]–[46], [49]; Reply [9], [12]**.

*Hayes v State of Queensland* [2017] 1 Qd R 337 (**JBA Vol 4 Tab 24 p 982**)

7. The duty is coherent with contract: **AS [42], [44]; Reply [10]**.

8. The duty is coherent with statute: **AS [50]–[56]; Reply [11]**.

*New South Wales v Paige* (2002) 60 NSWLR 371 at [1], [52]–[70], [97]–[131], [156]–[177], [330], [358] (**JBA Vol 4 Tab 28 p 1195**)

*Johnson v Unisys* [2003] 1 AC 518 (**JBA Vol 4 Tab 26 p 1127**)

*Fair Work Act 2009* (Cth) ss 382, 383, 392, 725, 732 (**JBA Vol 1 Tab 3 p 57**)

*Fair Work Act Regulations 2009* (Cth) reg 3.05 (**JBA Vol 1 Tab 4 p 140**)

*Commonwealth Bank of Australia v Barker* (2014) 253 CLR 169 at [20], [36], [40], [118] (**JBA Vol 2 Tab 14 p 629**)

Dated: 15 October 2024



Perry Herzfeld



Eitan Makowski



Stephen Puttick