

SUPREME COURT OF QUEENSLAND

**REGISTRY: Brisbane
NUMBER: 4103/17**

Plaintiff: MALLONLAND PTY LTD
ACN 051 136 291

AND

Defendant ADVANTA SEEDS PTY LTD
ACN 010 933 061

REPLY OF THE PLAINTIFF

The Plaintiff relies on the following facts in reply to the Defence of the Defendant:

1. The Plaintiff adopts the admissions made by the Defendant in its Defence filed 5 June 2016 (the **Defence**).
2. The Plaintiff joins issues with those facts which were either not admitted or denied in the Defence.
3. As to paragraph 2 of the Defence the Plaintiff:
 - (a) admits the facts pleaded in sub-paragraphs (d) and (e);
 - (b) denies that facts pleaded in sub-paragraph (f) and says that shattercane is recognised within the agricultural industry as being a noxious weed and is classified as an invasive and exotic species in North America;
 - (c) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.
4. As to paragraph 4 of the Defence the Plaintiff:
 - (a) admits the facts pleaded in sub-paragraph (a);

REPLY
Filed on Behalf of the Plaintiff
Uniform Civil Procedure Rules 1999
Rule 164

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- (b) denies that MR43 seed did not contain shattercane seed or that shattercane seed was not present in the MR43 seed distributed by the Defendant and says that the MR43 seed purchased by the Plaintiff and Group Members:
 - (i) did contained shattercane seed;
 - (ii) was purchased packaged in the manner set out in paragraph 7(d) of the Statement of Claim
 - (c) denies that the Plaintiff and each Group Member of Claimant did not suffer loss and damage due to the presence of shattercane seed in MR43 seed distributed by the Defendant for the reasons set out in paragraphs 6(f); 6(g)(iv), 6(h), 38, 46 and 47 the Statement of Claim;
 - (d) denies that shattercane did not contaminate any Group Members' or Claimants' land or any land which the Plaintiff had an interest as such allegation is untrue.
 - (e) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.
5. The Plaintiff admits the facts pleaded in paragraph 5 of the Defence.
6. As to paragraph 6 of the Defence the Plaintiff:
- (a) denies the facts pleaded in sub-paragraph (c)(iv) and says that the characteristics of shattercane are that it contaminates and infects land on which it is planted (or which it infests naturally) in that it germinates, propagates and multiplies on the land and thereby has an effect on the commercial farming of that land as it competes vigorously with any other planted crop and reduces their yield;
 - (b) denies the facts pleaded in sub-paragraphs (c)(v) and (vi) and says that the Plaintiff's land (described as "the Properties" in paragraph 11(e) of the Statement of Claim) was only infected with shattercane immediately after the land was planted with MR43 seed. To the extent necessary and for the purpose of its negligence case only the Plaintiff will also rely on the doctrine of *res ipsa loquitur*.
 - (c) admits the facts pleaded in sub-paragraph (c)(vii)(A);

- (d) does not admit the facts pleaded in sub-paragraph (c)(ix)(B) as the full extent of the chemical or other processes by which MR43 seed was treated are presently unknown to the Plaintiff;
 - (e) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.
- 7. As to paragraph 9(c) of the Defence the Plaintiff admits that MR43 seed was sold in Queensland only by retailers authorised by the Defendant to resell MR43 seed.
- 8. As to paragraph 14(b)(ii) of the Defence the Plaintiff denies that the causes of action accrued at the times pleaded therein and say that the relevant causes of action did not accrue until, at the earliest, a time when the Plaintiff and/or Group Members would have become aware of the impact and/or existence of shattercane, which was when a sorghum crop was first harvested and a reduced yield was noticed due to the existence of shattercane.
- 9. As to paragraph 17(c) of the Defence the Plaintiff denies that the effect of shattercane on commercial sorghum crops or on land on which commercial sorghum crops are grown can be lessened or controlled by:
 - (a) regular cleaning machinery;
 - (b) regular crop rotation;
 - (c) regular inspection of crops;
 - (d) a regular weed control regime in crop and fallowand says that:
 - (e) shattercane is a weed which needs to be eradicated on land in order for that land to be used for sorghum production;
 - (f) the eradication of shattercane involves a poisoning process which makes the land unavailable for other cropping during the time that this process is undertaken;
 - (g) the eradication process usually is undertaken in either spring or summer (when shattercane is active) and consequently land can be used to grow crops in winter or autumn;

- (h) the eradication process could take up to seven years to complete with the result that the land may not be able to be used for cropping purposes during the whole of this time;
- (i) shattercane propagates naturally on the land but also its spread is increased by harvesting as that process permits an increased rate of the spread of seed;
- (j) the spread of shattercane on infected land is not decreased by the regular cleaning of machinery;
- (k) it is not possible to undertake crop rotation during the period of time when shattercane is being eradicated from the land due to the poisons involved in such process;
- (l) the regular inspection of crops does not eradicate shattercane, although it may cause early detection of an infestation which can be beneficial in the eradication process;
- (m) a normal regular weed control regime will not eradicate shattercane.

10. As to paragraph 18 of the Defence the Plaintiff:

- (a) denies sub-paragraph (b)(i) and says that reasonable foreseeable harm was occasioned by the distribution of MR43 seed;
- (b) denies sub-paragraph (b)(ii) and says that if reasonable care had been undertaken in the manufacture of MR43 seed, such seed should not have contained shattercane seed;
- (c) denies sub-paragraph (b)(iii) for the reasons pleaded in paragraph 4 herein;
- (d) denies sub-paragraph (b)(iv) and for the reasons pleaded in paragraph 9 herein;
- (e) denies sub-paragraph (b)(v) and says that the Plaintiff only claims that a duty of care is owed to itself and Group Members;
- (f) denies sub-paragraph (b)(vi) and repeats and relies on the facts pleaded in paragraph 20 of the Statement of Claim;
- (g) denies sub-paragraph (b)(vii) and says that the duty of care could have been discharged by the Defendant ensuring that MR43 seed was manufactured with reasonable care and in such a way that it did not contain shattercane seed;

- (h) denies the conclusion of law pleaded in sub-paragraph(b)(viii) on the basis that such conclusion is incorrect;
 - (i) the Plaintiff does not understand and therefor does not plead to sub-paragraph (b)(ix);
 - (j) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.
11. As to paragraph 20 of the Defence the Plaintiff:
- (a) admits that the Defendant managed the production of MR43 seed as pleaded in sub-paragraph (b)(iii);
 - (b) denies that the MR43 seed purchased by the Plaintiff and Group Members was free of shattercane seed;
 - (c) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.
12. As to paragraph 22 of the Defendant the Plaintiff:
- (a) denies that the risk of harm associated with manufacturing MR43 seed which contained shattercane seed was not foreseeable as it was reasonably foreseeable that the risk of planting shattercane seed mixed with MR43 seed would cause the shattercane seed to grow and harm any sorghum crop that had been planted on the land and any future crop until the shattercane was eradicated from the land;
 - (b) denies that the risk of harm associated with manufacturing MR43 seed which contained shattercane seed was not insignificant as there was a real risk that by planting shattercane seed mixed with MR43 seed the shattercane seed would grow and harm any sorghum crop that had been planted on the land and any future crop until the shattercane was eradicated from the land;
 - (c) says that a reasonable person in the position of the Defendant would have taken precautions to ensure that the MR43 seed was manufactured in such a way that it did not contain shattercane seed having regard to:
 - (i) the probability that the harm would occur if care was not taken;
 - (ii) the likely seriousness of the harm; and
 - (iii) the burden of taking precautions to avoid the risk of harm

- (d) says that consequently the provisions of ss. 9 and/or 10 of the *Civil Liability Act 2003 (Qld)* do not apply;
 - (e) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.
13. As to paragraph 23 of the Defence the Plaintiff denies sub-paragraph(b)(iii) and says that the loss and damage suffered by the Plaintiff and Group Members was caused by the Defendant's breach of its duty of care (as pleaded in paragraphs 33 to 38 of the Statement of Claim) and that:
- (a) the breach of duty was a necessary condition to the occurrence of harm as, if the MR43 seed did not contain shattercane seed, the damage would not have occurred; and
 - (b) the scope of liability is appropriate as the loss and damages could not have been avoided by farming practices (as alleged in paragraph 17 of the Defence) for the reasons set out in paragraph 9 herein.
14. As to paragraphs 24 and 25 of the Defence the Plaintiff:
- (a) denies sub-paragraph 24(d) and 25(d) as there was a reasonable possibility that the MR43 seed might be contaminated or contain noxious weeds including shattercane for the reasons set out in paragraphs 14 to 45 of the Statement of Claim;
 - (b) denies sub-paragraph 24(e) and 25(f) as by remaining silent as to the possibility of the existence of shattercane in the MR43 seed, the Defendant's conduct amounted to misleading and deceptive conduct for the reasons pleaded in paragraphs 39 to 41 of the Statement of Claim;
 - (c) says that by remaining silent on the need to test the MR43 seed for shattercane seed the Defendant engaged in conduct which was misleading or deceptive or likely to mislead or deceive for the reasons pleaded in paragraphs 39 to 41 of the Statement of Claim;
 - (d) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.
15. As to paragraph 26 of the Defence the Plaintiff:

- (a) denies sub-paragraph (b)(iv) and says that the silence did induce the Plaintiff and Group Members to believe that there was no shattercane contained in the MR43 seed, which was in fact not true;
 - (b) says that adopting the farming practices referred to in paragraph 17 of the Defence would not have avoided the impact of planting the MR43 seed infected with shattercane for the reasons set out in paragraph 9 herein;
 - (c) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.

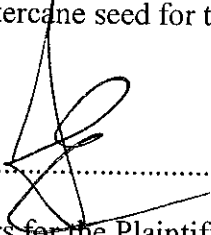
- 16. As to paragraph 29 of the Defence the Plaintiff:
 - (a) denies that neither the marketing nor the Misrepresentations (referred to in paragraph 42 of the Statement of Claim) did not amount to misleading and deceptive conduct for the reasons pleaded in paragraphs 39 to 45 of the Statement of Claim and this Reply;
 - (b) denies that the MR43 was properly tested as, if such testing had occurred it would have indicated the existence of shattercane in the MR43 seed;
 - (c) save as aforesaid joins issue with those facts which the Defendant denies or does not admit.

- 17. As to paragraph 33 of the Defence the Plaintiff:
 - (a) denies the facts pleaded in sub-paragraph (a) and says that the loss and damages suffered by the Plaintiff and Group Members was caused by the alleged breaches by the Defendant of the TPA or the ACL;
 - (b) says that adopting the farming practices referred to in paragraph 17 of the Defence would not have avoided the impact of planting the MR43 seed infected with shattercane seed for the reasons set out in paragraph 9 herein;
 - (c) denies that the conduct of the Defendant was too distant or remote from any breach of the TPA or ACL for the reasons pleaded herein.

- 18. As to paragraph 34 of the Defence the Plaintiff denies that the loss and damage of the Plaintiff and any Group Members should be reduced or

extinguished by the contributory fault or negligence of the Plaintiff and/or Group Members by virtue of s. 10 of the *Law Reform Act 1995* (Qld) or, in relation to any claim under s. 52 of the TPA by virtue of s. 82(1B) of that Act, and/or in relation to any claim under s. 18 of the ACL, by virtue of s. 37B of that Act, as adopting the farming practices referred to in paragraph 17 of the Defence would not have avoided the impact of planting the MR43 seed infected with shattercane seed for the reasons set out in paragraph 9 herein.

Signed:



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Description:

Solicitors for the Plaintiff