

In the High Court of New Zealand
Auckland Registry

CIV-2026-404-001264

I te Kōti Matua o Aotearoa Tamaki
Makaurau Rohe

BETWEEN

DIGITAL HOLDINGS (2017) LIMITED,
DIGITAL SIGNS (2017) LIMITED, DIGITAL
ADVERTISING (2017) LIMITED and DAVID
JAQUES

PLAINTIFFS

AND

~~BDO AUCKLAND LIMITED~~, BDO AUCKLAND,
NICHOLAS ROBERT INNES-JONES and
ANDREW JOHN MCKAY

DEFENDANTS

REPLY TO STATEMENT OF DEFENCE

Dated 28 July 2026

REPLY TO STATEMENT OF DEFENCE

Preliminary

The plaintiffs adopt the defined terms in the statement of defence, and identical paragraph-numbering, and plead as follows with respect to the positive allegations in the defendants' statement of defence:

Pleading

1. Not used.
2. Not used.
3. They admit paragraph 3. They discontinue their claim against BDO Auckland Limited.
4. Not used.
5. Not used.
6. They deny that the services provided by Mr Innes-Jones were limited to those described in the October 2019 Engagement and the December 2019 Engagement (refer paragraph 22 of the statement of claim where the plaintiffs plead that BDO Auckland provided ongoing consultancy services; see also paragraph 22 below). They admit that Accounting Plus Solutions Limited provided bookkeeping accounting services. They otherwise deny the positive allegations of fact in paragraph 6.
7. They admit the positive factual allegations in paragraph 7.
8. Not used.
9. Not used.

First retainer and advisory relationship

10. In relation to the positive allegations in paragraph 10:
 - (a) Admitted.
 - (b) Admitted.

- (c) Admitted.
 - (d) Admitted.
- 11. They admit the positive allegations of fact in paragraph 11.
- 12. In relation to paragraph 12:
 - (a) Admitted.
 - (b) In relation to (b): the report stated it was stated to have been provided in accordance with Service Engagement Standard No. 2 (**SES-2**) issued by CAANZ which inter alia outline how information provided by the company should be treated. SES-2 inter alia stipulates how matters are to be recorded in an engagement letter, and a report. It is admitted that paragraph 12(b) records text from the report which reflects SES-2 requirements. That is to say SES-2 is a source of legal obligations and duties; the report itself does not dictate them. Except as otherwise admitted paragraph 12(b) is denied.
- 13. They admit the amount is \$309,271.
- 14. In relation to paragraph 14:
 - (a) Admitted.
 - (b) They repeat the substance of paragraph 12(b) above.
- 15. Not used.
- 16. Not used.
- 17. Not used.
- 18. Not used.
- 19. Not used.
- 20. Not used.
- 21. Not used.

22. They admit that the plaintiffs did not accept the engagement proposed in that letter and they maintain their pleading in paragraph 22 of the statement of claim that during 2020 BDO Auckland had a continuing advisory relationship with the plaintiffs via Mr Innes-Jones. It continued in 2020 during the time BDO Auckland was providing services via Mr McKay. That continuing advisory relationship was contractual in nature: BDO Auckland provided services and the plaintiffs paid for them. While contractual in nature, it was not covered by any terms of engagement issued by BDO Auckland. BDO Auckland was actually aware of this continuing advisory relationship at the time of Mr McKay's work. Mr McKay directing and/ or purporting to direct Mr Innes-Jones to cease performing the continuing advisory services was conduct outside of the scope of the formal written engagements and they did not apply (and therefore, the exclusions and limitations of liability in the standard terms did not apply.)
23. Not used.
24. Admitted.
25. Admitted.
26. Not used.
27. They apprehend that the factual allegation in paragraph 27 is evidential and it is not a pleading. They are not required to plead to it, so they do not do so.
28. Not used.
29. Not used.
30. Admitted.
31. Not used.

32. In relation to paragraph 32, they deny sub-paragraph (c).¹
33. They cannot plead to sub-paragraphs 33 (a) and (b) because the defendants have failed to provide initial disclosure, as already noted. Reserving their position, they deny these sub-paragraphs. In relation to sub-paragraph (c): they deny that the business and BDO Auckland's review were only "briefly" discussed. They admit that the meeting had been described as a "meet and greet" and say the discussion went beyond that (refer [33] of the statement of claim).
34. In relation to the positive factual allegations in paragraphs 34: they deny that the consulting services provided by BDO were limited to matters listed in (a) and (b).
35. Not used.
36. They repeat the substance of paragraph 33 above.
37. Not used.
38. Not used.
39. They understand sub-paragraph (b) (i) to (ix) to be record of some of the content of the report rather than allegations in themselves. They therefore do not plead to them. They refer to the report as if pleaded in full.
40. Not used.
41. Not used.
42. Not used.
43. Not used.
44. Not used.

¹ The defendants have failed to provide initial disclosure. It is noted that the statement of defence refers to various internal communications between Mr Innes-Jones and Mr McKay which should be included in the initial disclosure.

- 45. Not used.
- 46. Not used.
- 47. Not used.
- 48. Not used.
- 49. Not used.
- 50. Not used.
- 51. Not used.
- 52. Not used.
- 53. Not used.
- 54. Not used.
- 55. Not used.
- 56. Not used.
- 57. Not used.
- 58. Not used.
- 59. Not used.
- 60. Not used.
- 61. Not used.
- 62. Not used.
- 63. Not used.
- 64. Not used.
- 65. Not used.
- 66. Not used.
- 67. Not used.
- 68. Not used.
- 69. Not used.

- 70. Not used.
- 71. They admit the IA Engagement Letter contained clause 4.1 and say that the defendants breached this provision (these are the matters pleaded in the statement of claim concerning a breach of fiduciary duty).
- 72. Not used.
- 73. Not used.
- 74. Not used.
- 75. Not used.

Reply to first affirmative defence to first cause of action

- 76. Not used.
- 77. Not used.
- 78. They do not admit that a cause of action for breach of fiduciary duty could not be characterised as a wilful default. Further, the plaintiffs' claims of breach of fiduciary duty are founded on the defendants' acceptance and performance of two incompatible retainers concerning the same business and the same funding relationship with BNZ. As pleaded in the claim, the fiduciary duties relied on arose on the facts from the advisory relationship between the defendants and the plaintiffs, and the breaches pleaded arose from the fact of the two conflicting retainers, undertaken without disclosure of the conflict and without the plaintiffs' fully informed consent. The exclusion of liability in the Standard Terms does not apply to the plaintiffs' first cause of action.
- 79. They deny paragraph 79.
- 80. They cannot plead to paragraph 80 because the defendants have failed to provide initial disclosure (it is noted that the defence refers to various internal communications between Mr Innes-Jones and Mr McKay). The exclusion of liability would not apply to work carried out where a BDO person was acting outside of the scope of their authority (a matter

pleaded by the defendants). As recorded earlier, the plaintiffs presently cannot determine that topic. They do not admit paragraph 80.

Reply to second affirmative defence to all causes of action—agreement not to sue first, third, and fourth named defendants

- 81. They repeat the substance of paragraph 80 above.
- 82. They repeat the substance of paragraph 80 above.
- 83. They repeat the substance of paragraph 80 above.
- 84. They repeat the substance of paragraph 80 above.

Reply to third affirmative defence to all causes of action – liability cap

- 85. They deny paragraph 85 except to admit that, as a matter of calculation, BDO's fees multiplied by four are \$103,168. Clause 12.1(d) does not apply to breaches of fiduciary duty. Further, it could not apply to BDO personnel acting outside the scope of their authority, a matter the defendants raise but to which the plaintiffs cannot presently plead because the defendants have not provided initial disclosure. In relation to the matters recorded in the sub-paragraphs:
 - (a) they admit that sub-paragraph (a) is correctly recorded. They otherwise deny it.
 - (b) Not used.
 - (c) Not used.
 - (d) Denied.
 - (e) See paragraph 80 above.

Reply to fourth affirmative defence to all causes of action—exclusion for consequential and other losses

- 86. They deny paragraph 86.
- 87. Not used.
- 88. They deny paragraph 88.
- 89. Not used.

90. Denied.

91. They repeat the substance of paragraph 80 above.

Reply to fifth affirmative defence to all causes of action—limitation

92. Not used.

93. With respect to paragraph 92, they deny that the claims are time-barred by clause 12.2 of the Standard Terms. With reference to the sub-paragraphs:

(a) It is accepted that the wording of clause 12.2 is correctly recorded. (It is denied that it applies.)

(b) Not used.

(c) Denied. The plaintiffs gave written notice of a claim within the prescribed time period.

(d) They repeat paragraph 80 above.

Reply to sixth affirmative defence to all causes of action—proportionate liability

94. They deny paragraph 93.

95. They repeat paragraph 80.

Reply to seventh affirmative defence to all causes of action—contributory negligence

96. The plaintiffs deny causing or contributing to any of their own loss. They deny sub-paragraphs (a) and (b).

97. They deny paragraph 96.

This REPLY TO STATEMENT OF DEFENCE is filed by DOUGLAS AUSTIN COWAN, solicitor for the plaintiffs, of the firm Cowan Law, Level 1, 10 Heather Street, Parnell, Auckland. Documents for service may be left at that address or served by email using the following email addresses:

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