

**SUPREME COURT OF NEW SOUTH WALES, COURT OF APPEAL**  
**MARIE JOSSANE ODTOJAN -V-**  
**MILES KEVIN CONDON T/A MR MILES K CONDON ABN 74 565 251 643.**  
**(LOWER COURT - DISTRICT COURT OF NSW - PROCEEDINGS NO. 2022/00273980).**  
**Applicant's Response to Respondent's Response (2023/103644)**

1. On 15 May 2023, Registrar Riznyczok made orders in relation to the leave hearing listed for 31 May 2023, that the Applicant to file an updated White Folder to provide further relevant documents by 26 May 2023; and the Applicant to provide a reply to the Respondent's Response filed 27 April 2023 (**R\_Response**).
2. The Applicant refers to the following:
  - a. Summons Seeking Leave to Appeal filed 30 March 2023 (**Summons**).<sup>1</sup> Amended Summons seeking additional orders of stay proceedings were filed on 6 April 2023.<sup>2</sup>
  - b. The Summary of the Applicant's Argument dated 30 March 2023, (**A\_Argument**); and
  - c. The Applicant's updated White Folders (**A\_WFolder1** and **A\_WFolder2**) dated 26 May 2023.
3. In court on 15 May 2023, the following transpired:
  - a. The Applicant notified the court of the Amended Summons.<sup>3</sup>
  - b. The Applicant notified the court of the alleged substantial misrepresentations made in R\_Response, written/signed by the Respondent's legal representatives, Senior Counsel, Mr Anthony McInerney (**Mr McInerney SC**) of New Chambers, Ms Winnie Liu (**Ms Lui**) of New Chambers, and the instructing solicitor, Mr James Berg, partner of DLA Piper.
    - i. The Respondent provided reasons<sup>4</sup> where no reasons, neither ex tempore nor in writing, were given by the primary judge.<sup>5</sup>
    - ii. The Respondent's counsel, Ms Lui, represented to the court that no 'further' reasons were provided by the primary judge. The Registrar noted that the court will refer to the court transcript dated 16 February 2023 to determine whether reasons were provided.<sup>6</sup>
    - iii. The Applicant sought to provide a reply to R\_Response noting the substantial misrepresentations made by the Respondent.
  - c. The Applicant referred to the correspondences between the Associate of Judge Norton and the parties. The Applicant had sought reasons from her Honour and gave notice of the issues in the conduct of the court hearing and the making of the orders on 16 February 2023.<sup>7</sup>
  - d. The Applicant notified the court that on 16 February 2023 Judge Norton presided in two other matters<sup>8</sup> together with these proceedings. On 28 March 2023, her Honour handed down her orders for the two matters where reasons were provided.<sup>9</sup> In the said two Orders, her Honour represented for the first time that the Orders dated 16 February 2023 in relation to these proceedings '*were made by consent*'.<sup>10</sup> Such representation by her

<sup>1</sup> A\_WFolder1 'Summons for leave to appeal' Tab 1.

<sup>2</sup> A\_WFolder1 'Amended Summons' Tab 6.

<sup>3</sup> [2a].

<sup>4</sup> R\_Response [8] 4 - [19] 8.

<sup>5</sup> A\_WFolder1 'A\_Argument' Tab 2 [8] 5 - [20] 6.

<sup>6</sup> A\_WFolder1 'Court transcript 16.02.2023' Tab 9.

<sup>7</sup> A\_WFolder1 'A\_Argument' Tab 2 [16] - [20] 6; A\_WFolder1 'Correspondences between Associate and parties 17.02.2023 - 27.02.2023' Tab 5 22-23.

<sup>8</sup> Nicolas G. Ford (2022/00242555) (**NF\_DCProceedings**) and Thomas P. Glynn (2022/00273977) (**TG\_DCProceedings**).

<sup>9</sup> A\_WFolder2 'Judge Norton's decision dated 28 March 2023 - NF\_DCProceedings' Tab 16; A\_WFolder2 'Judge Norton's decision dated 28 March 2023 - TG\_DCProceedings' Tab 17. Although her Honour represented in court on 28.03.2023 that her orders/decisions would be published, they have not been published to date.

<sup>10</sup> Ibid [32] 10 (p. 604); and [31] 10 (p. 618).

Honour that the Orders were made by consent is unbeknownst to parties and is not what transpired in court on 16 February 2023. The Registrar noted that her Honour's decisions in the two other proceedings are relevant and are to be provided in the updated White Folder.<sup>11</sup>

- e. The Applicant gave notice to the court of the '*Respondent's Supplementary White Book filed 27 April 2023*' (**R\_SWBook**) which provides, inter alia, documents misrepresented as the Plaintiff's Exhibit documents.<sup>12</sup> The Applicant refers to a table summarising the issues of R\_SWBook in Tab 7 of A\_WFolder1.
  - f. In court, Ms Lui and instructing solicitor Ms Sarah Lien (**Ms Lien**) of DLA Piper did not object to the Applicant's allegations [3e]. Despite the Applicant's notice, the Respondent continues to rely on the said documents in the R\_SWBook.<sup>13</sup> Outside of court, Ms Lui, who signed R\_Response and referred to the documents in the R\_SWBook, stated words to the effect: '*I did not file the White Book and have nothing to do with it*'.
  - g. Tampering with evidence with intent to mislead the court is a serious indictable offence under s 317 *Crimes Act 1900* ('**CA**') (NSW). An act or omission intending to pervert the course of justice is a serious indictable offence under s 319 CA.
  - h. The Registrar noted the serious allegations made by the Applicant, notifying that such issues are to be raised at the leave hearing.
  - i. The parties notified the court of the Respondent's Notice of Motion filed 4 April 2023 (**R\_Motion**) in the District Court (**DC**) seeking to strike out the DC proceedings.<sup>14</sup> The Respondent filed the R\_Motion, after being served with the Applicant's Summons on 30 March 2023. A concurrent hearing is listed on 1 June 2023, which will deal with the R\_Motion and the Applicant's Notice of Motion filed 5 May 2023 (**A\_Motion**) in response to R\_Motion, seeking stay of proceedings and dismissal of R\_Motion.<sup>15</sup>
  - j. The Registrar raised the matter with the Respondent's counsel of the utility of the R\_Motion to dismiss the DC proceedings and whether it is contrary to just, quick and cheap when the Respondent was aware of the leave/appeal sought in the NSWCA.
4. The Applicant gives notice to the court as follows:
- a. That the Applicant objects to the Respondent's R\_SWBook where the Respondent provides tampered and misrepresented documents filed to the court.<sup>16</sup>
  - b. The R\_Response provides misrepresentations and/or omissions on material matters:
    - i. The Respondent is non-responsive to the grounds for appeal being the denial of procedural fairness/natural justice.<sup>17</sup>
    - ii. In R\_Response [8]-[15], the Respondent provides reasons where the Respondent, a Senior Counsel, and his legal representatives are aware they are untrue as no such reasons were provided by the primary judge.<sup>18</sup>
    - iii. In R\_Response [3a], the Respondent provides an analysis of the LC judgement and what transpired in the LCProceedings. The Respondent continuously relies on the LC judgment to prove a fact of a credit card contract, which is a contravention of s 91 Evidence Act 1995 (**EA**). The Respondent, for the first time, created a new narrative

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<sup>11</sup> n 8-9.

<sup>12</sup> R\_SWBook '*Documents exhibited - affidavit of Marie Jossane Odtojan filed 30 November 2022*' Tabs 9-14; A\_WFolder1 '*Annexure A. Table of issues in R\_SWBook*' Tab 7.

<sup>13</sup> A\_WFolder1 '*Annexure A. Table of issues in R\_SWBook*' Tab 7.

<sup>14</sup> The Respondent's R\_Motion seeks to dismiss the DC proceedings or alternatively seeks for the Orders and costs orders dated 16.02.2023 to be compiled with by the Applicant. The Respondent has also sought an application under UCPR r 13.4 where such application was already dealt with on 16.02.2023.

<sup>15</sup> The parties' notice of motions (R\_Motion and A\_Motion) are available to be handed up to the court, if required.

<sup>16</sup> R\_SWBook '*Documents exhibited to affidavit of Marie Jossane Odtojan filed 30 November 2023*' Tabs 9-14; ss 317 and 319 Crimes Act.

<sup>17</sup> A\_WFolder1 '*A\_Argument*' Tab 2 [32], [44]-[64].

<sup>18</sup> [3d]; n 10-11.

relying on 'secondary evidence' which Mr McInerney gave evidence of at the bar table.<sup>19</sup>

- iv. Mr Berg in his two sworn affidavits in the DC for the motions listed for hearing on 1 June 2023 omits the relevant correspondences between the Associate of Judge Norton and the parties for the period 17 to 27 February 2023.<sup>20</sup> In the Applicant's Affidavit<sup>21</sup> in the A\_Motion in the DC, a Summary of the Respondent's misrepresentations and omissions in R\_Response is provided.
- c. The Respondent's professional indemnity insurer is not involved in this matter.<sup>22</sup> The Applicant's claim is a mandatory reporting matter to the indemnity insurer who is an interested party which must be involved in these proceedings, to conduct the proceedings and undertake its own investigation.<sup>23</sup> The Applicant's claim also includes aggravated and exemplary damages.
- d. Mr Berg raised issue of costs in his affidavit sworn 11 November 2022<sup>24</sup> providing his expertise in dealing with insurance claims, however, omitted the relevant matter as to whether the insurer is involved in these proceedings, conducting and instructing DLA Piper on the matter. Mr Berg failed to disclose whether the fee schedule of \$173,750 annexed in his sworn affidavit was prepared and approved by the Respondent's professional indemnity insurer. Mr Berg gives estimates that a hearing will take 7 days.<sup>25</sup>
- e. At the court hearing on 17 March 2023:<sup>26</sup>
  - i. The Applicant gave notice to the court of the Respondent's and his legal representatives' misleading conduct at the Court on 16 February 2023 misrepresenting facts about credit card contract which they cannot identify or produce, but state that it exists. Mr McInerney SC laughed at the allegations, which has been highlighted by the Applicant in court transcript.<sup>27</sup> Mr McInerney SC did not object nor respond to the serious allegation of misleading the court. JR\_Howard did not seek any response from the Respondent nor asked any questions. JR\_Howard, in making his orders dismissing the Applicant's notice of motion to set aside Orders under UCPR r 36.16(3A), did not acknowledge nor record the serious issues put to the court of the Respondent's conduct.
  - ii. Notice was given to JR\_Howard regarding costs:

*The plaintiff was deprived of ventilating the issue of the insurer, any costs in this matter must be authorised and approved by the defendant's compulsory indemnity insurer, and this is a serious matter which pertains to the defendant's credibility, including the defendant legal representatives and senior counsel, if the insurer is not involved in these proceedings being a mandatory reportable matter which is to be under the insurer's control and conduct. The plaintiff refers to the plaintiff's submissions at paras 124 to 131, 168(f) to 168(g), which were neither heard nor given any due consideration.*<sup>28</sup>

<sup>19</sup> A\_WFolder1 'Court transcript 16.02.2023' Tab 9 [45]-[50] 16; [5]-[45] 17; 83-84.

<sup>20</sup> The 'Affidavit of James Derek Berg sworn 04.04.2023 (Affidavit\_JDB1)' and 'Affidavit of James Derek Berg sworn 13.05.2023 (Affidavit\_JDB2)' are available to be handed up to the court, if required.

<sup>21</sup> The 'Affidavit of Marie Jossane Odtojan sworn 4.05.2023 (Affidavit\_MJO3)' [10a] to [10j] is available to be handed up to the court, if required.

<sup>22</sup> A\_WFolder2 'Affidavit of James Derek Berg sworn 11.11.2022 (Affidavit\_JDB)' Tab 15 [24]-[33].

<sup>23</sup> A\_WFolder1 'Applicants written submission' Tab 10 [124]- [131] 160; A\_WFolder1 'Affidavit of Marie Jossane Odtojan sworn 29.11.2022 (Affidavit\_MJO)' Tab 11 [34]; A\_WFolder1 'Applicant's letter to Respondent' Tab 12 [9]-[11] 538; CPA s 56(4) and (6).

<sup>24</sup> A\_WFolder1 'Affidavit\_JDB' Tab 15 [24]-[33] 590-593.

<sup>25</sup> The Applicant has only sought from the Respondents to confirm and produce the credit card contract the Respondent expressly referred to in his appeal advice, which the Respondent has failed to produce to the Applicant for the past 6 years. See [5]-[9].

<sup>26</sup> A\_WFolder1 'A\_Argument' Tab 2 [21]-[24].

<sup>27</sup> A\_WFolder2 'Court transcript 17.03.2023' Tab 18 [35]-[50] 40.

<sup>28</sup> Ibid [50] 20 - 5 [21].

### *Relevant Background*

5. The Respondent, Mr Miles Kevin Condon is a Senior Counsel of New Chambers, where the claim against him alleges that he provided appeal advice to the Applicant, containing false representations of a contract which he materially relies upon in his written appeal advice of 12 and 13 September 2016.<sup>29</sup>
6. To date, from 12 and 13 of September 2016, for almost 7 years, the Respondent has failed to identify and provide the credit contract he expressly relied upon in his appeal advice to the Applicant despite the Applicant's extensive notices to the Respondent.<sup>30</sup>
7. Prior to receiving the written advice, the Applicant met the Defendant at his chambers for the first time, on 12 September 2016. The Respondent with Mr Ford<sup>31</sup> did not advise nor relied upon any credit contract at the meeting as the Respondent confirmed with Mr Ford that neither the contract nor pre-contractual statement were produced throughout the LCProceedings.<sup>32</sup>
8. After the meeting, in subsequent written advice, the Defendant, Mr Ford, and Mr Thomas Glynn<sup>33</sup> represented for the first time, their reliance on a credit card contract in their written advice to the Applicant.<sup>34</sup> To date, all three legal practitioners have failed to identify and produce the credit contract they materially relied upon in their written advice.
9. The Respondent is alleged to have engaged in further dishonest conduct in the Supreme Court Costs Assessment process in 2017, inter alia, not acknowledging the Applicant was his client, disregarding professional duties owed to the Applicant.<sup>35</sup> Further, the Respondent relied upon the written advice dated 12 and 13 September 2023 where he now creates a different narrative in these proceedings that such written advice is not his and he is not a party to such advice.<sup>36</sup> Further dishonest conduct by the Respondent has been raised by the Applicant in these proceedings.<sup>37</sup>
10. The nature of the claim is set out in 'A\_Argument' [25]-[28] in tab 2 of A\_WFolder1 and ASOC [1]-[19] in tab 8 of A\_WFolder1.

*Applicant's reply to R\_Response following its paragraph numbers.*

### Paragraph 1

11. The Applicant is a litigant in person (LIP) in these proceedings.<sup>38</sup> On 9 May 2023, Mr Berg by correspondence, contended that the Applicant is LIP and sought for the Applicant to reconsider her position to that of a solicitor in these proceedings.<sup>39</sup>

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<sup>29</sup> A\_WFolder1 'A\_Argument' Tab 2 [25]-[28]; A\_WFolder1 'Affidavit\_MJO' Tab 11 'Summary of the Defendant's legal services to the Plaintiff and his conduct' [9]-[11]; 'Notice to Defendant' [12]-[16]; A\_WFolder1 'Appeal Advice 12.06.2016' Tab 12 191-193 and 'Memorandum of Advice dated 13.09.2016.' Tab 12 194-197.

<sup>30</sup> A\_WFolder2 'Applicant's letter to the Respondent of 16 pages dated 31 May 2017' Tab 12 449-465.

<sup>31</sup> Mr Nicolas Ford, Barrister of Edmund Barton Chambers, conducted the Applicant's Local Court proceedings 2014/00219407 (LCProceedings).

<sup>32</sup> Court hearing on 18 and 19 July 2016 in LCProceedings; A\_WFolder1 'Affidavit\_MJO' Tab 11 [9] 179-180; [17]-[19] 182.

<sup>33</sup> Principal solicitor of Glynn's Lawyers, hired upon the insistence of Mr Ford. Mr Glynn conducted the LC hearing with Mr Ford in the LCProceedings on 18-19 July 2016. The Applicant has never seen Mr Glynn since 19 July 2016. Mr Glynn was not present at the meeting on 12.02.2023; A\_WFolder1 'Affidavit\_MJO' Tab 11 [11i]-[11j].

<sup>34</sup> A\_WFolder1 'Appeal Advice 12.06.2016' Tab 12 190-192 and 'Memorandum of Advice dated 13.09.2016.' Tab 12 194-197.

<sup>35</sup> A\_WFolder1 'Amended Statement of claim filed 11.10.2022 (ASOC)' [46h] Tab 8 55-56.

<sup>36</sup> [4biii]; A\_WFolder1 'A\_Argument' Tab 2 [25]-[31]. The Respondent's SC represented in court on 17 March 2023 (Court transcript 17 March 2023 Tab 18 [10]-[15] 39), that the Respondent has nothing to do with the emailed written appeal advice provided to the Applicant on 12.09.2016 and on 13.09.2016 (in n 34 above).

<sup>37</sup> A\_WFolder2 'Affidavit of Marie Jossane Odojan sworn 28 February 2023 (Affidavit\_MJO1)' Tab 21 [14]-[18] 700-702; A\_WFolder1 'A\_Argument' Tab 2 [72]; A\_WFolder1 'Relevant Documents c. Applicant's email to Associate': Tab 5 [44] 28 [49] 28; A\_WFolder1 'Court transcript 16.02.2023' tab 9 [45]-[50] 16; [5]-[45] 17; [15]-[25] 27; [20]-[25] 66; 'Court transcript 17.03.2023' tab 18 [35] 10; [30]-[45] 20; [30]-[45] 26.

<sup>38</sup> A\_WFolder1 'A\_Argument' Tab 2 [29]-[31] 8; A\_WFolder1 'Affidavit\_MJO' Tab 11 [1] 178.

<sup>39</sup> Respondent's letter dated 9.05.2023 is available to be handed up to the court, if required.

12. The Respondent omits that the Orders are in relation to Judge Norton presiding over the court hearing on 16 February 2023 by the Respondent's notice of motion filed 11 November 2023, to dismiss and/or strike out pleadings pursuant to UCPR rr 13.4 and 14.28.<sup>40</sup>
  13. The Respondent misrepresents that the Applicant sought leave to replead as a basis to strike out the whole of the Applicant's ASOC.<sup>41</sup>
  14. Without Her Honour hearing the Applicant's case, submissions, and evidence and before hearing the other two matters of Mr Ford and Mr Glynn, her Honour stated words to the effect:
 

*"We're here to determine whether your pleadings comply with the rules and they don't. So, all of the notices of motions have various alternatives in them. As a matter of procedural fairness, I generally give people a chance to replead. But if you believe that these statements of claim encompass the case as you wish to run, then I'd have no option but to dismiss."*<sup>42</sup>
  15. The court transcript dated 16 February 2023 provides that her Honour did not review any of the three amended statements of claims relating to the three matters before her. Her Honour did not specifically put any pleadings/parts of the pleading to the Applicant prior to making her Orders and striking out the whole of the Applicant's ASOC.
  16. The Applicant refers to [3]-[20] in the 'A\_Argument' in tab 2 of A\_WFolder1 and the court transcript dated 16 February 2023.<sup>43</sup> The Applicant was denied procedural fairness, where the Applicant did not present her case, submissions and evidence (affidavit and exhibits).
  17. The Respondent had casted unjustifiable aspersions on the Applicant, her profession as a legal practitioner and her firm. Despite notice to cease threatening and referring to the Applicant's profession where she is not in capacity of a legal practitioner in these proceedings, the Respondent and his legal representatives wilfully continued to refer to and threaten the Applicant's profession.<sup>44</sup>
- Paragraph 2
18. [2a]: The Respondent confirms Mr Glynn as instructing solicitor of Mr Ford, who both acted for the Applicant and conducted the court hearing on 18 and 19 July 2016 in the LCProceedings.<sup>45</sup>
  19. The Respondent provides that a judgement was '*successfully obtained... on 16 August 2016*' for '*a credit card debt in the sum of \$45,299.765 plus interest*'. The Respondent has consistently misrepresented throughout the DC proceedings and now before the Court of Appeal the nature of the claim on the LCProceedings. CCS claim was pleaded '*pursuant to the credit card contract*'.<sup>46</sup>
  20. The Applicant made allegations against Mr Glynn and Mr Ford regarding their gross dishonesty in the conduct of the LCProceedings and obtained the LC judgment by fraud.<sup>47</sup>

<sup>40</sup> A\_WFolder1 'A\_Argument' Tab 2 [4].

<sup>41</sup> A\_WFolder1 'Court transcript dated 16.02.2023' Tab 9 [10] 40 - [15] 41 and [30] 43 - [5] 44. The Applicant was denied replying to two counsels' submissions to the court regarding repleading, no specific part/paragraph of the pleadings of the Applicant's ASOC was ventilated/put to the Applicant to clarify/replead. The Applicant gave notice to her Honour in making such orders that these will be appealable points.

<sup>42</sup> A\_WFolder1 'Court transcript 6.02.2023' Tab 9 [5] 36, p. 103.

<sup>43</sup> Ibid.

<sup>44</sup> A\_WFolder2 'Respondent's Written Submissions filed 12.12.2022' Tab 14; Mr McInerney SC has unjustifiably cast aspersions on the Applicant and her profession as a legal practitioner [11]-[23]; A\_WFolder1 'Applicant's written submission filed 14.02.2023' tab 10 [139]-[140].

<sup>45</sup> Mr Ford has no record of Mr Glynn. Mr Ford fabricated his account documents with no record of Mr Glynn and trust account payment from Mr Glynn on his accounting documents, instead falsely recording the Applicant and her firm as the instructing solicitor/firm/payer.

<sup>46</sup> A\_WFolder2 'Credit Corp Services Pty Limited (CCS) Amended Statement of Claim' Tab 24 731-735. To date, neither CCS, CCS' lawyers, Magistrate Freund nor the Applicant's three legal practitioners (Mr Ford, Mr Glynn and Mr Condon SC) can identify and produce the credit contract they all rely upon in their appeal advice dated 12 and 13 September 2016 and which is expressly referred to by Magistrate Freund approx. 75 times in her Judgment dated 16.08.2016.

<sup>47</sup> Applicant's claim against solicitor, Mr Thomas P Glynn, commenced in DC on 13/09/2022 (2022/00273977) and Applicant's claim against junior barrister, Mr Nicolas G Ford, commenced in the DC on 16/08/2022 (2022/0024555).

21. Further, Mr Glynn and Mr Ford made false representations to the court at the final hearing and at the costs argument hearing that a credit contract was received by the Applicant on 12 January 2015, which was not the Applicant's case.<sup>48</sup> The said date is aligned with the offer of compromise by CCS' solicitors Piper Alderman, partner Ms Anne Freeman and Mr Florian Ammer. Mr Ford and Mr Glynn withheld the court dates and costs affidavit and costs folder from the Applicant. At the costs hearing on 29 August 2016, the Applicant was not provided with the affidavit and costs folders and was not aware of the issues and claim for costs raised against her where costs sought over \$40,000 claim (costs and indemnity costs at the Local Court proceedings) exceeded \$230,000.00.<sup>49</sup>
22. Magistrate Freund gave costs and made an indemnity costs order for costs exceeding \$230,000.00 in reliance on Mr Ford's false evidence at the bar table that credit contract was provided to the Applicant on 12 January 2015, evidence solely given by Mr Ford at the bar table throughout the LCProceedings.<sup>50</sup> Her Honour did not have any physical evidence of a credit contract when she made judgment dated 16 August 2016 and a costs order.<sup>51</sup> There was neither affidavit evidence nor oral evidence given by either party in the LCProceedings to support such representation of Mr Ford.
23. There is no contract that can verify Magistrate Freund's judgment dated 16 August 2016<sup>52</sup> recording: "*judgment for the Plaintiff in the sum of \$40,597.74 plus interest on that amount from 10 May 2010 (...) at a rate of 8.66% pursuant to the Credit Card Contract*" and the costs orders exceeding an amount of \$230,000.00.
24. The Respondent was served with Notice to Admit Facts dated 14 November 2022 which the Respondent did not dispute by providing a Notice Disputing Facts pursuant to the UCPR rules. The Respondent admitted the facts under the Notice to Admit that he has never seen a credit contract he expressly referred to in his appeal advice.<sup>53</sup> Under Notice to Produce dated 14 November 2022, the Respondent was required to produce a credit card contract he referred to in his appeal advice. The Respondent did not produce any documents nor provided any reply pursuant to the UCPR.<sup>54</sup>
25. [2c]: The Respondent confirms that he did not appear in the LC proceedings, however, Mr McInerney SC, who neither acted for Mr Ford or Mr Glynn, made submissions on 16 February 2023 on their behalf regarding the LCProceedings, giving evidence at the bar table, providing analysis of the LC judgment, disregarding s 91 EA and relying on defences where no defences have been filed by the three Defendants.<sup>55</sup> Mr McInerney SC provided a summary of the Applicant's claim demonstrating that all three Defendants before court on 16 February 2023 are fully aware of the case made against them.<sup>56</sup>

Paragraph 3

26. The Respondent is fully aware of the 'Credit Contract issue' which the Respondent has failed to identify and/or produce a contract in accordance with his appeal advice.

<sup>48</sup> Judge Norton confirmed she was aware of the different position of the Applicant and Mr Ford (The Applicant counsel) in the LCProceedings. Judge Norton advocated for Mr Ford and his representations giving evidence at the bar table that a contract was provided on 12.02.2015 where she never sought any submissions from Mr Ford's counsel, Mr Bernard Lloyd. A\_WFolder1 'Court Transcript 16.02.2023' Tab 9 [30] - [35] 29.

<sup>49</sup> A\_WFolder2 'Applicant's Exhibit MJO of the Affidavit sworn 29 November 2022 with index table', Magistrate Freund Costs Judgment dated 2 September 2016 Tab 12, 'Decision and Orders', 448.

<sup>50</sup> A\_WFolder2 'Applicant's Exhibit MJO of the Affidavit sworn 29 November 2022 with index table' Court Transcript dated 18 July 2016, [45]-[50] 42 Tab 12 page 252; Court Transcript dated 19 July 2016 [10]-[20] 154 Tab 12 page 364.

<sup>51</sup> n 49 (above); A\_WFolder2 'Applicant's Exhibit MJO of the Affidavit sworn 29 November 2022 with index table', Magistrate Freund Judgment dated 16 August 2016 Tab 12 383-439.

<sup>52</sup> Ibid, Magistrate Freund Judgment dated 16 August 2016 Tab 12 439.

<sup>53</sup> A\_WFolder2 'Applicant's Exhibit MJO of the Affidavit sworn 29 November 2022 with index table', Notice to Admit Facts, 546-548.

<sup>54</sup> Ibid, Notice to produce for inspection, 544.

<sup>55</sup> A\_WFolder1 'Court Transcript 16.02.2023' tab 9 [20]-[45] 2.

<sup>56</sup> Ibid [20] 2- [5] 22.

27. The Applicant objects to the Respondent's opinions and analysis of the LC judgement. The reliance on previous judgment to prove fact(s) is impermissible under s 91 EA.
  28. The Respondent has not filed a Defence, however, has consistently relied on defences which change over time throughout the DC proceedings.<sup>57</sup>
  29. CCS in the LC Proceedings expressly pleaded a credit card contract.<sup>58</sup> No credit card contract was produced despite court orders to produce<sup>59</sup> nor proved in LC Proceedings. CCS is to date in contempt of the said orders dated 10/2/2015 and 17/12/2015. The issue was not addressed by the Court in LC Proceedings. Mr Ford gave false evidence at the bar table that the credit contract was provided on 12 January 2015. No contract was ventilated nor produced at the hearing on 18 and 19 July 2016.<sup>60</sup> Magistrate Freund referred to a contract approximately 75 times in the judgment, but failed to identify what she expressly referred to as a contract.<sup>61</sup>
  30. The '*Terms and Conditions*' referred to in the judgment is a general SGB terms and conditions brochure, which neither contains any particulars of the Applicant, nor credit product nor any contractual details. It expressly states in bold that this document is not a contract.<sup>62</sup>
  31. Credit Cards are subject to Credit Card Contracts and governed by statute, *the National Consumer Credit Protection Act 2009 (NCCPA)* and *National Credit Code (NCC)*<sup>63</sup> Any enforcement relating to credit claims must be subject to a credit card contract and pursuant to the NCCPA and the NCC.
  32. There is no legal cause of action neither pursuant to a credit card nor from the use of a credit card. A claim must be pursuant to a credit contract<sup>64</sup> and the specific breach pleaded as the cause of action.<sup>65</sup> No breach of contract was pleaded in the CCS's claim and it was not ventilated in the final hearing.
  33. The Respondent's reliance on a '*Card collection form*' is immaterial, it was never pleaded in the CCS's ASOC as such form is not a contractual document<sup>66</sup> and does not give rise to any legal rights including under the NCCPA nor under the NCC nor is it a legal cause of action for a claim. Such form does not prove the contract relied upon by the Respondent in his appeal advice.
- Paragraph 4:
34. See [1]
- Paragraph 5:
35. The Respondent's representation that '*the primary judge's ruling and orders were correct*' is misleading and is to be rejected. See [4bii]
  36. The Respondent omits, does not acknowledge and is non-responsive to the issues raised in the '*A\_Argument*'<sup>67</sup> regarding procedural fairness at [44]-[54], the fair hearing rule at [55]-[59], the bias rule at [60]-[61] and the right of legal representation at [62]-[63], the questions of procedural fairness/fair hearing at [64], considerations under s 58 in making orders at [65],

<sup>57</sup> [9]; n 35.

<sup>58</sup> A\_WFolder2 '*Credit Corp Services Pty Limited Amended Statement of Claim*' Tab 24 731-736.

<sup>59</sup> A\_WFolder1, '*Applicant's Exhibit MJO of the Affidavit sworn 29 November 2022 with index table*', Court Orders Tab 12 210.

<sup>60</sup> A\_WFolder2 '*LC Judgment dated 16.08.2016*' Tab 12 383-439.

<sup>61</sup> Ibid.A\_WFolder2 '*Applicant's email dated 29 August 2017 to Sydney Local Court seeking clarifications about the credit contract from Magistrate Freund*' Tab 25 737-743 and '*Sydney Local Court responses to the Applicant dated 31 August 2017*' Tab 25 744.

<sup>62</sup> The '*Terms and conditions*' can be handed up to court, if required.

<sup>63</sup> National Credit Code (The NCC) is in Schedule 1 of the NCCPA. *The National Consumer Protection (Transitional and Consequential Provisions) Act 2009* ('Transitional Act') governs application of the NCC to the credit contracts created before 2009.

<sup>64</sup> S 14 of the NCC. Under s 14, credit contract must be a written contract document.

<sup>65</sup> S 88 of the NCC. The credit provider cannot issue legal proceedings unless and until the debtor has defaulted and breached the contract.

<sup>66</sup> A\_WFolder2 '*Applicant's Exhibit MJO of the Affidavit sworn 29 November 2022 with index table*', '*Card Collection/Overdraft/Get set checklist*' Tab 12 487.

<sup>67</sup> A\_WFolder1 '*Summary of Applicant's Argument*' Tab 2.



considerations of the Applicant's ASOC at [66]-[67], considerations of the Applicant's submissions and evidence at [68]-[69].

Paragraph 6-7:

37. The Applicant refers to 'A\_Argument' at [44]- [69] in tab 2 of A\_AWFolder1.

Paragraph 8 - 20

38. No reasons nor case authorities were relied upon by her Honour in making her Orders. Such submissions by Mr McInerney SC, Ms Lui, and Mr Berg are misleading and are to be rejected.

Paragraph 21

39. The Applicant refers to 'A\_Argument' at [16]- [20] in Tab 2 of A\_AWFolder1 and 'Correspondences between the Associate and the parties' in Tab 5 of A\_AWFolder1.

40. For the first time, in R\_Response, the Respondent objects to the communications with the Associate. The Respondent provides reasons on behalf of Judge Norton's non-response to the Applicant's emails where no such reasons were given by her Honour.

41. In court on 15 May 2023, the Registrar sought clarification whether the parties had contacted Judge Norton in relation to her reasons.

Paragraph 22

42. The Applicant refers to 'A\_Argument' at [44]-[69] in Tab 2 of A\_AWFolder1.

Paragraph 23

43. The Applicant refers to 'A\_Argument' at [21]-[24] in Tab 2 of A\_AWFolder1.

Paragraph 24 -25

44. The leave hearing is listed for 31 May 2023. The Respondent's Notice of motion to strike out in DC proceedings is listed on 1 June 2023.

*A Miscarriage of justice if appeal is not granted.*

45. It is in the interest of justice that leave to appeal be granted where there has been clear disregard of the fundamental basic rule of procedural fairness/natural justice by the primary judge.<sup>68</sup>

46. As set out above, the primary judge was demonstrably prejudicial/bias towards the Applicant and presided the hearing with a predetermined outcome for all three matters before each of the parties' cases were heard. Effectively, the primary judge only heard the Respondent's case who made submissions for the three Defendants, being separate proceedings and where Mr McInerney was not the counsel for Mr Ford and Mr Glynn.<sup>69</sup>

47. The primary judge made her orders for this matter without providing reasons, and without hearing the Applicant's case. The orders are oppressive, ultra vires and the limiting of the Applicant's claim to appeal advice is an ambush on the Applicant where no such orders were sought by either party nor put to the Applicant to be heard on the matter before Orders were made. The primary judge disregarded the Evidence Act, accepted inconsistent representations of the contract by counsels, accepted evidence at the bar table and advocated for the all three Defendants.

48. What transpired on 16 February 2023 and the conduct of the Respondent, and his legal representatives adversely affects the public confidence in the court system and undermines the integrity of the courts and the legal profession. It would be a miscarriage of justice to refuse appeal where such serious issues alleged against the Respondent, a Senior Counsel, have not been resolved and where there is no finality. This matter is also related to two other matters which are sought to be appealed.

  
Marie Odtejan | Applicant | Ph: (

| Date: 29 May 2023.

<sup>68</sup> A\_WFolder1 'A\_Argument' tab 2 [44]- [69].

<sup>69</sup> A\_WFolder1 'Court Transcript 16.02.2023' Tab 9 [20]-[45] 2 p. 70 A\_WFolder1. Mr McInerney presentation took about 1,5 hours ('Court Transcript 16.02.2023' Tab 9 pp 2-22). A\_WFolder2 'Applicant's Affidavit sworn 28 February 2023' Tab 21 [14]-[17] 700-701.