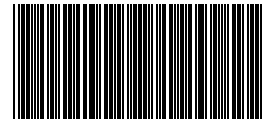




Filed: 13 September 2022 11:08 PM

Form 3A/B  
Rule 6.2



D0001M6E8G

## AMENDED STATEMENT OF CLAIM

### COURT DETAILS

Court	District Court of NSW
List	General List
Registry	Sydney
Case number	2022/00242555

### FILING DETAILS

Filed for	Plaintiff[s]
Your reference	880223ASOCNF

### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Amended Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Amended Statement of Claim (Signed ASOC FORD 13Spet2022.pdf)

[attach.]

Form 3B (version 6)

UCPR 6.2

**AMENDED**  
**STATEMENT OF CLAIM**

**COURT DETAILS**

Court	DISTRICT COURT OF NEW SOUTH WALES
Division	CIVIL
List	GENERAL
Registry	SYDNEY
Case number	2022/00242555

**TITLE OF PROCEEDINGS**

Plaintiff	<b>MARIE JOSSANE ODTOJAN</b>
Defendant	<b>NICOLAS GEORGE FORD T/A NICOLAS GEORGE FORD (ABN 85 160 429 622).</b>

**FILING DETAILS**

Filed for	<b>Marie Jossane Odtojan, Plaintiff</b>
Contact name and telephone	Marie Odtojan, [REDACTED]
Contact email	[REDACTED]

**TYPE OF CLAIM**

Torts - Professional Negligence - Legal Profession

## RELIEF CLAIMED

- 1 Damages including:
  - a. General Damages;
  - b. Special Damages;
  - c. Aggravated damages;
  - d. Exemplary damages.
- 2 Costs.
- 3 Interest on damages and costs pursuant to sections 100 and 101 of the Civil Procedure Act 2005 (NSW).
- 4 Any other orders this Honourable Court deems fit.

## PLEADINGS AND PARTICULARS

### A. THESE PROCEEDINGS

- 1 The Plaintiff brings these proceedings against Barrister Nicolas Ford of the Supreme Court of NSW for intentional negligence pertaining to deliberate fraudulent representations and conduct of a legal practitioner, with intent to defraud the Plaintiff and ~~perverting~~ the administration and the course of justice in court proceedings to obtain judgments illegally, engaging in improprieties and/or acting in a bad faith against the Plaintiff, ~~and~~ in the course of providing legal services to the Plaintiff. (Set out below).

### B. THE PARTIES

#### B.1. The Defendant

- 2 At all material times the Defendant was and is:
  - a. A natural person and a sole trader trading as Nicolas George Ford ABN 85 160 429 622 and is able to be sued;
  - b. A Barrister of the Supreme Court of NSW, admitted at the bar in 2014; and
  - c. Conducting his legal practice as a Barrister at Edmund Barton Chambers located at Level 44, MLC Centre, 19 Martin Place Sydney NSW 2000.

#### B.2. The Plaintiff

- 3 At all material times, the Plaintiff was and is:
  - a. A natural person;
  - b. The Defendant's client from on or about 23 February 2016 to on or about 5 October 2016 in relation to the NSW local court proceedings, *Credit Corp Services Pty Limited v Marie Jossane Odtojan* (Case No. 2014/00219407), ("CCSS\_LCProceedings").

## C. RELEVANT BACKGROUND

### C.1. Prior to engaging the Defendant

- 4 The Plaintiff did not seek for the services of the Defendant.
- 5 On 11 February 2016, the Defendant traveled to Parramatta where Mr Nicholas Silva (Mr Silva) of Arthur Phillip Chambers, contacted the Plaintiff's partner, Mr Artem Bryl (Mr Bryl), to inform him that the Defendant requested to meet in relation to the Plaintiff's case, the CCSS LCP proceedings.
- 6 Around 12 PM on 11 February 2016, upon receiving the phone call from Mr Silva, Mr Bryl brought with him the Credit Corp Services Pty Limited ("CCS") evidence folder and met the Defendant and Mr Silva on the street at 11 George Street, Parramatta, outside Arthur Philip Chambers.
- 7 Without being retained on the Plaintiff's matter, the Defendant attempted to take from Mr Bryl the CCS evidence folder, being the Affidavit of Adam Carpenter dated 24 March 2015, a CCS employee. The meeting took about 5 minutes.

#### Particulars

1. On 11 February 2016, Mr Bryl emailed copies of the CSS evidence, Affidavit of Adam Carpenter sworn 24/3/2015 and its exhibits. Mr Silva confirmed by SMS with Mr Bryl that he forwarded the CCS's evidence to the Defendant.
- 8 On 17 February 2016, the Defendant emailed the Plaintiff at her work email, offering his services stating that he was referred by Mr Nicholas Silva.

#### Particulars

1. Email from Defendant to Plaintiff's work email dated 17/2/2016 offering his services, stating he is referred by Nick Silva, asking for the court date and requesting the Plaintiff to agree to his initial retainer to review pleadings and evidence and a standard cost agreement and disclosure to follow.
- 9 On 17 February 2016, the Plaintiff spoke to the Defendant on the phone:
  - a. The Plaintiff sought the following information from the Defendant:
    - i. Whether the Defendant had credit law expertise, practiced in credit related matters and court proceedings such as that of the Plaintiff's case.
  - b. The Plaintiff gave notice to the Defendant of the following:
    - i. The issue with CCS and its legal representatives' non-compliance of request, notices to produce and court orders for the provision of the Credit Card Contract and other particulars/documents sought,
    - ii. The issue of the existence of the Credit Card Contract; and
    - iii. The Plaintiff's denial of entering a Credit Contract.
  - c. The Defendant assured the Plaintiff that he had credit law expertise and had practiced and conducted credit related matters.
  - d. The Defendant acknowledged the issues put to him by the Plaintiff regarding the Credit Card Contract.

## C.2. The Agreement

- 10 At 10 AM, on 23 February 2016, the Defendant emailed the Plaintiff his standard cost agreement dated ~~23/02/2016~~ February 2016 providing a quote of \$6,000 for his services to run the trial with one day preparation.
- 11 The Plaintiff had agreed to retain the Defendant and entered into the Defendant's standard cost agreement dated ~~23/02/06~~ February 2016.
- 12 The Defendant was to advise and act for the Plaintiff in the CCSS LC Proceedings, commenced by Credit Corp Services Pty Ltd (CCS).
- 13 It is a term of the agreement, implied at law, that the Defendant would use all reasonable care, skill and diligence in and about the performance of the retainer.
- 14 The Defendant owed the Plaintiff a duty of care requiring him to use all reasonable care, skill and diligence in provision of his professional legal services to the Plaintiff.

## C.3 Initial Meeting with the Defendant on 23 February 2016

- 15 Around 3 PM on 23 February 2016, the Plaintiff had the first meeting with the Defendant at his office at Edmund Barton Chambers at Level 44, MLC Centre, 19 Martin Place Sydney NSW 2000.
- 16 At the meeting on 23 February 2016, the Plaintiff and the Plaintiff's partner Mr Bryl gave notice to the Defendant of the following:
  - a. The Consumer Credit Code was applicable to the alleged Credit Contract, specifically s.12 of the Act which provide that '*Credit contract to be in form of a written contract document*';
  - b. Unsolicited credit card issue as there was no written request for a credit card (s.12DL of *the ASIC Act*);
  - c. The breach of s.14 of the *Consumer Credit Code* as there was no pre-contractual statement provided by SGB;
  - d. That the St George Bank (SGB) credit card had credit card insurance which incurred about \$20,000 in charges without credit card insurance contract and in breach of (s.132, s.136 of the CCC);
  - e. Plaintiff's pleading of 'Credit Card Contract' which does not exist and was never provided in the evidence and under Notices to Produce.
  - f. The court hearing for the case was scheduled on 7 April 2016.
- 17 At the meeting the Defendant made representations to the Plaintiff to the following effect:
  - a. That CCS does not have the contract they pleaded in their pleadings;
  - b. That St George Bank breached the Credit Code.
  - c. It will be an easy matter to argue, CCS will not be able to prove it;
  - d. Do not worry about your matter anymore, I will take care of everything.

1. On 23 February 2016 at the meeting, the Defendant effectively stated to the Plaintiff and Mr Bryl that:
 

*'The terms behind the credit card you say you are not bound by, that's really your case... it's unconscionable for them to rely on those terms in circumstances when you weren't given the terms of the contract. All of those things are easy arguments, cause they are not going to be able to prove it.'*
2. The Plaintiff and Mr Bryl notified the Defendant at the meeting on 23 February 2016 the following:
  - a. That there was no disclosure which was agreed by the Defendant;
  - b. ~~Referred to That the~~ two generic terms and conditions dated 2003 and 2006, provided by CCS and its legal representatives ~~where it was pointed out to the Defendant there are provided~~ no particulars at all ~~to~~ of the Plaintiff, ~~to~~ of any product, ~~what~~ and any interest rates, charges and fees. That the Terms ~~referred that it is not a~~ by law compliant ~~as to~~ a Credit Contract and the Terms refers that an 'Offer' must be provided which is to ~~provide~~record particulars, the credit limit, interest rate which was never provided to the Plaintiff from the outset by CCS.
  - c. That CSS and its legal representatives, Piper Alderman repeatedly misleads in its representations to the Plaintiff in providing documents they state are related to a contract when no contract had been provided by CCS pursuant to the Credit Code legislation is provided.
  - d. That by law they are to provide a pre-contractual statement before entering into any contract which was never done and CSS has failed to produce any document.
  - e. That the Credit Code NSW 1995 was before the Uniform Consumer Credit Code 1996 and you've got the National Consumer Credit Protection Act 2010 and Schedule 1 of the National Credit Code (NCC), ~~which is~~ are applicable ~~for to~~ any credit contracts as alleged in 2006 ~~would be~~ being a carried-over instrument that was created before the 2010.
  - f. That she the Plaintiff was not aware about the existence of a Credit Contract, pre-contractual documents pursuant to the credit legislation as they were never provided and such documents did~~oes~~ not exist~~s~~.
  - g. Referred to cases in contracts law which provide that a party cannot bring terms and conditions which were not provided at the time of the creation of the contract at a later date.
  - h. That CSES provided two generic terms and conditions never provided to the Plaintiff in 2006. In Mr Adam Carpenter's affidavit the 'Terms and Conditions' dated 2003 and CCS solicitors, Piper Alderman, provided 'Terms and Conditions' dated 2006.
3. The Defendant in response to the plaintiff's notices (in paragraph 2 above) acknowledged and agreed that there ~~was~~ is no contract ~~and no contract~~ pursuant to the credit legislation, stated words to the effect *'They breached it.'*, referring to CSS and SGB.
4. The Defendant acknowledged and stated that the Plaintiff *'didn't receive these terms and you never had access, you are not aware that those terms apply.'*
- 18 The Defendant gave urgency for the Plaintiff to amend her defence and for a further amended defence to be drafted.
- 19 The Defendant requested the Plaintiff to provide him with the Plaintiff's unfiled evidence in a Word file so he could edit the document before it is served on 26 February 2016.

#### C.4 Notices to the Defendant

- 20 Upon being retained and at all material times, the Defendant was fully aware of the following issues put to him by the Plaintiff, the basis the Defendant was retained on the matter:
- a. The issues of the Credit Card Contract as alleged by the CCS in its claim;
  - b. The issue of the existence of the Credit Card Contract;
  - c. That the Plaintiff was never in possession of the a Credit Card Contract;
  - d. That the Plaintiff denied entering the alleged Credit Contract;
  - e. The Consumer Credit Code (CCC) with strict requirements to credit card contracts which was applicable in 2006 and to the case, specifically s.12: 'Credit contract to be in form of written contract document', References to other relevant sections, such as ss. 13 - 21 of the CCC.
  - f. The repeated non-compliance and disregard of ~~the~~ CCS and its legal representatives, Piper Alderman of requests for particulars, notices and court orders for the provision of the Credit Card Contract and other relevant documents and particulars in relation to CCS claim.
  - g. Unsolicited credit card issue as there was no written request for a credit card (s.12DL of *the ASIC Act*);
  - h. Breach of s.14 of the *Consumer Credit Code* as there was no pre-contractual statement provided by SGB;
  - i. SGB credit card had credit card insurance which incurred about \$20,000 in charges without credit card insurance contract and in breach of (s.132, s.136 of the CCC);
  - j. Plaintiff CCS's pleading of 'credit card contract' which does not exist and which was never provided in the evidence and under Notices to produce.
  - k. That there were no contracts or prescribed documents required by credit legislation for SGB Credit Card Insurance and Swann insurance.

#### Particulars

1. The Plaintiff's initial conversation with the Defendant on 17 February 2016 where the Defendant was made aware of the issues as set out on paragraphs 20 above.
2. Plaintiff's initial meeting with the Defendant on 23 February 2016.
3. Plaintiff's Request for Further and Better dated 5/11/2014 ("RFBP");
4. Notices to produce dated 10 February 2015 ("NTP1"), 17 December 2015 ("NTP2") and 24 March 2016 ("NTP3");
5. Court Orders dated 7 January 2015, 27 October 2015 and 17 December 2015.
6. Paragraph 1 of the REBP, NTP1, NTP2, NTP3 required provision of the Credit Card Contract;
7. The court order dated 7/1/2015 required compliance with the RFBP.
8. The court order dated 27/10/2015 required compliance with the NTP1;
9. The court order dated 17/2/2015 required compliance with the NTP2.

- 21 On 24 March 2016, The Defendant was aware that the Plaintiff served on CCSS a further Notice to Produce dated 24/3/2016 again requesting the provision of the Credit Card Contract and relevant documents such as the insurance contracts and Power of Attorney/authorities.

Particulars

1. The Plaintiff's Notice to Produce dated ~~24/3/~~ March 2016 ("NTP3") ~~contained the~~ effectively required the same documents in the previous Notice to produce dated ~~10/2/~~ February 2015 and ~~17/12/~~ December 2015 in paragraphs 1, 4 to 7 with the paragraphs 2 amended and 3 deleted by the counsels Mr S.Hartford-DAvis and Mr N.Silva on 17 December 2015, as follows:

*You are required to produce the following documents or things to the Court on 30 March 2016 or such other date as the court orders:*

1. *The original of the St George Bank, ("SGB") credit card agreement for credit card number 4564851100920368, ("SGB Credit Card"), with disclosed credit card limit, credit card interest rates, fees and insurance policies, its rates and fees.*
2. *The original dated SGB electronic credit card application form referred in paragraph 6a of Mr Adam Carpenter's Affidavit, sworn 24 March 2015, ("Affidavit of Mr Carpenter"), in Tab 1 of Exhibit AC1 of the Affidavit of Mr Carpenter.*
3. *Copies of all documents in relation to the SGB's assessment and approval of the SGB Credit Card with a credit limit of \$40,000 referred in Mr Adam Carpenter's Affidavit paragraph:*
  - a. *6a and 29a, SGB electronic credit card application form in Tab 1 of Exhibit AC1 of the Affidavit of Mr Carpenter.*
  - b. *6b, SGB credit card collection form in Tab 2 of Exhibit AC1 of the Affidavit of Mr Carpenter.*
4. *The original application document referred in clause 3 'Declaration', on page 2 of the SGB credit card collection form dated 25/2/2006 referred in paragraph 6c and 29b, in Tab 3 of Exhibit AC1 of the Affidavit of Mr Carpenter.*
5. *Copies of all documents in relation to the 'Offer' as defined in the SGB Terms and Conditions, ("TAC") referred in paragraph 6d in the Affidavit of Mr Carpenter, in Tab 4 and Tab 15 of Exhibit AC1 of the Affidavit of Mr Carpenter. Pursuant to the SGB Terms and Condition the 'Offer' is to disclose:*
  - a. *TAC 9: Credit card limit;*
  - b. *TAC 17: Annual percentage rate;*
  - c. *TAC 18: Interest charges;*
  - d. *Further terms and information pursuant to page 2 of the TAC.*
6. *Copies of all pre-contractual documents pursuant to the prescribed law at the time, being Uniform Credit Consumer Code 1996 ("UCCC"), and in accordance to the SGB Terms and Conditions referred in paragraph 6d in the Affidavit of Mr Carpenter, in Tab 4 and Tab 15 of Exhibit AC1 of the Affidavit of Mr Carpenter. Page 71 and 66 of the TAC.*
7. *Copies of all documents, written consents and authorities allegedly provided to and executed by the Defendant, with respect to the following:*
  - a. *To enter into a policy insurance with Swann Card Insurance and SGB CC Protect Insurance, ("the insurance") on behalf of the Defendant;*
  - b. *To deduct the fees for the insurance from the SGB Credit Card and SGB personal savings account of the Defendant, (A/C No. 162760133 and A/C No. 464267424).*



- c. Copy of the insurance policy;
- d. Name of the insured on the insurance;
- e. Nature of the cover of the insurance;
- f. Documents relating to Swann card insurance;
- g. Document relating to SGB CC Protect Insurance;
- h. Statement of payments made to Swann Insurance;
- i. Statement of payments made to SGB Protect Insurance.
- j. Any claims made by SGB or the plaintiff with respect to the said insurance including, applications, letters, emails and responses by the insurer to the claim including amounts paid under the policy.

2. On 30 March 2016, the Defendant handed the Plaintiff a thin A4 yellow envelope, representing that the envelope provided CCS's response to the Plaintiff's Notice to Produce dated 24 March 2016 (NTP3).

3. CCS did not produce its response to the court as required under the Plaintiff's NTP3.

4. There was no letter from CCS to the Plaintiff, the envelope only contained a few documents already provided to the Plaintiff by CCS solicitor Mr Ammer of Piper Alderman in his letter dated 12 January 2015. CCS intentionally failed to comply with all the paragraphs 1 to 7 of the Plaintiff's notice to produce.

5. On 29 March 2016 the Defendant gave a memorandum of advice for the Plaintiff not to serve CCS a 'Notice to Admit Facts on the Plaintiff' which provides material issues of the Credit Contract.

6. The Defendant had advised and directed the Plaintiff to cease giving notices to the CCS and its solicitors, Piper Alderman.

22 The Defendant was fully aware that CCS had failed and continues to fail its compliance in producing its alleged Credit Card Contract under the Plaintiff's RFBP, Notices to produce and the court orders set out in particulars 3 to 9 under paragraph 20 and paragraph 21 above.

#### C.5 The Local Court Proceedings (CCS LCProceedings)

23 The Plaintiff was a litigant in person and self-represented in the court proceedings against Credit Corp Services Pty Ltd ("CCS") from the commencement of the case in 2014 until 22 February 2016.

24 CSS made a claim against the Plaintiff pursuant to an alleged Credit Card Contract under which all contractual interest, fees and charges and insurance are pursuant to a Credit Contract.

#### Particulars

1. Paragraph 3 of the CCS Statement of Claim dated 25 July 2014 ("CCS.SOC") and Amended Statement of Claim dated 7 January 2015 ("CCS.ASOC") provide:

*' 3. On or about 16 February 2006 the defendant entered into a credit card agreement, agreement number 4564852200920368 ("the contract") with St George Bank. '*

2. Paragraphs 3, 4, 5 and 8 out of 9 paragraphs in the CCS.ASOC provides that the cause of action to make a claim, the amount claimed, CSS rights under the claim and interest rates were all pursuant to a Credit Contract.

C.6 Requests, Notices to Produce and Court Orders for CCS - Provision of Credit Contract.

- 25 For the period from 5 November 2014 throughout the court proceedings the Plaintiff had sought from the CCS its alleged credit card contract under the following:
- a. Plaintiff's Request for Further and Better dated 5/11/2014 ("RFBP");
  - b. Notices to produce dated 10 February 2015 ("NTP1"), 17 December 2015 ("NTP2"), 24 March 2016 ("NTP3");
  - c. Court Orders dated 7 January 2015, 27 October 2015 and 17 December 2015;
  - d. Paragraph 1 of the REBP, NTP1, NTP2, NTP3 required provision of the Credit Card Contract;
  - e. The court order dated 7/1/2015 required compliance with the RFBP.
  - f. The court order dated 27/10/2015 required compliance with the NTP1;
  - g. The court order dated 17/2/2015 required compliance with the NTP2.

C.7 Defendant advice to Plaintiff - Further Amended Defence ("FAD").

- 26 On 25 February 2016, as requested by the Defendant at the initial meeting with the Plaintiff on 23 February 2016, the Plaintiff emailed the draft affidavits of her witnesses, Mr Artem Bryl and Ms Virginia Odotjan for his review.
- 27 ~~Around~~ On or about 6.00pm on 25 February 2016 the Defendant sent an email to the Plaintiff the following:
- a. A copy of the 10 page Further Amended Defence ('FAD') in a PDF file;
  - b. A draft letter to CCS's legal representatives, Piper Alderman, which directed and recorded at the top of the letter for the Plaintiff to insert her law firm letterhead:  

*"COPY ONTO TO ODTOJAN LAW FIRM LETTERHEAD."*
  - c. The Defendant directed the plaintiff of its urgency to send the letter he had drafted and the 10 page FAD to be served on Piper Alderman at 9am on 26 February 2016.
  - d. The Defendant further stated that the Plaintiff's affidavits are to be served on CCS by the next day on 26 February 2016.
- 28 On 26 February 2016:
- a. Defendant emailed the Plaintiff:
    - i. The final version of the FAD, stating to immediately serve it on to CSS with the letter he had drafted on 25 February 2016, directing the Plaintiff to place her law firm letterhead at the top of the letter as indicated in paragraph 27b above.
    - ii. The final versions of the affidavits stating effectively that he did not make any material changes.
  - b. The Defendant made no representations to the Plaintiff that there were any material amendments made by him in Plaintiff and witness's affidavit (Mr Bryl).
  - c. The Plaintiff and her witness attended the execution and witnessing of the affidavits of the Plaintiff and her witnesses, Mr Virginia Odotjan and Mr Bryl.

- d. The Plaintiff served the said affidavits to the CSS legal representatives, Piper Alderman.
- e. The Defendant directed the Plaintiff to serve the FAD and letter to CSS on the same day.
- f. As per the Defendant's advice and direction, the Plaintiff served the FAD and the letter to CCS on 26 February 2016.

#### C.8 LC.Proceedings - Interlocutory hearing before Magistrate Pierce on 30 March 2016

- 29 On 30 March 2016, the Defendant appeared at the interlocutory hearing on 30 March 2016 before Magistrate Pierce.
- 30 His Honour identified the issues that were to be ventilated at the final hearing to ensure for a fair hearing, and for the merits of Plaintiff's case to be ventilated at the final hearing:
  - a. That the Plaintiff raises the issue of the existence of the Credit Card Contract;
  - b. That Plaintiff's denial of entering into the alleged Credit Contract;
  - c. Allegation of an unsolicited Credit Card.
- 31 Magistrate Pierce gave express notice to the counsels, Mr Hartford-Davis and Mr Ford, the basis upon him granting the Plaintiff's FAD to be filed, and to vacate the 7 April 2016 hearing by application of the Defendant's counsel, to enable the merits of Plaintiff's case to ventilated and fair hearing to be conducted at the final hearing.

#### C.9 Engagement of Mr Thomas Glynn of Glynn's Lawyers.

- 32 The Plaintiff did not seek the services of Mr Thomas Glynn (Mr Glynn) of Glynn's Lawyers.
- 33 The Defendant insisted that Plaintiff engage a solicitor on the matter and had recommended Mr Thomas Glynn for his relevant legal skills in finance, banking, civil and credit related matters.
- 34 On 19 April 2016, the Defendant organised an initial meeting with Mr Glynn at Edmund Barton Chambers.
- 35 On or around 12 July 2016, the Defendant contacted the Plaintiff by email wanting to discuss the engagement of an instructing solicitor, making threatening representations that Plaintiff is to be protected ~~the Plaintiff~~ from '*potential adverse credit findings that may involve the Legal Services Commissioner*'. Mr Ford requested to have a discussion on the phone at 11:30 am on the same day.
- 36 On 12 July 2016, the Defendant contacted the Plaintiff and insisted that the Plaintiff engage Mr Glynn as solicitor for the final hearing on 18 and 19 of July 2016. The Defendant stated words to the effect:

*You should really have Tom as instructing solicitor. Just make a payment of his fees into his trust account, don't worry about my fees right now, will sort it out later. Tom's fees are the priority at the moment, to which the Plaintiff said words to the effect: 'OK, I will do that.'*

- 37 Upon the insistence of the Defendant, the Plaintiff engaged Mr Glynn on the matter.

#### Particulars

- 1. The Defendant and Mr Glynn were consistently following up with the Plaintiff to engage Mr Glynn as the solicitor on the Plaintiff's matter from the period of 22 April 2016 to 12 July 2016.

2. At the time, the Defendant was aware of the following:

- a. That CCS solicitor Mr Ammer of Piper Alderman made a complaint to the Office of Legal Services Commission ("OLSC") against the Plaintiff for giving direct notice to CCS of its legal practitioners misleading conduct in the court proceedings where Piper Alderman deliberately engages in misleading representations to the court about CCS compliance of notices and court orders regarding the production of the credit contract and among other relevant material documents and particulars.
- b. CCS/Piper Alderman made a report to the OLSC to intimidate and threaten the Plaintiff where they were aware the Plaintiff was a litigant in person and not acting in the capacity of a legal practitioner in the proceedings and court proceedings were on foot.
- c. That the Law Society of NSW Professional Standard Department ("LSNSW PSD") conducted its investigations contrary to its rules that it does not conduct investigations whilst court proceedings are on foot.
- d. ("LSNSW PSD") conducted its investigations for the period on or about early February 2016 until Late August 2016. The Law LSNSW PSD required a response from the Plaintiff to subsequent submission of CCS/Piper Alderman by 18 July 2016 on the first day of the final hearing.

3. The Defendant had sought to undertake and act for the Plaintiff in relation to the OLSC and LSNSW PSD complaints and investigation process.

C.10 CCS\_LC.Proceedings - Hearing 18 and 19 July 2016.

- 38 The CCS\_LC.Proceedings took place on 18 and 19 July 2016 before Magistrate Sharon Claire Freund at Sydney Downing Centre Local Court.
- 39 The ~~Defendant~~ CCS's legal representatives before the court at the bar table were Counsel Mr Hartford-Davis and Ms Natalie Miller as instructing solicitor.
- 40 Piper Alderman employees, partner, Mr Florain Ammer, Mr Brendan May, Mr Matthew Menilli, Owen Nanlohy and the ~~Defendant~~ CCS's employees, Mr Adam Carpenter were present at the hearing, seated at the public seating at the back of the court.
- 41 The Defendant and instructing solicitor, Mr Glynn appeared for the Plaintiff and directed the Plaintiff to be seated at the back of the court, in the public seating area.
- 42 On the first day of the hearing 18 July 2016, the Counsels handed up the Statement of Agreed Facts and Issues.
- 43 On the first day of court, on 18 July 2016, the Defendant's solicitors provided the trial bundle folders for the first time to the Plaintiff's legal representatives and without review of the contents and not seeking the Plaintiff's instructions, The Defendant and Mr Glynn accepted the bundle folders without objection.

D. The Defendant's Intentional Negligence and Deliberate Fraudulent Statements to mislead the court about the central issue - Credit Card Contract. CCS LCProceedings.

D.1 Administration of Justice Offences

Plaintiff's discovery after the judgment and costs judgment.

- 44 Or or about ~~June~~July 2017, after the conclusion of the CCSS LCProceedings and judgement were made, the Plaintiff discovered upon inspecting court files, and subsequently reviewing court transcripts of the premeditated and extensive sophisticated and concerted effort by the Defendant conspiring with Mr Glynn, CCS and CCS's legal representatives with intent to defraud and fail the Plaintiff's case, perverting the administration and the course of justice. (Set out below)
- 45 The Defendant with Mr Glynn, ~~assisted~~ CCS and its legal representatives wilfully engaged in improprieties at the final hearing to obtain an illegal judgment against the Plaintiff and inflict a gross miscarriage of injustice for the benefit of CCS, using the court system, as follows:
- To present an entirely different case of a Card Collection/Overdraft/Get Set Checklist ("Card Collection Checklist")~~From~~;
  - To eliminate the real issue of the Credit Contract;
  - Not to ventilate and argue the defences in the FAD;
  - To refer to a Contract generally and ambiguous but never to ask or identify what document in evidence is referred to as the alleged Contract;
  - To omit and circumvent the applicable Credit Laws.

Particulars

*The Applicable Credit Legislation not limited to the following:*

- Sections 4, 5, 14, 16, 17, 20, 88(1), 185 of the *National Credit Code* ("NCC") which is Schedule 1 of the *National Consumer Credit Protection Act 2009* ("NCCPA").
  - The alleged Credit Contract in 2006 must be in writing pursuant to section 14 of the *NCC* and must contain matters pursuant to section 17 of the *NCC*.
  - National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* ("Transitional Act") - Schedule 1: Section 3(2) The NCC applies in relation to a 'carried over instrument' which is defined in the Part 2 Dictionary of the *Transitional Act* as a contract or other instrument that was made before commencement; and was in force immediately before commencement; and the Old Credit Code of a referring State or a Territory applied to immediately before commencement;
  - Section 12DL of the ASIC Act - Unsolicited credit cards and debit cards with an applicable offence described in section 12GB;
  - Section 12DM of the ASIC Act - Assertion of right to payment for unsolicited credit financial services with an applicable offence described in section 12GB of the ASIC Act ;
  - Section 12DB of the ASIC Act - False or misleading representations with an applicable offence described in section 12GB of the ASIC Act.
- (Collectively referred to as the "Credit Laws").

- 46 The Defendant and Mr Glynn refused to reply to the Plaintiff's correspondences dated 28 April 2017, which they each received seeking extensive ~~calcification~~ clarification of what transpired at the final hearing and costs hearing in the CCS\_LCProceedings, particularly seeking clarification from the Defendant and Mr Glynn's of their consistent misrepresentations to the court that the Plaintiff effectively received 'contract documents' on 12 January 2015 when they were aware such representations were untrue.

D.1.1 The Defendant's Intentional Negligence and Deliberate Fraudulent Statements to mislead the court about the central issue - Credit Card Contract.

CSS\_LCProceedings - Final hearing on 18 and 19 July 2016.

- 47 Throughout the final hearing on 18 and 19 July 2016, no Credit Card Contract was:
- a. Admitted or produced in evidence before the court.
  - b. Was not ventilated throughout the final hearing;
- 48 The Defendant conspired with Mr Glynn, CSS legal representatives to engage in the following conduct:
- a. In omitting and not ventilating the real and material issue of the alleged Credit Card Contract with the intent to illegally obtain a judgment and costs on a non-contractual document, a Card Collection/Overdraft/Get Set Checklist ("Card Collection Checklist")~~From~~.
  - b. To omit and not to ventilate the applicable Credit legislation (set out in particulars under paragraph 45 above) and its strict penalties for non-compliance where particular offences of the Code, NCC, NCCPA and the ASIC Act pertain to criminal penalties. Strict penalties for commencing proceedings without a credit contract default (s 88 NCC) and non-provision of the contract upon written request (s 185 NCC).
  - c. To circumvent penalties exceeding \$3.6 Million under the ASIC Act (ss 12DL, 12DM, 12DB and s 12Gb - Offences) and NCC of NCCPA and the applicable credit legislation. Penalties under the Acts as strict liability and refer to the Criminal Code.
  - d. Conducting a trial by ambush on the Plaintiff by:
    - i. Fraudulently presenting and relying upon a different case, being a Card Collection Checklist~~From~~ as the material and central document to determine whether a Credit Contract was entered by the Plaintiff.
    - ii. To omit and not ventilate the central issue of a Credit Card Contract that must be pursuant to the Credit Laws (set out in particular under paragraph 45 above);
    - iii. To omit and not to ventilate the alleged Credit Card Contract,
    - iv. To omit and not to ventilate the Plaintiff's dispute of its existence of a Credit Contract and the Plaintiff's denial of entering any Credit Contract as alleged CCS credit contract.
    - v. ~~With no Credit Contract, falsely presenting a Card Collection Form as the material and central document to determine whether a Credit Contract was entered by the Plaintiff.~~

- vi. That Statement of Agreed Facts and Issues ~~—a version~~ submitted to the court was intentionally not a the version put to the Plaintiff by her legal representatives on 13 and 14 July 2016 and which omitted the proposed amendments by Mr Glynn and failed to follow the Plaintiff's instructions for further amendments. (See paragraph 48h below)

Particulars

- 1 On review of the final hearing transcripts for 18 and 19 July 2016, the credit card contract issue was never ventilated nor determined. The counsels, the Defendant and Mr Hartford-Davis and CCS witness Mr Adam Carpenter refer to a credit card contract generally.
- 2 CCS SOC/ASOC and ~~case summary~~ case summary signed by Mr Florian Ammer dated 21 June 2016 relies upon an alleged existing credit card contract/agreement to prove its claim in paragraphs 3.1 to 3.3, 4.1, 4.3 and 7 of CCS case summary.
- 3 The Plaintiff discovered that the different version of Statement of Agreed Facts and Issues dated 18/7/2016 (SAFI\_02) was submitted to the court on 18 July 2016 was not disclosed to the Plaintiff which provided a different case and version presented by the Defendant and Mr Glynn to the Plaintiff on 13 and 14 of July 2016.
- 4 The Defendant withheld SAFI\_02 from the Plaintiff and submitted it to the court without the Plaintiff's knowledge, instructions and consent. The following was provided in the SAFI\_02:
  - a. Presented a Card Collection ChecklistForm case, where the date of the ChecklistForm 25 February 2006 was inserted as a material date, the signature on the ChecklistForm was falsely put in dispute to determine whether a Credit Contract was entered by the Plaintiff.
  - b. Provided a definition of a 'Contract' pursuant to paragraph 3 of the Defendant's SOC/ASOC without identifying what the contract is and whether it complies with the strict requirements under ss 14, 16, 17 of the NCC. (See applicable Credit Laws in particulars at paragraph 45).
  - e. To falsely represent to the court that the Card Collection ChecklistForm as the material contract document to prove the Defendant's claim, where the form is presented to be:
    - i. The Credit Contract;
    - ii. A contractual document pursuant to the NCC of the NCCPA
    - iii. A declaration to satisfy the unsolicited credit card matter;
    - iv. A request for a Credit Card.
  - f. Submitted a Statement of Facts and Issues dated 18 July 2016 without the Plaintiff's knowledge and consent, presenting a different case:
    - i. Defined the alleged credit contract never produced throughout the proceedings and in evidence pursuant to the Defendant's pleading in paragraph 3 of claim.
    - ii. Fraudulently omitted that a Credit Contract must be in writing and in strict compliance with the NCC pursuant to the credit legislation and where applicable legislation applies as set out in paragraph 9 above.

## Particulars

1. The Statement of Agreed Facts and Issues dated 18/7/2016 signed by Mr Glynn and Mr Ammer was submitted on 18 July 2016 by the counsels Mr Hartford-Davis and the Defendant ~~Mr Ford~~ and was agreed between the counsels, CCS solicitors Piper Alderman and Mr Glynn without the Plaintiff's instructions and approval.
2. The Statement of Agreed Facts and Issues fraudulently represented a different case:
  - i. Intentionally omitting:
    1. the issue of the Credit Card Contract and its non-existence;
    2. that the Credit Contract must be in accordance with what constitutes a credit contract under the credit laws.
  - ii. The Contract was fraudulently defined pursuant to the Defendant's pleading paragraph 3 of its SOC/ASOC which provides no explanation what constitutes an alleged contract;
  - iii. A Card Collection Checklistform was fraudulently represented as a material document and became a central issue to be determined whether the said Checklistform, the signature on the Checklistform and the date of the Checklistform proved the Defendant's case. Falsely disputing the Checklistform for the court to determine the following:
    1. Whether the signature of the Checklistform was that of the Plaintiff to prove a Credit Contract was entered by the Plaintiff;
    2. That the date on the Checklistform was the date the Plaintiff entered into an alleged Credit Contract and that the Plaintiff had attended a St George Bank and all alleged terms (as per s 17 of the NCC) of non-existing contract were explained to the Plaintiff.
  - iv. The card collection Checklistform which is non-compliant with NCC, containing only the Plaintiff's name and does not contain any details of the Plaintiff's address, income assessments nor any particulars of any product, not even an amount and the type of a loan, was an application for a request for a \$40,000 credit card.
- g. To generally refer to a *Contract* and *Contract documents*, *Contractual documents*, without identifying the contract being referred to, as follows:
  - iv. The CCS witness, Mr Adam Carpenter, employee, commits perjury during his cross-examination by Mr Ford, by referring to original interest rates of a Credit Contract, however, he is never asked by Mr Ford to identify what document he represents is the Contract he refers to and where it is in evidence throughout his oral examination;
  - v. CCS witness, Mr Trevor Bowden is never asked to identify an alleged credit contract in his oral evidence;
  - vi. Magistrate Freund never sought to identify nor sought to clarify where in the evidence is the alleged Credit Contract referred to by the Defendant's CCS witnesses and the Counsels Mr Hartford-Davis and the Defendant ~~Mr Ford~~.



1. Court transcript on 18 and 19 July 2016, no question was put to the Witnesses or the counsels to identify the alleged Credit Contract which is generally referred by Mr Carpenter, Counsels and Magistrate Freund.
2. The Defendant only asked eleven introductory questions to the Plaintiff in examination-in-chief and never asked the Plaintiff about the credit contract and whether she received the contract or contract documents on 12 January 2015.
3. The CCS's witness, Mr Adman Carpenter, employee, during cross examination refers generally and vaguely to a Contract which to original interest rates are derived from pursuant to a Contract but he is never asked to identify what document in evidence he represents is the Contract and not asked to identify what document in evidence he refers as the Contract.
4. No questions were asked about the Credit Contract by either the counsels at oral examinations of:
  - a. Defendant's witnesses, Mr Trevor Bowden, Westpac employee;
  - b. The Plaintiff and Plaintiff's witness, Ms Virginia Odtojan.
5. Magistrate Freund never sought to identify or sought where in the evendent evidence is the alleged Credit Contract referred to by the Defendant's witnesses Mr Carpenter and the Counsels Mr Hartford and the Defendant.
6. The Defendant failed to call Plaintiff's witness, Mr Artem Bryl, who gave affidavit evidence of his dealings with CCS in relation to the Credit Contract and requests for the Contract. Mr Bryl was listed as one of the Plaintiff's witnesses Local Court Civil Listing Advice submitted to court on 21 June 2016 which the Defendant had prepared with Mr Ammer and directed the Plaintiff to sign at court.
7. To date the Defendant and Mr Glynn have refused to respond to the Plaintiff's correspondences dated 28 April 2017 seeking clarification from them after the hearing and reviewing the documents and transcripts - to identify what 'Contract document', 'Contract', 'Contractual documents' the Defendant Mr Ford repeatedly represented at the final hearing and cost argument hearing that Plaintiff had received on 12 January 2015. No Contract was in evidence before the court at the final hearing.
- h. To submitted a Statement of Facts and Issues dated 18 July 2016 without the Plaintiff's knowledge, instructions and consent, presenting and relying upon a different material facts of the case and falsely representing that it was agreed by the parties, as follows:
  - i. Defined the alleged credit contract, never produced throughout the proceedings and in evidence, pursuant to the Defendant CCS's pleading in paragraph 3 of its claim and not defined in accordance with the Credit Laws.
  - ii. Fraudulently omitted that a Credit Contract must be in writing and in strict compliance with the *NCC* pursuant to the credit legislation and where applicable legislation applies as set out in paragraph 9 above.
  - iii. Fraudulently omitted that contract itself was an issue and its existence and compliance with Credit Laws was in dispute.
- i. ~~To falsely represent that the Card Collection Form as the material to prove the Defendant's claim, where the form is presented to be:~~
  - i. ~~The Credit Contract;~~

- ii. A contractual document pursuant to the ~~NCC~~ of the ~~NCCPA~~
- iii. A declaration to satisfy the unsolicited credit card matter;
- iv. A request for a Credit Card.

- i. To suppress evidence - the original Credit Card was not produced in evidence before court at the final hearing.
  - a. The Plaintiff's original credit card was suppressed and not admitted in evidence at the final hearing.
  - b. The Defendant obtained the Plaintiff's Credit Card ~~from the Plaintiff~~ under a CCS subpoena for evidence in the proceedings, relating to the Defendant's signature issue.
  - c. The Credit Card was never admitted in evidence and never produced at the final hearing.
  - d. No Credit Card was ~~not~~ stored in the court files after the hearing. Court orders dated 21 April 2016 provide that the Credit Card was uplifted by CCS ~~the Plaintiff~~, but never produced at the hearing where it will show a the different signature when compared to that signature on the card collection Checklistform.
  - e. The Expert Report that cost approximately \$59,000 was inconclusive. Multiple subpoenas of approximately eleven were issued to obtain documents with the Plaintiff's signature to be compared with the signature of the Card Collection Checklistform.
  - f. The Defendant's counsel presented badly photocopied signatures to the Plaintiff at the witness stand for the Plaintiff to be an exert on her own signatures and to circle her own signatures from photocopies of signatures to be made an exhibit.
  - g. The plaintiff's document was then given to Ms Miller at the bar table where she was directed to create a new set of documents with the Plaintiff's signatures to circle them and hand them to the court as an exhibit.
  - h. Ms Miller, a Piper Alderman paralegal, was sitting at the bar table without leave of court impersonating a solicitor for the CCS throughout the hearing.
  - i. Later upon inspection of exhibit 14, at the court files after the judgement was made, the Plaintiff discovered that it was tampered with and the question mark on one of the signatures was crossed out.
  - j. The Defendant, its legal resentedatives fraudulently relied on the Card Collection Form and its signature to falsely state that a Credit Contract was entered by the Plaintiff.

#### D.1.2 Fraudulent statements that Contract documents were provided to the Plaintiff on 12 January 2015.

49. At all material times, before the court, the Defendant was intentionally negligent and deliberately made false representations that contract documents were provided to the Plaintiff on 12 January 2015, as follows:
- a. On 30 March 2016, at the interlocutory hearing before Magistrate Pierce as follows:
    - i. Transcript dated 30 March 2016, page 5 para 30: FORD: *Well, what we say, your Honour, was that the earliest she received the St George contract was 12 January 2015;*
    - ii. Transcript dated 30 March 2016, page 9 paras 5-15. FORD: *That is a two page letter, your Honour, where she says she has received those documents on or about 22 January 2015.*

FORD: *At about point 7 on the page, "I received the...contract was provided." Your Honour, I hope that answers your question in relation to the knowledge and the timing.*

- iii. Transcript dated 30 March 2016, page 12 para 45. FORD: *That second notice to produce is dated 17 February 2015 but, your Honour, I say on the record that she did receive the contract documentation on 12 January 2015.*
  
- b. On 18 July 2016, first day of the final hearing efore Magistrate Freund as follows:
  - i. Transcript dated 30 March 2016, page 5 para 30: FORD: *Well, what we say, your Honour, was that the earliest she received the St George contract was 12 January 2015;*
  - ii. Transcript dated 30 March 2016, page 5 para 30: FORD [cross-examining CCS witness Adam Carpenter] Q. *In fact the a complaint in relation to that, yes. defendant's position is that the first time she received the contract documentation from the plaintiff was 12 January 2015. You're aware that that is her assertion?*
  
- c. On 19 July 2016, second day of the final hearing efore Magistrate Freund as follows:
  - i. Transcript dated 19 July 2016, page 154 para 5. FORD: *The following matters were also not put to this witness and these are crucial. She always said, "I did not receive the contract documentation until after these proceedings were commenced and then on 12 January 2015."*
  - ii. Transcript dated 19 July 2016, page 154 para 15. FORD: *Her assertion was that she did not receive these documents before 12 January 2015.*
  - iii. Transcript dated 19 July 2016, page 158 para 20. FORD: *It's only when these proceedings are commenced - as a solicitor, she knows about things like notices to produce, issues, requests for particulars. It's only when she gets the documents on 12 January 2015 that she finds out what is being asserted against her are the terms.*
  
- d. On 29 August 2016, cost hearing before Magistrate Freund as follows:
  - i. Transcript dated 29 August 2016, FORD: *There's a bit of merit in that argument, I would submit. May I just deal with the gravitas of my friend's submission, which is the indemnity costs? The offer of compromise of 17 December 2014 was served on my client, and on my case, Ms Odtojan did not receive the contract documentation until 12 January 2015. Now, I appreciate your Honour made findings in relation to what now--*  
  
HER HONOUR: *What was that date that you say she didn't - I can't remember the dates*  
  
FORD: *12 January 2015, that has always been her case and you may recall that she issued*
  - ii. Magistrate Freund had vacated 16 August 2016 to 29 August 2016 by her own motion solely based on ~~for~~ the Defendant's schedule to be available and appear at the cost hearing despite the Plaintiff had a Counsel on her behalf on 16 august 2016.
  - iii. Magistrate Freund gave maximum costs and indemnity asking the counsels and relying on representations at the bar table from the counsels Mr James Willis and Defendant, both falsely representing to the court that the Plaintiff had received contract documents where they both were aware were unsupported by any evidence.
  - iv. The Defendant falsely gave representations that the Plaintiff received 'contract documentation until 12 January 2015 which was not supported by any evidence. The

Magistrate Freund never asks Counsel to refer to evidence, identify and particulars what Contract documents is referred to by the Defendant.

#### D.1.3 'Statement of Agreed Facts and Issues in Dispute' ('SAFI')

50. On 13 July 2016, the Defendant emailed Mr Glynn and to the Plaintiff a copy of SAFI. Shortly, Mr Glynn replied and provided the parties a draft copy to his amendments to the SAFI, inserting FAD defences clauses, 10A, 10.d.xi(2), 10.d.1x, 10.dx, 10.e, 10.g, 10F and Clause 10d.xi(2), 'if any Contract was in fact provided to the Defendant'.

##### Particulars

1. The Plaintiff's emails with the Defendant and Mr Glynn on 13 July 2016 and the SAFI draft email by Mr Glynn with proposed amendments dated 13/7/2016 and Plaintiff's instructions for further amendments to the SAFI on 14 July 2016.
51. After receipt of Mr Glynn's email, on or around 14 July 2016, The Plaintiff emailed both the Defendant and Mr Glynn agreeing to Mr Glynn's comments and providing the instructions to further amend as follows:

*Also, would like you to consider the following:*

*The definition of the contract is broadly defined and should be defined pursuant to the credit law.*

*Throughout the facts and issues, 'contract' is consistently referred to and should be referred as 'alleged contract' as the contract itself is an issue.*

*Issue 15 noted by Tom, while acceptance of payment from mother is not disputed the conduct (manner/procedure) in which payment arrangement was made and paid initially is an issue.*

52. On 14 July 2016, Mr Glynn responded to the Plaintiff acknowledging the Plaintiff's instructions and that he will notify the Defendant.
53. Sometime in July 2017, upon inspecting the court's file, the Plaintiff discovered that the Defendant and Mr Glynn had agreed to a different version of the SAFI with CCS to submit to court.
54. The version of the SAFI dated 18/7/2016 submitted to the court, without the Plaintiff's knowledge and consent, contained the following unauthorised amendments:
  - a. A material date of '25 February 2006' was added as an alternative date of alleged entering into the credit card agreement ('contract') in the heading 'Contract' on page 1;
  - b. The Contract, a regulated contract is defined pursuant to paragraph 3 of the CCS SOC/ASOC and not pursuant to Credit Legislation, s14 of NCC and a Letter of Offer with required pre contractual documents.
  - c. All amendments represented to the Plaintiff made by Mr Glynn on 13 July 2016 were not included except for Clause 11.
  - d. No amendments were made as per the Plaintiff's instructions on 13 July 2016.

##### Particulars

1. In July 2017, upon inspecting the court's file, the Plaintiff discovered that the Defendant and Mr Glynn had agreed to a different version of the SAFI with the CCS solicitors, signed by Mr Glynn and

Mr Ammer dated 18 July 2016 ("SAFI 02") and The SAFI 02 submitted to court on the first day of the final hearing was a different version of SAFI that the Defendant and Mr Glynn presented to the Plaintiff on 13 and 14 July 2016 to the court, which contained false representations of material facts and issues i dispute that the Plaintiff was intentionally not made aware of by the Defendant and Mr Glynn.

2. The submitted document did not reflect the instructions provided by the Plaintiff to the Defendant and to Mr Glynn on 13 and 14 July 2016 to define the contract pursuant to credit law, that the contract should be referred to as 'alleged contract' as it is an issue in the proceedings.
3. Version of the SAFI submitted to the court without the Plaintiff's knowledge contained the following unauthorised amendments without the Plaintiff's knowledge, instructions and consent:
  - a. A material date of '25 February 2006' was added as an alternative date of alleged entering into the credit card agreement ('contract') in the heading 'Contract' on page 1;
  - b. In paragraph 9, on page 2 deletion the words added by Mr Glynn on 13 July 2016: '... or if any Contract was in fact provided to the Defendant (Clause 10.d xi (2) Amended Defence.'
  - c. Deletion of paragraphs 15, 16, 17, 18, 19 on page 3 in relation to the defences in the Amended Defence drafted by Mr Glynn in his email dated 13 July 2016 the Plaintiff.
4. On or about July 2017, when the Plaintiff ~~went to~~ inspected the court files, the Plaintiff discovered that Mr GlynnFord and the Defendant tampered with the SAFI and submitted a different version of SAFI to the court which aligned with the CCS's case with intent to eliminate the material issue of the Credit Card Contract and removing the onus of proof from CCS to prove the existence of a Credit Contract.
5. The Defendant was Intentionally negligent, in breach of the retainer and in collusion with CCS and its legal representatives, the Defendant submitted a tampered SAFI dated 18 July 2016 to the court after:
  - a. Removing the issue of ~~that~~ the credit card contract and that it was never provided to the Plaintiff and the existence of the contract is in dispute from the SAFI in paragraph 9;
  - b. Making unauthorised amendments in the SAFI without seeking the Plaintiff's instructions and consent and representing that the SAFI dated 18 July 2016 was consented to by the parties.
  - c. Failing to follow instructions provided by the Plaintiff on 14~~3~~ July 2016 to specify that an alleged credit contract must be pursuant to the credit legislation and the contract itself is an issue.
- ~~6. SAFI submitted to the court omitted the main issue in the proceedings - non-existence of an alleged by the CCS credit card contract.~~

#### D.1.4 Defendant's Case Outline to the Court - 18 July 2016

55. On all occasions before the court, the Defendant deliberately provided the court with misleading case outline which omitted the issue of the credit card contract and focused the court on Credit Card Collection ChecklistForm.
56. The Defendant deliberately misled the Plaintiff and the Court at the CCSS\_LCProceedings hearing on 18 and 19 July 2016 by filing a Case Outline that provided a false narrative that the DefendantPlaintiff received contract documents on 12 January 2015, when the Defendant was aware was untrue.

57. Without the Plaintiff's knowledge and instructions, the Defendant drafted and submitted to the Court 4 pages Outline of the case dated 18 July 2019 with 8 pages of sections of the ASIC Act.

## Particulars

## 1a. The Defendant's Outline dated 18 July 2016:

- i. Intentionally failed to raise did not contain the issue of an alleged credit card contract, disputing its existence and compliance with Credit Laws (Particulars in paragraph 45);
- ii. Intentionally failed Did not to inform Court that the alleged credit card contract has never been produced by the CCS and was not admitted in evidence;
- iii. Intentionally failed to raise, did not provide as per Plaintiff's Defence/FAD, that the Plaintiff denies entering into credit card contract;
- iv. Intentionally failed to provide the Did not contain definition of the credit card contract pursuant to Credit Laws (Particulars in paragraph 45);
- v. Intentionally failed to provide the Did not contain applicable to the credit card contracts legislation - National Credit Code (Particulars in paragraph 45);
- vi. On page 2, had in Paragraph 5 provided with false material facts information stating that *'The defendant has sight production of the relevant contract documents from the plaintiff and says that she did not receive the credit card documents until after these proceedings were commenced and then only on 12 January 2015.'*
- vii. On page 2, in paragraph 6, contained 2 statements taken from the Plaintiff's letter dated 4 February 2015 to the CCS's solicitors, to fraudulently misrepresent and mislead the court that the Plaintiff received the contract on 12 January 2015:  
*'The contract referred (sic) in your client's ASOC has never been in my possession. I have made it very clear to your client and have repeatedly requested such contract to be provided to me. and later in the same letter - Documents in relation to the SGB, the application form, the card collection form and the terms and conditions were only obtained for the first time upon receipt of particulars provided by your firm (emphasis added).'*
- viii. Without any reference to the fact that the alleged credit card contract is an issue and has never been provided in the proceedings by CCS, the Defendant intentionally makes false representations referring to the Card Collection Checklist as a 'declaration' in Paragraph 7 eliminating the said central issues of the Credit Contract case and falsely stating the following is to be determined by the court where the Defendant was aware that he would not ventilate or test any contract as he was aware there was no contract.  
These complaints in summary go to the very issues before the court, namely:
  - a. *Whether she signed the declaration form relied upon;*
  - b. *Whether the defendant consented to the terms of the credit card;*
  - c. *Whether the plaintiff or SGB breached any law, including the ASIC Act as to acting unconscionably, or whether the contract contains unfair terms, or was unjust transaction within the meaning of the Consumer Credit Code;*
  - d. *Whether the credit card is an unsolicited credit card;*

- e. Whether the penalties doctrine applies to this case; and
- f. Whether the doctrine of non est factum applies to assist the defendant in resisting the plaintiff's claim.'

#### D.1.5 The Defendant misleading and fraudulent drafting of court documents

58 The Defendant engaged in fraudulent misrepresentations in drafting court documents as follows:

- a. The Case Outline dated 19 July 2016 (In the CCS\_LCPceedings the Defendant's Case Outline ~~written submissions~~ dated 19 July 2016): which provide false and misleading representations that omit the material facts and issues of the Credit Contract and ~~the issues to be ventilated in court~~ falsely represented that the central issue for the court to determine is centered on credit based findings against the Plaintiff.

The Outline was prepared without the Plaintiff's knowledge and instructions and contained a false factual matrix.

- b. The Written Submission dated 29 (In the CCS\_LCPceedings the Defendant's written submissions dated 29 July 2016) which provides false and misleading representations omitting the real issue of the credit card contract with the purpose to mislead the court.

#### Particulars

1. The Plaintiff had drafted and added the following paragraphs in written submissions:

i. OFFER AND PRE-CONTRACTUAL DOCUMENTS NEVER PROVIDED TO DEFENDANT AT ANY TIME & NOT TENDERED IN EVIDENCE

Paragraph 17. The court is referred to the two terms and conditions, ("TAC"), effective on 1 Aug 2003 and 1 Feb 2006 relied upon by the plaintiff. Both the TACs consistently referred to an "Offer". To date, no Offer documentation has been provided to the defendant. No Offer has been tendered by the plaintiff and no Offer is in evidence before the court.

ii. Paragraph 18. Both the TACs state: a. This document does not contain all the terms of this agreement or all the information we are required by law to give you before the agreement is formed. Further terms and information are in the Offer. b. under the information statement, under the heading 'The Contract', it states: Your credit provider must give you a pre-contractual statement containing certain information about your contract. The pre-contractual statement and this document must be given to you before:

- Your contract is entered into or;
- You make an offer to enter into the contract, whichever happens first.

iii. Paragraph 19. The Offer and pre-contractual statement were not provided to the defendant and have never been produced by the plaintiff. These documents are relevant as the TACs are relied by the plaintiff and give the standard practice and procedure at the time the credit card was issued and provided to defendant. Both TACs indicate what is required from SGB, specifying what documents are to be provided to the consumer prior to entering the contract or making an offer to enter into the contract.

iv. Paragraph 20. Reference to the TACs, Offer and pre-contractual statements were made in the Affidavit of Marie Odtojan sworn 26 February 2016 at page 7 and 8. The defendant was not cross

examined on these assertions and this will be the subject of detailed submissions below.

2. The Plaintiff's amendments to the written submission contradicted the Defendant's and Mr Glynn false statements to the court that the Plaintiff received credit contract on 12 January 2015. The Defendant and Mr Glynn had filed the written submissions to the court without alerting the Plaintiff to the fact that Defendant and Mr Glynn had run the Plaintiff's case on false factual matrix, intentionally misleading the court and the Plaintiff.
3. Throughout the court transcript on 18 and 19 July 2016, the Defendant and Mr Glynn intentionally failed to argue and ventilate the Credit Card Contract as follows:
  - a. There was no dispute of the Credit Card Contract and its existence, removing the onus of proof from CCS to prove its alleged Credit Contract.
  - b. The relevant Credit Laws set out in particulars under paragraphs 45.
  - c. Defendant and Mr Ford intentionally made false representations to the court disregarding the central issue of the Credit Contract, evidence, Credit Laws, the Plaintiff's instructions and evidence and material facts of the case.
  - d. The Defendant and Mr Glynn's demonstrably engaged in fraudulent representations unsupported by evidence and in blatant disregard of the material facts of the case, intentionally presenting a different material facts with intent to mislead the court and cause the Plaintiff to suffer loss and damages by undermining the Plaintiff's case and credibility in stating the following:

' that she attended the branch on 25 February 2006 and that she agreed to those terms... It's just stupidity on her behalf. She has authorised me to say that, your Honour; she knows it. Was she vulnerable at the time? She was. Was this predatory lending practice? I can't, on her evidence, put it that high...

It's only when these proceedings are commenced - as a solicitor, she knows about things like notices to produce, issues, requests for particulars.

It's only when she gets the documents on 12 January 2015 that she finds out what is being asserted against her are the terms.

She didn't agree to them. She didn't agree to them on 25 February. She didn't agree to them on 16 February. Foolishly, she agreed to a credit card for 40,000.

In my respectful submission, and this is what my written submissions will go to, the consumer credit law in Australia has developed, your Honour is well aware of that, and, as at 2006, the development of that law was such that she is not bound by terms unless she agrees to them.

It seems to me that my friend hasn't pleaded an alternative case, which ought to have been pleaded, or raised, which is that, in the event that the Court finds that she is not bound by the St George Bank terms dated on or about 16 or 25 February 2006, they have a common money count and they're entitled to interest under the old sch J or under the new CPA ..(not transcribable).. it seems to me that that's where this case lies

(Para 50 p 157 and paras 10-30, p 158 transcript dated 19 July 2016).
  - e. The Defendant and Mr Ford intentionally made false representations to the court referring to St George Bank terms dated on or about 16 or 25 February 2006' where the Defendant and Mr Ford were aware there was no evidence of any Credit Contract, of any St George Bank contractual terms that bound the Plaintiff, of any credit insurance contract, of any written



request for credit and any pre-contractual documents as required by the Credit Laws.

D.1.6 The Defendant Tempering with the Affidavit evidence.

59. The Defendant with Mr Glynn was intentionally negligent and in breach of their legal obligations to the Plaintiff to delete evidence at court and after the court without the Plaintiff's knowledge, instructions and consent.
60. Without seeking the Plaintiff's instructions and consent, after the court hearing of 19 July 2016, ~~Mr Ford~~ the Defendant deleted paragraphs in the affidavit of Marie Jossane Odtojan sworn 6 July 2016 as follows:
- a. Paragraphs 8.i, 8.j and 36 in the Plaintiff's affidavit;
  - b. Paragraphs 8.i, 8.j is relevant to the issue of the Credit Card Contract and related to the Plaintiff's conversation with St George Bank manager making enquiries about the bank process of how someone can obtain a \$40,000 credit card recommended limit amount.
  - c. Paragraph 36 was about the professional complaint to the Office of Legal Services Commissioner (OLSC) made against the Plaintiff by Mr Florian Samuel Ammer of Piper Alderman during the CCS\_LC Proceedings.
61. During the hearing on 18 July 2016, ~~the Defendant Mr Ford~~ agreed to delete in Mr Adam Carpenter's affidavit dated 24 March 2015, deleting his statement '*entered into the contract*' which was the central issue of the court proceedings matter.
62. ~~Mr Ford~~ The Defendant was fully aware that the Credit Card Contract was never provided to the Plaintiff having notice of the notices to produce and court orders set out in paragraphs ~~125~~ above, ~~however he~~ The Defendant deliberately made fraudulent statements at the bar table effectively stating '*contract documents were never provided until 12 January 2015*' throughout the final hearing and at the cost hearing.

Particulars

1. Transcript dated 19 July 2016, paragraphs 10, 20, page 154
  2. Transcript dated 29 August 2016, paragraphs 45, page 5, paragraph 5 page 6.
63. At the court hearing on 19 July 2016, ~~the Defendant Mr Ford~~ made an admission that CCS instructing solicitor Mr Florian Samuel Ammer is also ~~Mr Ford's~~ his instructing solicitor. In Court Transcript dated 18 July 2016, paragraph 30, page 25:

FORD: ..*Some evidence was given earlier by my learned instructing solicitor, Mr Ammer.*

64. In July 2017, upon review of the filed evidence, the Plaintiff had discovered that the Defendant ~~Mr Ford~~ fraudulently tampered with the Plaintiff's witnesses affidavit evidence of Artem Bryl affirmed 26 February 2016 before the evidence was filed by removing: the issue of the credit contract not been provided to the Plaintiff Defendant and tampering with the conversations and other statements as follows:
- a. On page 3 at paragraph 17, deleted the following statement "a document not provided to Marie" in relation to the word "contract" in Mr Bryl's conversation with Credit Corp

employee Rita Grima in relation to the contract she stated Marie signed with St George Bank;

- b. Tempered and deleted statements on page 5, 7, 8 and 9 all without Mr Bryl's knowledge in his affidavit.

#### Particulars

1. The email correspondences between the Defendant and the Plaintiff for from 25 to 26 February 2015 in relation to the draft affidavits and representing that he did not make any substantial changes to the affidavits of the Plaintiff and witnesses and placing urgency to sign, execute and serve on CCS.

#### D.1.7 The Defendant's Premeditated Conduct

65. The Defendant ~~has~~ premeditated from the outset to engage in misleading and deceptive conduct and fraud by:
  - a. Engaging in dishonest, misleading and deceptive conduct, in advising the Plaintiff drafting an extensive Further Amended Defence ("FAD") was material for the Plaintiff's case, which the Defendant ~~had intent did not plan~~ to ventilate and argue at the final hearing, resulting in ~~protracting~~ the proceedings and where the Defendant will not ventilate and argue the FAD at the final hearing.
  - b. The extensive FAD was made to dilute the Plaintiff's real issues of the Credit Contract, disputing its existence and the Plaintiff's denial of entering into a credit contract and where the Plaintiff never received it from the CCS and its legal representatives.
  - c. The Defendant had intent to make fraudulent representations on every occasion before the court that contract documents were received by the Plaintiff on 12 January 2015 which the Defendant knows is untrue.
  - d. Vacating the court hearing date of 7 April 2016 during the interlocutory hearing on 30 March 2016, incurring costs and giving false evidence at the bar table in favor for the benefit of the CCS and misleading the court that the Plaintiff ~~had~~ not received the credit card contract until 12 January 2015, when the Defendant was aware that the contract was never provided and was never admitted in evidence throughout the court proceedings.
  - e. Omitting the fact and evidence from the court - that no credit card contract was ~~never~~ provided/produced by the CCS and its legal representatives and have been non-compliant with notices and court orders as set out in paragraph 25;
  - f. At the court proceedings the Defendant with CCS's counsel Mr Hartford-Davis demonstrated gross dishonesty in misleading the court and omitting the central issue of the Credit Contract which must be in a written form pursuant to s 14 of the NCC and ~~to mislead~~ the court that the card collection ~~checklist form~~ constitutes the material contract document.
  - g. The Defendant and Counsel, Mr Hartford-Davis demonstrates their premeditated conduct to mislead the court about the central issue of the credit contract and presents the Card Collection ~~Checklist Form~~ as a material document at interlocutory hearing before Magistrate Pierce on 30 March 2016, (Transcript Page 26, para 15-30):

HIS HONOUR: *So that was the contract with St George.*

HARTFORD-DAVIS: *At that point, your Honour, can I ask you to take up the affidavit of Mr Ammer, which I have read and turn to the credit card collection form which is at pp 16 and 17?*

HIS HONOUR: *Yes?*

HARTFORD-DAVIS: *So your Honour has seen this form and it's signed at the back and there is now a dispute about whether that's the defendant's signature that's on p 17.*

HIS HONOUR: *Yes.*

HARTFORD-DAVIS: *This was part of the plaintiff's evidence-in-chief served in March 2015 and not until February was it alleged that this document was signed by someone other than the plaintiff.*

- a. Mr Hartford-Davis further represented to Justice Pierce on 30 March 2016, (Transcript Page 26, para 15-30)

HARTFORD-DAVIS: *Your Honour has seen the core documents themselves, your Honour has been taken to them, where, what we say is her signature, appears, the conundrum that this puts me in and my client and I tell your Honour squarely, is that in order to meet this defence we need a handwriting expert.*

- b. Mr Hartford-Davis, being fully aware that the CCS has never provided credit card contract despite court orders dated 7 January 2015 and all the notices to produce issues by the Defendant misleading the court on 18 July 2016 representing to Magistrate Freund that the signature on a credit card collection form is the the key issue in the proceedings, eliminating the issue of an alleged credit card contract (Transcript Page 9, para 30-35)

HARTFORD-DAVIS: *In that case, can I just say this, that the defence, long as it is, really, upon proper analysis, relies on five factual matters. I say this without disrespect, it dresses up these five factual matters in different ways, according to the statutory provisions that are relied upon, but there are five. The first of them is, the account was unsolicited. The second is that no contractual documentation was provided. Both of those allegations are to be resolved, your Honour, in effect, by determining whether or not Ms Odtojan's signature appears on the credit card collection form, because that constitutes a declaration both that she has made a written application and that the terms have been explained to her.*

- c. Mr Hartford-Davis on 18 July 2016 refers to the contractual interest rate when he is fully aware no such contract exists and was never submitted into evidence (Transcript dated 18 July 2016, Page 9, para 10-15)

HARTFORD-DAVIS: *The only other thing I need to say by way of factual introduction is that, as your Honour has seen, the assignment took place in May 2010 and the plaintiff's claim is for the sum outstanding and interest calculated from time to time at a simple interest rate of 8.66%. That is half of the contractual interest rate that was agreed with St George and it has, your Honour will see in the evidence, in effect, voluntarily imposed by Credit Corp, the plaintiff - had no obligation to do that and it has resulted in a very significant financial benefit to - I should say, the obviation of a significant disbenefit to the defendant, in the sum of about \$25,000 that the plaintiff has forgone.*

- d. The Defendant, in collusion with Mr Hartford-Davis, omits the issue that the credit card contract has never been produced, and gives false evidence at the bar table to assist the CCS that credit card contract has been provided, misleading the court on the key issue of

the proceedings. The Plaintiff has never gave such evidence that she has received a credit contract on 12 January 2015. (Transcript dated 19 July 2016, Page 154, para 10)

FORD: *The following matters were also not put to this witness, and these are crucial. She always has said, "I did not receive the contract documentation until after these proceedings were commenced and then on 12 January 2015. She was never challenged on that assertion.*

- e. The Defendant, in collusion with Mr Hartford-Davis, omits the issue that the credit card contract has never been produced, and gives false evidence at the bar table to assist the CCS that credit card contract has been provided, misleading the court on the material key issue of the proceedings. The Plaintiff has never gave such evidence that she has received a credit contract on 12 January 2015 (Transcript dated 19 July 2016, Page 154, para 20):

FORD: *Her assertion was that she did not receive these documents before 12 January 2015. So, contrary to what my friend says about his strong circumstantial case, and in particular the document we know as being exhibit C to Mr Bowen's affidavit, none of the documents brought forward by the plaintiff actually place her in the bank on 25 February 2006. Those documents don't place her there. Your Honour will need to make a finding that you don't believe her when she says she wasn't there.*

#### D.1.87 Failure to provide documents for the Cost hearing

66. The Defendant was intentionally negligent and in breach of his ~~their~~ legal obligations to the Plaintiff, where the Defendant with ~~and~~ Mr Glynn intentionally withheld from the Plaintiff material court documents being the Affidavit of Florian Ammer sworn 15 August 2016 and its exhibit cost folder, materially relied upon by CCS for the cost hearing on 29 August 2016.
67. The Defendant w~~with~~ withheld CCS court documents from the Plaintiff, ~~such as~~ the CCS's affidavit and Cost document bundle put to the court's attention on 16/~~8~~/August 2016;
68. The Defendant had intentionally ~~dis~~ disregarded the Plaintiff's instructions and notices to the Defendant and to Mr Ford about the Plaintiff's to provide the Plaintiff the CCS Cost bundle court documents as early as on 16/~~8~~/August 2016 ~~to be provided a copy of the documents~~ for the Cost argument on 29 August 2016 to the Plaintiff;
69. The Defendant had intentionally ~~de~~ delayed providing the CCS's Cost bundle court documents to the Plaintiff until 20 September 2016, after the cost argument hearing on 29 August 2016 had concluded ~~was over~~ and after the 28-day timeframe to make an application for appeal expired.
70. The Defendant intentionally ~~pre~~ prejudiced the Plaintiff by withholding from the Plaintiff the CCS cost affidavit and folder, ~~by~~ depriving ~~the~~ Plaintiff any ability to ~~from~~ reviewing and reply to the Plaintiff's cost affidavit and cost exhibit documents for the Cost hearing on 29 August 2016.
71. The Defendant intentionally ~~de~~ deprived the Plaintiff from filing an ~~putting forward an~~ affidavit in reply for the cost argument hearing, in particular, to address the issues concerning the letter of offer of compromise which CCS ~~the Plaintiff~~ would rely on in its application for indemnity costs.

#### D.1.98 Cost argument hearing on 29 August 2016

72. At a cost argument hearing on 29 August 2016, Mr Glynn failed to appear without any notice to the Plaintiff. The Defendant and Mr Ford appeared by himself. The Defendant appeared without

any folders or documents, no CCS affidavit and costs folders which were withheld from the Plaintiff and Mr Ford came to court without any folders.

Particulars

1. The Defendant was intentionally negligent and in breach of his ~~their~~ legal obligations to the Plaintiff, Mr Ford gave in giving false representations unsupported by any evidence as follows:

Transcript dated 29 August 2016, page 5, para 45, page 6, para 5. FORD: *There's a bit of merit in that argument, I would submit. May I just deal with the gravitas of my friend's submission, which is the indemnity costs? The offer of compromise of 17 December 2014 was served on my client, and on my case, Ms Odtojan did not receive the contract documentation until 12 January 2015. Now, I appreciate your Honour made findings in relation to what now--*

HER HONOUR: *What was that date that you say she didn't - I can't remember the dates--*

FORD: *12 January 2015, that has always been her case and you may recall that she issued--*

HER HONOUR: *Yes.*

E. D-1-9 Gross Delay of ~~with on~~ appeal advice and providing misleading appeal advice

73. Upon receiving the judgment on 16 August 2016, the Plaintiff promptly notified the Defendant and Mr Glynn Ford of the intention to appeal.
74. The Plaintiff promptly requested the Defendant and Mr Glynn Ford to provide their appeal advice.
75. The Defendant Mr Ford insisted that the appeal advice should be provided by a senior counsel and insisted that the Plaintiff engages his contact, senior counsel Mr Miles Condon from New Chambers in Sydney.
76. The Defendant Mr Ford requested that the Plaintiff Defendant transfers \$6,000.00 into Mr Glynn's trust account to secure an appeal advice from Mr Condon.
77. The Plaintiff transferred \$6,000.00 into Mr Glynn's trust account on or about 29 August 2016.
78. The Defendant and Mr Glynn was intentionally negligent and in breach of their legal obligations to the Plaintiff, ~~the Defendant~~
79. The Defendant Mr Ford Failed to provide competent, professional and timely appeal advice delaying provision of a written advice until 6:35pm on 12 September 2016, being 27-th day of 28-th day timeframe to launch an appeal and then provided further written advice at 2:51 pm on 13 September 2016.
80. The Defendant Mr Ford requested that the Plaintiff comes at 8:00am on 12 September 2016 to Mr Condon's office to meet with Mr Condon ~~and Mr Ford~~. Mr Glynn failed to appear at the meeting with Mr Condon.
81. At the meeting with Mr Condon, the Defendant admitted that CCS has never provided a credit contract and pre-contractual statement throughout the entire proceedings.
82. The written advice received from The Defendant Mr Ford and Mr Condon on 13 September 2016 on page 2 refers to a 'Letter of Offer' which was never provided by the CCS during the court proceedings.
83. The written advice received from the Defendant on 12 September 2016 and from Mr Glynn Ford and Mr Condon does not have any details whether an alleged credit card contract has been provided by the CCS in the course of the court proceedings.

## Particulars

1. The Plaintiff attended the meeting with Mr Condon with her witness Mr Artem Bryl;
2. The Defendant Mr Ford was also present at the meeting;
3. At the meeting on 12 September 2016 with Mr Condon, the Defendant Mr Ford stated that the CCS has never provided the alleged credit card contract and pre-contractual statement throughout the proceedings;
4. The Defendant Mr Ford's statement about non-provision of the credit card contract contradicted his previous statements at the court where he stated that credit card contract was provided to the Plaintiff on 12 January 2015.

84 During the meeting on 12 September 2016:

- a. No notice of appeal was drafted as represented by Defendant to the Plaintiff on 17 August 2016.
- b. Initial comment from Mr Condon: The magistrate 'did a very good judgment', that she made 'thorough factual findings' and essentially, that he could not point to a 'factual error that is glaringly improbable to justify appellant intervention'. The first question Mr Condon asked the Plaintiff, were words to the effect: 'Why do you take a different view? Or to put it neutrally tell me your best point in appeal or your best points?'
- c. Mr Condon further asked the Plaintiff: Tell me please, what was the point or points, the critical ones, which she fucked up, excuse the French, that will get a judge in common law interest, What will it be?
- d. Mr Condon further stated to the Plaintiff: I can't point to the magistrate misusing her position, Nick hasn't told me, I can't see, you haven't told me of anything which is a real fuck up in terms of the factual findings made by the magistrate.
- e. The Plaintiff and Mr Bryl sought from Mr Condon what the Magistrate referred to as the Contract when there was no Contract produced throughout the court proceedings.
- f. Mr Condon asked the Defendant if there was a signed Contract which the Defendant effectively replied: Offer and pre-contractual documents were never provided.
- g. Mr Condon only sought from the Plaintiff her thoughts for grounds of appeal.
- h. Throughout the meeting, Mr Condon only gave opinions unsupported by evidence or law.
- i. Mr Condon did not refer to any legal grounds to appeal nor refer to any evidence.
- j. Mr Condon and the Defendant never referred the Plaintiff to any alleged Contract, they never sighted or revised any Contract, terms of any Contract or any contract documents.
- k. Mr Condon was not aware of the case, there were no folders before him, nor any brief and he only had reference to the judgment dated 16 August 2016 and no reference to the applicable Credit Laws.
- l. Mr Condon only sought to review credit legislation when the Plaintiff and Mr Bryl raised the material issue that there was no contract and further raised the question as to what the Magistrate referred to as the Contract in her judgment when there was no contract in evidence.
- m. Mr Condon represented that he needed to look at a piece of legislation, section 12 of the Consumer Credit Code and that would get back to the Plaintiff in the morning.

- n. Mr Condon sought from the Plaintiff inappropriate and irrelevant matters such as whether she had a trust account and held trust account funds, what areas of law the Plaintiff practiced, asking probing questions about the Plaintiff's legal profession and law practice.
- o. Mr Condon only got back to the Plaintiff around 6:35 PM when the Defendant emailed the Plaintiff Mr Condon's advice stating: *Nick Ford reported to me on the Senior Counsel's advice which I copy below to you*'.

85. At 6.35 PM, on 12 September 2016, the Defendant emailed the Plaintiff stating the following: *If you wish to discuss or instigate the Appeal you must do so by tomorrow, as I understand the time limit to appeal expires tomorrow.*

86 The Defendant email at 6.35 PM on 12 September 2016 forwarded the advice from Mr Condon and the Defendant which contained intentional dishonesty representations with intent to mislead, confuse, distress and commit further improprieties in appeal advice and in appeal court proceedings in the event the Plaintiff had proceeded with the appeal at the Supreme Court.

#### Particulars

1. The Defendant's email to the Plaintiff at 6.35PM on 12 September 2016 forwarding the appeal advice from Mr Ford and Mr Condon.
2. The appeal advice emailed to the Plaintiff on 12 September 2016 provided false material facts and issues and misleading grounds of appeal, as follows:
  - a. Stating that *'Essentially as the Magistrate made credit based findings against Ms Odtojan that there were not reasonable prospects of success with respect to any appeal'*.
  - b. Stating that *'Credit based appeals are always difficult and generally cannot provide a basis for appeal'*
  - c. That the *'Supreme court is usually reluctant to interview in contract review type cases'*
  - d. That *'There is a line of authority where the appellate court will not interfere with credit findings and in this particular case there were credit based findings supported by documentary evidence...'*
  - e. Deliberately misleading that the original proceedings were determined on the central issues and merits of the case.
  - f. Referring to interest rates where the Defendant, Mr Glynn and Mr Condon is aware there is no credit contract in evidence and never sighted, reviewed any terms or interest pursuant to any contract.
  - g. Stating *'That judges do not have to give Reasons for every decision'*.
  - h. Referring to a non-contravala document, that the Plaintiff *'bore the onus of proof with respect of proving that a signature was a forgery; she did not discharge the onus'*
  - i. That there is no error of *Jones v Dunkel* Plaintiff *'could have called SGB Employee to give evidence'*
  - j. That the magistrate found against the Plaintiff *'on the questions as to whether she attended the SGB in Feb 2006 and signed the declaration document and these matters cannot be the subject of a ground of appeal. Therefore our conclusion is that there is no reasonable prospect of success with respect to any proposed appeal.'*
  - k. That the advice was subject to Ms Condon checking on one point *'that is - in the event that it is established that the SGB breached the then Credit Code (such as failing to provide the pre-contract documentation) does such a breach result in the debt being unenforceable?'*

- l. That even if there was a breach of the Credit Code... this breach does not mean that the debt is unenforceable; the SGB could have sued in court for 'Moneys Had and Received ' and pleaded a simple form of contract and claimed court interest'.
- m. That 'the law changed after the alleged contract in these proceedings'.
- n. 'We confirmed our advice that no appeal lies against the findings made by the trial judge.'
- o. The Defendant, Mr Glynn and Mr Condon in concert falsely refer that a Credit Contract exists when they are aware there is no contract in evidence and where they never sighted nor reviewed any contract in giving the appeal advice to the Plaintiff.

13 September 2016 - Last Day of 28 day timeframe for Appeal.

- 87. On the last day to file an appeal within the 28 day timeframe, the Defendant, Mr Glynn and Mr Condon sent various emails to the Plaintiff with intent to mislead, confuse and distress, the Plaintiff and deprive the Plaintiff any reasonable time to review and assess the Plaintiff's position in regards to the appeal advice.
- 88. At 2.51PM on 13 September 2016 the Defendant emailed the Plaintiff and Defendant a Memorandum of Advice dated 13 September 2016 recording the names of Mr Condon and the Defendant.
- 89. The Memorandum of Advice dated 13 September 2016 provided intentional false material facts and issues for grounds of appeal, as follows:
  - a. Relying on a false material fact of a 'Letter of Offer' which the Defendant, Mr Condon and the Defendant were aware did not exist and was never evidence.
  - b. Omitted Defendant's representations at the meeting on 12 September 2016 that CCS never produced its alleged Credit Card Contract and any pre-contractual statements throughout the court proceedings.
  - c. Vaguely states that exhibit 3 was correctly admitted in evidence. The advice does specify the documents and was never discussed at the meeting. Exhibit 3 is falsely represented in the appeal advice as a material document. Upon inspection of the evidence exhibit 3 was the affidavit of Trevor Bowen which does not provide material contract document of a Letter of Offer or any terms.
  - e. Refers to the Magistrate's making no finding that 'documents were signed as required by section 12 of the Credit Code' to be material in making an appeal when the Defendant and Mr Condon and the Defendant were aware there was no Credit Contract in evidence.
  - f. Intentionally omits the issue of the Credit Contract and the issue that there is no Credit Contract in evidence.
  - g. The appeal advice intentionally directs the Plaintiff to make the false material facts and issues in the Summons for Appeal as following:



That the learned magistrate erred in concluding that the debt was unenforceable, in the absence of any evidence that the credit contract was signed by the defendant and that the plaintiff has complied with section 12 of the Consumer Credit Code with the result that the contract was unenforceable.

h. At 3:17 PM on 13 September 2016, the Defendant emailed the Plaintiff giving advice of what is to be recorded on the Summons for appeal. The Defendant, Mr Glynn and Mr Condon did not draft any court documents and advised the following to the Plaintiff:

Orders sought in the summons will be as follows (Just copy and paste this into the summons):

1. Appeal allowed.
2. Set aside the decision of Magistrate S Freund made 16 August 2016
3. Dismiss the Amended Statement of Claim.
4. The Defendant (Plaintiff below) to pay the Plaintiff's costs of this Appeal and in the Local Court.

i. At 3:27 PM on 13 September 2016, the Defendant emailed the Mr Glynn copying the Plaintiff stating the following:

Tom,

I have advised Marie tha if she intends to appeal, despite our advice, that there is no procedure for Notice of Intention to Appeal. This applies only to an appeal to the Court of Appeal under Part 51 of the UCPR.

Her appeal is under Part 50 of the UCPR and there is no procedure for Notice of Intention.

Therefore if she intends to appeal, despite our advice, then she must lodge a Summons under part 50 UCPR today.

#### Particulars

1. At about 8.00 AM on 12 September 2016, The Plaintiff attended Senior Counsel's, Mr Miles Condon, chambers at New Chambers with her witness Mr Artem Bryl. The Defendant was present at the meeting.

2. The Defendant did not attend on 12 September 2016 and failed to notify the Plaintiff that he would not be attending the meeting.

3. At the meeting on 12 September 2016 with Mr Condon, the Defendant stated that CCS never produced its alleged Credit Card Contract and any pre-contractual statement throughout the court proceedings.

4. At all material times before the Plaintiff and the Plaintiff's witness, the Defendant and Mr Glynn would always agree that no credit contract or any pre-contractual documents were provided but before the court and in court documents, without the Plaintiff's knowledge, the Defendant and Mr Glynn made intentional consistent fraudulent statements to the court that 'contract documents were not received until 12 January 2015'.

90. The Defendant, Mr Glynn and Mr Condon had conspired to provide wilful false representations in material facts and issues in the appeal advice and gave false grounds for appeal, premeditating to cause the Plaintiff to suffer loss and damages.

91. The Defendant with Mr Glynn and Mr Condon caused serious deliberate delay to provide appeal advice when the Plaintiff had sought prompt appeal advice from Defendant and Mr Glynn on 17 August 2016 where providing an appeal advice was time of the essence.
92. The Defendant, Mr Glynn and Mr Condon intended to have carriage over the Plaintiff's appeal court proceedings, providing an estimated cost of approx 70,000 based on their fraudulent advice, where they had intent to commit further acts of improprieties against the Plaintiff.
93. The Defendant was intentionally negligent and in breach of his legal obligations to the Plaintiff as follows:
- a. Failed to provide competent, professional and timely appeal advice.
  - b. The Defendant and Mr Glynn intentionally failed and ignored the Plaintiff's instructions seeking appeal advice in email correspondences from 17, 19, 23, 24, 25, 26 August 2016.
  - c. Intentionally delay the provision of advice until 6:35 PM on 12 September 2016 and from 2:51pm on 13 September 2016, the last two days of the 28 day timeframe for the Plaintiff to file an appeal.
  - e Organised the meeting with Senior Counsel on the second last day to file an appeal, on 8:00 AM on 12 September 2016 at Mr Condon's office with Mr Ford.
  - f. The Defendant failed to appear at the meeting on 12 September 2016 without any notice to the Plaintiff.
  - g. Gave intentional dishonest and misleading appeal advice.

F. Account Records and Breach of Trust Account Obligations.

94. On 27 January 2017, the Defendant issued for the first time his account statement to the Plaintiff, falsely recording in the account statement the following:
- a. That the Plaintiff and her legal practice was the instructing solicitor and firm;
  - b. That payments were received from the Plaintiff's legal practice;
  - c. That a payment by cheque was made by the Plaintiff's legal practice on 30 November 2016.
95. The Defendant's account statement had no records of Mr Glynn and his firm, Glynns Lawyers. There were no records of any payments received from the Glynns Lawyers trust account.
96. On 18 May 2017, Mr Glynn emailed the Plaintiff his trust account statement dated 18 November 2016 inserting payment dates for the first time. Mr Glynn's trust account statement recorded a payment to the Defendant on 22 November 2016, an amount of \$2,505.21 which is not recorded in the Defendant's account statement dated 27 January 2017.
97. On or about 28 April 2017 the Plaintiff emailed a letter to the Defendant and Mr Glynn seeking prompt clarification from each of them regarding the conduct of the Plaintiff's case in the court proceedings, the disastrous outcome never explained nor any legal advice provided by the

Defendant and Mr Glynn, their false representations to the court regarding contract documents received by the Plaintiff on 12 January 2015 where they were aware no contract was produced in evidence throughout the court proceedings and seeking clarification of the discrepancies of the Defendant's account statement to that of Mr Glynn's trust account statement.

98. To date the Defendant has failed and continues to fail to provide any clarification of the matters raised in Plaintiff's letter dated 28 April 2017.

99. The Defendant has intentionally failed his financial accounting obligations, failed to keep a proper account where there is unaccounted payment of trust funds in Glynn's lawyers trust account statement records payment to the Defendant where no such payment is recorded in the Defendant's account statement.

100. To date, Defendant and Mr Glynn have intentionally failed and continue to fail to provide the Plaintiff any payment receipts and trust account receipts despite repeated requests from the Plaintiff.

#### G. Intentional Dishonest Conduct in NSW Supreme Court - Costs Assessment Process.

101. On 26 July 2017, the Plaintiff filed a costs assessment application under 'client v law practice' form, in relation to the Defendant's invoices dated 5 October 2016, 1 August 2016, 26 July 2016, 8 April 2016 and 2 March 2016 raising the issue of his intentional negligence and improprieties in conduct of the Plaintiff's case.

102 The Plaintiff raised Defendant's improprieties under objections in annexure "G" of the Plaintiff's cost assessment application, not limited to the following:

a. That the Defendant intentionally failed and refuses to acknowledge the Plaintiff is his client and falsely refers to the Plaintiff as a legal practitioner and records the Plaintiff's law firm.

b. That the Defendant intentionally has no records of Mr Glynn and Glynn's Lawyers in his account statements, the solicitor he insisted and recommended the Plaintiff to be retain on the matter (Paragraphs 32 to 37).

c. That the Defendant intentionally withheld CCS affidavit and cost folder detrimental to the Plaintiff where the Plaintiff had no knowledge of what was raised against her, the costs sought exceeded \$200,000 greatly prejudiced the Plaintiff unable to provide an affidavit in reply that contract was never produced in evidence and the offer of compromise was a disingenuous where CCS and its legal representatives were aware CCS claim was fraudulent alleging a fact which they were aware was untrue and no contract was produced and proved at the final hearing.

d. The Defendant intentionally failed to seek any instructions from the Plaintiff and if the Plaintiff gave instructions, the Defendant intentionally failed to follow the Plaintiff's instructions.

e. That the Defendant intentionally conducted the Plaintiff's case on a false factual matrix.

f. The Defendant failed his client's (Plaintiff) case in CCS\_LCProceedings, at the final hearing on 18 and 19 July 2016 on false representations of material facts unsupported by any evidence and contrary to the Plaintiff's instructions.

- g. The Defendant's account statement dated 27 January 2017 falsely records:
- i. The Plaintiff and Plaintiff's law practice as the instructing solicitor and law firm;
  - ii. That payments are received from the Plaintiff's legal practice;
  - iii. On 30 November 2016 falsely recorded a cheque payment from the Plaintiff's law practice of an amount of \$2,170.21.
- h. That the Defendant intentionally made fraudulent accounting records, there is no record of any payments made by Mr Glynn trust account where Glynn's Lawyers trust account records payments to the Defendant and the Defendant account has no records. There are unaccounted trust funds.
- i. That the Defendant intentionally failed to do any competent legal work to the standard expected from a legal practitioner;
- j. That the Defendant intentionally failed to respond to the Plaintiff's letter 28 April 2017.
- k. That the Defendant intentionally engaged in improprieties and dishonest representations in the conduct of the Plaintiff's case with intent to cause the Plaintiff loss and damages
103. The Cost Assessor initially assigned on the Plaintiff's cost assessment application, Ms Kirralee Young, emailed Mr Glynn and the Defendant on 10 September 2017 when she was just assigned on the matter, notifying that Mr Glynn is to be appropriately joined in the Defendant's costs assessment and sought the Defendant to provide a response to questions raised by Ms Young.
104. Shortly after receiving Ms Young email on 10 September 2017, she was withdrawn as the cost assessor on 19 September 2017 and notified that it was for cost assessor Mr Rosier.

#### Particulars

1. Ms Young sought the following from the Defendant in her email dated 10 September 2017:  
*'Mr Ford, please clarify whether you issued a separate costs agreement in respect to any of the work you carried out at any time to Glynn's Lawyers including in respect to the potential appeal. If you did, please provide a copy of the same. I also call for your files, all notes and brief/s (if still retained) and would ask that be delivered to my chambers please. I also call for a copy of the brief which was provided to Senior Counsel. Please ensure that any estimates which you provided to Ms Odtoian and/or her firm as to fees in the matter are also provided to me.'*
  2. Ms Young's email dated 19 September 2017 notifying the parties that she is withdrawn from as the cost assessor and notifying Mr Rosier to be the assessor on the cost assessment.
  3. Mr Rosier never sought to follow up the questions raised by Ms Young on 10 September 2016 despite the Plaintiff giving notice of the relevance to Mr Young's queries.
  4. Mr Rosier never sought any clarifications or sought response from the Defendant and Mr Glynn to the serious issues raised by the Plaintiff in the cost assessment application.
105. The Defendant intentionally makes false representations in his response submission to the Plaintiff's cost assessment filed 16 August 2017 where the Defendant is aware his representations are untrue with the intent to mislead the cost assessor and commit further acts of fraud against the Plaintiff to cause loss and damages, as follows:

- a. Intentionally does not acknowledge and refuses to correctly identify his client consistently referring to the Plaintiff as a legal practitioner and her law firm.
- b. At all material times, the Defendant is aware that the Plaintiff is not in the capacity of a legal practitioner in the CCS\_LCProceedings and in the cost assessment process.
- c. The Defendant intentionally omits and never mentions Mr Glynn of Glynn's lawyers in his 13 pages submission to the cost assessment dated 16 August 2017.
- d. The Cost assessor, Ms Kirralee Young was misled and confused by the Defendant's representations regarding the identification of his client as a legal practitioner and no record of Mr Glynn as the solicitor on the matter. Ms Young had sought clarification from the Defendant in her email dated 10 September 2017.
- e. The Defendant provided no response to the question raised by Ms Young and was never pressed by Mr Rosier. Mr Rosier did not seek any questions from the Defendant throughout the cost assessment process.
- f. The Defendant intentionally misleads and misrepresents that the Local Court proceedings is a 'debt recovery proceedings' in paragraph 5, deliberately eliminating that the claim in the proceedings was a dispute arising from an alleged Credit Card Contract
- g. The Defendant intentionally misleads and misrepresents in paragraph 6, that the Local Court proceedings was 'a claim... arising from the issue of a credit card' deliberately omitting the material issue of the Credit Card Contract.
- h. The Defendant intentionally omits the issue of a Credit Card Contract throughout his response submission.
- i. The Defendant intentionally misleads and misrepresents in paragraph 7b and 7b that pleadings were closed and substantial evidence were already filed at the time of his retainer.
  - i. The Defendant was aware that the Plaintiff's Amended Defence clearly contested the material fact of the alleged Credit Contract and its existence.
  - ii. The Defendant was aware the Plaintiff did not seek a Further Amended Defence ("FAD") which was proposed and insisted by the Defendant.
  - iii. The Defendant was aware that he drafted the
  - iv. The Defendant is aware that the 11 page FAD diluted the material and central issue of the Credit Card Contract where he had no intention to ventilate the issue of the credit contract and defences at the final hearing on 18 and 19 July 2016.
  - v. The Defendant intentionally drafted the FAD providing false material facts unsupported by evidence and contrary to the Plaintiff's instructions as follows:
    - 1. Falsely represents that Plaintiff received contract documents in paragraph 10A.d(ii), 10C.b.2, 10F.a
    - 2. Falsely refers that a Contract and Contract terms exists in paragraph 10A.d(x), 10A.g, 10B.b, 10C.b in its entirety, 10F.d, 10F.e to 10F.g

3. The Defendant intentionally changes the Plaintiff's pleading to admit the alleged assignment of the alleged contract in paragraph 5 when the Defendant was aware was untrue and contrary to the Plaintiff's instructions contesting the assignment in paragraph 5 in the Plaintiff's Amended Defence that the alleged Credit Contract itself was an issue.
  4. Falsely refers to a SGB Credit Card Declaration.
  5. The Defendant intentionally refers generally to the entire *Uniform Consumer Credit Code, National Credit Code* pursuant to the *National Consumer Credit Protection Act 2009* and does not specify any provisions throughout the FAD.
- iv. The Defendant intentionally drafted the FAD providing false material facts unsupported by evidence and contrary to the Plaintiff's instructions and evidence as follows:
- j. The Defendant intentionally misleads and misrepresents in paragraph 9 of the Defender's narrative on page 3:
1. That the FAD articulated many defences which he was aware that the FAD contained misleading facts unsupported by any evidence.
  2. The Defendant was aware that Plaintiff did not require the substantial defences and was aware that the alleged contract did not exist and was disputed and this was clearly and sufficiently contested in paragraphs 3 to 10 of the Plaintiff's Amended Defence filed 27 January 2015.
  3. Falsely stating that *'Each of the defences required the applicant's version of evidence to be accepted in evidence to make out the essential elements of the defences'*.
  4. The Defendant was aware that he did not raise the material issue of the credit contract and would not ventilate the material facts and issues.
  5. The Defendant was aware that he only sought eleven introductory questions in the Plaintiff's examination-in-chief and never raised questions pertaining to the material issue of the Contract nor ventilated any elements of the defences nor ventilated the Plaintiff's evidence.
  6. The Defendant intentionally diminished the Plaintiff, her case and defences in making false representations to the court effectively *'It's just stupidity on her behalf. She has authorised me to say that'* and that the contract documents were received by the Plaintiff on 12 January 2015 where the Defendant was aware was materially untrue.
- k. The Defendant intentionally misleads and misrepresents in paragraph 10 and 11 of the Defender's narrative on page 3 and paragraph 8(c) of the Defendant's submission on page 6:
1. The Defendant intentionally misleads and misrepresents in paragraph 8(c) of the Defendant's submission on page 6, that the written submission *'fully argued in writing the FAD'* further stating *'to suggest that the FAD was not argued is unsustainable and incorrect'*
  2. The Defendant's representations in 1 above is intentionally misleading. The Defendant is aware that he intentionally did not ventilate the material issue of the

contract and the defences of the FAD throughout the final hearing, he had omitted the central issue and applicable credit laws and that the Magistrate had confined the written submission to the issue of the Card Collection Checklist.

3. The Defendant intentionally misleads and misrepresents in paragraph 12(c) of the Defender's narrative on page 3, stating 'The court found against the applicant, primarily based on the facts that the trial judge did not accept the applicant's evidence'.

4. The Defendant's representations in 3 above is intentionally misleading. The Defendant is aware that he engaged in improprieties in the conduct of the Plaintiff's case/court proceedings where he intentionally did not ventilate the central issue of the contract, represented a false factual matrix, materially made false representations that contract documents were received by the Plaintiff on 12 January 2015 and only asked eleven introductory question in the Plaintiff's examination-in-chief never asked any substantial question in support of the defences in the FAD.

i. The Defendant intentionally misleads and misrepresents in paragraphs 9 and 11 of the Defendant's submission on page 6 to 13 stating that his costs are 'fair and reasonable' where he is aware that he engaged in improprieties in the CCS LCProceedings at the final hearing 18 and 19 July 2016, at the cost hearing on 29 August 2016 and in giving appeal advice where the Defendant had premeditated to defrauded the Plaintiff (Paragraphs 45, 48 to 105).

#### Particulars

1. The Defendant response submission filed 16 August 2017, falsely recorded on the cover and in paragraph 1: 'response to costs assessment client practitioner instructions retained application...'. The Defendant is aware that the Plaintiff's cost assessment application is under a 'Client v Law Practice' form.

2. The Defendant intentionally misleads and misrepresents in paragraph 2: 'the cost applicant is a legal practitioner'.

3. The Defendant intentionally misleads and misrepresents in paragraph 4: 'The applicant is and was at all material times the principal of the legal practice styled as "Marie Odtojan Lawyers".'

4. The Defendant at all times is aware that the Plaintiff is not in the capacity of a legal practitioner in the CCS LCProceedings and the cost assessment application.

5. The Defendant makes contrary statements in paragraph 7(a) the Defendant is aware that the Plaintiff is a litigant in the proceeding but he deliberately refers to the Plaintiff as a legal practitioner in paragraph 2 and 4.

6. The email from Ms Kirralee Young to the Defendant, Mr Glynn and the Plaintiff seeking clarifications dated 10 September 2017.

7. The Defendant was aware that the Plaintiff had already filed an Amended Defence which contested the material fact of the alleged Credit Contract and did not seek a Further Amended Defence as proposed by the Defendant.

8. The Defendant made false statements to humiliate and undermine the Plaintiff's credibility, case and defences falsely stating he was authorised to say the following:

In the court transcript dated 19 July 2016 para 50 on page 157 to para 5 on page 158:

FORD: *'that she attended the branch on 25 February 2006 and that she agreed to those terms... It's just stupidity on her behalf. She has authorised me to say that, your Honour; she knows it.*

In the court transcript dated 19 July 2016 para 20 of page 158: FORD: *'foolishly she agreed to a credit card for \$40,000.'*

H. Plaintiff's letter to Defendant dated 28 April 2016.

106. On 22 March 2017, the Plaintiff notified the Defendant of questions that will be put to the Defendant in relation to the Plaintiff's case.

107. On 5 April 2017 the Defendant replied stating *'whilst I am happy to assist by answering any questions, this account need to be attended to immediately'*

108. On 6 of April 2017, CCS solicitor Carlos Toda of Certus Partner, incorporated legal practice of CCS, issued a writ.

109. On 12 April 2017, the Defendant sent an email threatening to report the Plaintiff to the Legal Commissioner stating the following, *'Having had no reply, I intend referring this matter to the Office of the Legal Services Commissioner. Thanks, NG Ford Barrister'*

110. On 28 April 2017, the Plaintiff emailed and mailed the Defendant a 22 page letter seeking clarifications in relation to the Defendant's conduct in the proceedings and carriage of the Plaintiff's matter, requesting a response within 7 days.

111. On 5 July 2017, the Defendant sent an email to the Plaintiff with an attached document representing to be a response to the Plaintiff's letter dated 27 April 2017. The Defendant's letter dated 5 July 2017 states: *'I decline to answer the questions set out in our letter dated 28 April 2017. which states'*

112. The Defendant refuses to provide what contract documents he repeatedly misrepresented on every occasion before the court at the final hearing and cost argument hearing where he is aware there is no evidence of a credit contract.

113. The Defendant's letter dated 5 July 2017, refuses to reply to the issues raised in the Plaintiff's letter dated 28 April 2017 and provides deliberate misleading representations of material facts in the contents of his letter on pages 2 to 4.

114. The Defendant has failed and continues to fail to respond to the matters raised in the Plaintiff's letter dated 28 April 2017, particularly to the material question of the representations to the court that the Plaintiff received contract documents on 12 January 2015.



Particulars

1. Plaintiff's letter dated 28 April 2017 was sent to the Defendant before the Plaintiff had inspected the court file and was not yet aware of the fabricated court documents and false representations submitted to the court at the final hearing (Paragraphs 45,48 to 64).
2. The Plaintiff's letter sought what the Defendant and Mr Glynn falsely represented to the court the contract documents received by the plaintiff on 12 January 2015
3. The Defendant's letter dated 5 July 2017 intentionally providing false material facts with intent to mislead the Plaintiff.

I. Defendant's Breach of Professional Obligations

115. The Defendant, as a Barrister, intentionally failed his fundamental duties under the Uniform Conduct (Barristers) Rules 2015 - the Legal Profession Uniform Law, with intent to cause the Plaintiff to suffer loss and damage, not limited to the following:

- a. Rule 4(b): The Defendant intentionally failed to maintain high standards of professional conduct. (Paragraphs 45, 48 to 105)
- b. Rule 4 (c): The Defendant intentionally failed, as specialist advocate in the administration of justice, to act honestly, fairly, skilfully, bravely and with competence and diligence. (Paragraphs 45, 48 to 72).
- c. Rule 4(d): The Defendant intentionally failed his duties to the court and to his client, the Plaintiff (Paragraphs 45, 48 to 72).
- d. Rule 4(e): The Defendant intentionally failed to exercise his forensic judgments and give their advice independently and for the proper administration of justice (Paragraphs 45, 48 to 72).
- e. Rule 8(a): The Defendant intentionally engaged in conduct which is dishonest and discreditable to a barrister (Paragraphs 45, 48 to 105).
- f. Rule 8(b): The Defendant intentionally engaged in conduct prejudicial to the administration of justice (Paragraphs 45, 48 to 72).
- g. Rule 8(b): The Defendant intentionally engaged in conduct that diminishes public confidence in the legal profession, in the administration of justice and brings the legal profession into disrepute. (Paragraphs 45, 48 to 105).
- h. Rule 17: The Defendant intentionally engaged in credit law proceedings which outside his capacity, skill and experience.
- i. Rule 19. The Defendant intentionally engaged in conduct using his status as a barrister and threatened OLSC on the Plaintiff, insisting that the Plaintiff engage Mr Glynn to be retained (Paragraph 35), and to briefed SC Miles Condon for appeal advice (Paragraph 75).
- j. Rules 4(a) 23 to 25: The Defendant intentionally:
  1. Failed his paramount duty to the administration of justice: (Paragraphs 45, 48 to 72).
  2. Failed to act with independence in the interests of the administration of justice (Paragraphs 45, 48 to 105).
  3. Deceive and knowingly mislead the court (Paragraphs 45, 48 to 72).
  4. Failed to take all necessary steps to correct any misleading statement made by the Defendant. The defendant was aware that he made false representations to the court and did not intend to correct his misleading statements. (Paragraphs 49, 72).

- k. Rule 35: The Defendant intentionally failed to promote and protect fearlessly and by all proper and lawful means the client's best interests to the best of the barrister's skill and diligence, and do so without regard to his or her own interest or to any consequences to the barrister or to any other person. (Paragraphs 45, 48 to 72).
- l. Rule: 37: The Defendant intentionally failed to seek to assist the client to understand the issues in the case and the client's possible rights and obligations, sufficiently to permit the client to give proper instructions, including instructions in connection with any compromise of the case.
- m. Rule 44: The Defendant intentionally makes submissions and expresses views to a court on material evidence and issues in the case in terms which convey or appear to convey the barrister's personal opinion on the merits of that evidence or issue. (Paragraphs 49, 72).
- n. Rule 58: The Defendant intentionally failed to ensure that work he is briefed is done to:
- (a) confine the case to identified issues which are genuinely in dispute;
  - (b) have the case ready to be heard as soon as practicable;
  - (c) present the identified issues in dispute clearly and succinctly;
  - (d) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interests which are at stake in the case
  - (e) occupy as short a time in court as is reasonably necessary to advance and protect the client's interests which are at stake in the case. (Paragraphs 45, 48 to 72).

#### JE: Threats of Legal Services Commissioner

11684. The Defendant threatened the Plaintiff with the Office of Legal Services Commissioner ("OLSC").
11785. On or about 12 September 2016, during the appeal advice at the meeting with SC Mr Condon, the Defendant threatened the Plaintiff that she can be referred to the Law Society by the judge if she appeals this matter.
11886. The Defendant threatened the Plaintiff in his email dated 12 April 2017 effectively stating '*I intend to refer this matter to the Office of the Legal Services Commissioner*' in response to the Plaintiff giving notice by email on 22 March 2017 to the Defendant that the Plaintiff had questionse seeking clarifications which will shortly be provided to the Defendant.
11987. The Defendant threatened the Plaintiff's occupation with intent to intimidate her for giving notice that the Plaintiff wants to raise questions and had made the threat fully aware that the Plaintiff is the client and not acting in the capacity of a legal practitioner.

#### K. The Consequence of the Defendant's Intentional Negligence, Dishonest and Fraudulent Conduct.

120. In consequence of the Defendant's intentional negligence, improprieties committed in the Plaintiff's case, breaching the retainer agreement, duty of care and statutory obligations the Plaintiff suffered loss and damages. (Paragraphs 45, 48 to 72).
121. The Defendant showed intent to commit further acts of improprieties to cover up his fraudulent conduct in obtaining illegal judgement in the CCS LCProceedings, which caused the Plaintiff to suffer further loss and damages. (Paragraphs 73 to 102 to 105).
122. The Plaintiff materially relied on the Defendant as legal practitioner, to ventilate the real issue of the case, to promote the Plaintiff's evidence and defences and had relied on the Defendant's representation that he would ventilate the material issue of the Credit Contract which the Defendant

had intentionally breached all his contractual and statutory obligations with to cause the Plaintiff loss and damage as particularised herein.

123. The Plaintiff loss and damages would not have occurred but for the Defendant's intentional negligence and improprieties.

124. The had premeditated intent to cause harm on the Plaintiff and demonstrated that the Defendant had a conflict of interest which was a self-serving interest, for the benefit of himself, Mr Glynn, CCS and its legal representatives, Piper Alderman (Paragraphs 45, 48 to 72).

125. The wilful improprieties of the Defendant had directly cause the Plaintiff to suffer a gross miscarriage of justice in teh CCS LCProceedings, suffering loss and damages as follows (Paragraphs 45, 48 to 72):

- a. There is no finality in the original proceedings, CCS LCProceedings:
- b. The merits of the case, the material facts and central issues were not determined as a result of the Defendant's improprieties;
- c. The Defendant made deliberate false representations that the contract documents were received on 12 January 2015 omitting the issue of the contract in the final hearing and cost hearing.
- d. The Magistrate sought not to have written submissions at the cost argument hearing. The Magistrate relied upon the Defendant's statement that contract documents were received by the Plaintiff on 12 January 2015 to grant costs and indemnity costs exceeding \$200,000 against the Plaintiff.
- e. The Defendant had deliberately stated contract documents were given specifically on 12 January 2015 to align with CCS legal practitioners, Piper Alderman's offer of compromise.
- f. The Defendant was aware that no contract was provided to the Defendant on 12 January 2015 and such statement is not supported by any evidence.
- g. The Defendant with Mr Glynn fraudulently assisted CCS to be relieved from their burden of proof to prove a credit contract to prove its case. A different case of a Card Collection Checklist and trail by ambush was conducted on the Plaintiff.

#### Particulars

1. The Plaintiff's rights were intentionally infringed by the national negligence and improprieties of the Defendant (Paragraphs 45, 48 to 72).
2. The Defendant willfully failed all his duties to the Plaintiff and had exposed the Plaintiff to suffer great loss and damages. (Paragraphs 45, 48 to 72).
3. As a result of the Defendant's intentional negligence and improprieties the Plaintiff had to undertake and continues to undertake extensive, voluminous review of documents, court documents, correspondences, court court transcripts, discovery of documents pertaining to the wilful gross dishonest and fraudulent acts committed by the Defendant and Mr Glynn.
4. As a result of the Defendant's improprieties, the Plaintiff had to undergo a cost assessment process of the Supreme Court (Paragraphs 101 to 105).

Particulars of loss and special damages as a result of the Defendant's intentional negligence and dishonest and fraudulent conduct.

<u>Loss and damages number</u>	<u>Description</u>	<u>Amount</u>
<u>1.</u>	<u>Judgment dated 16/8/2016 in favour of Credit Corp Services ('CCS').</u>	<u>\$40,597.74</u>
<u>2.</u>	<u>Costs judgment and Indemnity costs/costs Certificate issued 28/5/2018 as assessed by the costs assessor Mr Rosier.</u>	<u>\$233,225.24</u>
<u>3.</u>	<u>Costs Assessor Peter Rosier costs Invoice issued 14/12/2017 (costs assessment of the Mr Glynn).</u>	<u>\$1,754.96</u>
<u>4.</u>	<u>Costs Assessor Peter Rosier costs Invoice issued 14/12/2017 (costs assessment of Mr Ford/Defendant).</u>	<u>\$2,544.21</u>
<u>5.</u>	<u>Costs Assessor Terence Stern costs invoice issues 15/12/2017 (costs assessment on Mr Condon)</u>	<u>\$1,386.00</u>
<u>6.</u>	<u>Costs Assessor Peter Rosier costs Certificate issued 28/5/2018 (costs assessment of CCS).</u>	<u>\$3,582.43</u>
<u>7.</u>	<u>Costs Assessors/Review panel Mark Campbell and John Sharpe cost Certificate issued 18/01/2019 (costs assessment of CCS).</u>	<u>\$4,100.28</u>
<u>8.</u>	<u>Legal fees of barrister Mr Ford/Defendant</u>	<u>\$31,817.00</u>
<u>9.</u>	<u>Legal fees paid to the Mr Glynn t/a Glynn's Lawyers.</u>	<u>\$8,335.00</u>
<u>10.</u>	<u>Legal fees paid to Mr Miles Condon in the amount for appeal advice.</u>	<u>\$3,494.79</u>
<u>11.</u>	<u>Fees for the costs assessment application against Mr Thomas Glynn.</u>	<u>\$100.00</u>
<u>12.</u>	<u>Cost Assessment application on Mr Ford/Defendant in the amount of \$100.00.</u>	<u>\$100.00</u>
<u>13.</u>	<u>Cost Assessment application on Mr Miles Condon in the amount of \$100.00.</u>	<u>\$100.00</u>
<u>Total (A)</u>		<u>\$331,137.65</u>

Particulars of out-of-pocket expenses.

<u>1.</u>	<u>Printing costs (court documents, transcripts, correspondences) travel costs, court parking expenses from 2014 to 2022</u>	<u>\$5,600.00</u>
<u>2.</u>	<u>Payments fo the transcripts orders (30 March 2016, 21 June 2016, 18-19 July 2016, 16 August 2016, 29 August 2016)</u>	<u>2,300.00</u>
<u>Total (B)</u>		<u>\$7,900.00</u>

Total (A and B above): \$339,037.65

Particulars

1. Judgment in favour of Credit Corp Services ('CCS') in the amount of \$40,597.74.
2. Indemnity costs/costs as assessed by the costs assessor Mr Rosier in the amount of \$233,225.24.
3. Costs Assessor Peter Rosier costs in the amount of \$1,754.96.

4. ~~Costs Assessor Peter Rosier costs in the amount of \$3,582.43.~~
5. ~~Costs Assessor Mark Campbell and John Sharpe cost in the amount of \$4,100.28.~~
6. ~~Post judgment interest on the Judgment and Costs (1 to 5 above).~~
7. ~~Legal fees of the Defendant in the amount of \$31,817.00 (of which \$11,188.21 was actually paid to the Defendant)~~
8. ~~Legal fees paid to Mr Thomas Glynn's t/a Glynn's Lawyers in the amount of \$8,335.00.~~
9. ~~Legal fees paid to Mr Miles Condon in the amount of \$3,494.79.~~

#### L. Aggravated Damages.

126. The Defendant intentionally engaged in conscious wrongdoing in contumelious disregard for the Plaintiff's rights as particularised herein. (Paragraphs 45, 48 to 105).
127. The Defendant caused the Plaintiff to be subjected to great distress, loss of opportunity to exercise the Plaintiff's rights to ventilate the real issues and merits of the Plaintiff's case in the Court proceedings as a result of the Defendant's intentional negligence and breach of professional duties to the Plaintiff. (Paragraphs 45, 48 to 105.)
128. The Defendant's and Mr Glynn's false representations were materially detrimental to the Plaintiff's case in court proceedings inflicting distress and damage to the Plaintiff's case, character, credibility, threatening Plaintiff's her profession. (Paragraphs 45, 48 to 105, 116 to 119).
129. The Plaintiff suffered great distress to the last minute appeal advice on the afternoon of 13 September 2016, being the 28th day of the appeal timeframe. The Plaintiff could not proceed with the appeal due to the unprofessional and conflicting advice provided by the Defendant, Mr Condon and Mr Glynn. (Paragraphs 73 to 93).
130. The appeal advice dated 12 September 2016 provides false representations against the Plaintiff referring to unspecified credit case findings. The Defendant does not refer where the Magistrate made such credit based findings against the Plaintiff. There is no evidence to support the Defendant's advice that due to credit based findings the matter cannot be appealed. (Paragraph 84 to 89).
- 'Essentially as the magistrate made credit based findings against Ms Odtojan that there were not reasonable prospects of success with respect to any appeal.'*
- 'Credit based appeals are always difficult and generally cannot provide a basis for an appeal'*
- 'There is a line of authority where the appellate court will not interfere with credit findings and this is a particular case there were credit based findings supported by documentary evidence and admissions by Ms Odtojan in the witness box. These admissions essentially meant that the trial judge had a basis for finding against her.'*
- 'I detect that this was a difficult matter for both Artem and Marie to understand because they are no being told by their lawyers that different reality exists which is an affront to Marie's version...'*
131. In providing appeal advice, the Defendant with Mr Glynn and Mr Condon undermined and humiliated the plaintiff where the Defendant and Mr Condon sought for the Plaintiff to provide error of law and the grounds of appeal which was the purpose of seeking the appeal advice from the Mr Condon, the Defendant and Mr Glynn and having paid them for their expertise.

132. The Defendant raised the issue that the Plaintiff was a solicitor in his submission to the Costs Assessor which in all circumstances was irrelevant and was done to attack, humiliate and undermine the Plaintiff.
133. The Defendant never acknowledges and records Mr Glynn as the solicitor and had framed the Plaintiff as the solicitor on the matter in cost assessment application and in his account statements. (Paragraph 102).
134. The Defendant intentionally records the Plaintiff as the solicitor on the matter, falsely representing that the Plaintiff was responsible as a legal practitioner of the outcome and conduct of the CCS LCProceedings where the Defendant was aware of his improprieties in the court proceedings (Paragraph 102).
135. In the advice to the Plaintiff, the Defendant, Mr Glynn and Mr Condon consistently referred to credit based findings made against the Plaintiff which the Defendant knew were untrue. (Paragraph 84 to 89).
136. The Defendant and Mr Glynn deliberately infringed on the Plaintiff's rights and making denigrating comments about the Plaintiff where the Defendant and Mr Glynn had no basis to make such representations unsupported by any evidence (Paragraph 49).
137. Throughout the court proceedings on 18 and 19 July 2016 and 29 August 2016, the Defendant made false statements to intentionally humiliate and undermine the Plaintiff's credibility, case and defences when the Defendant was aware that he had intentionally omitted to ventilate the material facts and issues of the Credit Contract, failed to promote the Plaintiffs' case, evidence and defences. The Defendant's argument before court was reduced to the following (Paragraphs 45, 48 to 105):

*FORD: It's just stupidity on her behalf. She has authorised me to say that, your Honour; she knows it. (Paragraph 50 page 157, paragraph 5 page 158 Court Transcript dated 19 July 2016).*

#### Particulars

1. The Defendant intentionally caused great distress on the Plaintiff always acting on the last minute as follows :
  - a. Preparing on a Sunday afternoon at 5 PM on 17 July 2016 before the two day final hearing commencing the next day on 18 July 2016. The Defendant only met with Mr Glynn and the Plaintiff regarding the final hearing on Sunday afternoon on 17 July 2016.
  - b. The Defendant caused great distress during the hearing on 18 and 19 July 2016 :
    - i. Dismissing the Plaintiff when she approached the bar table to provide instructions and sought to ask questions, directing the Plaintiff to return seated at the back of the courtroom;
    - ii. Defendant never contesting or objecting to the CCS's request for documents to be produced on day of court, The Defendant sought 2015 tax return relevant to the proceedings, sought to circle signatures on photocopied signatures and provided to Ms Miller to handle and mark the evidence which she handed up as exhibit 7 to the court;
    - iii. Not seeking the Plaintiff's instructions and if given, disregarding the Plaintiff's instructions.
    - iv. Providing voluminous documents to the Plaintiff at the last minute, the draft written submission on the evening of 28 August 2016 with CCS submissions and requesting the Plaintiff to make amendments the next morning.
    - v. Providing Documents within less than 24 hours for the Plaintiff to attend to which would not allow time for the Plaintiff to review and consider the documents. (FAD, written submissions, draft of affidavits).

M. Exemplary Damages.

138. The Defendant intentionally engaged in conscious wrongdoing in contumelious disregard for the Plaintiff's rights (Paragraphs 45, 48 to 105, 106 to 119).

139. The Defendant demonstrated blatant and wilful disregard of all his contractual, statutory and fiduciary duties to the Plaintiff (Paragraphs 45, 48 to 105, 106 to 119 ).

140. The Defendant demonstrated blatant and wilful disregard of his paramount duties to the court (Paragraphs 45, 48 to 72).

141. The Defendant demonstrated his intent to pervert and rely on his fraudulent acts committed against the Plaintiff in original proceedings and showed intent to commit further acts of improprieties against the Plaintiff to cause further loss and damages on the Plaintiff. (Paragraphs 45, 48 to 105, 106 to 119 ).

142. The Defendant demonstrated premeditated criminal intent to engage in improprieties in his engagement in the Plaintiff's matter and showed complete disregard of the laws, court rules and processes and his professional obligations as a legal practitioner and officer of the court. (Paragraphs 45, 48 to 105, 106 to 119).

**SIGNATURE**

I acknowledge that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature

11  
15 September 2022.

**NOTICE TO DEFENDANT**

**If you do not file a defence within 28 days of being served with this statement of claim:**

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

**HOW TO RESPOND**

**Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.

- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed,** by:
  - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
  - Filing an acknowledgement of the claim.
  - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed,** by:
  - Paying the plaintiff that part of the money that is claimed.
  - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at [www.ucprforms.nsw.gov.au](http://www.ucprforms.nsw.gov.au) or at any NSW court registry.

#### REGISTRY ADDRESS

Street address	Level 4 John Maddison Tower 86 Goulburn Street SYDNEY NSW 2000
Postal address	PO Box K1026 HAYMARKET NSW 1240
Telephone	<u>1300 679 272</u>



**AFFIDAVIT VERIFYING**

Name Marie Jossane Odtojan

Address Suite

Occupation Le

Date 13 Septe

I say on oath:

- 1 I am the plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN at Rouse Hill

Signature of deponent

Name of witness

Address of witness

Capacity of witness

4

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Sc

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

**I have known the deponent for at least 12 months.**

.

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

\_\_\_\_\_

**PARTY DETAILS**

[Include only if more than two plaintiffs and/or more than two defendants.]

**PARTIES TO THE PROCEEDINGS****Plaintiff**

Marie Odtojan, Plaintiff

**Defendant**

Nicolas George Ford T/A Nicolas George Ford  
(ABN 85 160 429 622).

**FURTHER DETAILS ABOUT PLAINTIFF****Plaintiff**

Name Marie Jossane Odtojan

Address

Address for service

As above

Telephone

Email

**DETAILS ABOUT DEFENDANT****Defendant**

Name Nicolas George Ford (ABN 85 160 429 622).

Address 44, MLC Centre, 19 Martin Place Sydney NSW 2000.