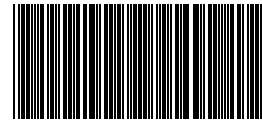




Filed: 11 October 2022 11:53 PM



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Form 3A/B  
Rule 6.2

## AMENDED STATEMENT OF CLAIM

### COURT DETAILS

Court	District Court of NSW
List	General List
Registry	Sydney
Case number	2022/00273980

### FILING DETAILS

Filed for	Plaintiff[s]
Your reference	OBL880225

### 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 (11Oct M.Condon\_2022\_ucpr\_form\_3b\_v6 (2) .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	2022/00273980

### **TITLE OF PROCEEDINGS**

Plaintiff	<b>MARIE JOSSANE ODTOJAN</b>
Defendant	<b>MILES KEVIN CONDON T/A MR MILES K CONDON (ABN 74 565 251 643).</b>

### **FILING DETAILS**

Filed for	<b>Marie Jossane Odtojan, Plaintiff</b>
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Contact name and telephone	
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Contact email	
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### **TYPE OF CLAIM**

Torts - Professional Negligence - Legal Profession/Torts – Other - Deceit

[on separate page]

## RELIEF CLAIMED

- 1 Damages Including:
  - a. General Damages
  - a. Special Damages
  - ~~c.2.~~ Aggravated damages.
  - ~~d.3.~~ Exemplary damages.
- ~~2.4~~ Interest on damages and costs pursuant to sections 100 and 101 of the Civil Procedure Act 2005 (NSW).
- ~~3.5~~ Costs.
- ~~4.6~~ Any other orders this Honourable Court deems fit.

## PLEADINGS AND PARTICULARS

- 1 The Plaintiff brings these proceedings against Miles Kevin Condon, barrister of the Supreme Court of NSW for breach of legal, statutory obligations, intentional negligence and tort of deceit pertaining to deliberate dishonest and fraudulent representations/conduct in appeal advice to the Plaintiff.
- 2 B. THE PARTIES
  - B.1. The Defendant
    - 3 At all material times the Defendant was and is:
      - a. A sole trader trading as Miles Kevin Condon ABN 74 565 251 643 and is able to be sued;
      - b. A Barrister of the Supreme Court of NSW, admitted at the bar in 1996; ~~and~~
      - c. A Senior Counsel appointed in 2012; and
      - ~~d.e.~~ Conducting his legal practice as a Barrister at New Chambers located at Levels 33 & 34, 126 Phillip Street Sydney NSW 2000 Australia.
  - B.2. The Plaintiff
    - 4 At all material times, the Plaintiff was and is:
      - a. A natural person;
      - b. The Defendant's client in August/September 2016 in relation to the appeal advice on a judgment dated 16 August 2016 made by Magistrate Sharon Claire Freund in the NSW local court proceedings, Credit Corp Services Pty Limited (CCS) v Marie Jossane Odtojan (Case No. 2014/00219407), (CCS\_LCProceedings).

## C. RELEVANT BACKGROUND

### C.1 The Local Court Proceedings (CCS LCProceedings).

5. The Plaintiff was a litigant in person and self-represented in the court proceedings against CCS from the commencement of the case in 2014 to 22 February 2016.

6. CCS made a claim against the Plaintiff pursuant to an alleged Credit Card Contract ("Credit Contract") where contractual interest, fees and charges and insurance are claimed to be pursuant to a Credit Contract.

#### Particulars

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

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

b. Paragraphs 3, 4, 5 and 8 out of 9 paragraphs in the ASOC pleaded that the amount claimed and interest rates were pursuant to an alleged Credit Card Contract.

2. At all material times CCS was aware of the issue raised of the Plaintiff's dispute of the existence of the alleged credit contract and denial of entering into the alleged contract.

3. CCS had failed and continues to fail in its compliance with requests for particulars dated 5/11/2014, Notices to produce dated 10 February 2015 (NTP1), 17 December 2015 (NTP2), 12 March 2016 (NTP3) and court orders dated 7 January 2015, 27 October 2015 and 17 December 2015 in the provision of its alleged credit contract including insurance contract and power of attorney/authorities among other material documents.

7. The Plaintiff had retained the following legal representatives in the CCS LCProceedings:

a. On 23 February 2016, Mr Nicolas Ford, Barrister of Edmund barton Chambers; and

b. On 12 July 2016, Mr Thomas Glynn of Glynn's Lawyers upon the instance of Mr Ford.

8. At all material times, Mr Ford and Mr Glynn were aware of the following:

a. The Plaintiff's dispute of the existence of the alleged credit contract;

b. The denial of entering the alleged credit contract; and

c. The multiple requests for particulars, notices, and court orders to CCS for the provision of its alleged credit contract amongst other material documents and the failure of CCS and its lawyers in complying with the said notice and orders to date.

9. The final hearing was held on 18 and 19 July 2016 before Magistrate Sharon Claire Freund at Sydney Downing Centre Local Court.

10. On 16 August 2016 the Judgment was handed down.

C.2. Plaintiff's discovery after the judgment.

11. On or about July 2017, after the judgement was made and CCS\_LCProceedings concluded, the Plaintiff discovered, upon inspecting the court files, fabricated court documents that were presented and relied upon by Mr Ford, Mr Glynn, CCS and its legal representatives to fraudulently create false material facts at the final hearing with intent to omit and circumvent the material facts and central issue of the Credit Contract and applicable Credit Laws.
12. Since July 2017 the Plaintiff undertook extensive review of voluminous documents where the Plaintiff discovered the premeditated and concerted effort by Mr Ford and Mr Glynn conspiring with CCS and its legal representatives to defraud the Plaintiff at the final hearing, to conduct a trial by ambush on the Plaintiff with intent to eliminate the central issue of the alleged Credit Contract, perverting the administration and the course of justice in order to obtain an illegal judgment and costs order against the Plaintiff.
13. The Plaintiff discovered that at the final hearing, there was no Credit Contract produced in evidence, the material issue of an alleged Credit Contract and breaches of Credit Laws were never ventilated nor determined by the court.

Particulars

1. Court transcripts dated 18 and 19 July 2016, 16 and 29 August 2016.
2. At all material times Mr Ford made deliberate false representations before the court that contract documents were not provided until 12 January 2015 which he was aware was untrue (Transcript 18 July 2016: Para 50 Page 41, Transcript 19 July 2016: Para 10 Page 154 and Transcript 29 August 2016: Para 45 page 5, Para 50 page 5 and para 5 page 6).
3. Mr Glynn and Mr Ford engaged in fabricating court documents to be submitted to the court without the Plaintiff's knowledge, such as the 'Statement of Agreed Facts and Issues' signed by the Mr Glynn and Mr Ammer of Piper Alderman on 18/7/2016 ("SAFI\_02"), submitted on the first day of court on 18 July 2016 providing false material facts and omitting the material facts and central issue of the Credit Contract and applicable credit laws which must be satisfied for a party to pursue any claim under a regulated contract, credit contract.
5. Mr Glynn intentionally misled the Plaintiff that the draft Statement of Agreed Facts and Issues with further amendments as instructed by the Plaintiff in email correspondences dated 13 and 14 July 2016 would be submitted to the court.
6. The Plaintiff discovered that Mr Ford and Mr Glynn had conspired with CCS and its legal representatives and premeditated to mislead the court in the final hearing about the real issues to be determined and engaged in the following:
  - a. A trial by Ambush;
  - b. Fabricating court documents;
  - c. Tampering with evidence;
  - d. Omitting and circumventing applicable credit laws.

7. Particulars of the applicable Legislation:

- a. 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”).
- b. The alleged Credit Contract must be in writing pursuant to section 14 of the NCC and must contain specific particulars pursuant to section 17 of the NCC.
- c. Penalties for commencing proceedings without a credit contract default, s 88 NCC, and non-provision of the contract upon written request, s 185 NCC.
- d. *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 previous Credit Code of a referring State or a Territory applied to immediately before commencement;
- e. Section 12DL of the *ASIC Act* - Unsolicited credit cards and debit cards with an applicable offence described in section 12GB;
- f. Section 12DM of the *ASIC Act* - Assertion of right to payment for unsolicited credit financial services with an applicable offence described in section 12GB;
- g. Section 12DB the *ASIC Act* - False or misleading representations with an applicable offence described in section 12GB.  
(Collectively referred to as the “Credit Laws”).

C.34- Prior to engaging the Defendant.

145 The Plaintiff did not seek for the services of the Defendant.

156 On 17 August 2016, Barrister, Mr Nicolas Ford of Edmund Barton Chambers, who was acting for the Plaintiff since 23 February 2016 in the *Credit Corp Services Pty Limited v Marie Jossane Odtojan* (Case No. 2014/00219407) (“CCSS\_LCProceedings”) and had insisted for the Plaintiff to engage a senior counsel on the matter and recommended the Defendant, effectively stating that he had relevant legal skills for an appeal in a credit related matters.

16.6 On or about 19 August 2016, Mr Ford represented to the Plaintiff that he had spoken to the Defendant regarding accepting the brief to advise on the prospect of an appeal.

~~7. On 16 August 2016, the Plaintiff attended Local Court with her witness and received the judgment.~~

~~8. On 17 August 2016, Mr Ford contacted the Plaintiff via phone and recommended that the Plaintiff engage the Defendant, Mr Miles Condon, from New Chambers to provide an appeal advice for the matter.~~

Particulars

- ~~1. Mr Ford represented to the Plaintiff on the phone that he and the Defendant recently ran an appeal from the Local court to the Supreme Court before the single judge and that they won the appeal and costs and had our costs paid.~~
- ~~2. Mr Ford represented to the Plaintiff that he will find out what the Defendant’s estimate of fees would be.~~
- 1.3 On 17 August 2016 Mr Ford represented to the Plaintiff that he will give the Plaintiff plenty of time to make a decision within 28 days and that the Defendant will draft a notice of appeal within a couple of days.

- 2.4 Mr Ford requested that the Plaintiff provide the Defendant with Mr Ford's folders for matter as Mr Ford returned them to the Plaintiff at the end of the hearing on 19 July 2016.
- 3.5 On 23 August 2016, the Plaintiff notified the instructing solicitor on the matter, Mr Thomas Glynn, who was engaged in the matter from 12 July 2016, and Mr Ford of the intention to appeal the judgment upon receiving the judgment on 16 August 2016.

~~C.24.~~ Gross Delay ~~with organising a meeting for the appeal~~ and Intentionally Negligent Appeal Advice.

17. On 16 August 2016, after receiving the judgment in CCS LCProceedings, the Plaintiff promptly notified Mr Ford and Mr Glynn of the intention to appeal the judgment and sought prompt appeal advice.
18. On 17 August 2016 Mr Ford called the Plaintiff and effectively made the following representations:
- a. That the Plaintiff should obtain an appeal advice from a senior counsel, the Defendant.
  - b. That there would be plenty of time to make an appeal within 28 days and that he would contact the Defendant and a notice of appeal will be drafted.
- 19.8 On 29 August 2016, as per the direction and insistence of Mr Ford, the Plaintiff transferred \$6,000.00 into the account which Mr Glynn presented as Glynns Lawyers Trust Account, for appeal advice from the Defendant.
- 20.9 The appeal advice meeting was organised by the Defendant on 12 September 2016, a day before the expiry of the 28 day timeframe for the Plaintiff to file an appeal.
21. The Defendant failed to provide competent, professional and timely appeal advice delaying provision of a written advice until 6:35 pm 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.

Particulars

1. On 30 August 2016, Mr Ford sent an sms to the Plaintiff stating that he sent a brief to the Defendant.
2. From 1 September 2016, the Plaintiff made multiple attempts to follow up with Mr Glynn and Mr Ford to find out the status of the appeal advice from the Defendant and to obtain a copy of the brief Mr Ford provided to the Defendant.
3. Mr Glynn and Mr Ford ignored the Plaintiff's and her witness Mr Bryl's emails and did not contact the Plaintiff until 11 September 2016.
4. Mr Ford organised the meeting with the Defendant on 12 September 2016, a day before the expiry of the 28 day timeframe to file an appeal.
5. On Sunday 11 September 2016, via sms, Mr Ford requested that the Plaintiff come for a meeting with the Defendant at 8 AM on Monday on 12 September 2016 at the Defendant's chambers.
6. In response to a question about what documents the Plaintiff should bring to a meeting with the Defendant, Mr Ford stated: 'bring nothing'.

~~€-312~~ September 2016 - Second Last Day of 28 day timeframe for Appeal.

22. From 1 September 2016, the Plaintiff made multiple attempts to follow up with the Defendant and Mr Ford to find out the status of the appeal advice with Mr Condon.

23. On Sunday, 11 September 2016, Mr Ford contacted the Plaintiff notifying about the meeting with the Defendant the following day on Monday at 8 AM on 12 September 2016.

24.40 The Plaintiff, Mr Artem Bryl and Mr Ford attended the meeting with the Defendant at New Chambers. Mr Glynn failed to appear at the Meeting on 12 September and did not notify the Plaintiff of the reasons for his absence.

25.44. During the meeting on 12 September 2016, the following transpired:

- a. No notice of appeal was ~~drafted provided to the Plaintiff~~ by the Defendant as ~~it was~~ represented by Mr Ford to the Plaintiff on 17 August 2016 (Paragraph 18).
- b. The Defendant's initial comment was: 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*'.
- c. The first question the Defendant 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?*'
- d. The Defendant 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?*
- e. The Defendant 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.*
- f. The Plaintiff and Mr Bryl sought from the Defendant what the Magistrate referred to as the Credit Contract when there was no Contract produced in evidence throughout the original court proceedings.
- g. The Defendant asked Mr Ford if there was a signed Contract, to which Mr Ford effectively replied: *Offer and pre-contractual documents were never provided.*
- h. The Defendant only sought from the Plaintiff her thoughts for grounds of appeal.
- i. Throughout the meeting, The Defendant only gave opinions unsupported by evidence or law.
- j. The Defendant did not refer to any legal grounds to appeal nor refer to any evidence.
- k. The Defendant and Mr Ford never referred the Plaintiff to any alleged Contract, never sighted or revised any Contract, terms of any Contract or any contract documents.



- I. The Defendant:
  - i. Was not aware of the facts of the case including the fact that the credit contract was never produced by the CCS;
  - ii. Had no folders before him and did not refer to any evidence;
  - iii. Did not have any brief before him at the meeting and did not refer to it throughout the meeting;
  - iii. Only had reference to the judgment dated 16 August 2016 and to CCS witness Mr Carpenter's affidavit dated 24 March 2015 and no reference to the applicable Credit Laws.
- m. The Defendant only sought to review credit legislation when the Plaintiff and Mr Bryl referred to the Credit Code and raised the material issue that there was no contract produced by CCS in the proceedings.
- n. The Defendant 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 course of the morning.
- o. The Defendant 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 and not focusing on the subject matter of the appeal advice - an alleged credit card contract where time was of the essence to provide appeal advice.
- p. At about 6:35 PM on 12 September 2016, My Glynn emailed the Plaintiff the Defendant's and Mr Ford's appeal advice.

#### Particulars

1. In ~~his email~~, Mr Glynn's email dated 12 September 2016, he stated the following:
  - i. 'Nick Ford reported to me on the Senior Counsel's advice which I copy below to you'.
  - ii. 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.

26.42. Mr Glynn's email at 6.35 PM on 12 September 2016 forwarded the advice from the Defendant and Mr Ford which contained intentionally dishonest 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 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 intervene 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 Ford were aware there was no credit contract in evidence and that it was never sighted or no contract terms can be reviewed.
- g. Stating *'That judges do not have to give Reasons for every decision'*.
- h. Referring to a non-contractual 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. 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 the Defendant 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 Ford and Mr Glynn in concert falsely referred to a Credit Contract 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.*

- 27.43. On the last day to file an appeal within the 28 day timeframe, the Defendant, Mr Ford and ~~the~~ Mr Glynn sent various emails to the Plaintiff with intent to mislead, confuse and distress the Plaintiff and deprive the Plaintiff of any reasonable time to review and assess the Plaintiff's position in regards to the appeal advice.
- 28.44. At 2.51PM on 13 September 2016 Mr Ford emailed the Plaintiff and Mr Glynn a Memorandum of Advice dated 13 September 2016 recording the names of the Defendant and of Mr Ford on the appeal advice.
- 29.45. The Memorandum of Advice dated 13 September 2016 provided intentionally false material facts and issues for grounds of appeal with intent to mislead the Plaintiff and prevent her from discovering the material facts and issues and prevent her from appealing the judgment, as follows:

a.g. Relying on a false material fact of a 'Letter of Offer' which the Defendant, Mr Ford and Mr Glynn were aware did not exist and was never provided in evidence.

b.f. Omitted Mr Ford'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.s. Vaguely stated that exhibit 3 was correctly admitted in evidence. The advice does specify the documents and was never discussed at the meeeting.

d. Exhibit 3 was is falsely represented in the appeal advice as a material document. Upon inspection of the evidence in 2017, the Plaintiff discovered that exhibit 3 was the affidavit of Trevor Bowen which does not provide material contract document of a Letter of Offer or any credit contract terms.

e.t. Referred to the Magistrate's making no findings that 'documents were signed as required by section 12 of the Credit Code' to be material in making an appeal when the Defendant, Mr Ford and Mr Glynn were aware there was no Credit Contract provided in evidence.

f.u. Intentionally omitted the material fact and issue of the existence of the alleged Credit Contract and the issue that there was no Credit Contract in evidence.

g.v. The appeal advice intentionally directed the Plaintiff to plead the false material facts and issues in the Summons for Appeal as followsing:

*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.w. At 3:17 PM on 13 September 2016, Mr Ford emailed the Plaintiff giving advice of what is to be recorded on the Summons for appeal. The Defendant, Mr Ford, and Mr Glynn 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.h. At 3:27 PM on 13 September 2016, Mr Ford emailed 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 the Defendant's chambers at New Chambers with her witness Mr Artem Bryl. Mr Ford was present at the meeting.
  2. Mr Glynn 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 the Defendant, Mr Ford 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, Mr Glynn and Mr Ford would agree that no credit contract or any pre-contractual documents were provided, but before the court and in court documents submitted to the court, unknown to the Plaintiff, Mr Glynn and Mr Ford made consistent fraudulent statements effectively stating that 'contract documents were not received until 12 January 2015'.
- 30.46. The Defendant, Mr Ford and Mr Glynn had conspired to provide wilful false representations of material facts and issues in appeal advice and the grounds for appeal, premeditating to cause the Plaintiff to suffer loss and damages.
- 31.47. The Defendant with Mr Ford and Mr Glynn caused serious deliberate delay to provide appeal advice when the Plaintiff had given notice regarding appeal advice to Mr Glynn and Mr Ford on 17 August 2016 and had promptly deposited trust funds into Mr Glynn's trust account on 29 August 2016 where they were aware appeal advice was time of the essence.
- 32.48. The advice was made with intent to commit further acts of fraud against the Plaintiff in the appeal proceedings where false material facts and issues in the appeal advice dated 12 and 13 September 2016 falsely referred to a Credit Contract where the Defendant, Mr Ford and Mr Glynn knew no contract was ever provided and they did not sight nor review any Contract in making the appeal advice they provided to the Plaintiff.
- 33.49. The Defendant, Mr Ford and Mr Glynn had 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.
34. The Defendant intentionally provided false material facts and issues referring to an existing unsigned credit contract in his appeal advice with intent to mislead the Plaintiff and the Supreme Court of NSW of the material facts and issues of the appeal grounds

which he was aware were untrue as no such credit contract was never admitted in evidence or ventilated at the hearing.

35.20. 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. Intentionally delayed the provision of advice until 6:35 PM on 12 September 2016 and until 2:51pm on 13 September 2016, the last day of the 28 day timeframe for the Plaintiff to file an appeal.
- c. Held the meeting with the Plaintiff on the second last day to file an appeal, at 8:00 AM on 12 September 2016 at the Defendant's office with Mr Ford.
- d. Gave intentionally dishonest and misleading appeal advice misleading the Plaintiff on the grounds of appeal, ensuring that the Plaintiff fails the appeal if the Plaintiff Defendant files an appeal pleading false facts as per the Defendant's appeal advice.

36. The Defendant intentionally gave false material ground for appeal and relied that a contract exists which he was aware was untrue and that a contract was not produced in evidence in original court hearing.

- a. 'The Supreme Court is usually reluctant to intervene in Contract Review type cases...' (Bullet point 5 in appeal advice dated 12 September 2016).
- b. That the Plaintiff 'charged about 8% but were at law entitled to charge a higher amount: if the case was remitted for re-trial the plaintiff may seek the higher contract interest rate' (Bullet point 8 in appeal advice dated 12 September 2016).
- c. That '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?' (Bullet point 13 in appeal advice dated 12 September 2016).
- d. That SGB could have sued in court for 'Moneys Had and Received ' and pleaded a simple form of contract and claimed court interest'. (Bullet point 13 in appeal advice dated 12 September 2016).
- e. 'Although there was a proper basis for the court to infer that the Defendant received the Letter of Offer and Terms and Conditions and although exhibit 3 was properly admitted into evidence, the magistrate made no finding that the documents were signed as required by section 12 of the Credit Code' (Paragraph 1 on page 2 in appeal advice dated 13 September 2016).
- f. 'The question become: what are the consequences of the plaintiff's failure? Although there is a penalty, does this mean the contract is unenforceable?' (Paragraph 3 on page 2 in appeal advice dated 13 September 2016).
- g. 'Section 170 provides: A credit contract... is not illegal, void or unenforceable because of a contravention of this Code unless this Code contains an express provisions to that effect.' (Paragraph 4 on page 2 in appeal advice dated 13 September 2016).

h. 'section 12 could be construed to mean that a failure to comply with the terms is a condition precedent to enforceability.' (Paragraph 6 on page 2 in appeal advice dated 13 September 2016).

i. 'Whether a contract is illegal, void or unenforceable depends upon the intention of the legislature as expressed in the statute...'

j. 'That the Summons would contain the following ground of appeal:

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

D. Plaintiff's letter to Defendant dated 31 May 2017.

37. On 31 May 2017, the Plaintiff provided a sixteen page letter dated 31 May 2017 ("Plaintiff's letter") to the Defendant in relation to his appeal advice provided on 12 and 13 September 2016.

38. The Plaintiff's letter gave notice and raised concerns to the Defendant in relation the appeal advice as follows:

- a. That the Defendant materially relied on a credit contract where he was aware there was no contract produced in evidence before on the court hearing on 18 and 19 July and Mr Ford had confirmed with him in the meeting on 12 September 2016, effectively that a 'credit card contract was not identified and not admitted in evidence'; (Paragraph 5 on page 2);
- b. The serious delay in providing appeal advice where time was of the essence (Page 2 under the heading 'Time of the Essence - Appeal Advice', paragraph 11 on page 10);
- c. The representations to the Plaintiff at the meeting on 12 September 2016 (Pages 2 to 8 under the heading 'Appeal Advice Meeting 12 September 2016');
- d. The failure to provide competent and timely legal advice (Pages 8 to 16 of Plaintiff's letter)
- e. Notice was given in relation to Mr Ford and Mr Glynn's conduct in the final hearing on 18 and 19 July 2016. The Plaintiff discovered that the material issues of a credit card contract were not ventilated and an entirely different factual matrix was presented to the court by Mr Ford and Mr Glynn (Paragraph 1 on page 8 of the Plaintiff's letter).
- f. Seeking clarification of the 'serious credit based findings' consistently and generally referred to by the Defendant in the meeting on 12 September 2016 and in his written appeal advice on 12 and 13 September 2016.

39. The Plaintiff sought the following clarification from the Defendant regarding the contract he relied upon in his appeal advice dated 13 September 2016:

- a. To clarify his conclusion that there was a 'proper basis for the court to infer that the Defendant received the Letter of Offer and Terms and Conditions' when 'The Letter of

Offer' was never mentioned/put before the court at trial (Paragraph 1(a) on page 12 of the Plaintiff's letter).

- b. To clarify what 'documents' he referred to that the "magistrate made no finding that the documents were signed as required by section 12 of the Credit Code" (Paragraph 1(b) on page 12 of the Plaintiff's letter).
- c. To clarify his conclusion in the advice "We do not think that the failure to obtain the defendant's signature was fatal to the plaintiff's case; in reality there was no evidence that section 12 was satisfied on the issue" (Paragraph 2 on page 12 of the Plaintiff's letter).
- d. To clarify what contract he referred to in the advice, stating the question, 'The question became: what are the consequences of the plaintiff's failure? Although there is a penalty, does this mean the contract is unenforceable?' (Paragraph 3 on page 12 of the Plaintiff's letter).
- e. To clarify what 'Credit Contract' the Defendant refers to on page 2 of his advice applying section 170 of the Credit Code, stating, 'A credit contract... is not illegal, void or unenforceable because of a contravention of this Code unless this Code contains an express provisions to that effect.' (Paragraph 4 on page 13 of the Plaintiff's letter).
- f. What 'Credit Contract' the Defendant refers to on page 3 of his advice "That the learned magistrate erred in concluding that the debt was enforceable, in the absence of any evidence that the credit contract was signed by the defendant and that the plaintiff had complied with section 12 of the Consumer Credit Code, with the result that the contract is unenforceable". (Paragraph 6 on page 13 of the Plaintiff's letter).

40 On 9 June 2017 the Defendant provided an email response to the Plaintiff's letter dated 31 May 2017.

41. The Defendant had failed and continues to fail to answer and clarify what Credit Contract the Defendant materially relied upon in his appeal advice.

42. The Defendant did not address the material concerns raised in the Plaintiff's letter.

43. The Defendant had sought a meeting with the Plaintiff instead of promptly addressing the issues raised.

#### Particulars

1. Plaintiff's letter to the Defendant dated 31 May 2017;
2. Defendant's email response to the Plaintiff's letter dated 9 June 2017.

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

44. On 15 September 2017, the Plaintiff filed a costs assessment application against the Defendant in relation to his invoices dated 16 September 2016 raising the issue of his

intentional negligence and breach of Uniform laws having failed his duty to provide competent, diligent and timely appeal advice to the Plaintiff.

45. The Plaintiff's costs assessment application provided objections, issues and concerns that had been raised to the Defendant in the Plaintiff's letter dated 31 May 2017.

46. The Defendant made the following deliberate misleading statements in his submission filed 9 October 2017 ("D Submission1") in the Supreme Court Cost Assessment process:

- a. The Defendant denied that the Plaintiff was his client, stating that 'Ms Odtojan was not my client - see 198(1)(a)' (Paragraph 6 of D Submission1);
- b. That the Plaintiff had no right under section 198 (Paragraph 5 of the D Submission1);
- c. That Defendant asserted that he had gave competent appeal advice and the time spent on the matter was 'reasonable' (Paragraphs 6 of D Submission1);
- d. That the Defendant exercised appropriate care in giving appeal advice (Paragraph 21 of D Submission1);
- e. The Defendant represented that he had a court transcript of the hearing received with the brief (Paragraph 11 of D Submission1);
- f. The Defendant for the first time raised that he advised the Plaintiff that the finding as to her allegation of forgery was correct. There were no pleadings of forgery in the original proceedings (Paragraph 20(c) of D Submission1);
- g. The Defendant intentionally omits throughout his submission the issue of the Credit Contract and does not identify the contract he relied upon in his appeal advice (Paragraph 20, 21, 23, 24 in D Submission1);
- h. The Defendant submits that the 'Assessor should assess Ms Odtojan's Complaints on the basis that she herself a solicitor and well able to formulate a proper claim if one existed'. (Paragraph 3 in D Submission1).
- i. The Defendant represented that the application was frivolous, denying that his advice was wrong and that his costs were not improperly incurred (Paragraph 27 in D Submission1).
- j. The Defendant's intentionally misrepresented 'that the plaintiff had not claimed the interest rate due under the contract' when the Defendant was aware that CCS claimed interest under the alleged credit contract and that no credit contract was produced in evidence. (paragraph 27 in the D Submission1)

47 On or about the 3 November 2017 the Plaintiff's submission dated 3 November 2017 ("P submission1") gave notice of the matters not limited to the following:

- a. The Plaintiff gave notice of deliberate misleading statements made in the responses provided by Defendant, Mr Ford and Mr Glynn in their costs assessment applications against them and that three legal practitioners had threatened the Plaintiff's profession as a legal practitioner. (Paragraph 6 on page 1 of P Submission1).
- b. The Plaintiff raised the issue of the existence of material documents that were never ventilated in the proceedings, being the credit contract, insurance, pre-contractual



statement, fees and charges booklet amongst other documents required pursuant to the Credit Laws (Paragraphs (7) & (8) on page 8 of P Submission1).

- c. The Plaintiff sought clarifications what court transcript the Defendant had in possession noting the court notified the Plaintiff court transcripts of the trial are only available late/end September 2016 (Paragraphs (10) & (11) on page 8 of P Submission1).
- d. The Plaintiff gave notice that the Defendant made deliberate misrepresentation where he was aware that there was no contract produced in evidence, stating, *'the fact that the plaintiff had not claimed the interest rate due under the contract'* (Paragraph 24 on page 11 of P Submission1).

48. The Defendant made the following deliberate misleading statements in his submission filed 5 December 2017 ("D Submission2") in the Supreme Court Cost Assessment process:

- a. In denying that he made misleading statements in his submission dated 9 October 2017 and that he threatened Plaintiff's profession as a legal practitioner (Paragraph 6 on page 1 of D Submission2).
- b. In denying that the Plaintiff is his client, stating in paragraph 2 on page 2 of the Defendant's submission2:
  - i. *'Ms Odtojan did not brief me directly'*
  - ii. *That there was 'complete absence of any evidence that Ms Odtojan (a) contacted me directly to act on her behalf; and (b) terminated Mr Glynn's retainer';*
  - iii. *'She constructs a claim that she is my client...'*
- c. The Defendant states, *'... at no point, does Ms Odtojan identify a matter of substance about which I lacked knowledge, nor does she identify what advice was wrong'* (Paragraph 3 on page 2 and response (1),(5) and (6) on page 3 of D Submission2).
- d. The Defendant intentionally omits and does not answer the issues raised by the Plaintiff of the existence of material documents that we never ventilated in the court proceedings being the credit contract, insurance, pre-contractual statement and fees and charges booklet amongst other documents required under Credit Laws. (Paragraph (7) and (8) on page 3 of D Submission2).
- e. The Defendant intentionally omits and does not answer the issues raised in paragraph 20(f) in P Submission1 regarding the issue of the existence of an alleged credit contract, interest claimed and payments received under an alleged contract when there was no contract and the matter of illegality raised by the Defendant based on one point of the law which refers to a credit contract.
- f. The Defendant intentionally misleads that there is a contract which applies under section 170 of the Credit Coder stating *'I expressed the opinion that illegality (if there was any) did not render the relevant contract unenforceable'*. (First paragraph on page 4 of D Submission2).

- g. The Defendant intentionally misleads about the issue of the alleged credit contract referring to the judgment. The Defendant raised for the first time making the following statement which contradicts his appeal advice dated 12 and 13 September 2016.

'Ms Odtojan's contention concerning the existence of the contract overlooks the problem that the magistrate did find that a contract came into existence between the parties... set out at paragraph J[66]-[68]. The complaint that the lawyers involved at the trial failed to ventilate the issues does not do justice to the matters that the magistrate was called upon to determine.'

(Second paragraph on page 4 of D Submission2).

- h. The Defendant intentionally omits and does not answer paragraph 24 in the P Submission1 raising the issue of the alleged contract.

#### Particulars

1. Plaintiff's costs assessment application filed 15 September 2017;
2. Defendant's submission in reply filed 9 October 2017.
3. Plaintiff's submission to the costs assessor dated 3 November 2017;
4. Defendant's undated submission to the costs assessor received by the Plaintiff on 5 December 2017.

#### F. Defendant's Breach of Professional Obligations

49. The Defendant, as a Barrister and Senior Counsel, 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 in providing the appeal advice. (Paragraphs 21, 25-35)
  - 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 in providing the appeal advice. (Paragraphs 21, 25-35 ).
  - c. Rule 4(d): The Defendant intentionally failed his duties to his client, the Plaintiff (Paragraphs 25 - 35 ).
  - d. Rule 4(e): The Defendant intentionally failed to exercise his forensic judgments in giving competent appeal advice independently, independent from Mr Ford and Mr Glynn, and for the proper administration of justice (Paragraphs 25-35).
  - e. Rule 8(a): The Defendant intentionally engaged in conduct which is dishonest and discreditable to a barrister in providing his appeal advice (Paragraphs 21, 25-35).
  - f. Rule 8(b): The Defendant intentionally engaged in conduct prejudicial to the administration of justice (Paragraphs 21, 25-35).
  - g. Rule 8(c): 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 21, 25-35).

- h. Rule 17: The Defendant intentionally engaged in credit law proceedings which were outside his capacity, skill and experience (Paragraphs 25-35).
- i. Rule 19. The Defendant intentionally engaged in conduct using his status as a barrister/Senior Counsel in undermining and threatening the Plaintiff's profession as a legal practitioner. (Paragraphs 25, 45, 47).
- j. Rules 4(a) 23 to 25: The Defendant intentionally:
  - 1. Failed his paramount duty to the administration of justice: (Paragraphs 21, 25-35).
  - 2. Failed to act with independence in the interests of the administration of justice (Paragraphs 21, 25-35).
  - 3. Deceived and knowingly misled in his appeal advice and communications with the client and his submissions in the Supreme Court Costs Assessment Process (Paragraphs, 25-35, 45, 47).
  - 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 in his appeal advice and correspondences to the client and in his submissions to the in the Supreme Court Costa Assessment Process and he did not intend to correct his misleading statements. (Paragraphs 25-35, 46, 48).
- 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 21, 25-35).
- 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 (Paragraphs 21, 25-35).
- m. 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 (Paragraphs 21, 25-35).

G. The Consequence of the Defendant's Intentional Negligence, Dishonest Conduct.

- 50. In consequence of the Defendant's intentional negligence, improprieties committed in providing the Plaintiff's appeal advice, The Defendant breached his duty of care and statutory obligations causing the Plaintiff suffered loss and damages in not delivering the material facts and issues to be basis of appeal grounds.
- 51. The Plaintiff's loss and damages would not have occurred but for the Defendant's intentional negligence and improprieties in providing intentional negligent and misleading appeal advice, failing to advice the Plaintiff on the real and material grounds for appeal and failing to notify

the Plaintiff of the issue of the credit contract and the conduct of the Mr Ford and Mr Glynn at the original proceedings where the Magistrate referred to representations of Mr Ford that contract documents were received on 12 January 2015 which was contrary to the Mr Ford's representation to the Defendant on 12 September 2016 (Paragraphs 38(a) and Judgment dated 16 August 2016);

52. The Defendant intentionally engaged in conscious wrongdoing in contumelious disregard for the Plaintiff's rights, set out in paragraphs above.

53. The Defendant demonstrated blatant and wilful disregard of all his professional, statutory and fiduciary duties to the Plaintiff.

54. The Defendant intentionally failed his duty of care to the client in providing misleading false material appeal grounds relying on an unsigned credit contract and causing gross delay of providing the appeal advice on 12 and 13 September 2016. (Paragraph 36)

55.22. The Plaintiff suffered loss and damages as a result of the Defendant's dishonest and misleading appeal advice and had relied upon the misleading advice not to appeal as particularised herein and set out below.

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

Loss and damages number	Description	Amount
1.	Judgment dated 16/8/2016 in favour of Credit Corp Services ('CCS').	\$40,597.74
2.	Costs judgment and Indemnity costs/costs Certificate issued 28/5/2018 as assessed by the costs assessor Mr Rosier.	\$233,225.24
3.	Costs Assessor Peter Rosier costs Invoice issued 14/12/2017 (costs assessment of the Mr Glynn).	\$1,754.96
4.	Costs Assessor Peter Rosier costs Invoice issued 14/12/2017 (costs assessment of Mr Ford).	\$2,544.21
5.	Costs Assessor Terence Stern costs invoice issues 15/12/2017 (costs assessment on Mr Condon/Defendant)	\$1,386.00
6.	Costs Assessor Peter Rosier costs Certificate issued 28/5/2018 (costs assessment of CCS).	\$3,582.43

7.	Costs Assessors/Review panel Mark Campbell and John Sharpe cost Certificate issued 18/01/2019 (costs assessment of CCS).	\$4,100.28
8.	Legal fees of barrister Mr Nicolas Ford.	\$31,817.00
9.	Legal fees paid to the Mr Glynn t/a Glynn's Lawyers.	\$8,335.00
10.	Legal fees paid to Mr Miles Condon/Defendant in the amount for appeal advice.	\$3,494.79
11.	Fees for the costs assessment application against Mr Thomas Glynn.	\$100.00
12.	Cost Assessment application on Mr Nicolas Ford in the amount of \$100.00.	\$100.00
13.	Cost Assessment application on Mr Miles Condon /Defendant in the amount of \$100.00.	\$100.00
Total (A)		\$331,137.65

Particulars of out-of-pocket expenses.

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

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

E. Aggravated Damages.

56. The Defendant intentionally engaged in conscious wrongdoing in contumelious disregard for the Plaintiff's rights as particularised herein. (Paragraphs 17 to 49).

57.2. The appeal advice dated 12 September 2016 provided 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 is not appealable.

*'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 now being told by their lawyers that a different reality exists which is an affront to Marie's version...'*

58.3. The Defendant intentionally engaged in Dishonest and fraudulent representations about a Credit Contract and contractual documents. The Defendant was aware there was no credit contract or any contractual documents in evidence and they were never produced at the court proceedings, yet provided the following in his email appeal advice dated 12 and 13 September 2016 (Paragraphs 36).

*'The Supreme Court is usually reluctant to intervene in Contract Review type cases...'*

59.4. In providing appeal advice, the Defendant with Mr Ford and Mr Glynn undermined and humiliated the plaintiff where the said legal practitioners sought for her to provide her legal opinion about the error of law and the grounds of appeal which was the purpose of seeking the said legal practitioner's expertise and having paid them for their expertise.

60.5. The Plaintiff suffered great distress when she received voluminous correspondences and advice on the 12 and 13 September 2016, being the 27 and 28 day of the 28 day timeframe to appeal where the Defendant, Mr Ford and Mr Glynn ~~the Defendant~~ had intended to cause great distress on the Plaintiff depriving the Plaintiff of any time to review what was put to her in the appeal advice.

61. 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 Ford and Mr Glynn. (Paragraphs 73 to 93).

62. In providing appeal advice, the Defendant with Mr Ford and Mr Glynn undermined and humiliated the Plaintiff where the Defendant 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 Defendant.(Paragraphs 73 to 93).

63. In the appeal advice the Defendant materially relied upon credit based findings as a basis not to appeal the judgment and not the real material issue that the contract referred to in the judgment was never produced in evidence in the court proceedings and was not ventilated (Paragraphs 73 to 93).

64. The Defendant was on notice of the issues put to him in the Plaintiff's letter dated 31 May 2017 (Paragraphs 73 to 93).

65. 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 on 12 September 2016 which was the purpose of seeking the appeal advice from the the Defendant having paid him for his expertise.

#### E. Exemplary Damages.

66.6. The Defendant intentionally engaged in conscious wrongdoing in contumelious disregard for the Plaintiff's rights, set out in paragraphs above. (Paragraphs 17 to 49).

67.7. The Defendant demonstrated blatant and wilful disregard of all his contractual, statutory and fiduciary duties and his duty of care to the Plaintiff. (Paragraphs 17 to 49).

68.8. The Defendant demonstrated his intent to perpetuate and rely on his fraudulent acts committed against the Plaintiff in giving false and misleading appeal advice original proceedings and showed intent to commit further acts of fraud against the Plaintiff to cause further loss and damages on the Plaintiff. (Paragraphs 37 to 49).

69.9. The Defendant demonstrated premeditated intent to engage in improprieties in his engagement in the Plaintiff's matter and showed complete disregard of the Plaintiff's rights, laws, court rules and processes and his professional obligations as a legal practitioner, Senior Counsel and officer of the court. (Paragraphs 17 to 49).

70. To date the Defendant has never addressed the issue put to him to clarify the contract he refers to in his appeal advice. (Paragraphs 37 to 49).

71. To date, The Defendant, Mr Ford and Mr Glynn have in concert never identified nor answered what they have materially relied upon as the Credit Contract.

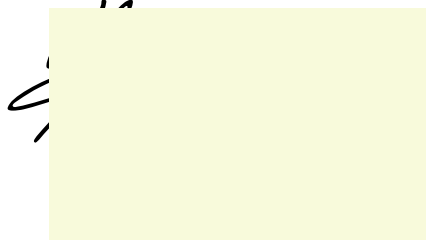
## SIGNATURE

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

Signature

Capacity

Date of signature



## 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

A  
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D

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

Ar  
Su  
So

50

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

**PARTY DETAILS****PARTIES TO THE PROCEEDINGS****Plaintiff**

Marie Odtojan, Plaintiff

**Defendant**Miles Kevin Condon T/A Mr Miles K Condon  
(ABN 74 565 251 643).**FURTHER DETAILS ABOUT PLAINTIFF****Plaintiff**

Name Marie Jossane Odtojan

Address

Address for service

Telephone

Email

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

Name Miles Kevin Condon T/A Mr Miles K Condon

Address New Chambers, Levels 33 & 34, 126 Phillip Street Sydney  
NSW 2000 Australia.