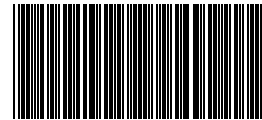




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Form 3A/B
Rule 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	District Court of NSW
List	General List
Registry	Sydney
Case number	2022/00273977

FILING DETAILS

Filed for	Plaintiff[s]
Your reference	OBL880224

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 (11Oct2022_Glynn_ucpr_form_3b_v6.docx.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	2022/00273977

TITLE OF PROCEEDINGS

Plaintiff	MARIE JOSSANE ODTOJAN
Defendant	THOMAS PATRICK GLYNN T/A GLYNNS LAWYERS (ABN 49 396 450 350)

FILING DETAILS

Filed for	Marie Jossane Odtojan, Plaintiff
Contact name and telephone	
Contact email	

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 a legal practitioner, solicitor, Thomas Patrick Glynn trading as Glynn's Lawyers, for intentional negligence and tort of deceit pertaining to deliberate dishonest and fraudulent representations/conduct with intent to defraud the Plaintiff, perverting the administration and the course of justice in court proceedings to obtain judgement illegally and/or in a bad faith against the Plaintiff, and in the course of providing legal services to the Plaintiff which resulted in the Plaintiff suffering loss and damages (Particularised 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, a legal practitioner (practising certificate number 699) trading as Glynn's Lawyers ABN 49 396 450 350 and is able to be sued;
 - b. A legal practitioner practising in NSW and in Tasmania, admitted as a solicitor in 1980; and
 - c. Conducts his legal practice at Level 10, 66 King Street Sydney NSW 2000 and 33 Main Road Stanley Tasmania 7331 and, subsequently at Level 21, 133 Castlereagh Street, Sydney NSW 2000 and at 86A Emmett Street, Smithton Tasmania 7330.

B.2. The Plaintiff

- 3 At all material times, the Plaintiff was and is
 - a. a natural person
 - b. The Plaintiff was the Defendant's client from on or about 12 July 2016 to on or about 17 November 2016 in relation to the NSW local court proceedings, *Credit Corp Services Pty Limited v Marie Jossane Odtojan*, Case No. 2014/00219407, ("CCS_LCProceedings").

C. RELEVANT BACKGROUND

C.1. Prior to Engaging The Defendant

- 4 The Plaintiff did not seek for the services of the Defendant.

- 5 Barrister, Mr Nicolas Ford of Edmund Barton Chambers, acting for the Plaintiff since 23 February 2016 in the CCS_LCProceedings, insisted for the Plaintiff to engage a solicitor on the matter and recommended the Defendant, effectively stating that he had relevant legal skills in finance, banking, civil and credit related matters.
- 6 On 19 April 2016, Mr Ford contacted the Plaintiff to attend his chambers at Edmund Barton Chambers, he had organised an initial meeting for the Plaintiff to meet the Defendant. During the meeting:
- a. The Plaintiff asked the Defendant's legal expertise, whether he had expertise in credit laws, civil proceedings and credit related matters similar to that of the Plaintiff's case.
 - b. The Defendant assured the Plaintiff that he had banking, finance expertise and had experience in civil proceedings in credit law related matters.
 - c. The Plaintiff gave notice to the Defendant of the following:
 - i. The material issue disputing the alleged Credit Card Contract and its existence;
 - ii. The issue with Credit Corp Services Pty Limited ("CCS") and its legal representatives non-compliance with request for particulars, notices to produce and court orders for production of the alleged Credit Contract, Insurance Contract, Power of Attorney/Authority and relevance documents and particulars (See paragraphs 13 - 14).
- 7 The Defendant and Mr Ford has consistently followed up with the Plaintiff to engage the Defendant as the solicitor on the matter as follows:
- a. On or about 21 April 2016, Mr Ford contacted the Plaintiff by phone asking whether she will engage the Defendant as her instructing solicitor.
 - b. At about 1:20 pm on or about 22 April 2016, the Defendant contacted the Plaintiff via email asking whether the Plaintiff wanted to engage him and Mr Ford for the court proceedings.
 - c. At about 5:21 pm on or about 22 April 2016, the Defendant contacted the Plaintiff via email stating that he will be providing a lump sum assessment of fees.
 - d. On or about 25 May 2016, the Defendant contacted the Plaintiff on the phone and asked whether the Plaintiff wanted to engage the Defendant.
 - e. On 1 July 2016, Mr Ford contacted the Plaintiff by phone stating he just spoke to the Defendant about the case.
 - f. On or about 4 July 2016, the Defendant contacted the Plaintiff on the phone and emailed the Plaintiff his estimate of professional costs for the hearing.
 - g. On or around 12 July 2016, Mr Ford contacted the Plaintiff by email wanting to discuss the engagement of an instructing solicitor, making threatening representations that he wanted to protect 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.
 - h. On 12 July 2016, ~~Mr Ford the Defendant~~ contacted the Plaintiff and insisted that the Plaintiff engage the Defendant, 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.'

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

Particulars

1. The Defendant and Mr Ford were consistently following up with the Plaintiff to engage Mr Glynn as the solicitor on the Plaintiff's matter from the period of 21 April 2016 to 12 July 2016.
2. At the time, Mr Ford 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 engaged in misleading representations to the court about CCS's compliance with notices and court orders to produce the credit contract amongst 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 which provide that Law Society 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, the first day of the final hearing.
3. Mr Ford was contacting the Plaintiff and sought to undertake and act for the Plaintiff in relation to the OLSC and LSNSW_PSD complaints and investigation process.

C.2 The Agreement

- 8 By an agreement on or about 12 July 2016, the Plaintiff retained the Defendant as a solicitor to advise and to act for the Plaintiff in the defence of an action instituted against the Plaintiff in CCS_LCProceedings in the Local Court of NSW.
- 9 It was a term of an agreement, implied at law, that the Defendant would use all reasonable care, skill and diligence in and about the performance of the retainer.
- 10 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 The Local Court Proceedings (CCS_LCProceedings).

- 11 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.
- 12 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 (CCS.SOC) and Amended Statement of Claim dated 7 January 2015 (CCS.ASOC) provide the following:

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 pleaded that the amount claimed and interest rates were pursuant to an alleged Credit Card Contract.

~~C.43~~ Requests, Notices and Court Orders - Production of the Alleged Credit Contract.

- 13 The Plaintiff had sought the alleged Credit Contract from CCS from 5 November 2014, under the following notices:
 - a. The Plaintiff's Request for Further and Better dated 5 ~~November/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. Other relevant documents such as Credit Insurance Contract, Power of Attorney were also sought;
 - e. The court order dated 7 ~~January/1/~~ 2015 required compliance with the RFBP.
 - f. The court order dated 27 ~~October/10/~~ 2015 required compliance with the NTP1;
 - g. The court order dated 17 ~~December/12/~~ 2015 required compliance with the NTP2.
- 14 At all material times, the Defendant and Mr Ford were aware from the outset, of the following:
 - a. That the Plaintiff disputed the existence of the alleged Credit Card Contract,
 - b. That the Plaintiff never received any Credit Contract and denies entering the alleged Contract as alleged by CCS in its claim;
 - c. That a Credit Contract, being a regulated contract, is subject to Statutory Credit Laws.
 - d. That CCS failed to produce its alleged Credit Contract, Credit Insurance Contract, Power of Attorney/Authority amongst other relevant documents and particulars under the Plaintiff's RFBP and Notices to Produce and Court Orders (Paragraph 13).
- 15 At all material times, the Defendant and Mr Ford never sighted nor reviewed any Credit Contract and provided no legal advice in relation to any Credit Contract.
- 16 At all material times, the Defendant and Mr Ford were aware that there was no Credit Contract produced by CCS throughout the court proceedings.
- 17 At all material times, the Plaintiff relied upon the Defendant and Mr Ford as a legal practitioners to conduct legal work under a contractual, statutory and fiduciary obligation to the Plaintiff and to adhere to their paramount duties to the court that the central and material issues of the Credit Contract and the material facts of the case including the defences raised in the Further Amended Defence filed 30 March 2016 drafted by Mr Ford would be ventilated and determined at the final hearing on 18 and 19 July 2016.

- 18 On Friday 15 July 2016, Mr Ford requested the Plaintiff to meet with him and the Defendant on Sunday 17 July 2016.
- 19 Around 5 PM on Sunday 17 July 2016, the Plaintiff met with the Defendant and Mr Ford at Edmund Barton Chambers. This was the first time the Defendant had met the Plaintiff since he was retained on the Plaintiff's matter.
- 20 At the meeting which took approximately 40 minutes, the Defendant and Mr Ford intentionally did not disclose to the Plaintiff the following:
- a. That a material date, 25 February 2006, was for the first time relied upon by CCS alleging that its Credit Contract was entered by the Plaintiff. (Paragraph 45);
 - b. That a non-contractual Card Collection/Overdraft/Get Set Checklist ("Card Collection Checklist"), the date recorded, 25 February 2006 and signature on the Card Collection Checklist would be the central issue in dispute, to be relied upon as a material document by the Defendant, Mr Ford, CCS and its legal representatives to determine whether the Plaintiff entered a St George Branch at Castle Hill to prove that the Plaintiff entered a Credit Contract (Paragraph 45);
 - c. That the Defendant and Mr Ford would make submissions to the court that the central issue of the case were credit based findings against the Plaintiff (Paragraph 64, 66);
 - d. That the issue of an alleged Credit Card Contract will never be addressed at the hearing;
 - e. That the issue that credit card contract does not exist and was never provided by CCS during the court proceedings will never be addressed at the final hearing;
 - f. That the Defendant and Mr Ford will make submissions to the court, despite the evidence and the Plaintiff's instructions that the Plaintiff received credit card contract on 12 January 2015~~6~~.
- 21 The Plaintiff did not receive any material and substantial legal advice of any kind from the Defendant in relation to the Plaintiff's case and the conduct of the proceedings.
- C.54 CCS_LC.Proceedings - Hearing 18 and 19 July 2016.
- 22 The CCS_LCProceedings took place on 18 and 19 July 2016 before Magistrate Sharon Claire Freund at Sydney Downing Centre Local Court.
- 23 The CCS's legal representatives before the court at the bar table were Counsel Mr Sebastian Hartford-Davis and Ms Natalie Miller as instructing solicitor.
- 24 Piper Alderman partner, Mr Florian Ammer, employees Mr Brendan May, Mr Matthew Mennilli, Mr Owen Nanlohy and the ~~Defendant~~ CCS employee and witness, Mr Adam Carpenter, were present at the hearing, seated at the public seating at the back of the court.
- 25 The Defendant expressly directed the Plaintiff to sit at the back of the court, in the public seating area which made it very hard for the Plaintiff to hear what was said before the court.
- 26 Upon commencement of the hearing on 18 July 2016, Mr Ford and the Defendant requested for all of the Plaintiff's witnesses to leave the courtroom. CCS witness, Mr Adam Carpenter, remained in the court throughout the two day hearing.

- 27 On 18 July 2016, the first day of the court hearing:
- a. The Counsels handed up the Statement of Agreed Facts and Issues dated 18 July 2016 signed by the Defendant and Mr Florian Ammer of Piper Alderman.
 - b. CCS's solicitors provided the trial bundle folders for the first time to the Plaintiff's legal representatives and without reviewing the contents and not seeking the Plaintiff's instructions, the Defendant and Mr Ford accepted the trial bundle folders.
- 28 When the Plaintiff approached the bar table during the hearing to raise questions and provide instructions, the Defendant and Mr Ford were dismissive and refused to listen to the Plaintiff.
- 29 The Defendant directed the Plaintiff to be returned seated at the back of the courtroom, stating words to the effect, '*Let Nick do his thing, he is in his zone*'.
- 30 Throughout the two-day court hearing, the Defendant and Mr Ford failed to provide any advice nor spoke to the Plaintiff about any material and substantial matters in relation to the Plaintiff's case and the court proceedings.
- 31 Throughout the two-day court hearing, the Defendant did not seek any instructions from the Plaintiff and was only concerned of the following:
- a. For the first time, asked the Plaintiff for contact details of witnesses who were with the Plaintiff on 25 February 2006.
 - b. The Defendant was accommodating for all requests of CCS's legal representatives without contesting to relevance, seeking the Plaintiff's 2015 tax return and subpoena documents of bank account statements for the period around February 2006 where the subpoena documents were directly produced on the day of the court, 18 July 2016, by email to the CCS solicitor, Mr Florian Ammer, and not to the court.
 - c. The Defendant asked the Plaintiff the Lawcover premium amount she pays for her legal practice and whether she has any civil law experience.

D. THE DEFENDANT'S INTENTIONAL NEGLIGENCE AND IMPROPRIETIES.

D.1 Administration of Justice Offences.

Plaintiff's discovery after the judgment and costs judgment.

- 32 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 the Defendant, Mr Ford, 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. (Paragraph 45) .
- 33 Since July 2017 the Plaintiff undertook extensive review of voluminous documents where the Plaintiff discovered the premeditated and concerted effort by the Defendant conspiring with Mr Ford, 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 as set out in the following paragraphs.

- 34 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 alleged breaches of the credit legislation were never ventilated nor determined by the court (Particulars in paragraph 37).

Particulars

1. Court transcripts dated 30 March 2016, 18 and 19 July 2016 and 16 and 29 August 2016. At all material times Defendant and Mr Ford made deliberate false representations effectively stating the following with knowledge that such representation was untrue:
 FORD: Well, what we say, your Honour, was that the earliest she received the St George contract was 12 January 2015. (Para 30 Page 5 Transcript 30 March 2016)
 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. (Para 40 Page 12 Transcript 30 March 2016)
 FORD. Question: In fact, the 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? (Para 50 Page 41 Transcript 18 July 2016)
 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. (Para 10 Page 154 Transcript 19 July 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. (Para 45 page 5 Transcript 29 August 2016)
 FORD: 12 January 2015, that has always been her case and you may recall that she issued---
 HER HONOUR: Yes.
 FORD: --numerous notices of notice to produce. (Para 50 page 5 - para 5 page 6 Transcript 29 August 2016)
 2. The Defendant engaged in the Fabrication of court documents such as the 'Statement of Agreed Facts and Issues' signed by the Defendant and Mr Ammer of Piper Alderman on 18/7/2016 ("SAFI_02"), submitted on the first day of court providing false material facts and omitting the material facts and central issue of the Credit Contract and applicable credit laws that must be satisfied for a party to pursue any claim under a regulated contract, credit contract (Paragraph 45, 52-56).
 3. The Statement of Agreed Facts and Issues ("SAFI_02") was never disclosed to the Plaintiff by the Defendant and Mr Ford with intent to present different material facts and issues to be determined.
 4. False representations of facts in appeal advice (Paragraph 84-101).
- 35 ~~Financial accounts of~~ Piper Alderman, the Defendant, Mr Ford and Miles Condon including engaged in the fabrication of financial accounts and submissions, creating new facts with an intent to mislead in the Supreme Court Cost Assessment and cover up the fraud committed in the original proceedings. The merits of the case were never tested nor determined by the court at the final hearing, resulting in no finality of the case as a result of the fraudulent conduct of the Defendant conspiring with Mr Ford, CCS and its legal presentations representatives (Paragraphs 43 to 83).
- 36 At all material times, the Plaintiff relied upon the Defendant and Mr Ford to ventilate the central issue of the alleged Credit Contract and the defences drafted by Mr Ford in the Further Amended Defence filed 31 March 2016 ("FAD") which was represented to be material to the Plaintiff's case. The filing of the FAD resulted in the one day hearing listing on 7 April 2016 to be vacated, protracting the court proceedings and incurring substantial costs.

- 37 The Defendant deliberately omitted ventilating the applicable credit laws at the final hearing, conspiring with CCS and its legal representatives to circumvent the credit legislation and penalties.

Particulars of applicable legislation.

1. 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”).
 2. 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.
 3. Penalties for commencing proceedings without a credit contract default, s 88 NCC, and non-provision of the contract upon written request, s 185 NCC.
 4. *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;
 5. Section 12DL of *the ASIC Act* - Unsolicited credit cards and debit cards with an applicable offence described in section 12GB;
 6. Section 12DM of *the ASIC Act* - Assertion of right to payment for unsolicited credit financial services with an applicable offence described in section 12GB;
 7. Section 12DB *the ASIC Act* - False or misleading representations with an applicable offence described in section 12GB.
(Collectively referred to as the “Credit Laws”).
- 38 The Defendant and Mr Ford by their conduct showed wilful intent not to ventilate the material facts and central issue of the alleged Credit Contract and the applicable credit laws.
- 39 The Defendant and Mr Ford had fraudulently removed the onus of proof from CCS to prove the existence of pleaded Credit Card Contract.
- 40 The Defendant showed blatant disregard of his contractual, statutory and fiduciary duties to the Plaintiff and his paramount duties to the court (Paragraphs 43 to 83).
- 41 CCS and its legal representatives, Certus Partners and Piper Alderman:
- a. Had intentionally pleaded an alleged fact, a Credit Card Contract, which they were aware was untrue;
 - b. Had intentionally relied upon a false material fact and a cause of action of a breach of contract fraudulently pursuing a claim in the courts where it had no legal basis;
 - c. Had premeditated to present false material facts, remove the issue of the alleged credit card contract and present to the court an issue of a Card Collection Checklist as a central issue of the case with the assistance of the Defendant and Mr Ford (Paragraphs 43, 45, 58).
 - d. Had no intention to comply and produce its alleged Credit Contract, Credit Insurance Contract, power of Attorney/Authority and other relevant documents required under the notices and Court Orders (Paragraph 13).

- 42 CCS and its legal representatives could only obtain an illegal judgment at the final hearing and cost hearing in concert with the Defendant and Mr Ford being in trusted positions as the Plaintiff's legal representatives, having a special relationship under a contract and a statutory obligation to promote and protect the legal rights and interest of the Plaintiff and to adhere to paramount duties to the court in the conduct of the Plaintiff's case in court proceedings.
- 43 At the final hearing on 18 and 19 July 2016, the Defendant in concert with Mr Ford, CCS and its legal representatives, engaged in the following improprieties:
- a. Presented and relied upon a different factual case of a Card Collection/Overdraft/Get Set Checklist ("Checklist") as the central issue and material document;
 - b. Omitted the real issue of the Credit Card Contract;
 - c. Omitted ventilating and arguing the defences in the Further Amended Defence,
 - d. Omitted materially raising the issue of the alleged Credit Contract, its existence and compliance with the Credit Laws;
 - e. Falsely referred to a Credit Contract generally and ambiguously with the intent to never identify/specify what is referred as the alleged Contract in evidence throughout the two day hearing;
 - f. Omitted and circumvented the applicable Credit Laws, penalties and CCS's conduct pertaining to contempt of court for non-compliance with the court orders (Paragraph 13 and particulars in paragraph 37).

D.1.1 The Defendant's Dishonest Conduct, Misleading the Court of the Central Issue - Credit Card Contract.

CCS_LCProceedings - The Final Hearing on 18 and 19 July 2016 ("Final hearing")

- 44 Throughout the final hearing, the material issue of the alleged Credit Contract which was not admitted or produced in evidence was not ventilated, tested and determined.
- 45 The Defendant, in concert with Mr Ford, CCS and its legal representatives intentionally engaged in the following wilful impropriety at the final hearing to obtain an illegal judgment against the Plaintiff and to inflict a gross miscarriage of injustice using the court system, as follows:
- a. To omit and not ventilate the following:
 - i. The material issue of the alleged Credit Card Contract.
 - ii. The Plaintiff's dispute of the existence of the alleged Credit Contract.
 - iii. The Plaintiff's denial of entering into the alleged Credit Contract.
 - iv. The defences in the Further Amended Defence ("FAD") drafted by Mr Ford and represented by the Defendant and Mr Ford to be material relied upon to ventilate and promote the Plaintiff's case.
 - v. The applicable Credit Laws (Particulars in paragraph 37).
 - vi. Breach of the credit legislation by CCS and its predecessor, St George/Westpac Bank, and statutory penalties for the said breaches (Particulars in paragraph 37).
 - vii. CCS and its legal representative failed to produce an alleged credit card contract throughout the court proceedings despite the notices to produce and court orders (Particulars in paragraph 13).

- b. To circumvent penalties exceeding approximately \$3.6 Million under the *ASIC Act* (ss 12DL, 12DM, 12DB and 12Gb - Offences) and *NCC of NCCPA*. Penalties under the Acts refer to the Criminal Code (Particulars in paragraph 37).
- c. To unlawfully conduct a trial by ambush on the Plaintiff by falsely representing to the court a different case of a non-contractual document of a Card Collection/Overdraft/Get Set Checklist ("Card Collection Checklist") to be the material and central issue to be determined, as follows:
 - i. Whether an alleged Credit Contract was entered by the Plaintiff on 25 February 2006;
 - ii. Whether the signature of the Card Collection Checklist was that of the Plaintiff and
 - iii. Whether the Plaintiff had attended a St George Bank Castle Hill Branch on the 25 February 2006 to satisfy that the Plaintiff had entered into an alleged credit contract.
- d. To rely upon the Card Collection Checklist as a material document to determine the case, as follows:
 - i. To present the Card Collection Checklist as the Credit Contract/Contractual document that satisfies the Credit laws, *NCC of the NCCPA*;
 - ii. That the Card Collection Checklist is a declaration to satisfy the unsolicited credit card issue, 12DL of the *ASIC Act*;
 - iii. That the Card Collection Checklist is a written request for a Credit pursuant to 12 DL and 12DM of the *ASIC Act*;
 - iv. That the signature and the date on the Card Collection Checklist is central to determine whether the Plaintiff attended a St George Bank branch in Castle Hill on 25 February 2006 and if so, to satisfy the court that all terms were read to the Plaintiff and the Plaintiff entered a Credit Card Contract as set out in paragraphs 66 and 68 of the Judgment made by Magistrate Freund dated 16 August 2016.
- e. To submit a Statement of Agreed Facts and Issues dated 18 July 2015 (SAFI_02) which the Defendant was aware provided false material facts and omits the material and central facts and issues of the non-existence of an alleged credit card contract required to be put before the court to conduct a fair hearing and determine on the merits of the case (Paragraph 52-56).
- g. To intentionally refer to a *Contract*, *Contract documents* or *Contractual documents* generally, ambiguously and vaguely to falsely represent that a Contract exists when the Defendant, Mr Ford, CCS and its legal representatives were aware that Credit Contract does not exist and it was not produced in evidence. In concert, the counsels did not ask CCS's witnesses any questions to identify the Credit Contract in evidence throughout the two day hearing, as follows:
 - i. CCS witness, Mr Adam Carpenter, employee, committed perjury during his cross-examination by referring to interest rates in the alleged Credit Contract where he was aware the alleged Credit Contract did not exist and was not in evidence (Paragraphs 35-45 page 18, paragraph 40 page 21 Transcript dated 18 July 2016).
 - ii. Mr Carpenter was never asked to identify a Contract or refer to any provision of a Contract in evidence by Mr Ford, the Defendant, the opposing counsel or the Magistrate throughout his oral examinations and throughout the court proceedings.
 - iii. CCS witness, Mr Trevor Bowden, Westpac employee who gave evidence at court, was never asked to identify and refer to the Credit Contract in evidence throughout his oral examination by the Counsels;
 - iv. Magistrate Freund never asked the Counsels or Mr Carpenter to identify and refer to evidence of what was generally referred to as a Contract.

- v. The Magistrate never sighted nor reviewed any Credit Contract or terms of any alleged Contract throughout the final hearing.
- vi. The Plaintiff was never asked about the Credit Contract, whether she received contract documents on 12 January 2015 or referred to any terms of any Contract during an examination by Mr Ford/the Defendant and cross-examination by the opposing counsel.
- h. To suppress evidence, being the original Credit Card, obtained under the Notice to Produce to Court dated 25 May 2016 by CCS legal representatives who represented the Credit Card to be material evidence subject to the proceedings regarding a signature issue on the Card Collection Checklist. The original Credit Card was not in evidence at the final hearing.
 - i. CCS legal representatives, Mr Ammer of Piper Alderman, materially relied on the Card Collection Checklist and issued approximately 11 subpoenas to obtain Plaintiff's signature in relation to the signature issue on a non-contractual document of a Card Collection Checklist to obtain an Expert report which was inconclusive.
 - ii. The inconclusive result of the signature Expert Report of 96 pages, costing \$59,000, was rejected by Magistrate Freund.
 - iii. The Defendant and Mr Ford intentionally failed to notify the court of the original Credit Card with the signature.
 - iv. Mr Ford had provided the original Credit Card to CCS's legal representatives, Piper Alderman, in compliance with their Notice to Produce to Court dated 25 May 2016.
 - v. During the hearing on 19 July 2016, the Defendant and Mr Ford failed to contest and object to the inappropriate request by CCS legal representatives that the Plaintiff to be an expert on her own signature to identify and circle her own signature on poorly photocopied signatures on three sheets of paper provided by CCS counsel Mr Hartford-Davis.
 - vi. On the morning of the hearing on 19 July 2016, the Plaintiff, upon realising Ms Miller was impersonating a legal practitioner at the bar table acting as an instructing solicitor for CCS, the Plaintiff gave an immediate notice to the Defendant and to Mr Ford to notify the court.
 - vii. The Defendant and Mr Ford refused not to notify the court and replied to the Plaintiff words to the effect: Do not worry about it.
 - viii. At the hearing on 19 July 2016, CCS counsel Mr Hartford-Davis provided the evidence given by the Plaintiff to CCS's paralegal Ms Miller who was directed by CCS's counsel to create a new set of documents with photocopies of Plaintiff's signatures and for Ms Miller to circle them and then to hand those documents to the court to be admitted in evidence as exhibit 7.

Particulars

- 1 On or about July 2017, upon the Plaintiff's inspection of the court files, there was no Credit Card Contract produced in evidence.
- 2 Upon review of the court transcripts dated 18 and 19 July 2016, the Plaintiff discovered that the central issue of the Credit Contract was never ventilated nor determined throughout the two day final hearing.
- 3 The merits of the case were not determined as a result of the Defendant's intentional negligence and improprieties committed in the Plaintiff's case, at the final hearing and at the costs hearing.
- 4 Magistrate Freund's Judgment dated 16 August 2016 vaguely and ambiguously refers to a Credit Contract approximately thirty times unsupported by evidence of a Contract. The Magistrate does not identify and specify what she refers to as a Contract.

- 5 The Magistrate refers to terms where two general St George Bank booklets called 'Terms and Conditions' dated 2003 and 2006 were admitted in evidence by CCS which do not provide any particulars of the Plaintiff, credit product and where said booklets cannot satisfy the requirements required to form a Credit Contract or pre-contractual statement pursuant to statutory credit legislation (the NCC under the NCCPA 2009).
- 6 The Card Collection Checklist, a non-contractual document which was falsely relied upon as a material document and central issue in dispute, records no particulars of the details of the type of credit product, limit amount, interest rates, insurance particulars, request for credit, and required particulars pursuant to the NCC.
- 7 As evidenced by the court transcripts of 18 - 19 July 2016, no questions were put to the Witnesses or the Counsels to identify the alleged Credit Contract which was generally, vaguely and ambiguously referred to by Mr Carpenter, the Counsels and Magistrate Freund.
- 8 Mr Ford only put eleven introductory questions to the Plaintiff in examination-in-chief and has not asked the Plaintiff about the credit contract and whether the Plaintiff:
 - a) entered into the credit card contract and
 - b) received the alleged credit card contract, particularly on 12 January 2015.
- 9 The Defendant and Mr Ford intentionally made false representations to the court that contract documents were received by the Plaintiff on 12 January 2015.
- 10 No questions were put to the following witnesses about the Credit Contract by the counsels:
 - a. Defendant's witnesses, Mr Trevor Bowden, Westpac employee; Mr Adam Carpenter, CCS employee,
 - b. The Plaintiff and Plaintiff's witness, Ms Virginia Odtojan.
- 11 The Defendant failed to call the Plaintiff's witness, Mr Artem Bryl, who gave affidavit evidence of dealing with CCS in seeking provision of the alleged Credit Contract which CCS had failed to provide to date.
- 12 CCS witness, Mr Adam Carpenter, committed perjury by giving false evidence referring to a credit card contract and that the interest rate was pursuant to the credit contract when he knew that what he said was untrue.
- 13 Mr Carpenter committed further perjury when he made false representations that he had banking and financial lending experience (paragraph 50, page 37 Court transcript dated 18 July 2016) when he did not have such experience provided in his affidavit evidence.
- 14 The Defendant and Mr Ford intentionally failed to ask CCS's witness, Mr Carpenter, to identify what document he refers to as the contract in evidence. Mr Ford and Mr Carpenter were aware there is no Credit Contract in evidence and falsely represented that it was the Plaintiff's position that credit contract was received for the first time on 12 January 2015, as follows:

FORD, question: *"Does the higher interest rate come from the contract documentation the St George Bank and the defendant?"*

ADAM CARPENTER, answer: *"Yes, it does."*
(Paragraph 40 Page 21 Court transcript 18/7/2016)

FORD, question: *"In fact, the 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?"*

ADAM CARPENTER, answer: *"Yes. That rings true, yes."*

(Paragraph 50 page 41 - paragraph 5 page 42 Court transcript 18/7/2016).

- 15 CCS claim and Summary of Plaintiff's (CCS) Case signed by Mr Florian Ammer of Piper Alderman dated 21 June 2016, relied upon a Credit Contract to prove its claim in paragraphs 3.1 to 3.3, 4.1, 4.3 and 7.
- 16 The Plaintiff discovered that the Statement of Agreed Facts and Issues dated 18/7/2016 (SAFI_02), submitted to the court on 18 July 2016, which was never disclosed to the Plaintiff, which provided a different case and was not the version represented to the Plaintiff by the Defendant in his email dated 13 July 2016 (SAFI_01).
- 17 The Defendant intentionally signed the SAFI_02 and submitted it to the court with the knowledge that he did not seek Plaintiff's instructions and consent. The SAFI_02 fraudulently represented a different case and omitted material facts of non-existing credit card contract which was always an issue put to CCS by the Plaintiff.
- 18 The Defendant intentionally failed to raise an issue of the production of the original credit card which was provided for evidence to the court by the Plaintiff to be ventilated at the final hearing.
- 19 The Defendant failed to raise an issue that the signature on the original credit card does not match the signature on the Card Collection Form.
- 20 The signature expert report which costed approximately \$59,000 was inconclusive.
- 21 The Defendant failed to challenge the irregular handling of the evidence given by the Plaintiff at the witness box during cross-examination and failed to raise an issue of inadmissibility of evidence having been intermingled with Ms Miller's documents which she created.
- 22 The Defendant with Mr Ford assisted CCS's legal practitioners to circumvent the rules of evidence in court proceedings at the final hearing on 18 and 19 July 2016 and at the cost hearing on 29 August 2016.
- 23 On or about July 2017, upon the Plaintiff's inspection of the court files, there was no Credit Card stored in the court files.
- 24 Court orders dated 1 June 2016 provided that the Credit Card was uplifted by the CCS solicitors, Piper Alderman. The Card was never produced at the hearing where it was obtained under the Notice to produce to Court for the final hearing being material evidence for the signature to be compared with the signature on the Card Collection Checklist.
- 25 Ms Miller, a Piper Alderman paralegal at the time, sat at the bar table without leave of court impersonating a solicitor for the CCS throughout the interlocutory hearing of 30 March 2016, final hearing of 18 and 19 July 2016 and the costs argument hearing of 29 August 2016.
- 26 Later in 2017, after the judgement was made, upon inspection of Exhibit 7, the Plaintiff discovered that the evidence was tampered with by Ms Miller at the bar table and the question mark placed on one of the signatures was crossed out by her.

D.1.2 Defendant Tampering with Affidavit Evidence.

- 46 The Defendant, in concert with Mr Ford, intentionally deleted material paragraphs of the Plaintiff's affidavit evidence in the CCS_LC proceedings, without the Plaintiff's knowledge, instructions and consent.
- 47 The Defendant with Mr Ford deleted material evidence in the following paragraphs in the affidavit of Marie Jossane Odtojan sworn 6 July 2016:

- a. Paragraphs 8.i provide the Plaintiff's conversation with St George Bank Parramatta branch General Manager, Mr Sampath. The Plaintiff made enquiries about the process of obtaining a \$40,000 credit card which the Bank manager represented would be impossible for the person earning \$40,000.
 - b. Paragraphs 8.j provide the Plaintiff's conversation with St George Bank Parramatta branch representative Kenny, who confirmed that credit card application cannot be approved on the phone and you will need to have meetings with the bank and provide all the required documents: completed bank application form, income slips, ~~p~~Product options will also be presented to you. Kenny confirmed that a person who earns \$50,000 can only get about 6,000 to 8,000 dollars credit limit and would not be able to get a \$40,000 credit limit.
 - c. Paragraph 36 providing the circumstances that during the court proceedings CCS and its CCS solicitor, Mr Florian Samuel Ammer of Piper Alderman, made a professional complaint to the Office of Legal Services Commissioner (OLSC), threatening the Plaintiff's profession of a legal practitioner where CCS and Mr Ammer of Piper Alderman were fully aware the Plaintiff was not in the capacity of a legal practitioner in the proceedings.
- 48 During the hearing on 18 July 2016, the Defendant with Mr Ford agreed to delete paragraph 6 in the affidavit of Mr Adam Carpenter's affidavit dated 24 March 2015 (CCS employee), deleting the words '*entered into the contract*' which the Defendant and Mr Ford knew was the central issue of the proceedings.
- 49 During the hearing on 18 July 2016, the Defendant with Mr Ford agreed to delete paragraph 15 in the affidavit of Mr Adam Carpenter's affidavit dated 24 March 2015 deleting information about the list of debts marked as "Exhibit AC2".
- 50 The Defendant as instructing solicitor wilfully allowed Mr Ford to intentionally make fraudulent representations to the court effectively stating that '*contract documents were never provided until 12 January 2015*' throughout the final hearing, in court documents, submissions, and at costs hearing where the Defendant was aware such representation made by Mr Ford to the court were untrue and unsupported by any evidence and ~~was were~~ made against the Plaintiff's instructions and evidence and contrary to the facts of the case.
- 51 The Defendant and Mr Ford made repeated false representations to the court effectively, that '*contract documents were never provided until 12 January 2015*' with the intent that such representations would be materially relied upon by the court that there was no issue with the Credit Contract and the contract existence was not disputed by the Plaintiff.

Particulars

1. The Defendant and Mr Ford intentionally deleted material evidence from the Plaintiff's affidavit evidence without the Plaintiff's knowledge, consent or instructions and misled the court that the deletion of paragraphs in the Plaintiff's affidavit was by consent.
2. Mr Ford represented that he is instructed to redact the Plaintiff's affidavit as follows:
 FORD: "*Your Honour, my instructor has reminded me that I have an obligation, which I'll do tomorrow, to hand up a marked redacted copy of the affidavit of the defendant of 26 February 2016. I'll do that tonight. I won't hand to the Court the full exhibits to that affidavit, just the affidavit proper, with the pages that have been agreed.*"
 (Para 50 page 160 Court transcript dated 19/7/2016.)

D.1.3 Defendant's False Representations to Court and in Court Documents on Material Facts and Issues in dispute.

Fabricated 'Statement of Agreed Facts and Issues' ("SAFI_02").

52 On 13 July 2016, the Defendant emailed the Plaintiff and Mr Ford his proposed amendments to the *Statement of Agreed Facts and Issues* ("SAFI_01") inserting the Further Amended Defence ("FAD") defence 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'*.

53 On 14 July 2016, the Plaintiff emailed the Defendant and ~~Mr Ford~~ Mr Glynn agreeing to the Defendant's proposed amendments in his draft SAFI_01, providing instructions for further amendments 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...'

54 On 14 July 2016, the Defendant by email acknowledged the Plaintiff's instructions of amendments to the SAFI_01, stating, *'OK, thanks. I will talk to Nick later today.'*

55 Sometime in July 2017, upon inspecting the court file, the Plaintiff discovered that the Defendant had signed and submitted to the court on 18 July 2016 an entirely different Statement of Agreed Facts and Issues and the proposed amendments were not made as represented by the Defendant to the Plaintiff in email correspondences dated 13 and 14 of July 2016.

56 The fabricated SAFI_02 submitted to the court on 18 July 2016 contained false material facts and issues, as follows:

- a. Inserted a material date of '25 February 2006' never raised before in court proceedings, which for the first time is relied upon by CCS as a material date alleging the Plaintiff entered on that date into the alleged Credit Card Contract.
- b. The Contract was defined ambiguously as per CCS claim in paragraph 3 and not pursuant to the applicable Credit Laws, section 14 of *the NCC*, omitting the prescribed Letter of Offer and pre-contractual statement disclosure pursuant to s 16 of *the NCC*. (Particulars in Paragraph 37).
- c. The Contract itself was not raised as a central issue in dispute. The Defendant and Mr Ford, in concert with the CCS's counsel, falsely represented to the court that the Contract exists and has been provided, compliant with the written requirements of the Credit Code and its existence is not in dispute between the parties.
- d. Intentionally omitted the amendments proposed by the Defendant to the Plaintiff on 13 July 2016 and the Plaintiff's instructions for amendments on 14 July 2016, as follows:
 - i. The words *'or if any Contract was in fact provided to the Defendant' (Clause 10.d xi (2) Amended Defence.'*
 - ii. Paragraphs 15, 16, 17, 18, 19 on page 3 in relation to the Plaintiff's defences in the FAD.

iii. Omitted the amendments as instructed by the Plaintiff on 14 July 2016.

Particulars

1. The Defendant was intentionally negligent, in breach of the retainer in engaging in fraudulent conduct with Mr Ford and CCS legal representatives, Piper Alderman in signing and submitting a fabricated SAFI_02 which provided false material facts and issues and omitted the material facts and issues. Falsely representing that SAFI_02 was agreed by the Plaintiff.
2. The Defendant intentionally submitted the SAFI_02 where he was aware he did so without the Plaintiff's knowledge, instructions and consent.
3. That Defendant intentionally misled the Plaintiff that proposed amendments would be made to the Statement of Agreed Facts and Issues as set out in the emails between the Defendant and the Plaintiff on 13 and 14 July 2016.
4. That Defendant intentionally failed to follow the Plaintiff instructions on 13 and 14 July 2016.

Case Outline to the Court dated 18 July 2016.

- 57 The Defendant's Case outline date 18 July 2016 contained representations of false material facts and issues which the Defendant knew were untrue.
- 58 The Defendant's Case Outline dated 18 July 2016, deliberately provided false material facts and issues with the intent to cause loss and damage to the Plaintiff and demonstrates the Defendant's complete disregard of his paramount duties to the court as a legal practitioner and court officer, as follows:
 - a. Intentionally omitting the issue of the credit card contract.
 - b. Falsely relying on the non-contractual St George Card Collection Checklist as a material document and central issue in dispute to determine whether the Plaintiff entered into a Credit Contract.
 - c. Falsely represented that the Credit Contract/Contract documents were received by the Plaintiff on 12 January 2015.
 - d. Intentionally provided misleading and incorrect Credit Laws:
 - i. Sections 12 CB and 12CC were in force in 2006, but the sections provided on pages 6-10 of the Outline were only effective from 2012 and inapplicable to the case;
 - ii. No mention of relevant sections 14-22 of *the NCC* (strict credit contract regulations with penalties) and sections 142, 143, 146 of *the NCC* (Credit insurance contract regulations) and breaches, such as non-existence of the credit card contract and credit insurance contract;
 - iii. Sections 12BF and 12BG of *the ASIC Act* were not applicable in 2006 and to the case;
 - iv. Section 12DM of *the ASIC Act* was applicable in 2006, but the section 12DM provided on pages 11 to 12 was only effective from 2012;
 - v. S63A of the TPA 1974 is mentioned and is relevant, but was never specified, provided in su~~the TPA 1974~~missions and was never ventilated at the hearing;
 - vi. Part 6 of *the NCC* - Penalties for defaults of credit providers was never mentioned in the Outline;

vii. Section 88 of *the NCC* - a prohibition of starting court proceedings unless the debtor is in default of the Credit Code - was never mentioned in the Outline;

viii. Section 1385 of *the NCC* requiring credit providers to provide a credit contract within 30 days after a written request with criminal penalties for non-compliance - was never mentioned in the Outline.

Written Submission dated 29 July 2016.

- 59 The Written Submissions dated 29 July 2016 purportedly drafted by Mr Ford which he emailed to the Defendant and to the Plaintiff on or around 28 July 2016 contained misleading representations of material facts and issues stating that the Plaintiff received credit card contract on 12 January 2015, omitting the real issue of the non-existing Credit Card Contract with the purpose to mislead the court.
- 60 On 28 July 2016, Mr Ford provided his written submissions and CCS counsel's written submissions dated 19 July 2016 to the Plaintiff on and sought for the Plaintiff to provide any amendments overnight.
- 61 The Plaintiff had to work overnight to insert information in the written submissions (paragraphs 17 - 20) which the Defendant and Mr Ford withheld from the court during the 2 day hearing:

Particulars

1. The Plaintiff 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.

- 62 The Defendant did not do any legal work in regards to court documents or submissions, emailing the Plaintiff and Mr Ford on 1 August 2016 making the following comment regarding the written submissions:

Good morning, excellent submissions. You have put a lot of effort to make them read well and convincingly. Well done.

- 63 The Plaintiff's amendments to the written submissions were based on evidence and contradicted the Defendant's and Mr Ford false statements to the court that the Plaintiff received credit contract on 12 January 2015. The Defendant and Mr Ford had filed the written submissions to the court without alerting the Plaintiff about the fact that Defendant and Mr Ford had run the Plaintiff's case at two day hearing on the false factual matrix, intentionally misleading the court and the Plaintiff.

Oral submission document of 19 July 2016.

- 64 The Defendant's and Mr Ford's oral submission document dated 19 July 2016 which he provided to the Plaintiff only on 25 July 2016 deliberately omitted the central and material facts and issues of the Credit Card Contract and falsely represented that the central issue for the court to determine is centered on credit based findings against the Plaintiff.
- 65 The Defendant and Mr Ford intentionally made false submissions to the court and showed intent to mislead the court on the material facts and issues to be determined at the final hearing.

Particulars

1. The Defendant's Outline dated 18 July 2016:
 - a. Intentionally failed to present the real issue of the alleged Credit Card Contract and disputing its existence. The alleged Credit Contract was not tested and determined as the issue of the alleged Contract and the issue of no evidence of any Contract was not raised by the Defendant and Mr Ford.
 - b. Intentionally failed to put to the court that CCS failed and continues to fail to produce its alleged credit card contract, insurance contract, power of attorney and other relevant documents/particulars under notices and court orders (See paragraph 15).
 - c. Intentionally failed to ventilate the Plaintiff's Defences in the Further Amended Defence where the Plaintiff denies entering into the alleged credit card contract.
 - d. Intentionally failed to define the credit card contract pursuant to the NCC and omitting the credit laws (See paragraph 37).
2. The Defendant's and Mr Ford's Outline of submissions dated 18 July 2016:
 - a. Intentionally made false and misleading representations to the court which the Defendant and Mr Ford knew were untrue in their oral submission document, as follows:
 - i. on page 2, Paragraph 5 stating that *'The defendant has sought 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.'*
 - ii. On page 2, in paragraph 6, falsely represented ~~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).'

- iii. Paragraph 7 of the case outline intentionally omits the central issue of the alleged Contract and demonstrates the fraudulent representations by the Defendant and Mr Ford of their intent to present an entirely different case relying on false facts and material documents conspiring with CCS that there is no issue of the Credit Contract and represented as if the contract and contract terms exists when they are fully aware no contract exists, as follows :
- ' 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 [CCS] 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.'*
3. Throughout the court hearing, in the court transcripts of 18 and 19 July 2016, the Defendant and Mr Ford 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 the particulars under paragraphs 37.
 - c. Mr Ford and the Defendant 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 Ford'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.

Defendant's Misleading and Deceptive Conduct

- 66 The Defendant was Intentionally negligent, in breach of the retainer and legal obligations to the Plaintiff under the applicable laws as follows:
- a. Misled the court by failing to put to the court the real issues in the proceedings as set out in paragraph 43 to 45.
 - b. The Defendant intentionally failed to raise the issue and ventilate the issue that there was no Credit Card Contract, never produced by the CCS in evidence and CCS was in continuous contempt of court orders for its non-compliance to produce the credit contract among other relevant documents under notices and court orders (Paragraph 13).
 - c. The Defendant intentionally failed to put it to the CCS, its witnesses in cross-examination, its witnesses the central issue of the Credit Card Contract and put to Mr Carpenter what he referred as the Contract in evidence when the Defendant and Mr Ford were aware there was no Contract in evidence.
 - d. The Defendant intentionally failed to disclose to the court that the Credit Insurance Contract was never produced by the CCS. This issue was not determined by the court and is not addressed in the Judgment. The Defendant failed to address this issue with the Magistrate.
 - e. The Defendant intentionally failed to ventilate and promote the Plaintiff's defences in the Further Amended Defence (FAD).
 - f. The Defendant Intentionally failed to put to the court relevant and applicable legislation under the NCC (CCS/St George Bank breaches of the NCC sections: 14 - Credit contract to be in the form of written contract document, s 16 Pre-contractual disclosure, s 17 Matters that must be in the contract, s 18 - Form and expression of contract document, s 22 Offence for Non-compliance, s 88(1) - Requirements to be met before credit provider can enforce credit contract or mortgage against defaulting debtor or mortgagor) which were not argued/tested and not considered, s 185 - the requirement to produce credit contract upon written request.

Particulars

1. The Defendant intentionally failed to put to the court and argue CCS/St George Bank breaches of the relevant provisions of the ASIC Act: s 12DL Unsolicited credit cards and debit cards, s 12GB Offences against Subdivision D, s 12DM Assertion of right to payment for unsolicited financial services, s 12DB False or misleading representations which were all relevant since no credit card contract exists;
2. The Defendant Intentionally failed to promote/ventilate the extensive pleadings in the Further Amended Defence;
3. The Defendant intentionally failed to ventilate and promote the Plaintiff's evidence;
4. The Defendant intentionally failed to ventilate non-compliance with the court orders by CCS;

5. The Defendant intentionally failed to do chief-examination of the Plaintiff, asking only eleven introductory questions;
6. The Defendant intentionally conducted the Plaintiff's matter on false facts, fraudulently representing that the Plaintiff received the contract documents on 12 January 2015 where the Defendant knew there was no evidence in support;
7. The Defendant intentionally misled the court with Mr Ford on every occasion on 18 and 19 July 2016 and 29 August 2016 that contract was received on 12 January 2015 which the Defendant and Mr Ford knew was untrue.
8. The Defendant intentionally submitted fabricated documents to the court without the Plaintiff's knowledge and instructions which contained false representations and omissions of material facts (See paragraphs 52 - 58).
9. The Defendant intentionally misled the Plaintiff that he would act on her behalf promoting her case and act in accordance to his statutory and contractual obligations;
10. The Defendant intentionally misled the Plaintiff by representing that the SAFI would be edited accordingly as discussed in email, but a different version of the SAFI was submitted to the court without the Plaintiff's instructions and consent.
11. The Defendant intentionally misled and deceived the Plaintiff by submitting documents without her instructions/knowledge/consent to the court such as the Defence Case Outline and oral submission falsely representing that the central issue is credit based findings against the Plaintiff and her whereabouts on the 25 February 2006;
12. Provided written submissions dated 29 July 2016 which contained misleading statements that the contract documents were provided to the Plaintiff on 12 January 2015.
13. CCS legal representatives obtained the original credit card, which Mr Ford requested the Plaintiff to deliver to his chambers.
14. Once Mr Ford obtained the credit card, the Defendant and Mr Ford never discussed it with the Plaintiff and the Card ~~h~~was never seen it again.
15. The original credit card was never put before the court throughout the two-day final hearing
16. In court 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.
17. In court 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.1.4 Failure to seek instructions, to appear, provide advice, give notice of court dates and withholding material documents.

- 67 The Defendant was intentionally negligent and in breach of his legal obligations to the Plaintiff in failing to appear in court without notice to the Plaintiff and failing to give any advice, notice, seek the Plaintiff's instructions in relation to the following events:
 - a. On 16 August 2016, court date of handing down judgment;
 - b. On 29 August 2016, court date for cost argument hearing;
 - c. On 2 September 2016, court date for cost order judgment; and
 - d. On 12 September 2016 for an appeal advice meeting with Senior Counsel, Miles Condon.

- 68 The Defendant intentionally failed and did not provide any advice nor sought the Plaintiff's instructions in relation to the following events:
- a. The final hearing on 18 and 19 July 2016;
 - b. The Judgement given on ~~dated~~ 16 August 2016;
 - c. Costs Argument hearing on 29 August 2016;
 - d. Cost order dated 2 September 2016 and
 - e. Appeal advice on 12 and 13 September 2016.
- 69 The Defendant with Mr Ford intentionally withheld and failed to disclose to the Plaintiff the court date on 16 August 2016 when judgment would be given with intent that the Plaintiff would not appear and the matter be dealt with ex-parte.

Failure to provide Plaintiff the Material CCS Affidavit and Exhibit Documents for Cost Hearing.

- 70 The Defendant intentionally withheld and failed to provide CCS's legal representatives affidavit sworn 15 August 2016 and cost folders to the Plaintiff. The Defendant was aware that CCS sought substantial amount for costs and indemnity costs exceeding \$200,000 against the Plaintiff and, in withholding the affidavit and costs folder, the Defendant had intent to infringe Plaintiff's rights and to grossly prejudice the Plaintiff from providing any response to the matters raised against the Plaintiff in the costs argument hearing on 29 August 2016.
- 71 The Defendant was intentionally negligent and in breach of his legal obligations to the Plaintiff, as follows:
- a. Withholding material court documents from the Plaintiff, being CCS's Affidavit sworn 15 August 2016 and Costs folder which were material to the cost argument hearing. Notice about the costs folder was given in court on 16 August 2016, but it was not provided to the Plaintiff and her counsel at the time.
 - b. The Defendant received the CCS's cost folder on or around 17 August 2016 and intentionally failed to provide the Plaintiff the CCS's cost folder despite repeated requests to the Defendant and Mr Ford.
 - c. The Defendant intentionally disregarded the Plaintiff's notice to the Defendant and to Mr Ford to provide the material documents - the CCS Cost documents folder subject of the costs argument hearing on 29 August 2016.
- 72 The Defendant intentionally infringed Plaintiff's rights and had malicious intent to deprive the Plaintiff of her rights to review and reply to the CCS costs documents and affidavit sworn 15 August 2016 where the Defendant had no intention to disclose, advice or act upon the documents served on him and held the said affidavit and the costs folder despite requests from the Defendant and Mr Ford until the costs argument court event and appeal timeframe lapsed.
- 73 The Defendant intentionally withheld and deprived the Plaintiff from replying to the CCS legal representative Mr Ammer's affidavit dated 15 August 2016 for the costs argument hearing, in particular, to address the issues concerning the letter of offer where material credit contract was never provided to the Plaintiff and where CCS would falsely rely on in its application for indemnity costs.

- 74 The Defendant had knowledge CCS pursued a fraudulent claim in pleading a contract they never produced throughout the court proceedings relying upon the fraudulent acts during the court proceedings to perpetuate the fraud.
- 75 The Defendant and Mr Ford intentionally withheld providing the Plaintiff with the CCS costs folder until about 20 September 2016, after the costs argument hearing was over and after the 28-day timeframe to make an application for appeal expired.
- 76 On 26 August 2016, the Plaintiff notified the Defendant and Mr Ford via email in relation to the issues to be raised at the costs argument hearing.
- 77 The Defendant and Mr Ford completely ignored the Plaintiff's said instructions, have not sought any instructions and continued to withhold costs documents from the Plaintiff until 20 September 2016.

D.1.5 Costs Argument Hearing on 29 August 2016.

- 78 The Defendant intentionally withheld and did not disclose nor provided to the Plaintiff the CCS's legal representatives affidavit sworn 15 August 2016 of 15 pages with the exhibit costs folder of approximately 104 pages.
- 79 At the costs hearing on 29 August 2016, the Defendant did not appear in court without and provided no notice to the Plaintiff. Mr Ford appeared without the CCS's affidavit and costs folder when he was aware that the Plaintiff had sought such documents from him and from the Defendant since 16 August 2016.
- 80 The Plaintiff was unaware what was raised against her at the costs argument hearing by CCS and was greatly prejudiced by the Defendant and Mr Ford in their conduct of withholding material court documents from the Plaintiff which infringed on the Plaintiff's right to respond to CCS affidavit and raise material issues of the Credit Contract and relevant documents never provided to the Plaintiff and the disingenuous offer of compromise by CCS where they were always on notice of the issue of the Credit Contract which was never produced throughout the proceedings.
- 81 Magistrate Freund specifically sought no written submission and requested oral submissions from the Counsels at the costs argument hearing.
- 82 On 29 August 2016, both counsels, Mr Ford and Mr James Willis, in concert, deliberately made false representations before the court about the credit contract which has not been produced throughout the proceedings as follows:

FORD: ... Ms Odtojan did not receive the contract documentation until 12 January 2015. Now, I appreciate your Honour made findings in relation to what now--

Magistrate: 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.

Para 45 page 5 - para 5 page 6 Court Transcript dated 29 August 2016.

WILLIS: In relation to my friend's submission, the offer of compromise, I would submit that the suggestion that Ms Odtojan did not receive the documents until 12 February 2015

would not trouble your Honour for two reasons. The first is, I'm instructed that those documents were provided to Ms Odtojan before the proceedings commenced, so at all times she had those documents, but in any event, on a reading of the rules, that is a matter that should have been raised by Ms Odtojan at an earlier time rather than at the end of the hearing and the reason I submit that is as follows.

Para 45 page 8 Court Transcript dated 29 August 2016.

- 83 The Defendant and Mr Ford intentionally failed to disclose to the Plaintiff the contents of the CCS legal representative's affidavit and costs folder with intent for the Plaintiff to suffer loss and damage by obtaining full costs and indemnity costs order exceeding \$200,000 based on fraudulent representations where the Magistrate solely relied on submissions from the counsels as she did not want to have written submissions. Mr Ford falsely represented to the court that contract documents were received on 12 January 2015 (Paragraph 83).

Particulars

1. The Defendant, intentionally negligent and in breach of their legal obligations to the Plaintiff, allowed Mr Ford to give false evidence as follows: *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.

(Para 45 page 5 - para 5 page 6 Court Transcript dated 29 August 2016).

- ~~1.~~2. The Defendant and Mr Ford never contacted the Plaintiff in relation to the court date on 16 August 2016 and never disclosed the judgment date to the Plaintiff. The Plaintiff had to follow up with Mr Ford on the phone on or around 15 August 2016 about the court date on 16 August upon discovering a listing on the online registry on or about 14 August 2016.
- ~~2.~~3. During the said conversation on the phone, Mr Ford stated to the Plaintiff that he did not know where the Defendant was.
- ~~3.~~4. The Defendant failed to appear on 16 August 2016 and gave no notice for non-appearance on the court date. Neither the Defendant nor Mr Ford attended court on 16 August 2016.
- ~~4.~~5. Magistrate Freund on her own application adjourned the cost argument hearing until 29 August 2016 solely on the basis of Mr Ford's availability to appear for the costs hearing.
- ~~5.~~6. The Defendant intentionally withheld the CCS's affidavit and costs folder which disclosed CCS costs exceeding \$200,000, maliciously depriving the Plaintiff from responding to the CCS's affidavit and costs folder where the Magistrate did not want written submissions, but sought to solely rely on the oral submissions at court by Mr Ford and CCS counsel.
- ~~6.~~7. The Magistrate relied on fraudulent representations from Mr Ford that contract documents were received on 12 January 2015 where there was no evidence in support for Mr Ford to make such representations to the Court.
- ~~7.~~8. The opposing counsel made false representations that contract documents were received in August 2014

HER HONOUR: You make the submission that you provided those documents before the - what was the date that your clients provided those documents?

WILLIS: *I understand it was about August 2014.*

(Para 15-20 Page 9 Court Transcript dated 29 August 2016).

8-9. The Plaintiff discovered upon receiving and reviewing the court transcript dated 19 July 2016, that 16 August 2016 was recorded at the end of the court transcript of 19 July 2016 as the next court date and this court date would be known to the Defendant and Mr Ford and was intentionally withheld from the Plaintiff.

E. Gross Delay and Intentionally Negligent Appeal Advice.

84 The Plaintiff promptly notified the Defendant and Mr Ford of the intention to appeal the judgment upon receiving the judgment on 16 August 2016.

85 On 17 August 2016 Mr Ford called the Plaintiff and made the following representations:

- a. That the Plaintiff should obtain an appeal advice from a senior counsel, Mr Miles Condon, ("Mr Condon") of New Chambers in Sydney.
- b. That there would be plenty of time to make an appeal within 28 days and that he would contact Mr Miles Condon and a notice of appeal will be drafted in a couple of days.

86 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 Glynn's Lawyers Trust Account, for appeal advice from Senior Counsel, Miles Condon.

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

87 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.

88 The Defendant and Mr Ford ignored the Plaintiff's and her witness Mr Bryl's emails and have not responded to the Defendant until Sunday on 11 September 2016.

89 The Defendant and Mr Ford organised the meeting with Mr Condon on 12 September 2016, a day before the expiry of the 28 day timeframe to file an appeal.

90 The Plaintiff, Mr Artem Bryl and Mr Ford attended the meeting with Mr Condon at New Chambers. The Defendant failed to appear and did not notify the Plaintiff of the reasons for his absence at the meeting.

91 During the meeting on 12 September 2016, the following transpired:

- a. No notice of appeal was drafted as represented by Mr Ford 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 Credit Contract when there was no Contract produced in evidence throughout the original court proceedings.
 - f. Mr Condon asked Mr Ford if there was a signed Contract which Mr Ford 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 Mr Ford 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'.*
- 92 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.*
- 93 The Defendant's email to the Plaintiff at 6.35 PM on 12 September 2016 forwarded the advice from Mr Condon 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 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 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 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 Ford and Mr Condon in concert falsely refer 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.

- 94 On the last day to file an appeal within the 28 day timeframe, the Defendant, Mr Ford 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.
- 95 At 2.51PM on 13 September 2016 Mr Ford emailed the Plaintiff and Defendant a Memorandum of Advice dated 13 September 2016 recording the names of Mr Condon and Mr Ford.
- 96 The Memorandum of Advice dated 13 September 2016 provided intentionally 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 Mr Ford, Mr Condon and the Defendant were aware did not exist and was never provided in evidence.
- b. 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. Vaguely stated 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 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.
- d. Referred 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 Mr Ford, Mr Condon and the Defendant were aware there was no Credit Contract provided in evidence.
- e. Intentionally omitted the issue of the alleged Credit Contract and the issue that there was no Credit Contract in evidence.
- f. The appeal advice intentionally directs the Plaintiff to plead 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.

- g. 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 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.*
- h. At 3:27 PM on 13 September 2016, Mr Ford emailed the Defendant 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. Mr Ford 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, 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, the Defendant and Mr Ford would always 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, the Defendant and Mr Ford made consistent fraudulent statements effectively stating that 'contract documents were not received until 12 January 2015'.
 5. The Defendant failed in knowing the timeframe to file appeal and reliesu on Mr Ford to provide such advice and to draft notice which demonstrates the Defendant is inexperienced and incompetent in the carriage of the Plaintiff's matter, contrary to his earlier presentations that he had expertise in civil proceedings and credit related matters.
 6. In the Defendant's submission to the Costs assessor dated 21 August 2017:
 - a. The Defendant represents he has' *extensive litigation experience across a wide range of jurisdiction*'.
 - b. The Defendant intentionally omits appeal advice attendances in his chronology.
 - c. The Defendant intentionally failed to provide appeal advice in a timely manner and gave false representations of facts for the appeal in his emails dated 12 and 13 September 2016.
 7. The Defendant's itemised attendances dated 15 September 2017 provide:
 - a. The Defendant's intentional delay to follow the Plaintiff's instructions and obtain prompt appeal advice, recording plaintiff's communications in relation to appeal advice from 23 August 2016.
 - b. Falsely recorded that he sought instructions from the Plaintiff in relation to appeal advice.
 - c. The Defendant did not seek any advice from the Plaintiff in relation to the appeal.
 - d. The Defendant ignored the Plaintiff's notices dated 1 September 2016, 6 September 2016 for the provision of the appeal advice time being of the essence while the Defendant had funds for appeal advice in his trust account.
 - e. The Defendant only started communicating to the Plaintiff on the afternoon of the second last day of the 28 day time frame for the appeal.
- 97 The Defendant, Mr Ford and Mr Condon 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.
- 98 The Defendant with Mr Ford and Mr Condon caused serious deliberate delay to provide appeal advice when the Plaintiff had given notice regarding appeal advice to Defendant and Mr Ford on 17 August 2016 and had promptly deposited trust funds into the Defendant's trust account on 29 August 2016 where they were aware appeal advice was time of the essence.
- 99 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 Condon knew no contract was ~~ever provided~~ produced in evidence at the final hearing and

they did not sight nor review any Credit Contract in making the appeal advice they provided to the Plaintiff.

- 100 The Defendant, Mr Ford and Mr Condon 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.
- 101 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 Ford intentionally failed and ignored the Plaintiff's instructions seeking appeal advice in email correspondences on 17, 23, 25, 29 August 2016, 1 and 6 September 2016.
 - c. 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.
 - d. Organised the meeting with Senior Counsel on the second last day to file an appeal, at 8:00 AM on 12 September 2016 at Mr Condon's office with Mr Ford.
 - e. The Defendant failed to appear at the meeting on 12 September 2016 without any notice to the Plaintiff.
 - f. Gave Forwarded intentionally dishonest and misleading appeal advice where the Defendant was aware no Credit Contract was produced in evidence.

F. Plaintiff's letter to Defendant dated 28 April 2016 and Defendant's Breach of Undertaking.

- 102 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.
- 103 On 12 May 2017, the Defendant replied by email stating that '*Your requests are very detailed and it will take me some time to respond which I will do so ASAP.*'
- 104 On 18 May 2017, the Defendant emailed the Plaintiff making false representations that he provided trust receipts by email on 31 August 2016 and does not acknowledge the discrepancies in his trust account statement dated 18 November 2018 with the records of Mr Ford's account statement dated 27 January 2017.
- 105 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.
- 106 The Defendant continues to be in breach of his undertaking to provide a response to the Plaintiff's letter as represented to the Plaintiff on 12 May 2017.

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 (Paragraph 52 - 58).
2. The Plaintiff's letter sought to identify in paragraphs 1-2 'Contract Documentation' on page 5 and in paragraph 3 on page 6 what the Defendant and Mr Ford represented to be the credit contract in the

case and what contract documentation did the Defendant and Mr Ford presented to the court the Plaintiff received on 12 January 2015.

G. Account Records and Breach of Trust Account Obligations.

- 107 On 17 November 2016, the Plaintiff gave instructions by email to the Defendant to return the remaining trust funds in Plaintiff's matter held in the Defendant's Trust Account.
- 108 On 18 November 2016, the Defendant emailed the Plaintiff a trust account statement dated 18 November 2016 showing nil balance, without any recorded dates of when payments were made from the trust account.
- 109 On 27 January 2017, Mr Ford 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.
- 110 Mr Ford's account statement had no records of the Defendant and his firm, Glynn's Lawyers. There were no records of any payments received from the Glynn's Lawyers trust account.
- 111 On 18 May 2017, the Defendant emailed the Plaintiff his trust account statement dated 18 November 2016 inserting payment dates for the first time. The Defendant's trust account statement recorded a payment to Mr Ford on 22 November 2016, an amount of \$2,505.21 which is not recorded in Mr Ford's account statement dated 27 January 2017.
- 112 On or about 28 April 2017, the Plaintiff emailed a letter to the Defendant and Mr Ford seeking prompt clarifications from each of them regarding:
- a. The conduct of the Plaintiff's case in the court proceedings;
 - b. The disastrous outcome never explained nor any legal advice provided by the Defendant and Mr Ford;
 - c. Their false representations regarding contract documents received by the Plaintiff on 12 January 2015 where they were always aware no contract was produced in evidence throughout the court proceedings;
 - d. Seeking clarification of the discrepancies of Mr Ford's account statement to that of the Defendant's trust account statement.
- 113 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.
- 114 The Defendant has intentionally failed his trust account obligations, failed to keep a proper account where there were unaccounted trust funds and failed to provide the Plaintiff trust account receipts.
- 115 To date, Defendant and Mr Ford have intentionally failed and continue to fail to provide the Plaintiff any payment receipts and trust account receipts despite repeated requests from the Plaintiff.

H. Intentionally Dishonest Conduct in NSW Supreme Court - Costs Assessment Process.

- 116 On 28 July 2017, the Plaintiff filed a costs assessment application on the Defendant's invoice dated 28 July 2016.

- 117 The Defendant failed to provide a proper account of funds held in his law practice trust account on behalf of the Plaintiff and intentionally failed to provide the Plaintiff's trust account receipts pursuant to trust account obligations.
- 118 The Defendant's trust account statement provides unaccounted trust account funds and payments made from the trust account to Mr Ford which are not recorded in Mr Ford's account statement.
- 119 The Plaintiff gave notice to the costs assessor in relation to the Defendant's conduct, as follows:
- a. Failed to follow client's (Plaintiff) instructions;
 - b. Failed his client's (Plaintiff) case in CCS_LCProceedings, at the final hearing on 18 and 19 July 2016 due to making false representations of facts against the client's instructions and evidence;
 - c. Unaccounted funds from the trust account in the amount of \$335.00 and refusal of provide trust account receipts in breach of trust account obligations;
 - d. Fraudulent accounting records where Mr Ford does not record any funds received from the Defendant. Mr Ford's account does not reflect payments recorded to have been made to Mr Ford in the Defendant's trust account statement.
 - e. Failed to provide a proper costs estimate;
 - f. Failed to do any competent legal work to the standard expected from a legal practitioner;
 - g. Failed to respond to the Plaintiff's letter 28 April 2017;
 - h. Engaged in improprieties, dishonest representations and fraudulent conduct.
- 120 The Defendant intentionally made false representations in his submissions ("D Submission1") to the costs assessor, Mr Peter Rosier filed on 21 August 2017;
- a. Falsely relying on his incorrect tax invoice dated 27 July 2016 to submit that the Plaintiff's application was made out of time. (Paragraph 2 and 3 of D Submission1);
 - b. The Defendant intentionally omitted the correct tax invoice dated 28 July 2017;
 - c. Stating that his instructions were to brief NF on the material by the Applicant in the proceedings where no instructions were sought nor the matter discussed with the Plaintiff (Paragraph 10 of D Submission1);
 - c. Stating that on 19 April 2016 he met the Plaintiff to receive instructions when he was not retained on the matter (Paragraph 13 of D Submission1);
 - d. Stating that Mr Ford's letter to the Plaintiff dated 5 July 2017 constitutes a response on behalf of the Defendant to the Plaintiff's letter dated 28 April 2017 and attaches Mr Letter which does not address the issues which were put to the Defendant (Paragraph 18 of D Submission1);
 - e. Stating that at all times the Defendant properly instructed Mr Ford for the hearing, including attending with him at the entire duration of the hearing when he was aware he did not seek

any instructions from the Plaintiff and was receiving instructions from Mr Ford. (Paragraph 12 of D Submission1).

121 The Defendant made the following statement in his statutory declaration dated 4 December 2017 as follows:

1. *By email dated 27 July 2016, a copy of which is attached and marked "A" I provided my tax invoice dated 27 July 2016 to Ms Odtojan.*
2. *I received an email dated 27 July 2016 in reply from Mr Odtojan, a copy of which is attached and marked "B".*
3. *By email dated 28 July 2016 I corrected the tax invoice acknowledging payment into my trust account of \$8000. Attached and marked "C" a copy of this email dated 28 July 2016.*

122 The Defendant intentionally made false representations in his statutory declaration dated 4 December 2017, as follows:

- a. By stating that he amended his 27 July 2016 when he was aware that he had issued a new tax invoice dated 28 July 2016 which he provided to the Plaintiff on 28 July 2016.
- b. The Defendant intentionally omitted to annex a copy of the invoice dated 28 July 2016 in his statutory declaration and had only annexed the tax invoice dated 27 July 2016 and emails ofn 27 and 28 July 2016.
- c. That the Defendant had corresponded with Ms Odtojan when he was aware that he corresponded with Mr Artem Bryl on 27 and 28 July 2016.

123 On or about 12 December 2017, the costs assessor, Mr Rosier, closed the costs assessment application in reliance of the Defendant's false statements in his statutory declaration.

I. Defendant's Breach of Professional Obligations.

124 The Defendant intentionally failed his fundamental duties as a solicitor with intent to cause the Plaintiff to suffer loss and damages as follows:

- a. Failed his ethical duties to the Plaintiff under rule 4.1 (4.1.1, 4.1.2, 4.1.3) *Australian Solicitor Conduct Rules (ASCR)* (set out in paragraphs 43 to 83).
- b. Failed his duty to communication of advice to the Plaintiff under rules 7.1 and 7.2:
 - i. The Defendant failed to provide any legal and competent advice to the Plaintiff throughout his engagement in the Plaintiff's matter.
 - ii. Any advice given was made to mislead the Plaintiff, based on false facts and representations and always delayed and provided at the last minute to cause distress on the Plaintiff giving little to no time to for the Plaintiff to consider an advice given (Paragraphs 52-63 (documents), paragraphs 84-101 (Appeal advice)).
- c. Failed to follow the Plaintiff's lawful, proper and competent instructions, Rule 8.1 ASCR (set out in paragraphs 27-28, 31, 46, 50, 56, 67-68, 77, 101, 107);
- d. Failed his Paramount duty to the court, in the administration of justice. Rule 3.1 (Paragraphs 43 to 51);

- e. On every occasion before the court, the Defendant and Mr Ford had intent to make consistent false material representations that Contract documents were provided to the Plaintiff on 12 January 2015. (Paragraphs 45 to 80);
- f. The Defendant made false allegations against the Plaintiff that the central issue in the case were credit based findings in oral submission to the court and in the document dated 19 July 2016 provided to the Plaintiff on or about 25 July 2016, alleging that the Plaintiff misled the Magistrate at the interlocutory hearing on 30 March 2016 and had engaged in perversion of justice where the Defendant knew this was untrue and the Defendant had no evidence to support such serious allegations made against the Plaintiff in breach of Rule 24. 24.4.1 and 21.4.2. set out in paragraphs 64 to 65 above;

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

- 125 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 to 124);
- 126 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 84 to 124);
- 127 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 causing the Plaintiff loss and damage as particularised herein. (Paragraphs 45 to 124);
- 128 The Plaintiff's loss and damages would not have occurred but for the Defendant's intentional negligence and improprieties. (Paragraphs 45 to 101);
- 129 heThe Defendant 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.
- 130 The wilful improprieties of the Defendant had directly caused the Plaintiff to suffer a gross miscarriage of justice in the CCS_LCProceedings, suffering loss and damages as follows (Paragraphs 45 to, 480);
 - 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 credit contract in the final hearing and costs 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 and Mr Ford had deliberately stated to the court that contract documents were provided to the Plaintiff given specifically on 12 January 2015 to align with CCS legal practitioners, Piper Alderman's offer of compromise dated 17 December 2014.
- f. The Defendant was aware that no credit 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 trial by ambush was conducted on the Plaintiff.

131 As a in consequence of the Defendant's intentional negligence, improprieties committed in the Plaintiff's case, breaching the retainer agreement, statutory obligations and where the Defendant shown intent to commit further acts of improprieties to cover up his fraudulent conduct in obtaining illegal judgement in the CCS_LCProceedings, the Plaintiff greatly suffered and continues to suffer loss and damages (Paragraphs 1323 - 1459).

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 Defendant).	\$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)	\$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 Defendant t/a Glynn's Lawyers.	\$8,335.00
10.	Legal fees paid to Mr Miles Condon in the amount for appeal advice.	\$3,494.79
11.	Fees for the costs assessment application against the Defendant, 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 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

K. Aggravated Damages.

- 132 The Defendant intentionally engaged in conscious wrongdoing in contumelious disregard for the Plaintiff's rights as particularised herein (Paragraphs 45 to 80).
- 133 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 845 - 1064).
- 134 The Defendant's and Mr Ford's ~~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 to 80).
- 135 The Plaintiff suffered great distress due 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, misleading and conflicting advice provided by the Defendant, Mr Condon and Mr Ford-Glynn. (Paragraphs 84 to 101).

136 The appeal advice dated 12 September 2016 provided false representations against the Plaintiff referring to unspecified credit based case findings representing that the judgment is unappealable. 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. to 89. (Paragraphs 84 to 101).

'Essentially as the magistrate made credit based findings against Ms Odojan 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 Odojan 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 not being told by their lawyers that different reality exists which is an affront to Marie's version...'

137 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 advice dated 12 September 2016: *'The Supreme Court is usually reluctant to intervene in Contract Review type cases...'* (Paragraphs 84 to 101).

138 In providing appeal advice, the Defendant with Mr Ford Glynn and Mr Condon undermined and humiliated the plaintiff where Mr Ford 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 Ford 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 GCS LG Proceedings 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).~~

139 ~~136~~. The Defendant and Mr Ford Glynn deliberately infringed on the Plaintiff's rights and made making denigrating comments about the Plaintiff where the Defendant and Mr Ford Glynn had

no basis to make such representations unsupported by any evidence (Particulars (3) in paragraph 4965).

~~140-137~~. Throughout the court proceedings on 18 and 19 July 2016 and 29 August 2016, the Defendant and Mr Ford 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 alleged 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 ~~83405~~):

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. Defendant's conduct is providing an appeal advice on the 12 and 13 September 2016 second and last day of the 28 day timeframe to file an application to appeal (Paragraphs 84 - 101).~~
- ~~2. The Plaintiff suffered great distress to the last minute appeal advice on the afternoon of 13 September 2016. (Paragraphs 94 - 101).~~
- ~~3. The Defendant had intentionally disregarded the Plaintiff's prompt instructions on 17 August 2016 of the Plaintiff's intention to appeal and sought appeal advice promptly (Paragraphs 84 - 85).~~
- ~~4. The Defendant intentionally caused great distress on the Plaintiff always acting on at 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 Ford Glynn and the Plaintiff regarding the final hearing on Sunday afternoon on 17 July 2016. (Paragraphs 18 - 21).~~
 - ~~b.~~
 - ~~c. b. The Defendant caused great distress during the hearing on 18 and 19 July 2016 (Paragraphs 22-31):~~
 - ~~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).~~

L. Exemplary Damages.

~~439-141~~. The Defendant intentionally engaged in conscious wrongdoing in contumelious disregard for the Plaintiff's rights, set out in paragraphs ~~438~~ to ~~1245~~.

~~440-142~~. The Defendant demonstrated blatant and wilful disregard of all his contractual, statutory and fiduciary duties to the Plaintiff (Paragraphs 45 to ~~12445~~).

~~141~~—143. The Defendant demonstrated blatant and wilful disregard of his paramount duties to the court (Paragraphs 45 to 66).

~~142~~—144. The Defendant demonstrated his intent to perpetuate and rely on his fraudulent acts committed against the Plaintiff in original proceedings and showed intent to commit further acts of fraud against the Plaintiff to cause further loss and damages on the Plaintiff. (Paragraphs 45 to 1312).

~~143~~—145. 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 32 to 106).

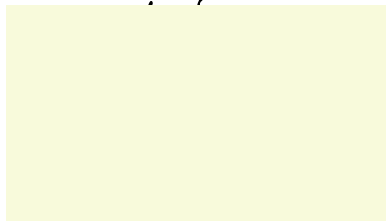
SIGNATURE

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.
- 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 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 100, 150

Occupation

Date 11 Oct

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

And as a witness, I certify the following matter

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

Marie Odtojan, Plaintiff

DefendantThomas Patrick Glynn T/A Glynn's Lawyers
(ABN 49 396 450 350)**FURTHER DETAILS ABOUT PLAINTIFF****Plaintiff**

Name Marie Jossane Odtojan

Address

Address for service

Telephone

Email

DETAILS ABOUT DEFENDANT**Defendant**Name Thomas Patrick Glynn T/A Glynn's Lawyers
(ABN 49 396 450 350)

Address Level 21, 133 Castlereagh Street, Sydney NSW 2000