

# Order NOT Entered

No: (P)SAD100/2014

Federal Court of Australia  
District Registry: South Australia  
Division: General

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**  
Applicant

**LINDSAY KOBELT**  
Respondent

## ORDER

**JUDGE:** Justice White  
**DATE OF ORDER:** 13 December 2016  
**WHERE MADE:** Adelaide

### DECLARATIONS

1. In the period between 1 July 2011 and 31 October 2012 in respect of 92 customers, and continuing until at least April 2014, the Respondent contravened s 29(1) of the *National Consumer Credit Protection Act 2009* (Cth) (**National Credit Act**) by engaging in credit activity within the meaning of s 6(1) of the National Credit Act when selling vehicles by way of Book-up without holding a licence to engage in that credit activity.
2. The Respondent contravened s 12CB(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) in that, since at least 1 June 2008 and continuing until at least July 2015, in connection with the supply of financial services to customers of Nobbys Mintabie General Store the Respondent engaged, in trade or commerce, in a system of conduct or pattern of behaviour within the meaning of s 12CB(4)(b) of the ASIC Act which was unconscionable within the meaning of s 12CB(1)(a) of the ASIC Act in that the Respondent:

- 2.1 obtained, as a condition of providing a credit facility, possession of debit cards and personal identification numbers from the customers and thereby obtained control over the withdrawal of monies from the customers' bank accounts;
- 2.2 on the day on which payments were made into the account or shortly afterwards withdrew the whole, or nearly the whole, of the available funds in the customers' bank accounts;
- 2.3 withdrew, in some instances, amounts which exceeded those which the customer had authorised and withdrew funds more frequently than some customers had authorised;
- 2.4 was indifferent as to whether the customers could, having regard to their financial position generally, afford their commitment to him;
- 2.5 did not provide to his customers periodically true and proper account statements of the transactions he had effected using their debit cards;
- 2.6 placed the customers in a position in which they were subject to the exercise of the Respondent's goodwill and his control in their everyday lives, including having to ask the Respondent for additional credit to obtain cash from their bank accounts and to purchase goods including general groceries which the Respondent at his discretion, agreed from time to time to provide;
- 2.7 in relation to debts that had been incurred initially for the purchase of motor vehicles, provided credit of a particularly expensive kind in circumstances in which in most cases customers were not aware that they were being charged for the provision of credit; and
- 2.8 operated a Book-up system which involved taking advantage of the vulnerability of many of the Book-up customers arising from a combination of factors: the remoteness of their communities; the limitations on their education; their impoverishment; and the limitations on their financial literacy.

## **INJUNCTIONS**

**THE COURT NOTES** the undertaking of ASIC that, in relation to any debit cards received from Mr Kobelt pursuant to paragraph 3.2.2 of these Orders, the officers who receive those cards will:

- (1) provide Mr Kobelt with a receipt specifying the number of debit cards collected and the names of the customers to whom they belong;
- (2) attend at Mimili and Indulkana and attempt to return to their owners as many of the debit cards as possible in the period 15 to 18 December 2016;

- (3) return any debit cards not delivered to customers in the period 15 to 18 December 2016 to the financial institution or institutions which issued the cards on 20 December 2016 by delivering the cards to the Adelaide branch of the institution or institutions, or if there is no branch of the institution in Adelaide, by posting the card or cards to the head office of the relevant institution.

**THE COURT ORDERS THAT:**

3. Pursuant to s 12GD(1) of the ASIC Act:
  - 3.1. the Respondent (whether by himself or his agents) be permanently restrained, and an injunction is hereby granted restraining him, whether personally or by his employees or agents from receiving and retaining:
    - 3.1.1. any customer's debit card, or
    - 3.1.2. any customer's debit card personal identification number.
  - 3.2. the Respondent is:
    - 3.2.1. to cease forthwith (whether by himself, his employees or his agents) using customers' debit cards, which as at the date of this order are in his possession, to withdraw funds from the customers' accounts;
    - 3.2.2. by no later than 10 am on Thursday 15 December 2016, to deliver any customers' debit cards which remain in his possession to the Australian Securities and Investments Commission (ASIC) employees who attend Nobby's Mintabie General Store at that time and to destroy any records in his (or his employees' or agents') possession of customers' personal identification numbers.
    - 3.2.3. during the period of 60 days commencing on 15 December 2016, to use his best endeavours to inform any customer whose debit card has been returned to ASIC and who either attends at Nobbys Mintabie General Store or telephones the Nobbys Mintabie General Store that the customer's card has been returned to ASIC and that they should contact Money Mob in their community or ASIC's Indigenous Helpline for advice about their debit card.

**Non-punitive orders**

4. Pursuant to s 12GLA of the ASIC Act the Respondent, is during the period commencing on 17 December 2016 and continuing until 4 March 2017:

- 4.1. to display, in a visible location at or near the entry to Nobbys Mintabie General Store, a sign not smaller than A3 size in the terms specified in Schedule A; and
- 4.2. to make available in a prominent place in Nobby's General Store A4 size pamphlets in the terms specified in Schedule A.

**Case Management Orders**

5. The matter is adjourned to 2.15 pm on Monday 20 February 2017 for the hearing of submissions on penalty and costs, including the costs of today's hearing.
6. There be liberty to apply.

Date that entry is stamped:

Deputy District Registrar

## SCHEDULE A

### IMPORTANT INFORMATION

#### **For customers who use book up at Nobbys Mintabie General Store**

On 9 November 2016 the Honourable Justice White of the Federal Court of Australia found that the way Lindsay Kobelt has been providing book up at Nobbys Mintabie General Store is unconscionable and unlawful.

The Honourable Justice White also found that Lindsay Kobelt should have had a credit licence to sell cars in the way he did on book up in the period between 1 July 2011 and 31 October 2012. Mr Kobelt did not have a credit licence.

The Federal Court of Australia has ordered Mr Lindsay Kobelt to give his customers' debit cards to ASIC so that they can be returned to the customers.

ASIC officers will be in the APY Lands between 15 December 2016 and 18 December 2016 so that they can return the debit cards to the customers. If ASIC is unable to contact the customer and return the card during this period, the debit card will be returned to the financial institution which issued the card.

The Federal Court of Australia will consider what penalty it should make and what other actions it should take against Mr Lindsay Kobelt at a hearing in Adelaide on [insert date].

**If you are a customer of Nobbys who used book up you have not done anything wrong and the orders which have been made for ASIC to remove your debit cards from Lindsay Kobelt and hand them back to you are to protect your interests.**

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### HOW TO GET INFORMATION

**If you left your debit card at Nobbys, you can contact Money Mob in your community or ASIC's Indigenous Helpline on 1300 365 957 for advice about your debit card. If you require a new debit card to be issued, they will be able to explain how to do this.**

Information is also available on MoneyMob's website.

**[www.moneymobtalkabout.com.au](http://www.moneymobtalkabout.com.au)**