

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/12/2017 12:25:22 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID1367/2017
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v FINANCIAL CIRCLE PTY LTD
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	22/12/2017, 10:15 AM
Place:	Court Room Not Assigned, Owen Dixon Commonwealth Law Courts Building Level 7, 305 William Street, Melbourne



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 15/12/2017 12:41:23 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2
Rules 2.2 and 15A.3

ORIGINATING PROCESS

No. VID of 2017

Federal Court of Australia
District Registry: Victoria
Division: Corporations & Commercial List

IN THE MATTER OF FINANCIAL CIRCLE PTY LTD (ACN 106 702 470)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

FINANCIAL CIRCLE PTY LTD (ACN 106 702 470)

Defendant

A. DETAILS OF APPLICATION

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth), (**the FCA Act**), sections 1101B, 1317E, 1317G(1E) and 1324(1) of the *Corporations Act 2001* (Cth) (**the Corporations Act**), sections 12GBA and 12GD(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**the ASIC Act**) and sections 166, 167 and 177 of the *National Consumer Credit Protection Act 2009* (Cth) (**the National Credit Act**).

The plaintiff seeks declarations of contraventions of the Corporations Act, the National Credit Act and the ASIC Act, pecuniary penalty orders, interlocutory and permanent injunctions and ancillary orders, including costs against the defendant (**Financial Circle**).

On the facts stated in the affidavit of Nicholas Damien Klooger dated 15 December 2017, the plaintiff seeks the relief set out below.

Filed on behalf of:	Australian Securities & Investments Commission, Plaintiff		
Prepared by:	Georgina Thomas, Lawyer, ASIC		
Tel	(03) 9280 4107	Fax	1300 729 000
Email	georgina.thomas@asic.gov.au		
Address for service	Level 7, 120 Collins Street, Melbourne Vic 3000 Attention: Georgina Thomas		

[Form approved 01/08/2011]



DECLARATIONS

1. Pursuant to s 1101B(1) of the Corporations Act and/or s 21 of the FCA Act, declarations that Financial Circle contravened:

(a) s 12CB of the ASIC Act by:

(i) providing misleading information to members of the public about the nature of the products and services offered by Financial Circle; and/or

(ii) providing advice to clients that:

(A) was not in their best interests;

(B) was not appropriate to their circumstances;

(C) failed to give priority to the client's interests; and/or

(D) employed unfair tactics against members of the public so as to obtain fees and commissions,

and thereby engaged in conduct, in trade or commerce in connection with the supply or possible supply of financial services to a person, that was in all the circumstances unconscionable;

(b) s 12DA and/or s 12DF of the ASIC Act and/or s 1041H of the Corporations Act by engaging, in trade or commerce, in conduct that is liable to mislead the public as to the nature and characteristics of the financial services offered by Financial Circle by failing to disclose to potential loan applicants that they were required to obtain financial advice and to accept the adviser's recommendations to purchase insurance and/or switch superannuation funds in order to obtain the loan;

(c) s 12DB(1)(h) by making, in trade or commerce, in connection with the supply or possible supply of financial services, false or misleading representations with respect to the need for any service, namely the need to:

(i) obtain financial advice; and

(ii) purchase personal risk insurance; and



(iii) switch superannuation funds,

in order to obtain a loan or any other cash payment (including a cash rebate); and

(d) s 912A(1) of the Corporations Act by:

(i) failing to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; and

(ii) failing to take reasonable steps to ensure that its representatives comply with the financial services laws.

2. Pursuant to s 1317E of the Corporations Act, declarations that Financial Circle has at all times since 18 August 2017 contravened s 961L of that Act by failing to take reasonable steps to ensure that its authorised representatives complied with ss 961B, 961G, 961H and 961J of that Act.

3. A declaration pursuant to s 166(1) of the National Credit Act that Financial Circle has since 18 August 2017 contravened s 29 of that Act by engaging in a credit activity, namely entering into credit contracts as the provider of credit, without a licence authorising it to engage in that activity.

PECUNIARY PENALTIES

4. Pursuant to s 12GBA of the ASIC Act, Financial Circle pay pecuniary penalties in respect of its contraventions of ss 12CB, 12DF and 12DB(1)(h) of that Act.

5. Pursuant to s 1317G(1E) of the Corporations Act, orders that Financial Circle pay pecuniary penalties in respect of its contravention of s 961L of that Act.

6. Pursuant to s 167(2) of the National Credit Act, orders that Financial Circle pay pecuniary penalties in respect of its contravention of s 29 of that Act.

INJUNCTIONS

7. An order pursuant to s 1101B(1) and/or s 1324(1) of the Corporations Act and/or s 12GD(1) of the ASIC Act, that Financial Circle be restrained, whether by itself, its servants, agents or employees, from:

(a) carrying on a financial services business;



- (b) carrying on a business related to, concerning or directed to financial products or financial services within the meaning of section 761A of the Corporations Act;
- (c) providing any of the following services:
 - (i) providing financial product advice within the meaning of section 761A of the Corporations Act;
 - (ii) dealing in financial products within the meaning of section 761A of the Corporations Act;
 - (iii) entering into credit contracts as a credit provider within the meaning of s 6(1) of the National Credit Act; or
- (d) in any way holding out Financial Circle as carrying on a business or providing services referred to in subparagraphs (a) to (c) above.

8. An order pursuant to s 177 of the National Credit Act that Financial Circle be restrained from providing credit or otherwise entering into a credit contract as a credit provider (whether by itself or its agent) within the meaning of s 6(1) of that Act unless and until it holds an Australian Credit Licence which authorises that credit activity.

INTERLOCUTORY ORDERS

9. Pursuant to ss 1101B(5) and 1324(4) of the Corporations Act, Financial Circle by itself, its servants, agents or employees, be restrained until the hearing and determination of this proceeding or further order from:
- (a) carrying on a financial services business;
 - (b) carrying on a business related to, concerning or directed to financial products or financial services within the meaning of section 761A of the Corporations Act;
 - (c) providing any of the following services:
 - (i) providing financial product advice within the meaning of section 761A of the Corporations Act;
 - (ii) dealing in financial products within the meaning of section 761A of the Corporations Act;



- (iii) entering into credit contracts as a credit provider within the meaning of s 6(1) of the National Credit Act; or
 - (d) in any way holding out Financial Circle as carrying on a business or providing services referred to in subparagraphs (a) to (c) above.
10. Alternatively to paragraph 9, pursuant to ss 1101B(5) and 1324(4) of the Corporations Act, Financial Circle by itself, its servants, agents or employees, until the hearing and determination of this proceeding or further order:
- (a) be restrained from making any offer to enter into a credit contract or to make a cash payment (including a cash rebate) to prospective retail clients in connection with:
 - (i) the provision of financial advice;
 - (ii) the switching of superannuation; and/or
 - (iii) the purchase of insurance products.
 - (b) be restrained from entering into a credit contract or cash payment or rebate arrangement with prospective retail clients, or assisting prospective retail clients to enter into a credit contract or cash payment or rebate arrangement in connection with:
 - (i) the provision of financial advice;
 - (ii) the switching of superannuation; and/or
 - (iii) the purchase of insurance products;
 - (c) suspend all promotion, advertising or offering of loans or cash payments (including cash rebates) to prospective retail clients on all internet websites within their power or control, in particular but not limited to the website conducted with the domain name <http://www.financialcircle.com.au>; and
 - (d) be restrained from advertising, promoting or marketing any business or service that involves the offer of loans or cash payments (including cash rebates) to prospective retail clients in connection with financial products and/or financial services.



11. Pursuant to s 177 of the National Credit Act, until the hearing and determination of this proceeding or further order Financial Circle be restrained from providing credit or otherwise entering into a credit contract as a credit provider (whether by itself or its agent) within the meaning of s 6(1) of that Act.

OTHER ORDERS

12. That exhibit “NDK-4” to the affidavit of Nicholas Damien Klooger sworn on 15 December 2017 be a confidential exhibit and not be disclosed to any person other than the parties, their legal advisors and the Court.
13. An order that Financial Circle pay the plaintiff’s costs.
14. Such further or other orders as the Court considers appropriate.

Date: 15 December 2017

A handwritten signature in blue ink, appearing to read 'G. Thomas'.

Georgina Thomas
Solicitor for the Australian Securities and Investments Commission

This application will be heard by the Federal Court of Australia at 305 William Street, Melbourne at _____ on 22 December 2017.

B. NOTICE TO DEFENDANT

TO:

Financial Circle Pty Ltd (ACN 106 702 470)
Suite 850
585 Little Collins Street
MELBOURNE VIC 3000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:



- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable

D. FILING

Date of filing: 15 December 2017

Registrar

This originating process is filed by Georgina Thomas for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is:

Australian Securities and Investments Commission
Level 7, 120 Collins Street
MELBOURNE VIC 3000
Attn: Georgina Thomas

It is intended to serve a copy of this originating process on the defendant.