

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/09/2019 4:47:56 PM AEST 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:	NSD1421/2019
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v BENDIGO AND ADELAIDE BANK LIMITED ABN 11 068 049 178
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 3/09/2019 5:12:27 PM AEST

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.



## Originating Process

No. of 2019

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

IN THE MATTER OF BENDIGO AND ADELAIDE BANK LIMITED (ABN 11 068 049 178)

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**BENDIGO AND ADELAIDE BANK LIMITED (ABN 11 068 049 178)**  
Defendant

### A. DETAILS OF APPLICATION

This application is made under ss 12GND, 12GNB and 12GD of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**).

The plaintiff seeks declarations of contraventions of the ASIC Act pursuant to ss 12GND and 12GNB of the ASIC Act and s 21 of the FCA and injunctions pursuant to s 12GD of the ASIC Act.

On the facts stated in the Concise Statement filed in these proceedings and served with this Originating Process, the plaintiff claims:

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer)	Conrad Gray, Litigation Counsel
Law firm (if applicable)	N/A
Tel	0434 605 839
Fax	N/A
Email	<a href="mailto:Conrad.gray@asic.gov.au">Conrad.gray@asic.gov.au</a>
Address for service (include state and postcode)	Level 5, 100 Market Street Sydney NSW 2000 marked to the attention of Tim Brooks



### First Delphi Bank Contract

1. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 10.1(c), 10.1(j), 10.1(k), 10.1(n), 11.1, 14, 17.6 and 22.1 of the Delphi Conditions, as defined by the Concise Statement, that comprises part of the small business contract between the defendant and the First Delphi Party (as identified in a confidential schedule provided to the defendants) dated 17 May 2018 (**First Delphi Bank Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
2. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 10.1(c), 10.1(j), 10.1(k), 10.1(n), 11.1, 14, 17.6 and 22.1 of the First Delphi Bank Contract is void *ab initio*.
3. An order pursuant to s12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 10.1(c), 10.1(j), 10.1(k), 10.1(n), 11.1, 14, 17.6 and 22.1 of the First Delphi Bank Contract.

### Second Delphi Bank Contract

4. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 10.1(c), 10.1(j), 10.1(k), 10.1(n), 11.1, 14, 17.6 and 22.1 of the Delphi Conditions, as defined by the Concise Statement, that comprises part of the small business contract between the defendant and the Second Delphi Party (as identified in a confidential schedule provided to the defendants) dated 8 February 2018 (**Second Delphi Bank Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
5. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 10.1(c), 10.1(j), 10.1(k), 10.1(n), 11.1, 14, 17.6 and 22.1 of the Second Delphi Bank Contract is void *ab initio*.
6. An order pursuant to s12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 10.1(c), 10.1(j), 10.1(k), 10.1(n), 11.1, 14, 17.6 and 22.1 of the Second Delphi Bank Contract.

### First Rural Bank Contract

7. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the small business contract between the defendant and the First Rural Party (as identified in a confidential schedule provided to the defendants) dated 5 June 2017 (**First Rural Bank Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.



8. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the First Rural Bank Contract is void *ab initio*.
9. An order pursuant to s12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the First Rural Bank Contract.

#### Second Rural Bank Contract

10. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Rural Conditions, as defined by the Concise Statement, that comprises part of the small business contract between the defendant and the Second Rural Party (as identified in a confidential schedule provided to the defendants) dated 13 December 2017 (**Second Rural Bank Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
11. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Second Rural Bank Contract is void *ab initio*.
12. An order pursuant to s12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Second Rural Bank Contract.

#### Third Rural Bank Contract

13. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Rural Conditions, as defined by the Concise Statement, that comprises part of the small business contract between the defendant and the Third Rural Party (as identified in a confidential schedule provided to the defendants) dated 5 July 2017 (**Third Rural Bank Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
14. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Third Rural Bank Contract is void *ab initio*.
15. An order pursuant to s12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Third Rural Bank Contract.



#### Fourth Rural Bank Contract

16. A declaration pursuant to s 12GND of the ASIC Act that each of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Rural Conditions, as defined by the Concise Statement, that comprises part of the small business contract between the defendant and the Fourth Rural Party (as identified in a confidential schedule provided to the defendants) dated 15 August 2017 (**Fourth Rural Bank Contract**) is an unfair term within the meaning of s 12BG of the ASIC Act.
17. A declaration pursuant to s 21 of the FCA or alternatively s 12GNB of the ASIC Act that each of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Fourth Rural Bank Contract is void *ab initio*.
18. An order pursuant to s12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Fourth Rural Bank Contract.

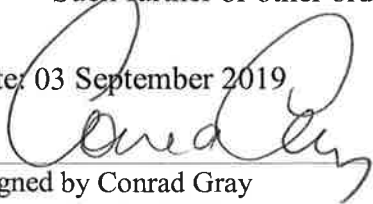
#### General orders

19. A declaration pursuant to s 12GND of the ASIC Act, or alternatively s 12GNB of the ASIC Act, or alternatively s 21 of the FCA, that any term in the same form as any of clauses 10.1(c), 10.1(j), 10.1(k), 10.1(n), 11.1, 14, 17.6 and 22.1 of the Delphi Conditions, as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Delphi Conditions and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act is an unfair term within the meaning of s 12BG of the ASIC Act and void pursuant to s 12BF(1) of the ASIC Act.
20. A declaration pursuant to s 12GND of the ASIC Act, or alternatively s 12GNB of the ASIC Act, or alternatively s 21 of the FCA, that any term in the same form as any of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Rural Conditions as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Rural Conditions and meets the definition of a small business contract within the meaning of s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract



for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act is an unfair term within the meaning of s 12BG of the ASIC Act and void pursuant to s 12BF(1) of the ASIC Act.

- 21. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any term in the same form as any of clauses 10.1(c), 10.1(j), 10.1(k), 10.1(n), 11.1, 14, 17.6 and 22.1 of the Delphi Conditions, as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Delphi Conditions and meets the definition of a small business contract within the meaning s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act.
- 22. An order pursuant to s 12GD of the ASIC Act that the defendant be restrained from relying on or enforcing any term in the same form as any of clauses 2.3, 2.4, 4.2, 4.4, 8.1(c), 8.1(p), 8.1(q), 8.1(v), 12.1 and 13.1 of the Rural Conditions, as defined in the Concise Statement, in any small business contract entered into or amended or renewed on or after 12 November 2016 between the defendant and any of its customers, which incorporates the Rural Conditions and meets the definition of a small business contract within the meaning s 12BF(4) of the ASIC Act and which is a standard form contract within the meaning of s 12BK of the ASIC Act and is a contract for a financial product or a contract for the supply or possible supply of financial services within the meaning of the ASIC Act.
- 23. Costs.
- 24. Such further or other orders that this Honourable Court sees fit.

Date: 03 September 2019  
  
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 Signed by Conrad Gray  
 Lawyer for the Applicant

This application will be heard by ..... at ..... at ..... \*am/\*pm on .....

**B. NOTICE TO DEFENDANT**

TO: Bendigo and Adelaide Bank Limited (ABN 11 068 049 177)  
The Bendigo Ctr, Bendigo, VIC 3550

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. FILING**

Date of filing: 3 September 2019

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*Registrar*

This originating process is filed by Conrad Gray for the plaintiff.

**E. SERVICE**

The plaintiff's address for service is Level 5, 100 Market Street SYDNEY NSW 2000 (marked to the attention of Tim Brooks).

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