

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 3/10/2023 12:05:13 PM AEDT
Date Accepted for Filing: 3/10/2023 12:27:31 PM AEDT
File Number: NSD1110/2023
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v BSF SOLUTIONS PTY LTD (ACN 648 900 896) & ORS
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



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Form 15

Rules 8.01(1); 8.04(1)

Originating application

No: _____ of 20

Federal Court of Australia

District Registry: New South Wales

Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

BSF SOLUTIONS PTY LTD (ACN 648 900 896) AND OTHERS LISTED IN THE SCHEDULE

Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

| | | | |
|--|--|-----|-----------------|
| Filed on behalf of (name & role of party) | Australian Securities and Investments Commission (the Applicant) | | |
| Prepared by (name of person/lawyer) | John Fogarty | Ref | 03148818-492505 |
| Law firm (if applicable) | DLA Piper Australia | | |
| Tel | +61 3 9274 5080 | Fax | +61 3 9274 5111 |
| Email | john.fogarty@dlapiper.com | | |
| Address for service (include State and postcode) | DLA Piper Australia 80 Collins Street Melbourne VIC 3000 | | |

[Version 2 form approved 09/05/2013]

**Time and date for hearing:**

Place: Level 17, Law Courts Building
184 Phillip Street
Queens Square
Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority of
the District Registrar



Details of claim

A This is an application for:

- 1.1 declaratory relief pursuant to section 166 of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**) and/or section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**);
- 1.2 orders for pecuniary penalties pursuant to section 167 of the Credit Act;
- 1.3 injunctive relief pursuant to section 177(1) of the Credit Act and/or section 23 of the Federal Court Act;
- 1.4 adverse publicity orders pursuant to section 182 of the Credit Act;
- 1.5 costs; and
- 1.6 such further or other orders as the Court sees fit.

B The legislative basis of the Court's jurisdiction to hear the application and to grant the relief sought is found in section 187 of the Credit Act and/or sections 21 and 23 of the Federal Court Act.

On the grounds stated in the Concise Statement, the Applicant claims:

Declarations

First Respondent (BSF)

1. A declaration that, in the period from about July 2022 to 3 October 2023 (**Relevant Period**), on each occasion that BSF entered into or performed a credit contract with a consumer described as a "No Fee for Credit Loan Agreement" or a "No Upfront Charge Loan Agreement" (**Loan Agreements**), BSF contravened section 29(1) of the Credit Act by engaging in a credit activity without holding an Australian Credit Licence (**ACL**) authorising BSF to engage in that activity, being the activity of being "a credit provider



under a credit contract” for the purpose of Item 1(a) of section 6(1) of the Credit Act and/or the activity of “[carrying] on a business of providing credit, being credit the provision of which the National Credit Code applies to”, for the purpose of Item 1(b) of section 6(1) and/or the activity of “[performing] the obligations, or [exercising] the rights, of a credit provider in relation to a credit contract or proposed credit contract” for the purpose of Item 1(c) of section 6(1), in that:

- (a) BSF was, and remained during the Relevant Period, a credit provider to consumers pursuant to the “No Upfront Charge Loan Model” (in the circumstances described in the Concise Statement);
 - (b) BSF entered into, performed and gave effect to 150,112 Loan Agreements with consumers;
 - (c) Cigno Australia entered into 150,112 services agreements with consumers described as “Account Keeping Agreements” (**Services Agreements**);
 - (d) consumers were charged the following fees, each of which was “a charge [that] is or may be made for providing the credit” for the purpose of s 5(1)(c) of the National Credit Code (**Code**): an “Account Keeping Fee” and/or a “Change of Payment Schedule Fee”, which were charged by Cigno Australia.
2. A declaration that, in the Relevant Period, on each occasion that BSF demanded, received or accepted a fee described as a “Late Payment Fee”, BSF contravened section 32(1) of the Credit Act by demanding, receiving or accepting fees, charges or other amounts from consumers for engaging in a credit activity without holding an ACL authorising BSF to engage in that activity, being:
- (a) the credit activity of carrying on a business of providing credit, being credit the provision of which the Code applies to, for the purpose of Item 1(b) of section 6(1) of the Credit Act; and/or



- (b) the credit activity of performing the obligations, or exercising the rights, of a credit provider in relation to a credit contract for the purpose of Item 1(c) of section 6(1) of the Credit Act.

Second Respondent (Cigno Australia)

3. A declaration that, in the Relevant Period, on each occasion that Cigno Australia provided the “Cigno Australia Services” pursuant to the “No Upfront Charge Loan Model”, Cigno Australia contravened section 29(1) of the Credit Act by engaging in a credit activity without holding an ACL authorising Cigno Australia to engage in the credit activity by:
- (a) on each occasion that it entered into or performed a Services Agreement with a consumer, exercising the rights of a credit provider (being BSF) on behalf of BSF in relation to a credit contract or a proposed credit contract, for the purpose of Item 1(c) of section 6(1) of the Credit Act; and/or
- (b) on each occasion that Cigno Australia provided a credit service (as defined in section 7 of the Credit Act), being the credit service of:
- (i) providing credit assistance (as defined in section 8 of the Credit Act) to consumers by:
- (A) suggesting that they apply for a particular credit contract with a particular credit provider (being BSF); and/or
- (B) assisting them to apply for a particular credit contract with a particular credit provider (being BSF); and/or
- (ii) acting as an intermediary (as defined in section 9(a) of the Credit Act) between consumers and BSF for the purposes of securing a provision of



credit for the consumer under a credit contract with the credit provider
(being BSF).

4. A declaration that, in the Relevant Period, on each occasion that Cigno Australia demanded, received or accepted fees described as an “Account Keeping Fee”, a “Default Fee” and/or a “Change of Payment Schedule Fee” (collectively, the **Cigno Australia Fees**), Cigno Australia contravened section 32(1) of the Credit Act by demanding, receiving or accepting fees, charges or other amounts from consumers for engaging in a credit activity without holding an ACL authorising Cigno Australia to engage in that activity, being the credit activity of:
- (a) exercising the rights of a credit provider (being BSF) on behalf of BSF in relation to a credit contract for the purpose of Item 1(c) of section 6(1) of the Credit Act; and/or
 - (b) providing a credit service (as defined in section 7 of the Credit Act) by:
 - (i) providing credit assistance (as defined in section 8 of the Credit Act) to consumers by:
 - (A) suggesting that they apply for a particular credit contract with a particular credit provider (being BSF); and/or
 - (B) assisting them to apply for a particular credit contract with a particular credit provider (being BSF); and/or
 - (ii) acting as an intermediary (as defined in section 9(a) of the Credit Act) between consumers and BSF for the purposes of securing a provision of credit for the consumer under a credit contract with the credit provider (being BSF).



Third Respondent (Harrison)

5. A declaration that Harrison was involved in BSF's contraventions of:
- (a) section 29(1) of the Credit Act and, by virtue of section 169(b) of the Credit Act, thereby himself contravened section 29(1) of the Credit Act; and
 - (b) section 32(1) of the Credit Act and, by virtue of section 169(b) of the Credit Act, thereby himself contravened section 32(1) of the Credit Act.

Fourth Respondent (Swanepoel)

6. A declaration that Swanepoel was involved in Cigno Australia's contraventions of:
- (a) section 29(1) of the Credit Act and, by virtue of section 169(b) of the Credit Act, thereby himself contravened section 29(1) of the Credit Act; and
 - (b) section 32(1) of the Credit Act and, by virtue of section 169(b) of the Credit Act, thereby himself contravened section 32(1) of the Credit Act.

Pecuniary penalties

BSF

7. An order that, within 30 days of the date of this order, BSF pay to the Commonwealth a pecuniary penalty in respect of its contraventions of:
- (a) section 29(1) of the Credit Act in such amount as the Court determines to be appropriate; and
 - (b) section 32(1) of the Credit Act in such amount as the Court determines to be appropriate.

Cigno Australia

8. An order that, within 30 days of the date of this order, Cigno Australia pay to the Commonwealth a pecuniary penalty in respect of its contraventions of:



- (a) section 29(1) of the Credit Act in such amount as the Court determines to be appropriate; and
- (b) section 32(1) of the Credit Act in such amount as the Court determines to be appropriate.

Harrison

9. An order that, within 30 days of the date of this order, Harrison pay to the Commonwealth a pecuniary penalty in respect of his involvement in BSF's contraventions of:
- (a) section 29(1) of the Credit Act in such amount as the Court determines to be appropriate; and
 - (b) section 32(1) of the Credit Act in such amount as the Court determines to be appropriate.

Swanepoel

10. An order that, within 30 days of the date of this order, Swanepoel pay to the Commonwealth a pecuniary penalty in respect of his involvement in Cigno Australia's contraventions of
- (a) section 29(1) of the Credit Act in such amount as the Court determines to be appropriate; and
 - (b) section 32(1) of the Credit Act in such amount as the Court determines to be appropriate.

Injunctions

BSF



11. An order that BSF be permanently restrained (whether by its servants, agents or employees) from:
- (a) engaging in the credit activities of being a “credit provider under a credit contract” (for the purpose of Item 1(a) of section 6(1) of the Credit Act) and/or “[carrying] on a business of providing credit, being credit the provision of which the [Code] applies to” (for the purpose of Item 1(b) of section 6(1) of the Credit Act) and/or “[performing] the obligations, or [exercising] the rights, of a credit provider in relation to a credit contract or a proposed credit contract” (for the purpose of Item 1(c) of section 6(1) of the Credit Act) in respect of Loan Agreements between BSF and consumers entered into in accordance with the “No Upfront Charge Loan Model” before the date of this order, including by:
 - (i) entering into agreements with consumers on materially similar terms as the Loan Agreements; and/or
 - (ii) providing credit to consumers;
 - (b) demanding, receiving or accepting fees, charges or other amounts from consumers (including the ‘Late Payment Fee’) in respect of Loan Agreements between BSF and consumers entered into in accordance with the “No Upfront Charge Loan Model” before the date of this order for engaging in the credit activities of:
 - (i) “[carrying] on a business of providing credit, being credit the provision of which the [Code] applies to” (for the purpose of Item 1(b) of section 6(1) of the Credit Act); and/or
 - (ii) “[performing] the obligations, or [exercising] the rights, of a credit provider in relation to a credit contract” (for the purpose of Item 1(c) of section 6(1) of the Credit Act);



- (c) engaging in the credit activities of being a “credit provider under a credit contract” (for the purpose of Item 1(a) of section 6(1) of the Credit Act) and/or “[carrying] on a business of providing credit, being credit the provision of which the [Code] applies to” (for the purpose of Item 1(b) of section 6(1) of the Credit Act) and/or “[performing] the obligations, or [exercising] the rights, of a credit provider in relation to a credit contract or a proposed credit contract” (for the purpose of Item 1(c) of section 6(1) of the Credit Act) for so long as it does not hold an ACL under section 35 of the Credit Act authorising it to engage in the credit activities, including by:
- (i) entering into agreements with consumers on materially similar terms as the Loan Agreements;
 - (ii) providing credit to consumers;
 - (iii) entering into any agreement on materially similar terms as the agreement titled the “Loan Management Facilitation Agreement” dated 20 July 2022 between BSF and Cigno Australia; and/or
 - (iv) implementing a model on materially similar terms as the “No Upfront Charge Loan Model”; and
- (d) demanding, receiving or accepting fees, charges or other amounts from consumers, including the “Late Payment Fee”, for so long as it does not hold an ACL under section 35 of the Credit Act authorising it to engage in the credit activities, including:
- (i) the credit activity of carrying on a business of providing credit, being credit the provision of which the Code applies to, for the purpose of Item 1(b) of section 6(1) of the Credit Act; and/or



- (ii) the credit activity of performing the obligations, or exercising the rights, of a credit provider in relation to a credit contract for the purpose of Item 1(c).

Cigno Australia

12. An order that Cigno Australia be permanently restrained (whether by its servants, agents or employees) from:
- (a) in respect of Service Agreements between Cigno Australia and consumers entered into in accordance with the “No Upfront Charge Loan Model” before the date of this order, engaging in credit activities including by:
 - (i) exercising the rights of a credit provider (being BSF) on behalf of BSF in relation to a credit contract or a proposed credit contract for the purpose of Item 1(c) of section 6(1) of the Credit Act by providing the Cigno Australia Services; and/or
 - (ii) providing a credit service (as defined in section 7 of the Credit Act) by:
 - (A) providing credit assistance (as defined in section 8 of the Credit Act) to consumers by:
 - (1) suggesting that they apply for a particular credit contract with a particular credit provider (being BSF); and/or
 - (2) assisting them to apply for a particular credit contract with a particular credit provider (being BSF); and/or
 - (B) acting as an intermediary (as defined in section 9(a) of the Credit Act) between consumers and BSF for the purposes of securing a provision of credit for the consumer under a credit contract with the credit provider (being BSF);



- (b) in respect of Service Agreements between Cigno Australia and consumers entered into in accordance with the “No Upfront Charge Loan Model” before the date of this order, demanding, receiving or accepting fees, charges or other amounts from consumers, including the Cigno Australia Fees;
- (c) “[exercising] the rights, of a credit provider in relation to a credit contract, or proposed credit contract” (for the purpose of Item 1(c) of section 6(1) of the Credit Act) and/or “[providing] a credit service” (as defined in section 7 of the Credit Act) for so long as it does not hold an ACL under section 35 of the Credit Act authorising it to engage in the credit activities, including by:
- (i) entering into agreements with consumers on materially similar terms as the Services Agreements;
 - (ii) providing services materially similar to the Cigno Australia Services;
 - (iii) providing credit assistance to consumers, including by:
 - (A) suggesting that consumers apply for a particular credit contract with a particular credit provider; and/or
 - (B) assisting consumers to apply for a particular credit with a particular credit provider;
 - (iv) acting as an intermediary between a credit provider and a consumer for the purposes of securing a provision of credit for the consumer under a credit contract for the consumer with the credit provider;
 - (v) entering into any agreement on materially similar terms as the agreement titled the “Loan Management Facilitation Agreement” dated 20 July 2022 between BSF and Cigno Australia; and/or



- (vi) implementing a model on materially similar terms as the “No Upfront Charge Loan Model”; and
- (d) demanding, receiving or accepting fees, charges or other amounts from consumers, including the Cigno Australia Fees, for so long as it does not hold an ACL under section 35 of the Credit Act authorising it to engage in the credit activities, including:
 - (i) the credit activity of exercising the rights of a credit provider (including BSF) on behalf of the credit provider in relation to a credit contract for the purpose of Item 1(c) of section 6(1) of the Credit Act by providing the Cigno Australia Services; and/or
 - (ii) the credit activity of providing a credit service (as defined in section 7 of the Credit Act) by:
 - (A) providing credit assistance (as defined in section 8 of the Credit Act) to consumers by:
 - (1) suggesting that they apply for a particular credit contract with a particular credit provider (including BSF); and/or
 - (2) assisting them to apply for a particular credit contract with a particular credit provider (including BSF); and/or
 - (iii) acting as an intermediary (as defined in section 9(a) of the Credit Act) between consumers and a credit provider for the purposes of securing a provision of credit for the consumer under a credit contract with the credit provider (including BSF).

Harrison



13. An injunction permanently restraining Harrison from being involved in any further contravention by BSF of:
- (a) section 29(1) of the Credit Act; and/or
 - (b) section 32(1) of the Credit Act.
14. An injunction restraining Harrison from carrying on, or from controlling, causing or permitting any entity to carry on, any business engaging in credit activity, or being involved in the carrying on by another person of any business engaging in credit activity, for a period that the Court sees fit.

Swanepoel

15. An injunction permanently restraining Swanepoel from being involved in any further contravention by Cigno Australia of:
- (a) section 29(1) of the Credit Act; and/or
 - (b) section 32(1) of the Credit Act.
16. An order restraining Swanepoel from carrying on, or from controlling, causing or permitting any entity to carry on, any business engaging in credit activity, or being involved in the carrying on by another person of any business engaging in credit activity, for a period that the Court sees fit.

Adverse publicity orders

17. An order that, within 14 days of the date of the Court's order, Cigno Australia at its own expense cause a notice to be published in a form and by a method or methods, or at a location or locations, that the Court deems appropriate in terms to be determined by the Court.



18. An order that, within 14 days of the date of the Court’s order, BSF at its own expense cause a notice to be published in a form and by a method or methods, or at a location or locations, that the Court deems appropriate in terms to be determined by the Court.

Other orders

19. An order that the Respondents pay the Applicant’s costs.
20. Such further or other orders as the Court sees fit.

Claim for interlocutory relief

The Applicant also claims interlocutory relief.

BSF

21. An order that, until the final determination of this proceeding or until further order, BSF be restrained (whether by its servants, agents or employees) from demanding, receiving or accepting fees, charges or other amounts from consumers in respect of Loan Agreements between BSF and consumers entered into in accordance with the “No Upfront Charge Loan Model” before the date of this order, including the “Late Payment Fee”.

Cigno Australia

22. An order that, until the final determination of this proceeding or until further order, Cigno Australia be restrained (whether by its servants, agents or employees) from demanding, receiving or accepting fees, charges or other amounts from consumers in respect of Service Agreements between Cigno Australia and consumers entered into in accordance with the “No Upfront Charge Loan Model” before the date of this order, including the Cigno Australia Fees.
23. Such further or other orders as the Court sees fit.

**Applicant's address**

The Applicant's address for service is:

Place: DLA Piper Australia, 80 Collins Street, Melbourne VIC 3000

Email: john.fogarty@dlapiper.com

The Applicant's address is: Level 5, 100 Market Street, Sydney NSW 2000

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 3 October 2023

A handwritten signature in black ink, appearing to read 'Jwf', written over a horizontal dotted line.

Signed by John Fogarty
DLA Piper Australia
Lawyer for the Applicant

**Schedule**

No: of 20

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

Respondents

| | |
|-------------------|--|
| Second Respondent | CIGNO AUSTRALIA PTY LTD (ACN 648 971 626) |
| Third Respondent | BRENTON JAMES HARRISON |
| Fourth Respondent | MARK SWANEPOEL |

Date: 3 October 2023