

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: 8/03/2023 2:49:16 PM AEDT
Date Accepted for Filing: 8/03/2023 3:13:16 PM AEDT
File Number: NSD204/2023
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v GREEN
COUNTY PTY LTD ACN 619 832 816 & 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 2023

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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

GREEN COUNTY PTY LTD (ACN 619 832 816) and others named 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.

Time and date for hearing:

Place: 184 Phillip Street, 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

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Applicant
Prepared by (name of person/lawyer) Iva Bacvic
Law firm (if applicable) _____
Tel (02) 9911 5787 Fax 1300 729 000
Email Iva.Bacvic@asic.gov.au
Address for service Australian Securities and Investments Commission
(include state and postcode) Level 5, 100 Market Street, Sydney NSW 2000



Details of claim

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

Relief against the First Respondent (**Green County**) and the Second Respondent (**Max Funding**)

1. Pursuant to section 166 of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) and/or section 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), declarations that:
 - a) Green County contravened section 29 of the NCCPA by engaging in a credit activity without holding a licence authorising it to engage in the credit activity through the act of entering credit contracts with Consumer 1 dated on or around 25 May 2020, 27 May 2020 and 17 December 2020 and Consumer 2 dated on or around 17 December 2019 and 14 January 2020 under which Green County was the credit provider, to which the *National Credit Code* (**Code**) applied;
 - b) Max Funding contravened section 29 of the NCCPA by engaging in a credit activity without holding a licence authorising it to engage in the credit activity through the act of providing a credit service to Consumer 1 and Consumer 2 in relation to their credit contracts with Green Country (as referred to in prayer 1.a) above), to which the Code applied.
2. Pursuant to section 113(1) of the Code and/or section 21 of the FCA Act, declarations that Green County contravened the key requirements contained in:
 - a) section 17(4) of the Code by entering into the credit contracts with Consumer 1 and Consumer 2 referred to in prayer 1.a) above, which did not contain the annual percentage rate, or rates, under the contract;
 - b) section 17(6) of the Code by entering into the credit contracts with Consumer 1 and Consumer 2 referred to in prayer 1.a) above, which did not contain the total amount of interest charges payable under the contract; and
 - c) section 32A of the Code by entering into the credit contracts with Consumer 1 and Consumer 2 referred to in prayer 1.a) above, which had an annual cost rate that exceeded 48%.
3. Pursuant to section 167 of the NCCPA, an order that each of Green County and Max Funding pay to the Commonwealth pecuniary penalties in respect of their contraventions set out in prayer 1 above.



4. Pursuant to section 113(2) of the Code, an order that Green County pay to the Commonwealth pecuniary penalties in respect of its contraventions set out in prayer 2 above.
5. Pursuant to section 177 of the NCCPA, injunctive relief restraining Green County and Max Funding, whether by themselves, their servants, agents or employees, from:
 - a) engaging in further unlicensed credit activity, in contravention of section 29 of the NCCPA; and
 - b) in any way attempting to engage in further unlicensed credit activity, in contravention of section 29 of the NCCPA.
6. Pursuant to section 177 of the NCCPA, injunctive relief restraining Green County, whether by itself, its servants, agents or employees, from:
 - a) engaging in further contraventions of the key requirements in sections 17(4), 17(6) and 32A of the Code; and
 - b) in any way attempting to engage in further contraventions of the key requirements in sections 17(4), 17(6) and 32A of the Code.
7. Pursuant to sections 178, 179 and/or 180 of the NCCPA and/or section 124 of the Code, an order that Green County and/or Max Funding compensate Consumer 1 and Consumer 2 for the loss or damage suffered as a result of Green County's and/or Max Funding's contraventions set out in prayers 1 and 2 above.
8. Pursuant to sections 179 and/or section 180 of the NCCPA and/or section 124 of the Code, an order declaring that Green County's credit contracts with Consumer 2 are void or such other order as the Court considers appropriate.
9. Pursuant to section 182 of the NCCPA, an adverse publicity order against Green County and Max Funding requiring those companies to publish, at their own expense, advertisements in terms as ordered by the Court.

Relief against the Third Respondent (Ms Ng)

10. Pursuant to section 1317E of the *Corporations Act 2001* (Cth) (**Corporations Act**), a declaration that Ms Ng has contravened section 180 of the Corporations Act by failing to exercise her powers and discharge her duties, as a director of Green County and/or an officer of Max Funding, to each of which she owed duties, with reasonable care and diligence by:
 - a) being aware, or in circumstances where she ought to have been aware, of the



business model adopted by Green County and/or Max Funding in relation to lending to prospective borrowers who were seeking credit to purportedly set up a business; and/or

- b) by having that business model in place, failing to take any or all measures that a reasonably careful and diligent officer in her position would have taken,

thereby creating a significant risk of non-compliance by Green County and/or Max Funding with their legal obligations and jeopardising Green County's and/or Max Funding's interests by exposing Green County and/or Max Funding to a risk of reputational harm, litigation and/or regulatory action.

11. Pursuant to section 1317G of the Corporations Act, an order that Ms Ng pay to the Commonwealth pecuniary penalties in relation to her contraventions of section 180 of the Corporations Act.
12. Pursuant to section 206C of the Corporations Act, an order disqualifying Ms Ng from managing corporations for a period that the Court considers appropriate.

Other

13. Costs.
14. Such further or other order as the Court deems fit.

**Applicant's address**

The Applicant's address for service is:

Place: Level 5, 100 Market Street, Sydney NSW 2000

Email: Iva.Bacvic@asic.gov.au

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: 8 March 2023

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

Signed by Iva Bacvic
Lawyer for the Applicant

**SCHEDULE OF PARTIES**

No. of 2023

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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

GREEN COUNTY PTY LTD (ACN 619 832 816)

First Respondent

MAX FUNDING PTY LTD (ACN 616 549 725)

Second Respondent

IVY TANG GY NG

Third Respondent

Date: 8 March 2023