

NOTICE OF FILING

Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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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



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.

Concise Statement



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

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. This proceeding concerns contraventions of consumer credit legislation and statutory duties of care and diligence arising from a business model that failed to have in place reasonable arrangements to identify a prospective borrower's true loan purpose.
2. The First Respondent (**Green County**) was incorporated on 19 June 2017 and is a company that carried on the business of lending money. The Second Respondent (**Max Funding**) was incorporated on 21 December 2016 and is a company that carried on business as a 'loan introducer'. Neither Green County nor Max Funding has ever held an 'Australian credit licence' (**ACL**) within the meaning of section 35 of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**).
3. The Third Respondent (**Ms Ng**) has been the sole director and secretary of Green County since its incorporation. Further, at all material times, Ms Ng had the responsibility for the day-to-day management of, directly supervised and managed representatives of, and/or otherwise made, or participated in making, decisions that affected the whole, or a substantial part, of the business of Max Funding and thereby was an 'officer' of Max Funding within section 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**).
4. Since Green County's incorporation, Max Funding has referred to Green County nearly half of the prospective borrowers that contacted Max Funding. On or after 19 June 2017, Green County agreed with Mutual Mortgage Service Pty Ltd (ACN 619 166 095) (**Mutual Mortgage**) that it would provide "loan management services" to Green County.

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)		
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5. During the period from on or around 19 June 2017 to 4 May 2021 (**Relevant Period**), Max Funding, Mutual Mortgage and Green County operated under a business model which sought to provide loans not regulated by the *National Credit Code* (**Code**) and which, thus, did not require an ACL (**Business Model**). The Business Model involved:
 - a) Max Funding advertising and promoting loan services on behalf of Green County, and providing prospective borrowers with an online loan application system;
 - b) Max Funding, Mutual Mortgage and/or Green County having in place arrangements to consider the content of a prospective borrower's loan application;
 - c) Mutual Mortgage issuing prospective borrowers with loan documentation for and on behalf of Green County; and
 - d) upon execution of the loan documentation, Green County advancing the requested funds to borrowers, and Mutual Mortgage and/or Max Funding acting as customer service agent or loan manager for Green County.

6. Where a prospective borrower was seeking credit to purportedly set up a business, the Business Model:
 - a) did not have in place reasonable arrangements to identify the prospective borrower's true loan purpose, including that it did not require corroborative documentation to establish or otherwise verify the true purpose of the loan;
 - b) where information was collected or received from a prospective borrower that called into question the purported business purpose, did not reasonably deal with that information to establish or otherwise verify the true purpose of the loan;
 - c) placed unreasonable reliance upon the purpose of the loan as self-described by the prospective borrower, including that:
 - i. Max Funding used answers, provided by the prospective borrower during the online application process, to generate a document entitled 'Business Plan', which was not a document created, seen, reviewed or submitted by the prospective borrower; and
 - ii. risk assessors responsible for assessing loan applications relied upon the prospective borrower's purported Business Plan in considering their loan application, including the purpose of the loan; and
 - d) involved Mutual Mortgage providing to the prospective borrower, for signing, a document entitled 'Declaration of purpose for which credit is provided' (**Declaration**) within the same PDF file as the proposed credit contract and other loan documentation.

7. The Declaration was substantially in the form set out in regulation 68 of the *National*

Consumer Credit Protection Regulations 2010 (Cth) (Regulations) and was an attempt to obtain the benefit of section 13(2) of the Code.

Credit lending practices contrary to Code and NCCPA

8. During the Relevant Period, pursuant to the Business Model, Green County advanced funds to Consumer 1 (whose identity has been disclosed to the Respondents in separate correspondence from ASIC) in the following circumstances:
- a) on or around 24 May 2020, Consumer 1 completed a loan application for the stated purpose of “*setup business*”;
 - b) Consumer 1 provided permission to Max Funding to access his bank statements, which recorded prior negative account balances and payments made to other short term credit facilities and gambling services. Consumer 1 also provided a Council rate notice and some identifying documentation. Consumer 1 was not otherwise asked to provide any documentation to verify the purported business purpose of the loan or information about his financial position, past credit history or payments to gambling services. Consumer 1 did not have an Australian Business Number (**ABN**) or, in fact, any intention or plans to establish a business. Consumer 1 intended to use the loan funds for gambling;
 - c) on or around 27 May 2020, Consumer 1 applied for a further (second) loan. At the time of the second loan advance, Consumer 1 had not made any repayments;
 - d) on or around 16 December 2020, Consumer 1 applied for a further (third) loan. Prior to the third loan advance, Consumer 1 and/or a financial counsellor acting on his behalf contacted Mutual Mortgage to request postponement, cancellation or a moratorium of the loan repayments, and to inform it that Consumer 1 had (at times) no employment or other form of income, had no business or intention to have a business, had been in a gambling spiral at the time of the first loan application and that the first loan perpetuated his gambling problem;
 - e) Consumer 1 used all, or substantively all, of the loan funds advanced pursuant to each of the three loans on gambling related transactions;
 - f) the ‘annual cost rate’ (within the meaning of section 32B of the Code) of each loan exceeded 48%.
9. During the Relevant Period, pursuant to the Business Model, Green County advanced funds to Consumer 2 (whose identity has been disclosed to the Respondents in separate correspondence from ASIC) in the following circumstances:
- a) on or around 15 December 2019, Consumer 2 completed a loan application for the stated purpose of “*business cash flow*”;

- b) Consumer 2 provided permission for Max Funding to access her bank statements, which recorded prior low or nil account balances and a payment made to another short term credit facility. Consumer 2 also provided a Council rate notice and some identifying documentation. Consumer 2 was not otherwise asked to provide any documentation to verify the purported business purpose of the loan or information about her financial position or past credit history. Consumer 2 did not have an ABN or, in fact, any intention or plans to establish a business. Consumer 2 intended to use loan funds on household bills and expenses;
 - c) on or around 10 January 2020, Consumer 2 applied for a further (second) loan. At the time of the second loan advance, Consumer 2 had not made any repayments;
 - d) after the second loan advance, Consumer 2, a financial counsellor acting on her behalf and/or legal counsel acting on her behalf contacted Mutual Mortgage to request postponement, a waiver or a moratorium of the loan repayments, and to inform it that Consumer 2 had no source of income and had no business;
 - e) Consumer 2 used all, or substantively all, of the loan funds on household bills and expenses;
 - f) the annual cost rate of each loan exceeded 48%.
10. The purpose for which credit was provided to Consumers 1 and 2 on each occasion was a personal, domestic, or household purpose for the purposes of section 5 of the Code.
11. In making the advances to Consumers 1 and 2, Green County and/or Max Funding knew, or had reason to believe – or, alternatively, would have known, or had reason to believe, if they had made reasonable inquiries about the purpose for which the credit was provided, or intended to be provided – that the credit was in fact to be applied wholly or predominantly for a ‘Code purpose’ (as that term is defined in section 13(2) of the Code). As such, sections 13(3)(a) and/or 13(3)(b) of the Code applied and, pursuant to section 13(1) of the Code, it is presumed that the Code applies to each credit contract.
12. Insofar as the Code could be held to apply to any loan entered into by Green County, it engaged in a ‘credit activity’ within the meaning of item 1(a) of section 6(1) of the NCCPA. Insofar as the Code applied to any of the loans entered into by Green County, which were referred to it by Max Funding, Max Funding provided a ‘credit service’ within the meaning of section 7(b) of the NCCPA and thereby engaged in a ‘credit activity’ within the meaning of item 2 of section 6(1) of the NCCPA, and was a ‘prescribed person’ within the meaning of regulation 67 of the Regulations for the purposes of section 13(3) of the Code.
13. In the premises:
- a) Green County contravened section 29 of the NCCPA by engaging in a credit

- activity without holding an ACL through the act of entering credit contracts with Consumers 1 and 2 under which it was the credit provider;
- b) Max Funding contravened section 29 of the NCCPA by engaging in a credit activity without holding an ACL through the act of providing a credit service to Consumers 1 and 2 in relation to their credit contracts with Green County;
 - c) Green County contravened sections 17(4) and 17(6) of the Code by entering into credit contracts with Consumers 1 and 2, which did not contain the annual percentage rate, or rates, under the contract and which did not contain the total amount of interest charges payable under the contract; and
 - d) Green County contravened section 32A of the Code by entering into the credit contracts with Consumers 1 and 2, with an annual cost rate that exceeded 48%.
14. Significant civil penalties may be imposed, and criminal charges laid, for contravention of section 29 of the NCCPA and sections 17(4), 17(6) and 32A of the Code.

Contravening conduct by Ms Ng

15. At all times during the Relevant Period, Ms Ng:
- a) was required to exercise her powers and discharge her duties in relation to Green County and Max Funding in accordance with section 180 of the Corporations Act;
 - b) was aware, or ought to have been aware, of the Business Model adopted by Green County and Max Funding;
 - c) ought to have taken the measures that a reasonably careful and diligent officer in her position would have taken, with respect to prospective borrowers that were seeking credit to purportedly set up a business, to have in place arrangements to avoid Green County and/or Max Funding (actually or potentially) contravening the NCCPA and the Code. Such measures ought to have included having in place reasonable accountability arrangements, policies, processes, procedures, training, monitoring, reporting and governance arrangements, and in particular reasonable arrangements to identify the prospective borrower's true loan purpose; reasonably dealing with information that called into question the purported business purpose of the loan; and/or testing the purpose of the loan as self-described by the prospective borrower;
 - d) by having the Business Model in place, failed to take any or all of those measures that a reasonably careful and diligent officer in her position would have taken.
16. In the premises set out above, Ms Ng failed to exercise her powers and discharge her duties to Green County and/or Max Funding with the care and diligence required by section 180(1) of the Corporations Act, as her conduct exposed Green County and/or Max

Funding to a foreseeable risk of harm, including the risk of reputational harm, litigation and/or regulatory action for civil and criminal contraventions of the NCCPA and the Code.

B. RELIEF SOUGHT FROM THE COURT

17. The relief sought is set out in the accompanying originating application.

C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

18. The primary legal grounds for the relief sought are identified above.

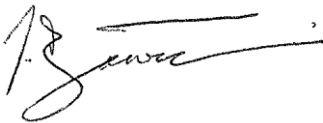
D. THE ALLEGED HARM SUFFERED

19. Borrowers who entered into credit contracts regulated by the NCCPA were harmed by being charged or subject to unlawful fees and charges; a failure to disclose certain Code-related matters; and not being provided with hardship protections under Part 4, Division 3 of the Code. Not all such consumers have necessarily been identified by ASIC. Further, unlicensed credit providers obtain an unfair competitive advantage against licensed credit providers, who incur compliance costs in maintaining their ACL.

Certificate of lawyer

I, Iva Bacvic, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 8 March 2023

A handwritten signature in black ink, appearing to read 'I. Bacvic', with a horizontal line extending to the right.

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