

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/07/2021 3:10:03 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 Application - Form 15 - Rule 8.01(1)
File Number:	QUD242/2021
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v GENERAL COMMERCIAL GROUP PTY LTD & ORS
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Dated: 22/07/2021 4:09:39 PM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

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 15
Rules 8.01(1); 8.04(1)

ORIGINATING APPLICATION

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: QUEENSLAND
DIVISION: GENERAL

No. QUD of 2021

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

GENERAL COMMERCIAL GROUP PTY LTD (ACN 134 168 540)

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: Commonwealth Law Courts Building, 119 North Quay, Brisbane

Date: July 2021

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

Filed on behalf of the Australian Securities and Investments Commission, Applicant

Prepared by Conrad Gray

Tel (02) 9911 2313

Fax (07) 3867 4725

Email conrad.gray@asic.gov.au

Address for service: Level 20
240 Queen Street
BRISBANE QLD 4000



Details of claim

For the purposes of this application:

Credit Act means the *National Consumer Credit Protection Act 2009* (Cth).

Credit Regulations means the *National Consumer Credit Protection Regulations 2010* (Cth)

Federal Court Act means the *Federal Court of Australia Act 1976* (Cth).

AFCA means the Australian Financial Complaints Authority

On the grounds stated in the concise statement the applicant claims:

1. As against the first respondent:
 - (a) a declaration pursuant to section 166 of the Credit Act, that the first respondent contravened section 47(1)(m) of the Credit Act, by reason of a contravention of its obligation under section 11A(2) of the Credit Regulations to take reasonable steps to cooperate with AFCA in respect to AFCA complaint number 673708, being the complaint to AFCA by Michael and Renee Ashton (the **Ashtons**) of 14 October 2019 (the **Ashton Urban Complaint**).
 - (b) a declaration pursuant to section 166 of the Credit Act, that the first respondent contravened section 47(1)(m) of the Credit Act, by reason of a contravention of its obligation under section 11A(2) of the Credit Regulations from 6 April 2019 to take reasonable steps to cooperate with AFCA in respect to AFCA complaint number 627350, being the complaint to AFCA by Aroha Webby and Curtis Pokai (**Webby and Pokai**) on or around 13 March 2019;
 - (c) a declaration pursuant to section 166 of the Credit Act, that by the first respondent's conduct in:
 - (i) attempting to rely on the settlement agreement dated 29 July 2019 between the second respondent and the Ashtons (**Ashton Eden Settlement Agreement**) in order to claim to AFCA that the Ashton Urban Complaint had been resolved and was therefore outside of AFCA's jurisdiction;
 - (ii) threatening the Ashtons with legal proceedings unless they withdraw the AFCA Urban Complaint; and
 - (iii) commencing proceedings in QCAT, through its agent Miravo Pty Ltd, against the Ashtons seeking damages alleged to have occurred as a consequence of the Ashton Urban Complaint,



the first respondent breached its obligation to do all things necessary to ensure that the credit activities authorised by its Australian Credit Licence were engaged in efficiently, honestly and fairly, and thereby contravened section 47(1)(a) of the Credit Act;

- (d) an order pursuant to section 167 of the Credit Act that the first respondent pay a pecuniary penalty in respect of the contravention of section 47(1)(a) of the Credit Act occurring from 13 March 2019 and contraventions of sections 47(1)(m) of the Credit Act occurring from 6 April 2019;
 - (e) an injunction pursuant to section 177 of the Credit Act, directing the first respondent to pay to the Ashtons:
 - (i) the amount of \$11,492.71, being the amount of the determination by AFCA of 31 July 2020 in the Ashton Urban Complaint (complaint 673708), and
 - (ii) interest on that amount from 14 August 2020, being 14 days from the acceptance of that determination by the Ashtons, until the date of judgment, calculated pursuant to section 51A of the Federal Court Act;
 - (f) an injunction pursuant to section 177 of the Credit Act restraining the first respondent from further contraventions of sections 47(1)(m) and 47(1)(a) of the Credit Act;
 - (g) an injunction pursuant to section 177 of the Credit Act, restraining the first respondent from engaging in credit activity for a period the Court sees fit; and
 - (h) costs.
2. As against the second respondent:
- (a) a declaration pursuant to section 166 of the Credit Act, that the second respondent contravened section 47(1)(m) of the Credit Act, by reason of a contravention of its obligation under section 11A(2) of the Credit Regulations from 6 April 2019 to take reasonable steps to cooperate with AFCA in respect of AFCA complaint number 613517, being the complaint to AFCA by the Ashtons of 9 January 2019 (**Ashton Eden Complaint**);
 - (b) a declaration pursuant to section 166 of the Credit Act, that the second respondent contravened section 47(1)(m) of the Credit Act, by reason of a contravention of its obligation under section 11A(2) of the Credit Regulations from 6 April 2019 to take reasonable steps to cooperate with AFCA in respect to AFCA complaint number 626243, being the complaint by Webby and Pokai initially made to the Credit and Investments Ombudsman (reference number 18/4337) and then transferred to AFCA in or around December 2018;
 - (c) a declaration pursuant to section 166 of the Credit Act, that by the second respondent's conduct in:



- (i) entering into the Ashton Eden Settlement Agreement on 29 July 2019 in order to resolve the Ashton Eden Complaint with AFCA; and
- (ii) notwithstanding that settlement agreement, subsequently commencing proceedings in QCAT, through its agent Miravo Pty Ltd, against the Ashtons seeking damages alleged to have occurred as a consequence of the Ashton Eden Complaint,

the second respondent breached its obligation to do all things necessary to ensure that the credit activities authorised by its Australian Credit Licence were engaged in efficiently, honestly and fairly, and thereby contravened section 47(1)(a) of the Credit Act;

- (d) an order pursuant to section 167 of the Credit Act that the second respondent pay a pecuniary penalty in respect of the contravention of section 47(1)(a) of the Credit Act occurring from 13 March 2019 and contraventions of sections 47(1)(m) of the Credit Act occurring from 6 April 2019;
 - (e) an injunction pursuant to section 177 of the Credit Act, restraining the second respondent from further contraventions of sections 47(1)(m) and 47(1)(a) of the Credit Act;
 - (f) an injunction pursuant to section 177 of the Credit Act, restraining the second respondent from engaging in credit activity for a period the Court sees fit; and
 - (g) costs.
3. As against the third respondent:
- (a) declarations pursuant to section 166 of the Credit Act that the third respondent has contravened sections 47(1)(m) and 47(1)(a) of the Credit Act by reason of his involvement in the contravention of those sections by the first respondent;
 - (b) an order pursuant to section 167 of the Credit Act that the third respondent pay a pecuniary penalty in respect of the contravention of section 47(1)(a) of the Credit Act occurring from 13 March 2019 and contraventions of sections 47(1)(m) of the Credit Act occurring from 6 April 2019;
 - (c) an injunction pursuant to section 177 of the Credit Act restraining the third respondent from further contraventions of sections 47(1)(m) and 47(1)(a) of the Credit Act;
 - (d) an injunction pursuant to section 177 of the Credit Act, restraining the third respondent from carrying 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 the Court sees fit; and
 - (e) costs.



4. As against the fourth respondent:

- (a) declarations pursuant to section 166 of the Credit Act that the fourth respondent has contravened sections 47(1)(m) and 47(1)(a) of the Credit Act by reason of his involvement in the contravention of those sections by second respondent;
- (b) an order pursuant to section 167 of the Credit Act that the fourth respondent pay a pecuniary penalty in respect of the contravention of section 47(1)(a) of the Credit Act occurring from 13 March 2019 and contraventions of sections 47(1)(m) of the Credit Act occurring from 6 April 2019;
- (c) an injunction pursuant to section 177 of the Credit Act restraining the fourth respondent from further contraventions of sections 47(1)(m) and 47(1)(a) of the Credit Act;
- (d) an injunction pursuant to section 177 of the Credit Act, restraining the fourth respondent from carrying 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 the Court sees fit; and
- (e) costs.

Applicant's address

The Applicant's address for service is:

Australian Securities and Investments Commission
Level 20, 240 Queen Street
Brisbane Qld 4000
DX 322 Brisbane
Conrad.Gray@asic.gov.au

The Applicant's address is - Level 20, 240 Queen Street, Brisbane in the State of Queensland

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 22 July 2021

A handwritten signature in cursive script, appearing to read 'Conrad Gray'.

Signed by Conrad Gray
Lawyer for the Applicant

**SCHEDULE**

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: QUEENSLAND
DIVISION: GENERAL

No. QUD of 2021

Respondents

Second Respondent	EDEN CAPITAL (AUSTRALIA) PTY LTD (ACN 602 485 487)
Third Respondent	DALE BRENDAN HEREMAIA
Fourth Respondent	BENJAMIN EDEN HEREMAIA