

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 29/10/2024 2:22:44 PM AEDT  
Date Accepted for Filing: 29/10/2024 2:58:10 PM AEDT  
File Number: VID1157/2024  
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v OAK CAPITAL MORTGAGE FUND LIMITED (ACN 161 407 058) & ANOR  
Registry: VICTORIA 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 2

Rule 2.2, 15A.3

## Originating process

No: VID

of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

### **Australian Securities and Investments Commission**

Plaintiff

### **Oak Capital Mortgage Fund Limited (ACN 161 407 058) & another**

Defendants

## **A DETAILS OF APPLICATION**

This application is made under ss 12GBA, 12GBB, 12GBCC, 12GD, 12GLA, 12GLB and 12GNB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and ss 21 and 23 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**).

The Plaintiff seeks against the Defendants:

- (a) declarations pursuant to s 12GBA of the ASIC Act and/or s 21 of the FCA;
- (b) pecuniary penalties pursuant to s 12GBB of the ASIC Act;
- (c) orders pursuant to s 12GNB(1) of the ASIC Act that each of the contractual provisions identified in Schedule 6 to the Statement of Claim is void ab initio;
- (d) injunctive relief pursuant to s 12GD of the ASIC Act and/or s 23 of the FCA;
- (e) adverse publicity orders pursuant to s 12GLA and/or s 12GLB of the ASIC Act;
- (f) relinquishment orders pursuant to s 12GBCC of the ASIC Act; and
- (g) costs.

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission (the Plaintiff)		
Prepared by (name of person/lawyer)	John Fogarty	Ref	03148818-492510
Law firm (if applicable)	DLA Piper Australia		
Tel	+61 3 9274 5000	Fax	+61 3 9274 5111
Email	john.fogarty@dlapiper.com		
<b>Address for service</b> (include State and postcode)	DLA Piper Australia 80 Collins Street Melbourne VIC 3000		



On the facts stated in the Concise Statement and Statement of Claim, the Plaintiff claims:

### **Declarations**

- 1 A declaration that, by engaging in the Contrived Avoidance System of Conduct and the Purpose System of Conduct (as defined in the Statement of Claim), the Defendants contravened s 12CB(1) of the ASIC Act.

### **Injunctions**

- 2 If a contravention of s 12CB(1) of the ASIC Act is established, an injunction restraining the Defendants (whether by their servants, agents or employees) from operating a system which facilitates the provision of credit without an Australian Credit Licence in circumstances where, at the time the credit contract is entered into or is proposed to be entered into:
  - (a) the Defendants know or ought reasonably to know that the credit is provided or intended to be provided wholly or predominantly:
    - (i) for personal, domestic or household purposes; or
    - (ii) to purchase, renovate or improve residential property for investment purposes; or
    - (iii) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; and
  - (b) the Defendants:
    - (i) have no reasonable basis to believe that the named company borrower(s) will repay the credit (within the meaning of s 3 of the Credit Code); and
    - (ii) know or ought reasonably to be aware that a natural person(s) other than the named company borrower(s) intends to repay the credit personally, including through personal income and/or dealing in personally owned assets.
- 3 If a contravention of s 12CB(1) of the ASIC Act is established, an injunction restraining the Defendants (whether by their servants, agents or employees) from soliciting and obtaining from loan applicants declarations in the form of those identified in Schedule 2 and Schedule 6 to the Statement of Claim.
- 4 If a contravention of s 12CB(1) of the ASIC Act is established, an injunction restraining the Defendants from seeking to recover alleged loss or damages, or from seeking any



other form of relief, from any of the companies or consumers identified in Schedule 1 to the Statement of Claim, where such alleged loss or damage or relief arises from, or is otherwise related to, the facts, matters or loan transactions the subject of this proceeding.

#### **Orders that contractual provisions are void**

5 If a contravention of s 12CB(1) of the ASIC Act is established, orders pursuant to s 12GNB(1) of the ASIC Act that each of the contractual provisions identified in Schedule 6 to the Statement of Claim is void ab initio.

#### **Pecuniary penalties**

6 If a contravention of s 12CB(1) of the ASIC Act is established, an order that, within 30 days of the date of the order, the Defendants each pay to the Commonwealth a pecuniary penalty in respect of their contravention of s 12CB(1) of the ASIC Act.

#### **Relinquishment of benefits**

7 If a contravention of s 12CB(1) of the ASIC Act is established, an order that, within 30 days of the order, the Defendants pay an amount equal to the benefit derived and detriment avoided because of the contravention.

#### **Publication/adverse publicity orders**

8 If a contravention of s 12CB(1) of the ASIC Act is established, an order that, within 30 days of the order the Defendants, at their own expense and in a manner and form approved by the Court:

- (a) cause a notice to be published:
  - (i) in *The Australian*, the *Australian Financial Review* and one daily newspaper in each State and Territory, on a weekday and the following Saturday; and
  - (ii) on its website, for a period of six months; and
- (b) send a letter by email or ordinary post to all borrowers and guarantors of loans entered into during the Relevant Period,

stating that the Defendants have been ordered to pay pecuniary penalties because they have engaged in unconscionable conduct by engaging in the Contrived Avoidance System of Conduct and the Purpose System of Conduct (as defined in the Statement of Claim).

#### **Other Orders**

9 An order that the Defendants pay the Plaintiff's costs.



10 Such further or other orders as the Court sees fit.

Date: 29 October 2024

A handwritten signature in black ink, appearing to be 'Jwf'.

Signature of plaintiff's legal practitioner

This application will be heard by ..... at

Federal Court of Australia, 305 William Street, Melbourne, Vic 3000 at ..... am / pm

on .....



**B NOTICE TO DEFENDANT(S) (IF ANY)**

**TO: Oak Capital Mortgage Fund Limited (ACN 161 407 058)**

**Oak Capital Wholesale Fund Pty Limited (ACN 622 106 692)**

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: 29 October 2024

.....  
Registrar

This originating process is filed by John Fogarty, DLA Piper Australia for the plaintiff.

**D SERVICE**

The plaintiff's address for service is:

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

Email: john.fogarty@dlapiper.com

The Plaintiff's address is: Level 7, 120 Collins Street, Melbourne VIC 3000

It is intended to serve a copy of this originating process on the Defendants.





## Schedule of parties

No:

of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

### Defendants

First Defendant

**Oak Capital Mortgage Fund Limited (ACN 161 407 058)**

Second Defendant

**Oak Capital Wholesale Fund Pty Limited (ACN 622 106 692)**