

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application - Form 15 - Rule 8.01(1)
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File Number: NSD1326/2024
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
DIAMOND WHEELS PTY LTD (ACN 068 677 163) & 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 2024

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

Australian Securities & Investments Commission

Applicant

**Diamond Wheels Pty Ltd (ACN 068 677 163) trading as Lansvale Motor Group 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 Philip Street, Sydney

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
Prepared by (name of person/lawyer) Georgina Thomas/Mira Vucic - ASIC
Law firm (if applicable) _____
Tel (03) 9280 4107 / (02) 9911 2334 Fax _____
Email georgina.thomas@asic.gov.au / mira.vucic@asic.gov.au
Address for service Level 5, 100 Market Street, Sydney NSW 2000
(include state and
postcode)



Details of claim

1. This is an application for:
 - (a) declaratory relief pursuant to section 166 of the *National Consumer Credit Protection Act 2009* (Cth) and/or section 113(1) of the National Credit **Code** and/or section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**);
 - (b) orders for pecuniary penalties pursuant to section 167 of the Act and/or section 113(2) of the Code;
 - (c) injunctive relief pursuant to section 177(1) of the Act and/or section 23 of the Federal Court Act;
 - (d) costs; and
 - (e) such further or other orders as the Court sees fit.
2. 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 Act and/or sections 21 and 23 of the Federal Court Act.

On the grounds stated in accompanying concise statement and adopting the terms defined in the concise statement, the Applicant seeks:

Declarations

Contraventions by Diamond Wheels

3. A declaration that Diamond Wheels contravened s 29 of the Act by engaging in credit activity without holding an ACL authorising it to engage in that credit activity on 7,928 occasions between 24 September 2018 and 5 December 2019, being each time it entered into, performed or exercised rights under the Diamond Wheels Contracts during that period. Diamond Wheels engaged in credit activity in relation to those contracts because it was the credit provider under them, for the purposes of Item 1(a) of s 6(1) of the Act and/or it performed the obligations or exercised the rights of a credit provider in relation to those contracts, for the purposes of Item 1(c) of s 6(1) of the Act in that:
 - (a) it was, and remained, the credit provider under the Diamond Wheels Contracts;
 - (b) it entered into and performed the Diamond Wheels Contracts; and



- (c) it sought recovery of principal, interest, fees and charges under the Diamond Wheels Contracts.
4. A declaration that on each occasion Diamond Wheels demanded, received or accepted a payment of principal, interest, or a fee described as a “Establishment Fee” or “Loan Administration Charge” in relation to the Diamond Wheels Contracts in the period from 24 September 2018 to 5 December 2019, it contravened s 32 of the Act by demanding, receiving or accepting a fee, charge or other amount from consumers for engaging in credit activity that contravened s 29 of the Act.
5. A declaration that on each occasion Diamond Wheels:
- (a) entered into a Diamond Wheels Contract; or
- (b) required or accepted payment of interest on the Diamond Wheels Contracts, between 24 September 2018 and 5 December 2019, it contravened s 24(1) of the Code by imposing a monetary liability prohibited by s 23(1) of the Code and by accepting payment of an amount in respect of a monetary liability that cannot be imposed consistently with the Code, by calculating a flat rate of interest against the original principal sum rather than on unpaid daily balances, in contravention of s 28 of the Code.

Contraventions by Keo Automotive

6. A declaration that Keo Automotive contravened s 29 of the Act by engaging in credit activity without holding an ACL authorising it to engage in that credit activity, on 14,596 occasions between 6 December 2019 and 26 April 2024, being each time it performed or exercised the rights of a credit provider under the Diamond Wheels Contracts. Keo Automotive engaged in credit activity in relation to those contracts because it performed the obligations or exercised the rights of a credit provider in relation to them, for the purposes of Item 1(c) of s 6(1) of the Act, in that it sought recovery of principal, interest, fees and charges under those contracts.
7. A declaration that on each occasion Keo Automotive demanded, received or accepted a payment of principal, interest, or a fee described as a “Establishment Fee” or “Loan Administration Charge” in relation to the Diamond Wheels Contracts in the period from 6 December 2019 to 26 April 2024, it contravened s 32 of the Act by demanding, receiving or accepting a fee, charge or other amount from consumers for engaging in credit activity that contravened s 29 of the Act.



8. A declaration that Keo Automotive contravened s 29 of the Act by engaging in credit activity without holding an ACL authorising it to engage in that credit activity on 129 occasions between 21 January 2020 and 17 December 2023, being each time it entered into or performed the Keo Finance Contracts. Keo Automotive engaged in credit activity in relation to those contracts because it was the credit provider under them, for the purposes of item 1(a) of s 6(1) of the Act in that:
 - (a) it performed the Keo Finance Contracts; and/or
 - (b) it advanced loan amounts under the Keo Finance Contracts.
9. In the alternative to the declaration sought in paragraph 8 above, a declaration that Keo Automotive contravened s 29 of the Act by engaging in credit activity without holding an ACL authorising it to engage in that credit activity between 21 January 2020 and 17 December 2023, being the credit activity of providing a “credit service” for the purposes of Item 2 of s 6(1) of the Act, in that Keo Automotive provided “credit assistance” to consumers within the meaning of s 8 of the Act, or acted as an “intermediary” within the meaning of s 9 of the Act, in relation to the Keo Finance Contracts.
10. A declaration that Keo Automotive contravened s 29 of the Act by engaging in credit activity without holding an ACL authorising it to engage in that credit activity on 7,956 occasions between 13 March 2020 and 30 April 2024, being each time it exercised rights under the Keo Finance Contracts. Keo Automotive engaged in credit activity in relation to those contracts because it exercised the rights of a credit provider in relation to them, for the purposes of Item 1(c) of s 6(1) of the Act, in that it sought recovery of principal, interest, fees and charges under those contracts.
11. A declaration that on each occasion Keo Automotive demanded, received or accepted a payment of principal, interest, or a fee described as a “Establishment Fee” or “Account Keeping Fee” in relation to the Keo Automotive Contracts in the period from 13 March 2020 to 30 April 2024, it contravened s 32 of the Act by demanding, receiving or accepting a fee, charge or other amount from consumers for engaging in credit activity that contravened s 29 of the Act.



12. A declaration that on each occasion Keo Automotive:
- (a) entered into a Keo Finance Contract; or
 - (b) required or accepted payment of interest on the Keo Finance Contracts,
- it contravened s 24(1) of the Code by imposing a monetary liability prohibited by s 23(1) of the Code and by accepting payment of an amount in respect of a monetary liability that cannot be imposed consistently with the Code, by calculating a flat rate of interest against the original principal sum rather than on unpaid daily balances, in contravention of s 28 of the Code.

Contraventions by Ken Keomanivong

13. A declaration that the Third Respondent, Ken Keomanivong, contravened ss 29 and 32 of the Act and s 24(1) of the Code by being involved in Diamond Wheels' contraventions of those provisions.
14. A declaration that Ken Keomanivong contravened ss 29 and 32 of the Act and ss 24(1) of the Code by being involved in Keo Automotive's contraventions of those provisions.

Pecuniary penalties

15. Diamond Wheels pay pecuniary penalties in respect of its contraventions of ss 29 and 32 of the Act and s 24(1) of the Code in such amounts as the Court determines to be appropriate.
16. Keo Automotive pay pecuniary penalties in respect of its contraventions of ss 29 and 32 of the Act and s 24(1) of the Code in such amounts as the Court determines to be appropriate.
17. Ken Keomanivong pay pecuniary penalties in respect of his contraventions of ss 29 and 32 of the Act and s 24(1) of the Code in such amounts as the Court determines to be appropriate.



Injunctions

Diamond Wheels

18. Diamond Wheels be permanently restrained, whether by its servants, agents or employees, from:

- (a) demanding, receiving or accepting repayments of principal and payments of interest, fees, charges or other amounts from consumers in respect of the Diamond Wheels Contracts; and
- (b) providing credit to consumers, entering into or performing agreements on the same or substantially the same terms as the Diamond Wheels Contracts for so long as it does not hold an ACL authorising it to engage in the credit activities at items 1(a) to (c) of s 6(1) of the Act.

Keo Automotive

19. Keo Automotive be permanently restrained, whether by its servants, agents or employees, from:

- (a) demanding, receiving or accepting repayments of principal and payments of interest, fees, charges or other amounts from consumers in respect of the Diamond Wheels Contracts and Keo Finance Contracts;
- (b) providing credit to consumers, entering into or performing agreements on the same or substantially the same terms as the Keo Finance Contracts for so long as it does not hold an ACL authorising it to engage in the credit activities at items 1(a) to (c) of s 6(1) of the Act; and
- (c) providing a credit service to consumers by:
 - i. providing credit assistance to consumers by suggesting they apply, or assisting them to apply, for a particular credit contract with a particular credit provider; and/or
 - ii. acting as an intermediary between consumers and a credit provider for the purposes of securing a provision of credit for the consumer under a credit contract with a credit provider,

for so long as it does not hold an ACL authorising it to engage in the credit activity at item 2 of s 6(1) of the Act.



Ken Keomanivong

20. Ken Keomanivong be permanently restrained from demanding, receiving or accepting repayments of principal and payment of interest, fees, charges or other amounts from consumers in respect of the Diamond Wheels Contracts and Keo Finance Contracts.
21. Ken Keomanivong be permanently restrained from being involved in any conduct by:
 - (a) Diamond Wheels or Keo Automotive demanding, receiving or accepting repayments of principal and payment of interest, fees, charges or other amounts from consumers in respect of the Diamond Wheels Contracts and Keo Finance Contracts;
 - (b) Diamond Wheels or Keo Automotive providing credit to consumers, entering into or performing agreements on the same or substantially the same terms as the Diamond Wheels Contracts or the Keo Finance Contracts, for so long as Diamond Wheels or Keo Automotive, as relevant, does not hold an ACL authorising it to engage in the credit activities at items 1(a) to (c) of s 6(1) of the Act; and
 - (c) Keo Automotive providing a credit service to consumers for so long as Keo Automotive does not hold an ACL authorising it to engage in the credit activity at item 2 of s 6(1) of the Act.
22. Ken Keomanivong be permanently, or alternatively for a period the Court sees fit, restrained from carrying on, 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.

Other orders

23. The Respondents pay the Applicant's costs.
24. Such further or other orders as the Court sees fit.

**Applicant's address**

The Applicant's address for service is:

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

Email: georgina.thomas@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: 23 September 2024

A handwritten signature in blue ink, appearing to read "G. Thomas".

Signed by Georgina Thomas

Lawyer for the Applicant

**Schedule of parties**

No. of 2024

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

Australian Securities & Investments Commission

Applicant

Diamond Wheels Pty Ltd (ACN 068 677 163)

First Respondent

Keo Automotive Pty Ltd (ACN 635 561 296)

Second Respondent

Ken Keomanivong

Third Respondent