

NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Number: NSD830/2023
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
BAKKEN HOLDINGS PTY LTD ACN 162 828 202 & ANOR
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 2
Rules 2.2 and 15A.3

ORIGINATING PROCESS

NO. NSD of 2023

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: COMMERCIAL AND CORPORATIONS**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

BAKKEN HOLDINGS PTY LTD (ACN 162 828 202)

First Defendant

MERRILYN ANNE MANSFIELD

Second Defendant

A. DETAILS OF APPLICATION

This application is for:

- (a) declaratory relief pursuant to s. 21 of the *Federal Court of Australia Act 1976* (Cth) (**FC Act**), s.1317E(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), and s.12GBA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (b) orders for pecuniary penalties pursuant to s.1317G(1) of the *Corporations Act* and s.12GBB of the *ASIC Act*;
- (c) orders restraining unlawful conduct pursuant to s.1324 of the *Corporations Act* and s.12GD of the *ASIC Act*;
- (d) orders disqualifying the Second Defendant from managing corporations pursuant to s.12GLD of the *ASIC Act*;
- (e) orders for adverse publicity pursuant to ss.12GLA(2) and/or 12GLB(1) of the *ASIC Act* and/or ss.1101B(1)(a) and/or 1324(7) of the *Corporations Act*;
- (f) orders for probation pursuant to s.12GLA(2)(b) of the *ASIC Act*;
- (g) orders for costs pursuant to s.43 of the *FC Act*;

in respect of:

- (h) a contravention by the First Defendant of s.911A(1) of the *Corporations Act*;
- (i) a contravention by the First Defendant of ss.12CB(1) of the *ASIC Act*; and

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission		
Prepared by (name of person/lawyer)	Conrad Gray / Natalie Colbert		
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- (j) contraventions by the First and Second Defendants of s.12DB(1)(a) and/or (e) of the ASIC Act.

The Court's jurisdiction to hear the present case and to grant the relief sought is found in s.1337B(1) of the Corporations Act, s.12GJ(1) of the ASIC Act and s.39B(1A)(c) of the *Judiciary Act 1903* (Cth).

In this Originating Process, the terms which are defined in the accompanying Concise Statement have the meaning as they do in that document.

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

Declaratory relief pursuant to s.1317E of the Corporations Act and s.21 of the FC Act

1. A declaration that between 30 April 2020 and 30 June 2022, Bakken carried on a financial services business without a financial services licence covering the provision of the financial services in contravention of s.911A(5B) of the Corporations Act.

Declaratory relief pursuant to s.12GBA(1) of the ASIC Act and s.21 of the FC Act

Unconscionable Conduct

2. A declaration that during the Relevant Period, Bakken engaged in a system of conduct or pattern of behaviour in its dealings with consumers which was, in all the circumstances, unconscionable and in contravention of s.12CB(1) of the ASIC Act.

False or Misleading Representations

3. A declaration that in the period between 30 April 2020 and 23 March 2022, on each occasion that it sent an email to potential consumers in which it stated that as soon as they entered an "Informal Debt Agreement" or a "Solve My Debt Now Agreement", "your creditors must cease any recovery action", Bakken contravened s.12DB(1)(e) of the ASIC Act by making a false and/or misleading representation that as soon as a consumer entered into such an agreement that consumer's creditors were required to cease any recovery action in respect of their debt(s) when in fact the signing of an agreement with Solve My Debt did not impose any requirement on creditors to cease any recovery action in respect of that consumer's debt(s).
4. A declaration that by publishing a video uploaded to the Channel and linked to the Website and an article on the Website, on or about 10 February 2021 until 6 February 2022, both entitled "How our Solve My Debt Now solution is better than a debt consolidation loan", Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken took over and made payments towards a consumer's debts at the same time that it engaged in negotiations with their creditors (**Payments Were Made**) when in fact Bakken often did not make payments to a consumer's creditors until it reached a negotiated agreement with that creditor and/or often did not make any payments nor conduct any negotiations with a creditor that granted a payment holiday until that holiday ended (**Lack of Payments**).



5. A declaration that on each occasion Bakken emailed a mailout to potential consumers entitled:
- a. "How our Solve My Debt Now solution is better than a debt consolidation loan" on or about 15 February 2021;
 - b. "End of jobkeeper – what to do now?" on or about 15 March 2021;
 - c. "I would recommend Solve My Debt Now to absolutely anybody" on or about 19 April 2021;
 - d. "Win back sleepless nights with solve my debt now" on or about 17 May 2021;
 - e. "Have big or small loans? We can help you become debt free" on or about 16 September 2021; and
 - f. "You don't have to be stuck in the payday (small) loans trap" on or about 18 August 2021,

Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Payments Were Made when in fact there was a Lack of Payments.

6. A declaration that by publishing an article on the Website entitled "Have big or small loans? We can help you become debt free" on or about 15 September 2021 until 6 February 2022, Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Payments Were Made when in fact there was a Lack of Payments.
7. A declaration that by publishing an article on the Website entitled "You don't have to be stuck in the payday (small) loans trap" on or about 9 August 2021 until 6 February 2022, Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Payments Were Made when in fact there was a Lack of Payments.
8. A declaration that by publishing a video uploaded to the Channel and linked to the Website entitled "What is insolvency, what is bankruptcy, which was available throughout the Relevant Period Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the power or was otherwise able to ensure that a consumer would avoid bankruptcy (**Avoid Bankruptcy Power**), had the ability to ensure that a consumer's debt and/or liability to pay interest would be reduced, waived or frozen (**Interest or Debt Power**) and/or had the power to or was otherwise able to ensure that adverse entries on a consumer's credit file would be removed (**Adverse Entry Removal Power**) when in fact Bakken did not have the power to ensure that a consumer would avoid bankruptcy if they used the Service (**No Avoid Bankruptcy Power**), did not have the power to ensure that a consumer's debt and/or liability to pay interest would be reduced, waived or frozen and did not always achieve a reduction, waiver or freezing of the consumer's debt and/or interest (**No Interest or Debt Power**) and/or did not have the power to ensure that adverse entries on a consumer's credit file would be removed and did not always achieve the removal of adverse entries on a consumer's credit file (**No Removal Power**).
9. A declaration that by publishing an amended article on the Website entitled "What is bankruptcy, what is insolvency" which was available on the Website between 6 February 2022 and 11 March 2022 Bakken contravened s.12DB(1)(a) and/or (e) of



the ASIC Act by making a false and/or misleading representation that Bakken had the Avoid Bankruptcy Power and the Interest or Debt Power when in fact Bakken had No Avoid Bankruptcy Power and No Interest or Debt Power.

10. A declaration that on each occasion that Bakken sent an email constituting “Masterclass 2” to potential consumers during the Relevant Period, Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the Adverse Entry Removal Power and the Avoid Bankruptcy Power when in fact Bakken had No Removal Power and No Avoid Bankruptcy Power.
11. A declaration that on each occasion that Bakken sent an email constituting “Masterclass 3” to potential consumers during the Relevant Period, Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the Avoid Bankruptcy Power when in fact Bakken had No Avoid Bankruptcy Power.
12. A declaration that by publishing an amended article on the Website entitled “How to get out of debt and stop going bankrupt” which was available on the Website between 6 February 2022 and 9 June 2022 Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the Avoid Bankruptcy Power and the Interest or Debt Power when in fact Bakken had No Avoid Bankruptcy Power and No Interest or Debt Power.
13. A declaration that by publishing an article on the Website entitled “How to get out of debt and stop going bankrupt” on or about 6 February 2022 until 9 June 2022 Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the Adverse Entry Removal Power when in fact Bakken had No Removal Power.
14. A declaration that by publishing an article on the Website entitled “Fix your debt – Do you need help with debt?” which was available on the Website between 6 February 2022 and 9 June 2022 Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the Avoid Bankruptcy Power and the Interest or Debt Power when in fact Bakken had No Avoid Bankruptcy Power and No Interest or Debt Power.
15. A declaration that by publishing a video linked to the Website on or about 10 February 2021 until 9 June 2022 entitled “A financial recovery from COVID”, Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the Adverse Entry Removal Power when in fact Bakken had No Removal Power.
16. A declaration that by publishing an article on the Website on or about 10 February 2021 until 9 June 2022 entitled “A financial recovery from COVID”, Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the Adverse Entry Removal Power when in fact Bakken had No Removal Power.
17. A declaration that by publishing each of:
 - a. a video uploaded to the Channel and linked to the Website on or about 10 February 2021 until 9 June 2022 entitled “Resetting your Home Loan & Rate”,



- b. an article on the Website on or about 10 February 2021 until 9 June 2022 entitled “Resetting your Home Loan & Rate”,

Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that Bakken had the Adverse Entry Removal Power and the Interest or Debt Power when in fact Bakken had No Removal Power and No Interest or Debt Power.

18. A declaration that by publishing an article on the Website on or about 15 November 2021 until 5 February 2022 and in amended form from on or about 6 February 2022 until 9 June 2022 entitled “Positive goal setting in a post-COVID-19 world” Bakken contravened s.12DB(1)(a) and/or (e) of the ASIC Act by making a false and/or misleading representation that: a) Bakken was completely transparent about its fees; and b) the only fees charged to consumers were the setup fee, administration fee and the negotiation fee because Bakken: a) also charged or purported to charge the update fee, the restart fee, the credit repair fee and/or the default fee and, in the case of the amended article, the negotiation fee; and b) did not disclose the update fee or the restart fee in the Agreement.

Involvement in False or Misleading Representations

19. A declaration that Merrilyn Anne Mansfield:
- a. was involved in each of Bakken’s contraventions of s.12DB(1)(a) and (e) of the ASIC Act pleaded in paragraphs 5(e), 5(f), 6, 10, 11, 13, 16 and 17(b) above; and
 - b. by operation of s.12GBCL of the ASIC Act, contravened s.12DB(1)(a) and (e) of the ASIC Act.

Restraining order – Corporations Act

20. An order pursuant to s.1324 of the Corporations Act that Bakken is restrained from providing financial services without an Australian financial services licence covering the financial services provided.

Restraining order – ASIC Act

21. An order pursuant to s.12GD of the ASIC Act that Bakken is restrained from engaging in unconscionable conduct in connection with the supply or possible supply of a financial service.
22. An order pursuant to s.12GD of the ASIC Act that Bakken is restrained from making false or misleading representations in connection with the supply or possible supply of a financial service.
23. An order pursuant to s.12GD of the ASIC Act that Merrilyn Anne Mansfield is restrained from making, or from being knowingly concerned in the making of, false or misleading representations in connection with the supply or possible supply of a financial service.

Disqualification order – ASIC Act

24. An order pursuant to s.12GLD of the ASIC Act that Merrilyn Anne Mansfield be disqualified from managing corporations for such period that the Court considers appropriate.



Pecuniary penalty – Corporations Act

25. An order that Bakken is to pay the Commonwealth a pecuniary penalty pursuant to s.1317G(1) of the Corporations Act in such sum as the Court considers appropriate.

Pecuniary penalty – ASIC Act

26. An order that Bakken is to pay the Commonwealth a pecuniary penalty pursuant to s.12GBB of the ASIC Act in such sum as the Court considers appropriate.

27. An order that Merrilyn Anne Mansfield is to pay the Commonwealth a pecuniary penalty pursuant to s.12GBB of the ASIC Act in such sum as the Court considers appropriate.

Advertising order

28. An order pursuant to ss.12GLA(2) and/or 12GLB(1) of the ASIC Act and/or ss.1101B(1)(a) and/or 1324(7) of the Corporations Act that Bakken, at its own expense, publish or cause notices to be published in such terms, form and media (including on, but not limited to, the Website, the Solve My Debt Now Facebook page, and the Channel) that the Court considers appropriate.

Probation order

29. An order pursuant to s.12GLA(2)(b) of the ASIC Act that Bakken is to, at their own expense, establish a compliance, education and training, and internal operations review program in such terms that the Court considers appropriate.

Costs

30. An order pursuant to s.43 of the FC Act that Bakken and Merrilyn Anne Mansfield are to pay the Australian Securities and Investment Commission’s costs of and incidental to the proceedings.

Date: 8 August 2023

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Conrad Gray
Lawyer for the Plaintiff

This application will be heard by at 184 Philip Street, Queens Square, NSW, 2000 at *am/*pm on

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

TO:

Bakken Holdings Pty Ltd (ACN 162 828 202) of Level 8, 171 Clarence Street, SYDNEY NSW 2000.

Merrilyn Anne Mansfield of 76 Bradleys Road, North Avoca NSW 2260.



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. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Nil

D. FILING

Date of filing:

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Registrar

This originating process is filed by Conrad Gray for the Plaintiff.

E. SERVICE

The plaintiff's address for service is:

Australian Securities and Investments Commission
 Level 5, 100 Market Street
 Sydney NSW 2000

It is intended to serve a copy of this originating process on each defendant.