

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION**
No: NSD2089/2013

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/06/2014.

DETAILS OF FILING

Document Lodged: Amended Document
File Number: NSD2089/2013
File Title: Julie Gray v Cash Converters International Limited ACN 069 141 546 & Ors
District Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 23/06/2014

Registrar

Warwick Soden

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



Form 19
Rule 9.32

**Amended Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

(Filed on 23 June 2014 pursuant to
order made by Farrell J on 19 June 2014)

No. NSD 2089 of 2013

Federal Court of Australia

District Registry: NSW

Division: General

Julie Gray

Applicant

Cash Converters International Limited ACN 069 141 546 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: Law Courts Building Queens Square, Sydney NSW 2000

Date:

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

Filed on behalf of	Julie Gray (Applicant)
Prepared by	Ben Slade
Law firm	Maurice Blackburn
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Address for service	c/- Maurice Blackburn Pty Ltd, Level 20, 201 Elizabeth Street, Sydney NSW 2000

[Form approved 01/08/2011]

Details of claim

Terms defined in the accompanying statement of claim carry the same meaning when used in this originating application.

On the grounds stated in the accompanying statement of claim, the applicant claims on her own behalf and in a representative capacity:

1. As against CC International:
 - (a) Statutory compensation pursuant to s 12GF(1) of the ASIC Act in relation to the First and Second Gray Personal Loans and the loans of Group Members;
 - (b) A declaration that CC International was involved in the contraventions by CC Personal Finance of s 12CB(1) of the ASIC Act in relation to the Third Gray Personal Loan;
 - (c) Such further or other orders as the nature of the case requires;
 - (d) Interest; and
 - (e) Costs.
2. As against Saffrock:
 - (a) Statutory compensation pursuant to s 12GF(1) of the ASIC Act in relation to the First and Second Gray Personal Loans and the loans of Group Members;
 - (b) Further or in the alternative, a declaration that the 'deferred establishment fee' provided for by the terms of the First and Second Gray Personal Loans and in the loans of Group Members is void;
 - (c) In the alternative, an order that the 'deferred establishment fee' provided for by the terms of the First and Second Gray Personal Loans and in the loans of Group Members be annulled or reduced pursuant to s 78(1)(c) of the Code;
 - (ca) In the alternative, an order that the 'deferred establishment fee' provided for by the terms of the First and Second Gray Personal Loans and in the loans of Group Members be annulled or reduced pursuant to s 78(1)(b) of the Code;
 - (d) Such further or other orders as the nature of the case requires;
 - (e) Interest; and
 - (f) Costs.
3. As against CC Personal Finance:
 - (a) A declaration that CC Personal Finance contravened s 12CB(1) of the ASIC Act in relation to Third Gray Personal Loan;

- (b) Statutory compensation pursuant to s 12GF(1) of the ASIC Act in relation to the loans of Group Members;
- (c) Further or in the alternative, a declaration that the 'deferred establishment fee' provided for by the terms of the Third Gray Personal Loan and in the loans of Group Members is void;
- (d) In the alternative, a declaration that deferred establishment fee' provided for by the terms of the Third Gray Personal Loan exceeds a reasonable estimate of CC Personal Finance's loss arising from the early termination of the Third Gray Personal Loan, including CC Personal Finance's average reasonable administrative costs in respect of such a termination within the meaning of s 78(4) of the Code;
- (e) In the alternative, an order that the 'deferred establishment fee' provided for by the terms of the loans of Group Members be annulled or reduced pursuant to s 78(1)(c) of the Code;
- (ea) In the alternative, a declaration that the 'deferred establishment fee' provided for by the terms of the Third Gray Personal Loan is unconscionable within the meaning of s 78(1) of the Code;
- (eb) In the alternative, an order that the 'deferred establishment fee' provided for by the terms of the loans of Group Members be annulled or reduced pursuant to s 78(1)(b) of the Code;
- (f) Such further or other orders as the nature of the case requires;
- (g) Interest; and
- (h) Costs.

Questions common to claims of group members

In accordance with paragraph 2.1(c) of *Practice Note CM 17 – Representative Proceedings under Part IVA of the Federal Court of Australia Act 1976 (Cth)*, the applicant specifies the following questions of fact or law which are common to the claims of the Group Members:

1. Whether Safrock and/or CC Personal Finance had any entitlement to debit or retain fees other than those specifically provided for by the written terms of the personal loan, and specifically, fees designated as 'Administration Fee' or 'nAdmin' fee?
2. Whether the debiting and retention by the Safrock and/or CC Personal Finance of the:
 - (a) 'Administration Fee'; or
 - (b) 'nAdmin' fee;

is unconscionable and in contravention of section 12CB(1) of the ASIC Act in circumstances where the written terms of the loan made no provision for them?

3. Whether the respondents had a system or practice which required consumers to repay their credit contracts early for the purpose of causing them to incur the 'Deferred Establishment Fee'?
4. Whether a 'Deferred Establishment Fee' is ascertainable for the purposes of clause 7(2) of Schedule 3 of the NSW Act, in circumstances where, prior to the making of the personal loan, the common intention of Safrock or CC Personal Finance and the consumer (Ms Gray and Group members) was that the loan would be repaid in an ascertained period of less than 2 years?
5. Whether it is unconscionable and in contravention of section 12CB(1) of the ASIC Act for Safrock or CC Personal Finance to debit or retain a 'Deferred Establishment Fee', in circumstances where prior to the making of the personal loan the common intention of Safrock or CC Personal Finance and the consumer (Ms Gray and Group members) was that the loan would be repaid in an ascertained period of less than 2 years?
6. Whether in the circumstances in question 4, the provision in each of the credit contracts of each of Ms Gray and the Group Members imposing the Deferred Establishment Fee is void pursuant to clause 5(2) of Schedule 3 of the NSW Act?
7. Whether a Deferred Establishment Fee in the order 35% of the amount of the loan, payable if the loan is repaid in approximately 7 months rather than over two years, is unconscionable within the meaning of section 78(4) of the Code and should be annulled or reduced pursuant to section 78(1)(c) of the Code?
- 7A. Whether a Deferred Establishment Fee in the order 35% of the amount of the loan, payable if the loan is repaid in approximately 7 months rather than over two years, is unconscionable within the meaning of section 78(1) of the Code and should be annulled or reduced pursuant to section 78(1)(b) of the Code?
8. Whether each of the allegations in paragraphs 72, 73, 73A, 73B, 74 and 76 of the statement of claim is correct.
9. Whether Safrock or CC Personal Finance debited the 'nAdmin' fee and the 'Administration Fee' from consumers' accounts by using the system developed and provided by MON-E in conjunction with Safrock and/or in conjunction with CC Personal Finance?
10. Whether CC International was involved in the contraventions by Safrock and CC Personal Finance within the meaning of section 12GF(1) of the ASIC Act?

Representative action

1. The applicant brings this application on her own behalf and as a representative party under Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).
2. The applicant and the persons whom she represents are natural persons (**Group Members**) who:
 - (a) entered into credit contracts with either of the second or third respondents between 1 July 2010 and 30 June 2013, being the provision of credit to which the *National Credit Code* (**Code**) applies; and
 - (b) had any of the following fees and/or charges debited to their account under the credit contract:
 - (i) an 'Administration Fee'; or
 - (ii) an 'nAdmin' fee; or
 - (iii) a 'Deferred Establishment Fee'.

Applicant's address

The applicant's address for service is:

Place: Level 20, 201 Elizabeth St, Sydney NSW 2000

Email: bslade@mauriceblackburn.com.au

The applicant's address is 45 Rugby Street, Cambridge Park NSW 2747.

Service on the Respondents

It is intended to serve this application on all respondents.

Date: 23 June 2014



Signed by Ben Slade
Lawyer for the applicant

Schedule

No. NSD 2089 of 2013

Federal Court of Australia

District Registry: NSW

Division: General

Respondents

Second Respondent:

Safrock Finance Corporation (QLD) Pty Ltd ACN 098 566 520

Third Respondent:

Cash Converters Personal Finance Pty Ltd ACN 110 275 762