

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/10/2018 3:42:06 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD900/2015
File Title: Sean Lynch v Cash Converters Personal Finance Pty Ltd ACN 110 275 762
& Anor
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 26/10/2018 9:49:34 AM AEDT

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 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.



~~Third~~Fourth Further Amended Statement of claim

No. NSD 900 of 2015

(leave granted by Gleeson J on 24 October 2018)

Federal Court of Australia

District Registry: New South Wales

Division: General

Sean Lynch

Applicant

Cash Converters Personal Finance Pty Ltd (ACN 110 275 762) and another named in the schedule

First Respondent

A. THE GROUP MEMBERS

1. The applicant brings this proceeding on his own behalf and on behalf of represented persons pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) being natural persons (**Group Members**) who entered into one or more credit contracts in Queensland between 30 July 2009 and 30 June 2013:

- (a) where either the first respondent (**CC Personal Finance**) or the second respondent (**Safrock**) was the lender;
- (b) in respect of which the *Consumer Credit (Queensland) Code (Qld Code)* or *National Credit Code (National Code)* applied;
- (c) in relation to which, a fee styled as a 'broker's' fee or a 'brokerage' fee was paid by or on behalf of the Group Member to:
 - (i) a company or entity that was wholly owned by Cash Converters International Ltd ACN 069 141 546 (**CC International**); or
 - (ii) a company or entity that was a franchisee of Cash Converters Pty Ltd ACN 009 288 804 (**CCPL (Qld Franchisee)**); or

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(iii) a company or entity that was acting pursuant to an agreement, arrangement or understanding with a company or entity in (i) or (ii) above (**Qld Franchisee Broker**);

and

(d) which was administered by a software and internet platform provided by Mon-e Pty Ltd ACN 087 343 299 (**Mon-e**) and/or Safrock;

(**Qld Loan Contracts**).

B. THE PARTIES

2. The applicant (**Mr Lynch**):

- (a) at all material times was resident in Queensland;
- (b) is a 'consumer' within the meaning of section 5 of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**); and
- (c) at all material times obtained credit from CC Personal Finance and Safrock for personal, domestic or household purposes.

3. CC Personal Finance:

- (a) is a company duly incorporated under the laws of Australia;
- (a1) at all material times prior to 21 November 2011 was called 'Safrock Finance Group Pty Ltd';
- (b) is a wholly owned subsidiary of CC International;
- (c) provided credit in the course of its business within the meaning of section 6(1) of the Qld Code and/or section 5(1) of the National Code;
- (d) is a credit provider within the meaning of section 5 of the Credit Act;
- (e) in the premises of paragraph 3(c) and/or (d), at all material times provided a financial service within the meaning of section 12BAB(1)(b) of the ASIC Act; and
- (f) in its dealings with Mr Lynch and the Group Members, engaged in trade and commerce within the meaning of section 12BA(1) of the ASIC Act.

4. Safrock:

- (a) is a company duly incorporated under the laws of Australia;
- (b) is a wholly owned subsidiary of CC International;

- (c) provided credit in the course of its business within the meaning of section 6(1) of the Qld Code and/or section 5(1) of the National Code;
- (d) is a credit provider within the meaning of section 5 of the Credit Act;
- (e) in the premises of paragraph 4(c) and/or (d), at all material times provided a financial service within the meaning of section 12BAB(1)(b) of the ASIC Act; and
- (f) in its dealings with Mr Lynch and the Group Members, engaged in trade and commerce within the meaning of section 12BA(1) of the ASIC Act.

C. CASH CONVERTERS BUSINESS STRUCTURE & SYSTEM

5. CC International:

- (a) is a public company duly incorporated under the laws of Australia;
- (b) held, at all material times since at least November 2006, 100% of the shares in:
 - (i) CCPL;
 - (ii) CC Personal Finance;
 - (iii) Safrock;
 - (iv) Mon-e;
 - (v) Cash Converters (Cash Advance) Pty Ltd ACN 127 866 308 (**CC Cash Advance**);
- (c) at all material times was, or has styled itself as, the international master franchisor of the Cash Converters franchise;

Particulars

- (a) CC International stated:

Over 20 years, the Company [Cash Converters International Ltd] has developed and refined its franchise offering to the point where it has mature and stable multi-store franchise chains in both Australia and the United Kingdom. The Company also acts as the master franchisor of the franchising concept. ...

in the following documents published by it on the ASX:

- (i) 2009 Annual Report, dated 2 November 2009, p13;
- (ii) 2010 Annual Report, dated 18 October 2010, p13;
- (iii) 2011 Annual Report, dated 20 October 2011, p12;
- (iv) 2012 Annual Report, dated 15 October 2012, p15;
- (v) 2013 Annual Report, dated 17 October 2013, p15; and
- (vi) 2014 Annual Report, dated 20 October 2014, p12, however in this document the number “20” in the quote above is replaced by “29”.

- (b) CC International stated in a document entitled “Admission to listing on the premium segment of the Official List and to trading on the London Stock Exchange’s main market for listed securities” dated 2 August 2011 (**Prospectus**) that (p22):

In relation to its Franchise operations, the Group acts as an international Franchisor which has the benefit of allowing the Group to be able to expand its business and receive the managerial commitment of a local Franchisee in the various territories in which it operates. Under the Franchise Agreements, CCIL enters into in Australia and the UK, the Group provides each Franchisee with the right to use the CCIL trademark and business systems.

Over 20 years, the Group has developed and refined its franchise offering to the point where it has mature multi-store franchise chains in both Australia and the UK. The Group also acts as the international master Franchisor.

- (d) presently operates a global network of over 700 Cash Converters branded stores across 21 countries, including:
- (i) approximately 71 stores in Australia which are owned either by CC International or by an entity that is wholly owned by CC International; and
 - (ii) approximately 82 franchised stores in Australia;
- which provide consumer credit services and second hand goods retailing.

6. CCPL:

- (a) is a company duly incorporated under the laws of Australia;
- (b) has, since 1988, been the franchisor for the name and business system of the Cash Converters franchise operating in Australia;
- (c) at all material times was the franchisor under a franchise agreement with Cliffview Pty Ltd ACN 057 538 904 t/a Cash Converters Inala (**Cash Converters Inala**).

7. Bak Property Pty Ltd ACN 103 054 824 trading as Cash Converters Goodna (**Bak**):

- (a) from at least 31 July 2008 until 30 June 2013 operated the personal finance centre within the Cash Converters branded store at Shop 2, 2 William St, Goodna QLD 4300;
- (b) was between 31 July 2008 and 30 June 2013, a Qld Franchisee;
- (c) was between 31 July 2008 and 30 June 2013, a Qld Franchisee Broker; and
- (d) was (from 31 August 2010) a wholly owned entity of CC Cash Advance.

8. Further or in the alternative to paragraph 7, at all material times from 27 August 2010 or later the personal finance centre within the Cash Converters branded store at Shop 2, 2 William St, Goodna QLD 4300 was operated by:

- (a) CC Cash Advance; or
- (b) CC Personal Finance; and/or
- (c) another wholly owned entity of CC International.

Particulars

- (a) The applicant does not know which of the wholly owned entities of CC International operated the personal finance centre at Cash Converters Goodna.
 - (b) The best particulars that the applicant can give at this time are that the entity could be:
 - (i) Bak – as pleaded in paragraph 7 of the Amended Statement of Claim, it may have run the personal finance centre at the Goodna store until 26 August 2010 and may have continued to do so after 27 August 2010. CC International was the ultimate holding company of Bak from 31 August 2010. CC International also entered into the Bak Share Purchase Agreement as guarantor (Prospectus, p81); or
 - (ii) Cash Converters (Stores) Pty Ltd - directly controlled Bak per CC International's 2011 Annual Report dated 20 October 2011, p59; or
 - (iii) CCPL - the Prospectus on page 81 states that on 18 August 2010 this entity entered into the Morris Store Purchase Agreement to purchase the Goodna store; or
 - (iv) Safrock – also entered into the Morris Store Purchase Agreement (Prospectus, p81);
 - (v) CC (Cash Advance) – entered into the 18 August 2010 Bak Share Purchase Agreement to purchase all the shares in Bak (Prospectus, p81); or
 - (vi) Mon-e – also entered into the Morris Store Purchase Agreement and the Bak Share Purchase Agreement (Prospectus, p81); another wholly owned entity of CC International.
9. Since at least November 2007, CC International, CCPL, CC Personal Finance, Safrock, Mon-e, CC Cash Advance have had:
- (a) the following directors in common:
 - (i) Peter Cumins; and
 - (ii) Reginald Webb (except CC Cash Advance);
 - (b) the following directors previously in common:
 - (i) John Yeudall (from April 2012 until November 2013);
 - (ii) Andrew Moffat (except CC Cash Advance); and
 - (c) the same company secretary, being Derek Ralph Groom.
10. At all material times prior to 1 July 2010, Safrock and/or CC Personal Finance were required to comply with clause 3 of the *Consumer Credit (Queensland) Special Provision Regulation 2008 (Qld) (Qld Regs)* which provided that the maximum rate of interest for all credit contracts

regulated by the Qld Code was 48% and that calculating the annual percentage rate for the purpose of compliance with the Qld Regs was to be undertaken in accordance with clauses 3 and 4.

11. At all material times from 1 July 2010, Safrock and/or CC Personal Finance were required to comply with the *Credit (Commonwealth Powers) Act 2010 (Qld)* (**Qld Act**) which operated in Queensland to:
 - (a) impose a maximum interest rate for all credit contracts (within the meaning of the Qld Code) of 48% (section 32(1));
 - (b) require calculation of the annual percentage rate for the purpose of compliance with section 32(1) to be undertaken in accordance with sections 32 and 34; and
 - (c) continue the application of certain provisions of the Qld Code, despite its repeal, for the purpose of enforcing compliance with the maximum annual percentage rate (section 33).

12. At all times since at least October 2007, there has been loan administration software and an internet platform provided by Mon-e and, prior to 1 July 2009 also by Safrock (**Mon-e System**) which:
 - (a) generated a recommendation as to the amount of credit that can be lent to a consumer, on the basis of information provided by the consumer;
 - (b) generated uniform documents relating to a credit contract or proposed credit contract, which for Qld Loan Contracts at all material times included the documents entitled:
 - (i) 'Appointment of Broker' and/or 'Quote for Credit Assistance'; and
 - (ii) 'Contract – Part 1 Schedule' or 'Loan Contract' (including pages headed 'The Schedule'); and
 - (iii) (from on or after 1 April 2010) 'Credit Proposal';
 - (c) formulated, or was used to formulate, the amounts and schedules for repayment of principal, fees and charges and the payment of interest by consumers with respect to each credit contract;
 - (d) in conjunction with Safrock and/or CC Personal Finance caused direct debits to occur directly to a consumer's bank account;
 - (e) arranged fees and/or commissions payable by Safrock and/or CC Personal Finance with respect to unsecured loans to be set and effected; and
 - (f) enabled reporting as to each individual credit contract accessible by entities including Safrock and/or CC Personal Finance.

13. At all material times, Safrock, CC Personal Finance and CC Cash Advance have used the Mon-e System for unsecured loan products offered or provided by them.

14. Since at least October 2007, each:

(a) franchisee of CCPL in Australia, including each Qld Franchisee (but excepting Cash Converters franchisees in South Australia and the Northern Territory); and

(b) Qld Franchisee Broker;

and each of:

(c) Bak;

(d) Cash Converters Inala;

have been required by CCPL (either directly or indirectly), when offering unsecured loans through a personal finance centre in any Cash Converters branded store in Queensland or on-line to Queensland residents, to use the Mon-e System in order to originate and administer those loans.

Particulars

(a) CCPL was permitted, pursuant to Exclusive Dealing Notification N70435 to the Australian Competition and Consumer Commission dated 6 October 2005, to require that existing franchisees except in South Australia and the Northern Territory, who wished to offer loans styled as cash advances, must use the software and system offered by Mon-e to do so.

(b) From at least October 2007 to 30 June 2009, the software and system that had been created by Safrock Finance Group Pty Ltd for originating and administering loans styled as personal loans in Cash Converters branded stores was used to do so in all states and territories other than South Australia and the Northern Territory. On 23 October 2007 CC International released its 2007 annual report which stated on p12:

Safrock provides the software and funding to allow the Australian franchise network to offer secured and unsecured personal loans in the range of \$1,000 to \$10,000.

(c) On 1 July 2009, the software and system offered by Mon-e for originating loans styled as cash advances was fully integrated with the software and system that had been created by Safrock Finance Group Pty Ltd that was used for originating and administering loans styled as personal loans.

(d) CCPL was permitted, pursuant to an Exclusive Dealing Notification to the Australian Competition and Consumer Commission dated 30 July 2012, to require:

(i) all existing franchisees in Australia who wished to offer loans styled as cash advances, to also offer loans styled as personal loans with CC Personal Finance as credit provider, and to use the software and system offered by Mon-e to do so;

(ii) all new franchisees to offer cash advances and loans styled as personal loans with CC Personal Finance as credit provider, and to use the software and system offered by Mon-e to do so.

(e) As franchisor, CCPL was in a position to compel its franchisees and persons who might contract to those franchisees to adopt uniform procedures and systems for the origination of unsecured loans in any Cash Converters franchised store in Queensland, pursuant to its franchise agreement:

- (i) Cash Converters Finance Corporation Ltd's prospectus dated 31 January 2008 included a 2008 pro-forma CCPL franchise agreement that states at p32 in the Schedule to the agreement:

14.2 The Franchisor may require the Franchisee to do the following and in that event, the Franchisee shall take all steps necessary to give effect to the Franchisor's requirement (including the entering into of agreements with the relevant service providers or principals): ...

(c) offer personal loans using the Safrock Finance lending facility applicable in the State...

14.3 The Franchisee may not use any system (including software or any other method of doing business or of marketing products or services) for any operations within the franchised store or for the offering of any products or services referred to in clause 14.2 unless such system has been approved by the Franchisor in writing.

- (ii) the 2 February 2009 Cash Converters Finance Corporation Ltd prospectus included a 2009 pro-forma CCPL franchise agreement that states at p32 in the Schedule to the agreement, with respect to, amongst other things, the provision of personal loans:

The Franchisee may perform these obligations itself, or with the consent of the Franchisor, the Franchisee may arrange for a company under its control to perform these obligations...

D. LOANS TO THE APPLICANT

D1. First Lynch Loan

15. On 26 August 2010 Mr Lynch signed a document entitled 'Appointment of Broker' (**First Lynch Appointment of Broker**) with Bak seeking a loan in the net amount of \$600.
16. The First Lynch Appointment of Broker signed by Mr Lynch had terms which included:
- (a) that he had requested Bak to recommend to Safrock to lend him \$600;
 - (b) that Bak acted exclusively for Safrock and did not seek to obtain credit from any other credit providers;
 - (c) that he would pay Bak a 'Broker's Fee' of \$210, which was 35% of the proceeds of the loan (excluding, for the purposes of that calculation, the brokerage fee) (**First Lynch Brokerage Fee**).

Particulars

As at 26 August 2010, Bak traded under the name 'Cash Converters Goodna'.

17. On the same day that Mr Lynch signed the First Lynch Appointment of Broker, he also signed another document entitled 'Contract – Part 1 Schedule' in which Safrock was described as 'the Lender' (**First Lynch Contract Form**) and which had terms that included:
- (a) an annual percentage rate of 48% payable upon the 'Amount of credit' defined in the First Lynch Contract Form; and

(b) the payment of the First Lynch Brokerage Fee to Bak from the monies advanced.

18. On or about 27 August 2010:

(a) Mr Lynch obtained an amount representing the 'Amount of credit' defined in the First Lynch Contract Form (less the amount referred to in (b) below); and

(b) the amount of the First Lynch Brokerage Fee was remitted directly by Safrock to Bak from the loan monies otherwise directly advanced to Mr Lynch.

Particulars

(a) Mr Lynch received the amount of \$600 by direct deposit into his bank account on 27 August 2010.

(b) The 'Amount of credit' defined in the First Lynch Contract Form was \$810.

(c) The amount of the First Lynch Brokerage Fee was \$210. The applicant does not know how this amount was remitted by Safrock to Bak.

(d) Further particulars will be provided following discovery and the issue of subpoenas and notices to produce.

D2. Second Lynch Loan

19. On 1 June 2012 Mr Lynch signed a document entitled 'Appointment of Broker' (**Second Lynch Appointment of Broker**) with Cash Converters Inala seeking a loan in the net amount of \$600.

20. The Second Lynch Appointment of Broker signed by Mr Lynch had terms which included:

(a) that he had requested Cash Converters Inala to recommend to CC Personal Finance to lend him \$600;

(b) that Cash Converters Inala acted exclusively for CC Personal Finance and did not seek to obtain credit from any other credit providers;

(c) that he would pay Cash Converters Inala a 'Broker's Fee' of \$210 which was 35% of the proceeds of the loan (excluding, for the purposes of that calculation, the brokerage fee) (**Second Lynch Brokerage Fee**).

21. On the same day that Mr Lynch signed the Second Lynch Appointment of Broker, Mr Lynch signed a document entitled 'Quote for Credit Assistance' by which Cash Converters Inala offered to provide credit assistance to him on the following terms (**Second Lynch Loan Quote**):

(a) that the maximum amount of credit would be \$810;

(b) that the term of the credit would be 6 months;

- (c) that the maximum annual percentage rate of interest applicable to the credit contract would be 48%;
- (d) that Mr Lynch would pay to Cash Converters Inala as broker, a broker's fee of no more than \$210.

Particulars

Quote for Credit Assistance signed by Mr Lynch and dated 1 June 2012.

22. Further, on the same day Mr Lynch also signed another document entitled 'Contract – Part 1 Schedule' in which CC Personal Finance was described as 'the Lender' (**Second Lynch Contract Form**) and which had terms that included:
- (a) an annual percentage rate of 48%;
 - (b) the payment of the Second Lynch Brokerage Fee to Cash Converters Inala from the monies advanced; and
 - (c) that \$121.50 of the Second Lynch Brokerage Fee would be payable to the franchisor, CCPL, as a licence fee.

- 22A. On a date which Mr Lynch cannot presently particularise, the Mon-e System generated a 'Credit Proposal' in respect of the Second Lynch Credit Contract (as defined in paragraph 37(b)) which, among other things:
- (a) identified the 'Licensee' as 'Cash Converters Inala';
 - (b) identified the 'Credit Provider' as CC Personal Finance;
 - (c) identified the 'Consumer' as Mr Lynch;
 - (d) stated that the 'total amount of fees and charges taken from the credit' would be \$210.00 and the 'method' of calculating these fees and charges had been '35% of the net credit amount';

Particulars

Paragraph 20(d)(vii) of the respondents' defence filed on 19 October 2015 and the documents provided by the respondents as being referred to in that defence.

- 22B. Cash Converters Inala and CC Personal Finance intended that the Credit Proposal be provided to Mr Lynch at the same time that he signed the Second Lynch Appointment of Broker.

Particulars

- (a) Paragraph 20(d)(vii) of the respondents' defence filed on 19 October 2015.
- (b) CC International's Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II' dated August 2010 at pages 6 and 10 which stated the recovery of 35% of the principal loaned in Queensland and certain other states by means of various fees and charges.

- (c) CC International's Annual Report for the year ended 30 June 2008 at page 10 which stated in relation to 'cash advances' given through the Cash Converters franchise network in Australia that the fee charged for providing the advance was 35% of the principal advanced which compensated the franchisee/lender for the high risk nature of the loan.
- (d) The 16 September 2009 KPMG 'Independent expert report & Financial services guide' on CC International, at pages 22 and 23 which stated the recovery of 35% of the amount loaned by means of 'charges'. The report was published to shareholders as an annexure to a Notice of General Meeting dated 18 September 2009.

23. On or about 6 June 2012:

- (a) Mr Lynch obtained an amount representing the 'Amount of credit' defined in the Second Lynch Contract Form (less the amounts referred to in (b) and (c) below);
- (b) the amount of the Second Lynch Brokerage Fee (less \$121.50) was remitted directly by CC Personal Finance to Cash Converters Inala from the loan monies otherwise directly advanced to Mr Lynch; and
- (c) CC Personal Finance apparently remitted to CCPL \$121.50.

Particulars

- (a) Mr Lynch received the amount of \$600 by direct deposit into his bank account on 6 June 2012.
- (b) The 'Amount of credit' defined in the Second Lynch Contract Form was \$810.
- (c) The amount of the Second Lynch Brokerage Fee was \$210.
- (d) The applicant does not know how the amount of \$121.50 was remitted by CC Personal Finance to CCPL or how the remainder of the Second Lynch Brokerage Fee was remitted to Cash Converters Inala.
- (e) Further particulars will be provided following discovery and the issue of subpoenas and notices to produce.

D3. Third Lynch Loan

- 24. On 27 October 2012 Mr Lynch signed a document entitled 'Appointment of Broker' (**Third Lynch Appointment of Broker**) with 'Cash Converters Goodna' seeking a loan in the net amount of \$600.
- 25. The Third Lynch Appointment of Broker signed by Mr Lynch had terms which included:
 - (a) that he had requested 'Cash Converters Goodna' to recommend to CC Personal Finance to lend him \$600;
 - (b) that 'Cash Converters Goodna' acted exclusively for CC Personal Finance and did not seek to obtain credit from any other credit providers;

(c) that he would pay 'Cash Converters Goodna' a 'Broker's Fee' of \$210, which was 35% of the proceeds of the loan (excluding, for the purposes of that calculation, the brokerage fee) (**Third Lynch Brokerage Fee**).

26. On the same day that Mr Lynch signed the Third Lynch Appointment of Broker, he also signed a document entitled 'Quote for Credit Assistance' by which CC Personal Finance offered to provide credit assistance to him on the following terms (**Third Lynch Loan Quote**):

- (a) that the maximum amount of credit would be \$810;
- (b) that the maximum term of the credit would be 6 months;
- (c) that Mr Lynch would pay to CC Personal Finance as broker, a broker's fee of no more than \$210.

Particulars

The Quote for Credit Assistance signed by Mr Lynch on 27 October 2012 referred to 'Cash Converters Personal Finance' as 'broker'.

27. On the same day that Mr Lynch signed the Third Lynch Appointment of Broker, he also signed another document entitled 'Loan Contract' in which CC Personal Finance was described as the 'Lender' (**Third Lynch Contract Form**) and which had terms that included:

- (a) an annual percentage rate of 48%;
- (b) the payment of the Third Lynch Brokerage Fee to 'Cash Converters Goodna' from the monies advanced; and
- (c) that \$121.50 of the Third Lynch Brokerage Fee would be payable to the franchisor, CCPL, as a licence fee.

27A. On a date which Mr Lynch cannot presently particularise, the Mon-e System generated a 'Credit Proposal' in respect of the Third Lynch Credit Contract (as defined in paragraph 45(b)) which, among other things:

- (a) identified the 'Licensee' as 'Cash Converters Goodna';
- (b) identified the 'Credit Provider' as CC Personal Finance;
- (c) identified the 'Consumer' as Mr Lynch;
- (d) stated that the 'total amount of fees and charges taken from the credit' would be \$210.00 and the 'method' of calculating these fees and charges had been '35% of the net credit amount';

Particulars

Paragraph 25(d)(vii) of the respondents' defence filed on 19 October 2015 and the documents provided by the respondents as being referred to in that defence.

27B. Cash Converters Goodna and CC Personal Finance intended that the Credit Proposal be provided to Mr Lynch at the same time that he signed the Third Lynch Appointment of Broker.

Particulars

- (a) Paragraph 25(d)(vii) of the respondents' defence filed on 19 October 2015.
- (b) The applicant repeats particulars (b) to (d) to paragraph 22B above.

28. On or about 29 October 2012:

- (a) Mr Lynch obtained an amount representing the 'Amount of credit' defined in the Third Lynch Contract Form (less the amounts referred to in (b) and (c) below);
- (b) the amount of the Third Lynch Brokerage Fee (less \$121.50) was remitted directly by CC Personal Finance to one of:
 - (i) itself;
 - (ii) Bak; or
 - (iii) CC Cash Advance;
 from the loan monies otherwise directly advanced to Mr Lynch; and
- (c) CC Personal Finance apparently remitted to CCPL \$121.50.

Particulars

- (a) Mr Lynch received the amount of \$399.94 by direct deposit into his bank account on 29 October 2012. CC Personal Finance transferred to itself an amount of \$200.06 on 29 October 2012 in final repayment of the Second Lynch Loan.
- (b) The 'Amount of credit' defined in the Third Lynch Contract Form was \$810.
- (c) The amount of the Third Lynch Brokerage Fee was \$210.
- (d) The applicant does not know which of CC Personal Finance, Bak or CC Cash Advance was remitted the amount of the Third Lynch Brokerage Fee (less \$121.50), or how this amount was remitted.
 - (i) 'Cash Converters Personal Finance' was referred to as the 'broker' on the Quote for Providing Credit Assistance dated 27 October 2012 signed by Mr Lynch, the Broker's Preliminary Assessment of Unsuitability dated 27 October 2012 in relation to the Third Lynch Loan, and a document titled 'Credit Assistance Consumer Acknowledgement' dated 27 October 2012 signed by Mr Lynch acknowledging receipt from CC Personal Finance of a 'Quote for Providing Credit Assistance', 'Cash Converters Personal Finance Credit Guide' and Cash Converters Personal Finance Credit Proposal'.
 - (ii) 'Cash Converters Goodna' was referred to as the 'broker' on the Appointment of Broker and the Third Lynch Contract Form.
 - (iii) A document entitled 'Credit Guide for Bak Property Pty Ltd' was apparently provided by CC Personal Finance to Mr Lynch with respect to the Third Lynch Loan and that document listed Australian Credit Licence Number 391415. Bak

Property Pty Ltd held Australian Credit Licence Number 391475 from 7 January 2011.

- (iv) CC Cash Advance held Australian Credit Licence Number 391415 from 2 February 2011, which licence number was stated on the Broker's Preliminary Assessment of Unsuitability dated 27 October 2012 in relation to the Third Lynch Loan.
- (e) The applicant does not know how the amount of \$121.50 was remitted by CC Personal Finance to CCPL.
- (f) Further particulars will be provided following discovery and the issue of subpoenas and notices to produce.

E. BREACH OF THE QLD CODE BY SAFROCK WITH REGARD TO THE APPLICANT

29. By reason of the matters pleaded in paragraphs 4 to 18 and/or 35(a) and/or 35(d)(iv), the First Lynch Appointment of Broker and the First Lynch Contract Form:

- (a) were, within the meaning of 'contract' set out in Schedule 1 of the Qld Code, either:
 - (i) a contract; or
 - (ii) a series or combination of contracts or contracts and arrangements;
 and
- (b) formed part of the 'credit contract' between Mr Lynch and Safrock within the meaning of section 5 of the Qld Code (**First Lynch Credit Contract**).

30. The provision in the First Lynch Credit Contract for the payment of the First Lynch Brokerage Fee is void as:

- (a) the First Lynch Brokerage Fee is to be included in calculating the annual percentage rate under the First Lynch Credit Contract pursuant to section 32(4) of the Qld Act; and
- (b) by its inclusion in the First Lynch Credit Contract, it caused the annual percentage rate under that contract to exceed 48% per annum in contravention of section 32(1) of the Qld Act.

Particulars

The annual percentage interest rate calculated on a daily basis if the First Lynch Brokerage Fee is included is 175.10%. The applicant refers to paragraph 9 of the expert report of Andrey Vasnev dated 25 July 2017.

31. Further, the provision in the First Lynch Credit Contract for the payment of the First Lynch Brokerage Fee and interest on that fee imposed a monetary liability on Mr Lynch in respect of a fee or charge and interest charge exceeding the amount that may be charged consistently with the Qld Code in contravention of section 21(1) of the Qld Code.

Particulars

The applicant refers to and repeats the particulars to paragraph 30 above. Calculations were performed on a daily basis where:

- (a) the repayment schedule and amounts repaid were those on the Contract Form;
 - (b) the date of provision of credit is that on the loan statement provided to the applicant by Safrock;
 - (c) the first repayment date is that on the loan statement provided to the applicant by Safrock.
32. Further, as the First Lynch Brokerage Fee and interest charge on that fee were imposed at the time the First Lynch Credit Contract was entered into, the First Lynch Credit Contract has contravened a key requirement of the Qld Code pursuant to section 100(1)(i) of the Qld Code.
33. In the circumstances, Mr Lynch seeks:
- (a) the recovery of the First Lynch Brokerage Fee and interest charged or paid on that fee pursuant to section 21(2) of the Qld Code and/or section 32(3) of the Qld Act;
 - (b) a declaration that Safrock has contravened a key requirement of the Qld Code in relation to the First Lynch Credit Contract pursuant to section 102(1) of the Qld Code;
 - (c) an order requiring Safrock to pay him an amount as civil penalty pursuant to section 102(2) of the Qld Code.

F. CONTRAVENTION OF THE ASIC ACT BY SAFROCK WITH REGARD TO THE APPLICANT

34. Further and in the alternative to the claim of Mr Lynch pleaded in section E, the First Lynch Credit Contract was a financial service within the meaning of section 12BAB of the ASIC Act.

Particulars

The First Lynch Credit Contract was a credit facility as defined in s 12BAA(7)(k) and Reg 2B(1)(a) of the ASIC Regulations 2001 because it involved the provision of credit to Mr Lynch. Accordingly, the First Lynch Credit Contract was a financial product that the credit provider issued and dealt in, within the meaning of ss 12BAB(1)(b) and 12BAB(7) of the ASIC Act.

35. By entering into an arrangement which included the payment of the First Lynch Brokerage Fee, and interest upon that fee, Safrock engaged in conduct that was, in all the circumstances, unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:
- (a) the First Lynch Brokerage Fee was a mechanism designed to ensure that the lender received a return greater than the statutory cap provided for under the Qld Act (and the earlier Qld Regs)

Particulars

- (a) On or about 23 October 2008, after the Office of Fair Trading, Queensland (**OFT**), commenced regulatory action in relation to purported pawn broking arrangements styled as 'Advantage Loan' products offered within Cash Converters branded stores in Queensland, Ian Day (General Manager) and Peter Cumins (Managing Director) of CC International informed Joe Camilleri of OFT to the effect that Cash Converters in Queensland intended to 'move to a finance broking model'.
 - (b) On or about 28 October 2008, Mr Cumins further informed Stephen L'Barrow of OFT to the effect that he would be telling franchisees that 'they are in big trouble' and Cash Converters would be converting to a finance broking model as soon as possible.
 - (c) The 16 September 2009 KPMG 'Independent expert report & Financial services guide' on CC International, commissioned by CC International and based upon publicly available information, internal documents of CC International and discussions with CC International directors and management, at page 23 stated that:
 - (i) 'In Queensland, New South Wales (NSW) and the Australian Capital Territory (ACT) the relevant State Governments have introduced a 48 percent per annum cap on all consumer credit loans, inclusive of fees and charges (refer to Appendix 4 for further details). In these territories, store franchisees have been licensed by Cash Converters to act as finance brokers for various lenders and MPL [Mon-e] provides a software support system to the lenders and the franchisees. The franchisees receive brokerage fees from borrowers.'
 - (ii) 'Safrock derives income from the interest it charges on loans, which varies from State to State due to different legislative requirements, and an establishment fee for each new loan granted and each existing loan refinanced. In Queensland, NSW and the ACT a brokerage arrangement/system operates, which is similar to the one managed by MPL [Mon-e], except with Safrock the lender is Cash Converters (and not a related party set up by the franchisee/broker). Costs consist of commissions paid to franchisees for each successful or refinanced loan and commissions paid to an external entity responsible for promoting the loans and providing in-store staff training.'
 - (d) On 4 September 2011, Mr Cumins informed the Courier Mail to the effect that Cash Converters gets around the statutory cap in Qld by operating a brokerage lending model and stated 'Our franchisee or store manager is the broker and charges a fee while another company, which does not legally have to be at 'arms-length' is the lender and also charges a fee.'
 - (e) CC International stated on or about 14 October 2011 in a submission to the Parliamentary Committee on Corporations and Financial Services at page 7 that 'While it is argued that industry survives in these states [QLD and NSW], the reality is that all short term lenders in these states have in place mechanisms to ensure they receive a return greater than the (less than) 4% per month, which the 48% annualised cap imposes on them. They resort to these alternative mechanisms, most commonly a brokerage fee, in order to return a profit. The implication that consumers are better off in QLD and NSW, and are borrowing at much lower effective rates, is just not true. No-one pays less for a *Cash Advance* in QLD or NSW than in other states.'
 - (f) Further particulars will be provided following discovery and the issue of subpoenas and notices to produce.
- (b) the services purported to be provided by Bak to Mr Lynch in acting as a 'broker' were illusory in that:
- (i) the determination of Mr Lynch's credit worthiness and whether his credit application would be approved was an automated process undertaken by the Mon-e System and/or a process undertaken by Safrock and not by Bak; and/or

- (ii) there was no relevant 'recommendation' made by Bak to Safrock;
- (iii) the brokerage services provided by Bak in respect of Mr Lynch's loan were provided to, and paid for by, Safrock.

Particulars

- (a) Email from Guy Noakes, Principal of Deloitte, to Ralph Groom, dated 14 October 2008 [CCPQ.001.075.3456] in which Mr Noakes stated in respect of Cash Advances that the fee charged by the broker would be subject to Goods and Services Tax (GST) on the basis that the broker will be making a taxable supply of brokerage services and would be liable to pay the applicable GST to the ATO but that if the lender company received the brokerage services there was the potential for the lender company to claim as a credit 75% of the GST included in the cost of the brokerage services.
 - (b) "Recipient Generated Tax Invoice" from Cash Converters Browns Plains to Safrock dated 30 April 2010 [CCPQ.001.038.0271] for "Brokerage for April 2010 (Inclusive of GST)" in the amount of \$5,320.00 which shows that Cash Converters Browns Plains provided brokerage services to Safrock for which it charged brokerage fees during April 2010 in respect of credit contracts entered into by consumers with Safrock.
 - (c) "Summary of intercompany transactions.xlsx" provided by Janice Kwok (the then "Financial Controller" of CCPL) to Ralph Groom on 29 August 2011 [CCPQ.001.082.8458] which shows that Safrock recorded the payment to CC Cash Advance of the brokerage fees as an "expense".
 - (d) Legal advice from Grant Donaldson SC to CCPL dated 14 May 2012 [CCPQ.001.052.4160] in which Mr Donaldson describes the transaction between Safrock and one its brokers as being one in which the broker "could recover [the brokerage fee] in an action against Safrock" (at paragraph 42).
 - (e) Further particulars to be provided after interrogatories or discovery.
- (c) at all material times, Mr Lynch and many or most of the consumers who obtained loans from Safrock were vulnerable;

Particulars

- (a) Mr Lynch was vulnerable in so far as his fortnightly income at the time of the First Lynch Credit Contract was a benefit of \$618.70 paid by Centrelink.
- (b) The Commonwealth Department of Treasury reported in June 2011 that the available data for this type of consumer suggested that:
 - (i) approximately 40 to 49% had an annual income of less than \$24,000;
 - (ii) between 50 to 74% had an annual income of less than \$36,000;
 - (iii) 50% were partially employed or unemployed;
 - (iv) 46 to 50% were in receipt of government benefits; and
 - (v) possibly 25% had incomes so low that they fell below the Henderson Poverty Line.
- (c) Cash Converters' 'Response to the Commonwealth Government Green Paper on Consumer Credit Reform – Phase II' dated August 2010 [CCPQ.002.029.2287] reported at pages 6 to 7 that, based on data sourced from CC Personal Finance transactions from the 2009-2010 financial year:
 - (i) most consumers who access personal loans have net incomes of less than \$36,000 per annum, being 76.22% of those accessing personal loans; and
 - (ii) 43.93% of personal loan customers were receiving government benefits.

Further particulars will be provided following discovery and the issue of subpoenas and notices to produce.

further or in the alternative to (a) to (c) above:

- (d) the bargaining position of Mr Lynch and Safrock was grossly unequal in that:
- (i) Mr Lynch had no bargaining power to bargain for any change to the terms and conditions of the First Lynch Credit Contract;
 - (ii) Mr Lynch was in a vulnerable position in that he had been in receipt of the Disability Support Pension since 18 September 1997, and was in need of the service constituted by the First Lynch Credit Contract;
 - (iii) Safrock was a wholly owned subsidiary of CC International which is a publicly listed company with a market capitalisation of approximately:
 - A. \$298M for the period 2010 to 2011;
 - B. \$290.5M for the period 2011 to 2012; and
 - C. \$529.8M for the period 2012 - 2013;
 - (iv) Safrock was only willing to provide a loan styled as a 'personal loan' to Mr Lynch if he executed the First Lynch Appointment of Broker and was not willing to negotiate that requirement;

Particulars

- (a) The documents provided for execution by the applicant in relation to the First Lynch Credit Contract included:
 - (i) the 'Contract – Part 1 Schedule' that included a statement that a brokerage fee would be paid to 'Bak Property Pty Ltd t/a Cash Converters Goodna' as directed by the borrower; and
 - (ii) the 'Appointment of Broker' forms.
- (b) The applicant repeats the particulars (a) to (e) to paragraph 35(a) above.
- (e) the requirement to use a 'broker' was not reasonably necessary for the protection of the legitimate interests of Safrock in that it was able itself to provide any necessary assessment of the credit-worthiness of Mr Lynch;
- (f) Safrock also used unfair tactics in its dealings with Mr Lynch in that Safrock knew or ought to have known that the 'brokerage' services the subject of the First Lynch Appointment of Broker were of no or negligible value to Mr Lynch in that:
 - (i) the 'broker' acted exclusively for the lender;
 - (ii) any determination of Mr Lynch's credit worthiness was a largely automated process undertaken by use of the Mon-e System;

- (iii) there was no relevant 'recommendation' made by the 'broker' to Safrock;
- (iv) the 'broker' provided no service and performed no function that could not be provided or performed by Safrock itself;
- (v) the brokerage services provided by Bak in respect of Mr Lynch's loan were provided to, and paid for by, Safrock.

Particulars

The applicant repeats the particulars (a) to (e) to paragraph 35(b)(iii) above.

- (g) alternatively to (f), Safrock used unfair tactics in its dealings with Mr Lynch in that Safrock knew or ought to have known that the amount of the First Lynch Brokerage Fee, being approximately 35% of the amount advanced, was not reasonably related to the value of the service allegedly being provided by the 'broker' to Mr Lynch;

Particulars

The applicant repeats paragraph 35(f)(i) to (v) above.

The applicant repeats the particulars (a) to (e) to paragraph 35(b)(iii) above.

- (h) in relation to the First Lynch Appointment of Broker:

- (i) Bak contravened section 140(1) of the National Code;

Particulars

(a) The applicant refers to and repeats paragraph 16(b) above.

(b) At all material times from 1 July 2010, section 140(1) of the National Code provided that a supplier must not require a purchaser of goods and services to apply for, or obtain, credit from a particular credit provider.

- (ii) Safrock knew that the express written advice from Mr Simon Couper QC was to the effect that there was a "strong argument" that the type of brokerage agreement which comprised the First Lynch Appointment of Broker was likely to contravene section 130 of the Qld Code which was in the same terms in section 140(1) of the National Code;

Particulars

(a) At all material times prior to 1 July 2010, section 130 of the Qld Code had provided that a supplier must not require a purchaser of goods and services to apply for, or obtain, credit from a particular credit provider.

(b) Legal advice given to Cash Converters Pty Ltd dated 2 December 2008 by Simon Couper QC for the purpose of advising on the legality of the "loan brokerage model" stated that:

The purpose of s. 130 is to prevent anti-competitive arrangements by which a supplier of goods or services is tied to one credit provider. Here the brokerage service is tied to one credit provider. The credit provider will pay for the service. The arrangement falls

literally within the prohibition under the section. There is no apparent reason to read down the words of the section.

There is a strong argument that the brokerage agreement has the following elements: (a) the brokerage fee is to be paid by the credit provider from the advance; (b) if the customer wishes to use the brokerage services, the customer must apply to a particular credit provider for credit. That is required by the broker as part of the agreement.

It follows that it is likely that every such brokerage agreement will constitute a contravention of s. 130 of the Consumer Credit Code, attracting in each case a maximum penalty of 100 penalty units. That is, in my view, there is a strong argument that every brokerage agreement constitutes an offence under the Code.

- (c) The legal advice referred to at particular (b) above was given to Mr Michael Cooke, Group Legal Counsel, CC International (**Mr Cooke**) on 2 December 2008 as an attachment to an email from Mr Paul Venus, Partner of Holding Redlich, solicitors to Mr Cooke received at 10.59am on 2 December 2008 [CCPQ.001.041.3354], [CCPQ.001.041.3355].
 - (d) A further legal advice given to Cash Converters Pty Ltd by Simon Couper QC also dated 2 December 2008 stated that “Given that the model functions upon the basis that the loan will be made by the associated credit provider, the problem will remain unless the model is changed.”
 - (e) The further legal advice referred to at particular (d) above was given to Mr Cooke on 2 December 2008 as an attachment to an email from Mr Paul Venus of Holding Redlich, solicitors to Mr Cooke received at 4.14 pm on 2 December 2008 [CCPQ.001.041.3348], [CCPQ.001.041.3349].
 - (f) A third legal advice given to Cash Converters Pty Ltd by Simon Couper QC dated 5 December 2008 for the purpose of advising on whether the broker does not “require” the consumer to obtain credit from a particular provider stated that “...I adhere to the view expressed in my advice. I think that there is a substantial risk that a court would find that the brokerage system involves a requirement by the broker that the broker's services be paid for by finance from a particular credit provider.”
 - (g) The third legal advice referred to at particular (f) above was given to Mr Cooke on 5 December 2008 as an attachment to an email from Mr Paul Venus of Holding Redlich, solicitors to Mr Cooke received at 3.55pm on 5 December 2008 [CCPQ.001.041.3524], [CCPQ.001.041.3525].
 - (h) The implications of Mr Couper QC’s advice in relation to personal loans was known by Mr Cooke at the time of receipt and he purported to make changes in light of that advice (admission in transcript of 18 May 2017 at T89.14-.40).
- (i) by virtue of the matters pleaded in paragraphs 29 to 31 above, the provision in each of the First Lynch Credit Contract requiring Mr Lynch to pay the First Lynch Brokerage Fee is void under section 32(2) of the Qld Act;
 - (j) Safrock knew or ought to have known that the extended definition of ‘contract’ in Schedule 1 to the Qld Code and used in ‘credit contract’ applied to the First Lynch Appointment of Broker, with the consequence that the provision of the First Lynch Credit Contract requiring Mr Lynch to pay the First Lynch Brokerage Fee was void under section 32(2) of the Qld Act;

Particulars

- (a) Safrock was a wholly owned subsidiary of CC International, which is a publicly listed company whose business was providing consumer finance.

- (b) The activity of consumer finance was highly regulated at both national and state levels. In Queensland it was regulated, among other things, by the Qld Code, Qld Regs and later the Qld Act.
 - (c) The extended meaning of ‘contract’ in the Qld Code as used in ‘credit contract’ and its application to related arrangements had been considered in 2008 in a manner adverse to Safrock and CC Personal Finance in this proceeding by the NSW Court of Appeal in *Bahadori v Permanent Mortgages Pty Ltd* (2008) 72 NSWLR 44; [2008] NSWCA 150.
 - (d) The extended meaning of ‘contract’ in the Qld Code and the decision in *Bahadori* (supra) were not addressed in any manner in the advices of Mr Couper QC, which were provided 6 months after the decision in *Bahadori*.
- (k) alternatively, Safrock had no belief or no reasonable belief that the provision for payment of the First Lynch Brokerage Fee complied with the statutory cap provided for under the Qld Act (and the earlier Qld Regs);

Particulars

- (a) The applicant repeats the particulars (a) to (e) to paragraph 35(a) above.
 - (b) The extended meaning of ‘contract’ in the Qld Code as used in ‘credit contract’ and its application to related arrangements had been considered in 2008 in a manner adverse to Safrock and CC Personal Finance in this proceeding by the NSW Court of Appeal in *Bahadori v Permanent Mortgages Pty Ltd* (2008) 72 NSWLR 44; [2008] NSWCA 150.
- (l) in causing or permitting the First Lynch Credit Contract to include provision for the payment of the First Lynch Brokerage Fee, Safrock did not act in good faith as its only objective in requiring payment of a brokerage fee was to avoid the operation of the statutory cap provided for under the Qld Act (and the earlier Qld Regs).

Particulars

The applicant repeats the particulars (a) to (e) to paragraph 35(a) above.

36. Mr Lynch suffered loss and damage by the contravening conduct of Safrock and claims compensation pursuant to section 12GF(1) [or section 12GM\(1\)](#) of the ASIC Act.

Particulars

Payment by Mr Lynch of the First Lynch Brokerage Fee and interest charged or paid on that fee.

G. BREACH OF THE QLD CODE BY CC PERSONAL FINANCE WITH REGARD TO THE APPLICANT AND THE SECOND LYNCH LOAN

37. By reason of the matters pleaded in paragraphs 3, 5 to 14 and 19 to 23, and/or 43(a) and/or 43(d)(iv), the Second Lynch Appointment of Broker, the Second Lynch Loan Quote and the Second Lynch Contract Form:
- (a) were respectively, within the meaning of ‘contract’ set out in Schedule 1 of the Qld Code, either:
 - (i) a contract; or

- (ii) a series or combination of contracts or contracts and arrangements;
 - and
 - (b) formed part of the 'credit contract' between Mr Lynch and CC Personal Finance within the meaning of section 5 of the Qld Code (**Second Lynch Credit Contract**).
38. The provision in the Second Lynch Credit Contract for the payment of the Second Lynch Brokerage Fee is void as:
- (a) the Second Lynch Brokerage Fee is to be included in calculating the annual percentage rate under the Second Lynch Credit Contract pursuant to section 32(4) of the Qld Act; and
 - (b) by its inclusion in the Second Lynch Credit Contract, it caused the annual percentage rate under the contract to exceed 48% per annum in contravention of section 32(1) of the Qld Act.

Particulars

The effective annual percentage interest rate calculated on a daily basis if the Second Lynch Brokerage Fee is included is 175.10%. The applicant refers to paragraph 9 of the expert report of Andrey Vasnev dated 25 July 2017.

39. Further, the provision in the Second Lynch Credit Contract for the payment of the Second Lynch Brokerage Fee and interest on that fee imposed a monetary liability on Mr Lynch in respect of a fee or charge and interest charge exceeding the amount that may be charged consistently with the Qld Code in contravention of section 21(1) of the Qld Code.

Particulars

The applicant refers to and repeats the particulars to paragraph 38 above. Calculations were performed on a daily basis where:

- (a) the repayment schedule and amounts repaid were those on the Contract Form;
 - (b) the date of provision of credit is that on the loan statement provided to the applicant by CC Personal Finance.
 - (c) the first repayment date is that on the loan statement provided to the applicant by CC Personal Finance.
40. Further, as the Second Lynch Brokerage Fee and interest on that fee were imposed at the time the Second Lynch Credit Contract was entered into, the Second Lynch Credit Contract has contravened a key requirement of the Qld Code pursuant to section 100(1)(i) of the Qld Code
41. In the circumstances, Mr Lynch seeks:
- (a) the recovery of the Second Lynch Brokerage Fee and interest charged or paid on that fee pursuant to section 21(2) of the Qld Code and/or section 32(3) of the Qld Act;

- (b) a declaration that CC Personal Finance has contravened a key requirement of the Qld Code in relation to the Second Lynch Credit Contract pursuant to section 102(1) of the Qld Code;
- (c) an order requiring CC Personal Finance to pay him an amount as civil penalty pursuant to section 102(2) of the Qld Code.

H. CONTRAVENTION OF THE ASIC ACT BY CC PERSONAL FINANCE WITH REGARD TO THE APPLICANT AND THE SECOND LYNCH LOAN

42. Further and in the alternative to the claim of Mr Lynch pleaded in section G, the Second Lynch Credit Contract was a financial service within the meaning of section 12BAB of the ASIC Act.

Particulars

The Second Lynch Credit Contract was a credit facility as defined in s 12BAA(7)(k) and Reg 2B(1)(a) of the ASIC Regulations 2001 because it involved the provision of credit to Mr Lynch. Accordingly, the Second Lynch Credit Contract was a financial product that the credit provider issued and dealt in, within the meaning of ss 12BAB(1)(b) and 12BAB(7) of the ASIC Act.

43. By entering into an arrangement which included the payment of the Second Lynch Brokerage Fee, CC Personal Finance engaged in conduct that was, in all the circumstances, unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:

- (a) the Second Lynch Brokerage Fee was a mechanism designed to ensure that the lender received a return greater than the statutory cap provided for under the Qld Act (and the earlier Qld Regs);

Particulars

The applicant refers to and repeats the particulars to paragraph 35(a).

- (b) the services purported to be provided by Cash Converters Inala in acting as a ‘broker’ were illusory in that:
 - (i) the determination of Mr Lynch’s credit worthiness and whether his credit application would be approved was an automated process undertaken by the Mon-e System and/or a process undertaken by CC Personal Finance and not Cash Converters Inala; and/or
 - (ii) there was no relevant ‘recommendation’ made by Cash Converters Inala to CC Personal Finance;
 - (iii) the brokerage services provided by Cash Converters Inala in respect of Mr Lynch’s loan were provided to, and paid for by, CC Personal Finance.

Particulars

The applicant repeats the particulars (a) to (e) to paragraph 35(b)(iii) above.

- (c) at all material times, Mr Lynch and many or most of the consumers who obtained loans from CC Personal Finance were vulnerable;

Particulars

- (a) Mr Lynch was vulnerable in so far as his fortnightly income at the time of the Second Lynch Credit Contract was as follows:
- (i) for the fortnight commencing 16 April 2012: a benefit of \$603.32 from Centrelink, plus \$504.75 from casual work at Wildbreads, totalling \$1108.07;
 - (ii) for the fortnight commencing 30 April 2012: a benefit of \$633.94 from Centrelink, plus \$446.51 from casual work at Wildbreads, totalling \$1080.45;
 - (iii) for the fortnight commencing 14 May 2012: a benefit of \$699.85 from Centrelink, plus \$314.69 from casual work at Wildbreads, totalling \$1,014.54;
 - (iv) for the fortnight commencing 28 May 2012: a benefit of \$982.20 from Centrelink;
 - (v) for the fortnight commencing 11 June 2012: a benefit of \$732.20 from Centrelink, plus \$97.81 from casual work at Wildbreads, totalling \$830.01.
- (b) The applicant refers to and repeats particular (b) and (c) to paragraph 35(c).

further or in the alternative to (a) to (c) above:

- (d) the bargaining position of Mr Lynch and CC Personal Finance was grossly unequal in that:
- (i) Mr Lynch had no bargaining power to bargain for any change to the terms and conditions of the Second Lynch Credit Contract;
 - (ii) Mr Lynch was in a vulnerable position in that he had been in receipt of the Disability Support Pension since 18 September 1997, and was in need of the service constituted by the Second Lynch Credit Contract;
 - (iii) CC Personal Finance was a wholly owned subsidiary of CC International which is a publicly listed company with a market capitalisation of approximately:
 - A. \$298M for the period 2010 to 2011;
 - B. \$290.5M for the period 2011 to 2012; and
 - C. \$529.8M for the period 2012 to 2013;
 - (iv) CC Personal Finance was only willing to provide a loan styled as a 'personal loan' to Mr Lynch if he executed the Second Lynch Appointment of Broker and was not willing to negotiate that requirement;

Particulars

- (a) The documents provided for execution by the applicant in relation to the Second Lynch Credit Contract included:
 - (i) the 'Contract – Part 1 Schedule' that included a statement that a brokerage fee would be paid to 'Cash Converters Inala' as directed by the borrower; and
 - (ii) the 'Appointment of Broker' forms.
- (b) The applicant repeats the particulars (a) to (e) to paragraph 35(a) above.
- (e) the requirement to use a 'broker' was not reasonably necessary for the protection of the legitimate interests of CC Personal Finance in that it was able itself to provide any necessary assessment of the credit-worthiness of Mr Lynch;
- (f) CC Personal Finance also used unfair tactics in its dealings with Mr Lynch in that CC Personal Finance knew or ought to have known that the 'brokerage' services the subject of the Second Lynch Appointment of Broker were of no or negligible value to Mr Lynch in that:
 - (i) the 'broker' acted exclusively for the lender;
 - (ii) any determination of Mr Lynch's credit worthiness was a largely automated process undertaken by use of the Mon-e System;
 - (iii) there was no relevant 'recommendation' made by the 'broker' to CC Personal Finance;
 - (iv) the 'broker' provided no service and performed no function that could not be provided or performed by CC Personal Finance itself;
 - (v) the brokerage services provided by Cash Converters Inala in respect of Mr Lynch's loan were provided to, and paid for by, CC Personal Finance;

Particulars

The applicant repeats the particulars (a) to (e) to paragraph 35(b)(iii) above.

- (g) alternatively to (f), CC Personal Finance used unfair tactics in its dealings with Mr Lynch in that CC Personal Finance knew or ought to have known that the amount of the Second Lynch Brokerage Fee, being approximately 35% of the amount advanced, was not reasonably related to the value of the service allegedly being provided by the 'broker' to Mr Lynch;

Particulars

The applicant repeats paragraph 43(f)(i) to (v) above.

The applicant repeats the particulars (a) to (e) to paragraph 35(b)(iii) above.

(h) in relation to the Second Lynch Appointment of Broker:

(i) Cash Converters Inala contravened section 140(1) of the National Code;

Particulars

- (a) The applicant refers to and repeats paragraph 20(b) above.
- (b) At all material times from 1 July 2010, section 140(1) of the National Code provided that a supplier must not require a purchaser of goods and services to apply for, or obtain, credit from a particular credit provider.

(ii) CC Personal Finance knew that the express written advice from Mr Simon Couper QC was to the effect that there was a “strong argument” that the type of brokerage agreement which comprised the Second Lynch Appointment of Broker was likely to contravene section 130 of the Qld Code which was in the same terms in section 140(1) of the National Code;

Particulars

- (a) At all material times prior to 1 July 2010, section 130 of the Qld Code had provided that a supplier must not require a purchaser of goods and services to apply for, or obtain, credit from a particular credit provider.
- (b) Legal advice given to Cash Converters Pty Ltd dated 2 December 2008 by Simon Couper QC for the purpose of advising on the legality of the “loan brokerage model” stated that:

The purpose of s. 130 is to prevent anti-competitive arrangements by which a supplier of goods or services is tied to one credit provider. Here the brokerage service is tied to one credit provider. The credit provider will pay for the service. The arrangement falls literally within the prohibition under the section. There is no apparent reason to read down the words of the section.

There is a strong argument that the brokerage agreement has the following elements: (a) the brokerage fee is to be paid by the credit provider from the advance; (b) if the customer wishes to use the brokerage services, the customer must apply to a particular credit provider for credit. That is required by the broker as part of the agreement.

It follows that it is likely that every such brokerage agreement will constitute a contravention of s. 130 of the Consumer Credit Code, attracting in each case a maximum penalty of 100 penalty units. That is, in my view, there is a strong argument that every brokerage agreement constitutes an offence under the Code.

- (c) The legal advice referred to at particular (b) above was given to Mr Michael Cooke, Group Legal Counsel, CC International (**Mr Cooke**) on 2 December 2008 as an attachment to an email from Mr Paul Venus, Partner of Holding Redlich, solicitors to Mr Cooke received at 10.59am on 2 December 2008 [CCPQ.001.041.3354], [CCPQ.001.041.3355].
- (d) A further legal advice given to Cash Converters Pty Ltd by Simon Couper QC also dated 2 December 2008 stated that “Given that the model functions upon the basis that the loan will be made by the associated credit provider, the problem will remain unless the model is changed.”
- (e) The further legal advice referred to at particular (d) above was given to Mr Cooke on 2 December 2008 as an attachment to an email from Mr Paul Venus of Holding Redlich, solicitors to Mr Cooke received at 4.14 pm on 2 December 2008 [CCPQ.001.041.3348], [CCPQ.001.041.3349].

- (f) A third legal advice given to Cash Converters Pty Ltd by Simon Couper QC dated 5 December 2008 for the purpose of advising on whether the broker does not “require” the consumer to obtain credit from a particular provider stated that “...I adhere to the view expressed in my advice. I think that there is a substantial risk that a court would find that the brokerage system involves a requirement by the broker that the broker's services be paid for by finance from a particular credit provider.”
 - (g) The third legal advice referred to at particular (f) above was given to Mr Cooke on 5 December 2008 as an attachment to an email from Mr Paul Venus of Holding Redlich, solicitors to Mr Cooke received at 3.55pm on 5 December 2008 [CCPQ.001.041.3524], [CCPQ.001.041.3525].
 - (h) The implications of Mr Couper QC’s advice in relation to personal loans was known by Mr Cooke at the time of receipt and he purported to make changes in light of that advice (admission in transcript of 18 May 2017 at T89.14-.40).
- (i) by virtue of the matters pleaded in paragraphs 37 to 39 above, the provision in each of the Second Lynch Credit Contract requiring Mr Lynch to pay the Second Lynch Brokerage Fee is void under section 32(2) of the Qld Act;
 - (j) CC_Personal Finance knew or ought to have known that the extended definition of ‘contract’ in Schedule 1 to the Qld Code and used in ‘credit contract’ applied to the Second Lynch Appointment of Broker, with the consequence that the provision of the Second Lynch Credit Contract requiring Mr Lynch to pay the Second Lynch Brokerage Fee was void under section 32(2) of the Qld Act;

Particulars

- (a) CC Personal Finance was a wholly owned subsidiary of CC International, which is a publicly listed company whose business was providing consumer finance.
 - (b) The activity of consumer finance was highly regulated at both national and state levels. In Queensland it was regulated, among other things, by the Qld Code, Qld Regs and later the Qld Act.
 - (c) The extended meaning of ‘contract’ in the Qld Code as used in ‘credit contract’ and its application to related arrangements had been considered in 2008 in a manner adverse to Safrock and CC Personal Finance in this proceeding by the NSW Court of Appeal in *Bahadori v Permanent Mortgages Pty Ltd* (2008) 72 NSWLR 44; [2008] NSWCA 150.
 - (d) The extended meaning of ‘contract’ in the Qld Code and the decision in *Bahadori* (supra) were not addressed in any manner in the advices of Mr Couper QC, which were provided 6 months after the decision in *Bahadori*.
- (k) alternatively, CC Personal Finance had no belief or no reasonable belief that the provision for payment of the Second Lynch Brokerage Fee complied with the statutory cap provided for under the Qld Act (and the earlier Qld Regs);

Particulars

- (a) The applicant repeats the particulars (a) to (e) to paragraph 35(a) above.
- (b) The extended meaning of ‘contract’ in the Qld Code as used in ‘credit contract’ and its application to related arrangements had been considered in 2008 in a manner adverse to Safrock and CC Personal Finance in this proceeding by the NSW Court of Appeal in *Bahadori v Permanent Mortgages Pty Ltd* (2008) 72 NSWLR 44; [2008] NSWCA 150.

- (l) in causing or permitting the Second Lynch Credit Contract to include provision for the payment of the Second Lynch Brokerage Fee, CC Personal Finance did not act in good faith as its only objective in requiring payment of a brokerage fee was to avoid the operation of the statutory cap provided for under the Qld Act (and the earlier Qld Regs).

Particulars

The applicant repeats the particulars (a) to (e) to paragraph 35(a) above.

44. Mr Lynch suffered loss and damage by the contravening conduct of CC Personal Finance and claims compensation pursuant to section 12GF(1) or section 12GM(1) of the ASIC Act.

Particulars

Payment by Mr Lynch of the Second Lynch Brokerage Fee and interest on that fee.

I. BREACH OF THE QLD CODE BY CC PERSONAL FINANCE WITH REGARD TO THE APPLICANT AND THE THIRD LYNCH LOAN

45. By reason of the matters pleaded in paragraphs 3, 5 to 14 and 24 to 28, and/or 51(a) and/or 51(e)(iv) the Third Lynch Appointment of Broker, Third Lynch Loan Quote and the Third Lynch Contract Form:
- (a) were respectively, within the meaning of ‘contract’ set out in Schedule 1 of the Qld Code, either:
- (i) a contract; or
- (ii) a series or combination of contracts or contracts and arrangements;
- and
- (b) formed part of the respective ‘credit contract’ between Mr Lynch and CC Personal Finance within the meaning of section 5 of the Qld Code (**Third Lynch Credit Contract**).
46. The provision in the Third Lynch Credit Contract for the payment of the Third Lynch Brokerage Fee is void as:
- (a) the Third Lynch Brokerage Fee is to be included in calculating the annual percentage rate under the Third Lynch Credit Contract pursuant to section 32(4) of the Qld Act; and
- (b) by its inclusion in the Third Lynch Credit Contract, it caused the annual percentage rate under those contracts to exceed 48% per annum in contravention of section 32(1) of the Qld Act.

Particulars

The effective annual percentage interest rate calculated on a daily basis if the Third Lynch Brokerage Fee is included is 175.10%. The applicant refers to paragraph 9 of the expert report of Andrey Vasnev dated 25 July 2017.

47. Further, the provision in the Third Lynch Credit Contract for the payment of the Third Lynch Brokerage Fee and interest on that fee imposed a monetary liability on Mr Lynch in respect of a fee or charge and interest charge exceeding the amount that may be charged consistently with the Qld Code in contravention of section 21(1) of the Qld Code.

Particulars

The applicant refers to and repeats the particulars to paragraph 46 above.

Calculations were performed on a daily basis where:

- (a) the repayment schedule and amounts repaid were those on the Contract Form;
 - (b) the date of provision of credit is that on the loan statement provided to the applicant by CC Personal Finance;
 - (c) the first repayment date is that on the loan statement provided to the applicant by CC Personal Finance.
48. Further, as the Third Lynch Brokerage Fee and interest on that fee were imposed at the time the Third Lynch Credit Contract was entered into, the Third Lynch Credit Contract has contravened a key requirement of the Qld Code pursuant to section 100(1)(i) of the Qld Code.
49. In the circumstances, Mr Lynch seeks:
- (a) the recovery of the Third Lynch Brokerage Fee and interest charged or paid on that fee pursuant to section 21(2) of the Qld Code and/or section 32(3) of the Qld Act;
 - (b) a declaration that CC Personal Finance has contravened a key requirement of the Qld Code in relation to the Third Lynch Credit Contract pursuant to section 102(1) of the Qld Code;
 - (c) an order requiring CC Personal Finance to pay him an amount as civil penalty pursuant to section 102(2) of the Qld Code.

J. CONTRAVENTION OF THE ASIC ACT BY CC PERSONAL FINANCE WITH REGARD TO THE APPLICANT AND THE THIRD LYNCH LOAN

50. In the alternative to the claim of Mr Lynch pleaded in section I, the Third Lynch Credit Contract was a financial service within the meaning of section 12BAB of the ASIC Act.

Particulars

The Third Lynch Credit Contract was a credit facility as defined in s 12BAA(7)(k) and Reg 2B(1)(a) of the ASIC Regulations 2001 because it involved the provision of credit to Mr Lynch. Accordingly, the Third Lynch Credit Contract was a financial product that the credit

provider issued and dealt in, within the meaning of ss 12BAB(1)(b) and 12BAB(7) of the ASIC Act.

51. By entering into an arrangement which included the payment of the Third Lynch Brokerage Fee, CC Personal Finance engaged in conduct that was, in all the circumstances, unconscionable and in contravention of section 12CB(1) of the ASIC Act in that:

(a) the Third Lynch Brokerage Fee was a mechanism designed to ensure that the lender received a return greater than the statutory cap provided for under the Qld Act (and the earlier Qld Regs);

Particulars

The applicant refers to and repeats the particulars to paragraph 35(a).

(b) the services purported to be provided by either of Bak or CC Cash Advance to Mr Lynch in acting as a 'broker' were illusory in that:

(i) the determination of Mr Lynch's credit worthiness and whether his credit application would be approved was an automated process undertaken by the Mon-e System and/or a process undertaken by CC Personal Finance and not by either of Bak or CC Cash Advance; and/or

(ii) there was no relevant 'recommendation' made by either of Bak or CC Cash Advance to CC Personal Finance;

(iii) the brokerage services provided by Bak or CC Cash Advance in respect of Mr Lynch's loan were provided to, and paid for by, CC Personal Finance;

Particulars

The applicant repeats the particulars (a) to (e) to paragraph 35(b)(iii) above.

(c) in the alternative to (b), to the extent that CC Personal Finance purported to act as a 'broker' to Mr Lynch, the services provided by CC Personal Finance to Mr Lynch were illusory as CC Personal Finance was the lender on the Third Lynch Loan;

Particulars

The applicant refers to and repeats paragraph 26.

(d) at all material times, Mr Lynch and many or most of the consumers who obtain loans from CC Personal Finance were vulnerable;

Particulars

(a) Mr Lynch was vulnerable in so far as his fortnightly income at the time of the Third Lynch Credit Contract was as follows:

- (i) for the fortnight commencing 3 September 2012, Centrelink benefit of \$732.20;
 - (ii) for the fortnight commencing 17 September 2012: Centrelink benefit of \$740.72;
 - (iii) for the fortnight commencing 1 October 2012: Centrelink benefit of \$748.20;
 - (iv) for the fortnight commencing 15 October 2012: Centrelink benefit of \$748.20;
 - (v) for the fortnight commencing 29 October 2012: Centrelink benefit of \$748.20.
- (b) The applicant refers to and repeats particular (b) and (c) to paragraph 35(c).

further or in the alternative to (a) to (d) above:

- (e) the bargaining position of Mr Lynch and CC Personal Finance was grossly unequal in that:
- (i) Mr Lynch had no bargaining power to bargain for any change to the terms and conditions of the Third Lynch Credit Contract;
 - (ii) Mr Lynch was in a vulnerable position in that he had been in receipt of the Disability Support Pension since 18 September 1997, and was in need of the service constituted by the Third Lynch Credit Contract;
 - (iii) CC Personal Finance was a wholly owned subsidiary of CC International which is a publicly listed company with a market capitalisation of approximately:
 - A. \$298M for the period 2010 to 2011;
 - B. \$290.5M for the period 2011 to 2012; and
 - C. \$529.8M for the period 2012 to 2013;
 - (iv) CC Personal Finance was only willing to provide a loan styled as a 'personal loan' to Mr Lynch if he executed the Third Lynch Appointment of Broker and was not willing to negotiate that requirement;

Particulars

- (a) The documents provided for execution by the applicant in relation to the Third Lynch Credit Contract included:
 - (i) the 'Loan Contract' (including pages headed 'The Schedule') that included a statement that a brokerage fee would be paid to 'Cash Converters Goodna' as directed by the borrower; and
 - (ii) the 'Appointment of Broker' forms.
 - (b) The applicant repeats the particulars (a) to (e) to paragraph 35(a) above.
- (e1) the services purported to be provided by either of Bak or CC Cash Advance to Mr Lynch in acting as a 'broker' and the requirement to use such a 'broker' was not reasonably necessary for the protection of the legitimate interests of CC Personal Finance in that it

was able itself to provide any necessary assessment of the credit-worthiness of Mr Lynch;

- (f) in the alternative to (e1), CC Personal Finance used unfair tactics in its dealings with Mr Lynch in that: CC Personal Finance disguised the fact that it was both the ‘broker’ and the lender by describing the lender as ‘CC Personal Finance’ and the broker as ‘Cash Converters Goodna’ in the documents given to Mr Lynch;

Particulars

The applicant repeats the particulars to paragraph 26 above.

- (f1) Further or alternatively to (f), CC Personal Finance also used unfair tactics in its dealings with Mr Lynch in that CC Personal Finance knew or ought to have known that the ‘brokerage’ services the subject of the Third Lynch Appointment of Broker were of no or negligible value to Mr Lynch in that:
- (i) the ‘broker’ acted exclusively for the lender;
 - (ii) any determination of Mr Lynch’s credit worthiness was a largely automated process undertaken by use of the Mon-e System;
 - (iii) there was no relevant ‘recommendation’ made by the ‘broker’ to CC Personal Finance;
 - (iv) the ‘broker’ provided no service and performed no function that could not be provided or performed by CC Personal Finance itself;
 - (v) to the extent that Bak or CC Cash Advance provided brokerage services in respect of Mr Lynch’s loan, the brokerage services were provided to, and paid for by, CC Personal Finance.

Particulars

The applicant repeats the particulars (a) to (e) to paragraph 35(b)(iii) above.

- (f2) alternatively to (f1), CC Personal Finance used unfair tactics in its dealings with Mr Lynch in that CC Personal Finance knew or ought to have known that the amount of the Third Lynch Brokerage Fee, being approximately 35% of the amount advanced, was not reasonably related to the value of the service allegedly being provided by the ‘broker’ to Mr Lynch;

Particulars

The applicant repeats paragraph 35(f)(i) to (v) above except that the reference to “Safrock” is to be read as a reference to CC Personal Finance.

The applicant repeats the particulars (a) to (e) to paragraph 35(b)(iii) above.

(g) by causing Mr Lynch to enter into the Third Lynch Appointment of Broker, CC Personal Finance:

- (i) contravened section 140(1) of the National Code which prohibited CC Personal Finance from requiring Mr Lynch to apply for, or obtain, credit from a particular credit provider; and

Particulars

The applicant refers to and repeats paragraphs 25(b) and 26 above.

- (ii) engaged in the contravention in (i) knowing that the express written advice from Mr Simon Couper QC was to the effect that there was a “strong argument” that the type of brokerage agreement which comprised the Third Lynch Appointment of Broker was likely to contravene section 130 of the Qld Code which was in the same terms in section 140(1) of the National Code.

Particulars

- (a) At all material times from 1 July 2010, section 140(1) of the National Code provided that a supplier must not require a purchaser of goods and services to apply for, or obtain, credit from a particular credit provider.
- (b) At all material times prior to 1 July 2010, section 130 of the Qld Code had provided that a supplier must not require a purchaser of goods and services to apply for, or obtain, credit from a particular credit provider.
- (c) Legal advice given to Cash Converters Pty Ltd dated 2 December 2008 by Simon Couper QC for the purpose of advising on the legality of the “loan brokerage model” stated that:

The purpose of s. 130 is to prevent anti-competitive arrangements by which a supplier of goods or services is tied to one credit provider. Here the brokerage service is tied to one credit provider. The credit provider will pay for the service. The arrangement falls literally within the prohibition under the section. There is no apparent reason to read down the words of the section.

There is a strong argument that the brokerage agreement has the following elements: (a) the brokerage fee is to be paid by the credit provider from the advance; (b) if the customer wishes to use the brokerage services, the customer must apply to a particular credit provider for credit. That is required by the broker as part of the agreement.

It follows that it is likely that every such brokerage agreement will constitute a contravention of s. 130 of the Consumer Credit Code, attracting in each case a maximum penalty of 100 penalty units. That is, in my view, there is a strong argument that every brokerage agreement constitutes an offence under the Code.

- (d) The legal advice referred to at particular (c) above was given to Mr Michael Cooke, Group Legal Counsel, CC International (**Mr Cooke**) on 2 December 2008 as an

attachment to an email from Mr Paul Venus, Partner of Holding Redlich, solicitors to Mr Cooke received at 10.59am on 2 December 2008 [CCPQ.001.041.3354], [CCPQ.001.041.3355].

- (e) A further legal advice given to Cash Converters Pty Ltd by Simon Couper QC also dated 2 December 2008 stated that “Given that the model functions upon the basis that the loan will be made by the associated credit provider, the problem will remain unless the model is changed.”
 - (f) The further legal advice referred to at particular (e) above was given to Mr Cooke on 2 December 2008 as an attachment to an email from Mr Paul Venus of Holding Redlich, solicitors to Mr Cooke received at 4.14 pm on 2 December 2008 [CCPQ.001.041.3348], [CCPQ.001.041.3349].
 - (g) A third legal advice given to Cash Converters Pty Ltd by Simon Couper QC dated 5 December 2008 for the purpose of advising on whether the broker does not “require” the consumer to obtain credit from a particular provider stated that “...I adhere to the view expressed in my advice. I think that there is a substantial risk that a court would find that the brokerage system involves a requirement by the broker that the broker's services be paid for by finance from a particular credit provider.”
 - (h) The third legal advice referred to at particular (g) above was given to Mr Cooke on 5 December 2008 as an attachment to an email from Mr Paul Venus of Holding Redlich, solicitors to Mr Cooke received at 3.55pm on 5 December 2008 [CCPQ.001.041.3524], [CCPQ.001.041.3525].
 - (i) The implications of Mr Couper QC’s advice in relation to personal loans was known by Mr Cooke at the time of receipt and he purported to make changes in light of that advice (admission in transcript of 18 May 2017 at T89.14-.40).
- (h) by virtue of the matters pleaded in paragraphs 45 to 47 above, the provision in each of the Third Lynch Credit Contract requiring Mr Lynch to pay the Third Lynch Brokerage Fee is void under section 32(2) of the Qld Act;
- (i) CC Personal Finance knew or ought to have known that the extended definition of ‘contract’ in Schedule 1 to the Qld Code and used in ‘credit contract’ applied to the Third Lynch Appointment of Broker, with the consequence that the provision of the Third Lynch Credit Contract requiring Mr Lynch to pay the Third Lynch Brokerage Fee was void under section 32(2) of the Qld Act;

Particulars

- (a) CC Personal Finance was a wholly owned subsidiary of CC International, which is a publicly listed company whose business was providing consumer finance.
- (b) The activity of consumer finance was highly regulated at both national and state levels. In Queensland it was regulated, among other things, by the Qld Code, Qld Regs and later the Qld Act.
- (c) The extended meaning of ‘contract’ in the Qld Code as used in ‘credit contract’ and its application to related arrangements had been considered in 2008 in a manner adverse to Saffrock and CC Personal Finance in this proceeding by the NSW Court of Appeal in *Bahadori v Permanent Mortgages Pty Ltd* (2008) 72 NSWLR 44; [2008] NSWCA 150.
- (d) The extended meaning of ‘contract’ in the Qld Code and the decision in *Bahadori* (supra) were not addressed in any manner in the advices of Mr Couper QC, which were provided 6 months after the decision in *Bahadori*.

- (j) alternatively, CC Personal Finance had no belief or no reasonable belief that the provision for payment of the Third Lynch Brokerage Fee complied with the statutory cap provided for under the Qld Act (and the earlier Qld Regs);

Particulars

- (a) CC Personal Finance knew that there was no ‘broker’ as it was both the ‘broker’ and the lender in the Third Lynch Credit Contract. The applicant repeats the particulars to paragraph 26 above.
- (b) The applicant repeats the particulars (a) to (e) to paragraph 35(a) above.
- (c) The extended meaning of ‘contract’ in the Qld Code as used in ‘credit contract’ and its application to related arrangements had been considered in 2008 in a manner adverse to Safrock and CC Personal Finance in this proceeding by the NSW Court of Appeal in *Bahadori v Permanent Mortgages Pty Ltd* (2008) 72 NSWLR 44; [2008] NSWCA 150.
- (k) in causing or permitting the Third Lynch Credit Contract to include provision for the payment of the Third Lynch Brokerage Fee CC Personal Finance did not act in good faith as its only objective in requiring payment of a brokerage fee was to avoid the operation of the statutory cap provided for under the Qld Act (and the earlier Qld Regs).

Particulars

The applicant repeats the particulars to (a) to (e) to paragraph 35(a) above.

52. Mr Lynch suffered loss and damage by the contravening conduct of CC Personal Finance and claims compensation pursuant to section 12GF(1) [or section 12GM\(1\)](#) of the ASIC Act.

Particulars

Payment by Mr Lynch of the Third Lynch Brokerage Fee and interest on that fee.

K. CLAIMS OF GROUP MEMBERS

53. Group Members signed documents listed in paragraph 12(b) being:
- (a) ‘Appointment of Broker’ and/or ‘Quote for Credit Assistance’; and
- (b) ‘Contract – Part 1 Schedule’ or ‘Loan Contract’ (including pages headed ‘The Schedule’).
- 53A. Group Members with credit contracts dated on or after 1 April 2010 were provided with, or were intended to be provided with, the ‘Credit Proposal’ document listed in paragraph 12(b), by the Qld Franchisee, Qld Franchisee Broker, or wholly owned entity of CC International to whom they paid a fee styled as a ‘broker’s’ fee or a ‘brokerage’ fee.
54. Group Members entered into the Qld Loan Contracts which provided for the payment of a fee styled as a ‘broker’s’ fee or a ‘brokerage’ fee in circumstances where:

- (a) that fee was void; and/or

Particulars

- (a) The material facts and particulars of the claims of the Group Members in respect of the conduct of Safrock and/or CC Personal Finance are similar to the material facts and particulars of the claims of Mr Lynch against Safrock and CC Personal Finance in that:
- (i) prior to 30 June 2010, the maximum interest rate was set out in clause 3 of the Qld Regs and applied as if it had been prescribed by the Qld Code by reason of section 14(2) of the *Consumer Credit (Queensland) Act 1994 (Qld) (1994 Act)*;
 - (ii) the provision for the payment of the brokerage fee in each of the Qld Loan Contracts reflected a system in place in respect of the offering and administration of unsecured loans through Cash Converters branded stores in Queensland in the period from at least 1 January 2009 until 30 June 2013 inclusive, in which persons who wished to obtain an unsecured loan would be required to sign a document entitled 'Appointment of Broker' or 'Credit Application' and/or (for credit contracts entered into on or after 1 April 2010) 'Quote for Providing Credit Assistance' and agree to pay a fee styled as a 'broker's' or 'brokerage' fee prior to having their application for credit accepted by either of Safrock and/or CC Personal Finance.
- (b) Further particulars will be provided following discovery and the issue of subpoenas and notices to produce.
- (b) the provision for the payment of the fee was unconscionable.

Particulars

- (a) The material facts and particulars of the claims of the Group Members in respect of the conduct of Safrock and/or CC Personal Finance are similar to the material facts and particulars of the claims of Mr Lynch against Safrock and CC Personal Finance in that:
- (i) the provision for the payment of the brokerage fee in each of the Qld Loan Contracts reflected a system in place in respect of the offering and administration of unsecured loans through Cash Converters branded stores in Queensland in the period from at least 1 January 2009 until 30 June 2013 inclusive, in which persons who wished to obtain an unsecured loan would be required to sign a document entitled 'Appointment of Broker' or 'Credit Application' and/or (for credit contracts entered into on or after 1 April 2010) 'Quote for Providing Credit Assistance' and agree to pay a fee styled as a 'broker's' or 'brokerage' fee prior to having their application for credit accepted by either of Safrock and/or CC Personal Finance;
 - (ii) the provision for the payment of the brokerage fee in each of the Qld Loan Contracts was a mechanism designed to ensure that the lender in each of the Qld Loan Contracts received a return greater than the statutory cap provided for under the Qld Act (and the earlier Qld Regs). The applicant refers to and repeats the particulars to paragraph 51(a) above;
 - (iii) the provision for the payment of the brokerage fee in each of the Qld Loan Contracts reflected a system in place in respect of the offering and administration of unsecured loans through Cash Converters branded stores in Australia since at least October 2007 in which CC International and/or CCPL encouraged or required all franchisees in NSW, Queensland, Victoria, and the ACT and any company or entity that was acting pursuant to an agreement, arrangement or understanding with a franchisee (if they were offering unsecured personal loans) to deal with their customers on terms which included the requirement to pay a fee or charge which amounted to approximately 35% of the credit originally sought by a consumer;
 - (iv) the brokerage fee in each of the Qld Loan Contracts amounted to approximately 35% of the loan amount originally sought by each of the Group Members;

- (v) the services purported to be provided to the Group Members by the Qld Franchisees and/or the Qld Franchisee Brokers and/or the wholly owned entity of CC International that were acting as brokers or credit assistance providers were illusory in that:
 - A. the determination of credit worthiness and whether a Group Member's credit application would be approved was an automated process undertaken by the Mon-e System and/or a process undertaken by Safrock and/or CC Personal Finance and not by the relevant Qld Franchisee, Qld Franchisee Broker or the wholly owned entity of CC International providing credit assistance to the Group Member;
 - B. there was no relevant 'recommendation' made by any of the Qld Franchisees and/or the Qld Franchisee Brokers and/or the wholly owned entity of CC International to Safrock and/or CC Personal Finance;
 - C. the brokerage services provided by the Qld Franchisees and/or the Qld Franchisee Brokers and/or the wholly owned entity of CC International that were acting as brokers in respect of Group Members' loans, were provided to, and paid for by, Safrock and/or CC Personal Finance.
- (vi) the bargaining position of each of the Group Members and Safrock and/or CC Personal Finance was grossly unequal in that:
 - A. the Group Members had no bargaining power to bargain for any change to the terms and conditions of the Qld Loan Contracts;
 - B. the Group Members were in a vulnerable position in that they were in need of the service constituted by the Qld Loan Contracts and in 2009 to 2011 more than 50% of the Group Members had incomes below \$36,000 and almost 50% were in receipt of government benefits. The applicant refers to and repeats the particulars (b) and (c) to paragraph 35(c) above;
 - C. Safrock and CC Personal Finance were wholly owned subsidiaries of CC International which is a publicly listed company with a market capitalisation of approximately:
 - i. \$298M for the period 2010 to 2011;
 - ii. \$290.5M for the period 2011 to 2012; and
 - iii. \$529.8M for the period 2012 to 2013;
 - D. Safrock and/or CC Personal Finance were only willing to provide a loan styled as a 'personal loan' to each Group Member if they executed a document entitled 'Appointment of Broker' and were not willing to negotiate that requirement. The applicant refers to and repeats the particulars to paragraphs 35(d)(iv), 43(d)(iv) and 51(e)(iv) above;
- (vii) the requirement to use a 'broker' was not reasonably necessary for the protection of the legitimate interests of Safrock and/or CC Personal Finance in that they were able themselves to provide any necessary assessment of the credit-worthiness of each of the Group Members;
- (viii) Safrock and/or CC Personal Finance used unfair tactics in their dealings with Group Members in that Safrock and/or CC Personal Finance knew or ought to have known that the 'brokerage' services the subject of the Qld Loan Contracts were of no or negligible value to Group Members in that:
 - A. the 'broker' acted exclusively for the lender;
 - B. any determination of a Group Member's credit worthiness was a largely automated process undertaken by use of the Mon-e System;
 - C. there was no relevant 'recommendation' made by the 'broker' to Safrock and/or CC Personal Finance;

- D. the 'broker' provided no service and performed no function that could not be provided or performed by Safrock and/or CC Personal Finance itself;
 - E. the brokerage services provided by the Qld Franchisees and/or the Qld Franchisee Brokers and/or the wholly owned entity of CC International that were acting as brokers in respect of Group Members' loans, were provided to, and paid for by, Safrock and/or CC Personal Finance.
- (ix) alternatively to (viii), Safrock and/or CC Personal Finance used unfair tactics in their dealings with Group Members in that Safrock and/or CC Personal Finance knew or ought to have known that the amount of brokerage fee, being approximately 35% of the amount advanced, was not reasonably related to the value of the service allegedly being provided by the 'broker' to Group Members. The applicant refers to and repeats particulars (a)(viii) A. to D. to paragraph 54(b) above and (a) to (e) to paragraph 35(b)(iii) above;
 - (x) alternatively to (viii) and (ix), to the extent that CC Personal Finance purported to act as a 'broker' to the Group Members when it was also the lender on the Qld Loan Contracts, the services provided by CC Personal Finance as 'broker' to Group Members were illusory;
 - (xi) in relation to each Appointment of Broker and/or Credit Application signed by a Group Member with respect to a Qld Loan Contract:
 - A. the broker contravened section 130 of the Qld Code (for Qld Loan Contracts entered into prior to 1 July 2010) and/or section 140(1) of the National Code (for Qld Loan Contracts entered into from 1 July 2010) which prohibited a supplier of brokerage services from requiring Group Members to apply for, or obtain, credit from a particular credit provider;
 - B. each of Safrock and CC Personal Finance knew with respect to each of the Qld Loan Contracts to which it was a party, that the express written advice from Mr Simon Couper QC was to the effect that there was a "strong argument" that the type of brokerage agreement which comprised the Appointment of Broker and/or Credit Application was likely to contravene section 130 of the Qld Code (and from 1 July 2010, section 140(1) of the National Code, which was in the same terms as section 130 of the Qld Code). The applicant refers to and repeats particulars (b) to (h) to paragraph 35(h)(ii) above;
 - (xii) the provision in each of the Qld Loan Contracts requiring Group Members to pay a fee styled as a 'broker's' fee or a 'brokerage' fee is void under section 32(2) of the Qld Act;
 - (xiii) Safrock and CC Personal Finance knew or ought to have known that the extended definition of 'contract' in Schedule 1 to the Qld Code and used in 'credit contract' applied to the document entitled 'Appointment of Broker', with the consequence that the provision of the Qld Loan Contracts requiring Group Members to pay a fee styled as a 'broker's' fee or a 'brokerage' fee was void under section 32(2) of the Qld Act. The applicant refers to and repeats particulars (a) to (d) to paragraphs 35(j), 43(j) and 51(i) above;
 - (xiv) alternatively to (xiii), Safrock and CC Personal Finance had no belief or no reasonable belief that the provision for payment of a fee styled as a 'broker's' fee or a 'brokerage' fee complied with the statutory cap provided for under the Qld Act (and the earlier Qld Regs). The applicant refers to and repeats particulars (a) and (b) to paragraphs 35(k) and 43(k) and particulars (a), (b) and (c) to paragraph 51(j) above;
 - (xv) in causing or permitting the Qld Loan Contracts to include provision for the payment of a fee styled as a 'broker's' fee or a 'brokerage' fee, Safrock and CC Personal Finance did not act in good faith as their only objective in requiring payment of a brokerage fee was to avoid the operation of the statutory cap provided for under the Qld Act (and the earlier Qld Regs). The applicant refers to and repeats the particulars (a) to (e) to paragraph 35(a) above.

- (b) Further particulars will be provided following discovery and the issue of subpoenas and notices to produce.

55. The Group Members, pursuant to:

- (a) section 21(2) of the Qld Code and/or section 32(3) of the Qld Act, are entitled to recover payment of the brokerage fees and interest on those fees;
- (b) section 102(1) of the Qld Code, seek a declaration that Safrock and/or CC Personal Finance contravened a key requirement of the Qld Code in relation to the Qld Loan Contracts;
- (c) section 102(2) of the Qld Code, seek an order requiring Safrock and/or CC Personal Finance to pay them an amount as civil penalty.

Particulars

As the brokerage fee and interest charge on that fee were imposed upon each of the Group Members at the time each of the Qld Loan Contracts were entered into by the Group Members, each of the Qld Loan Contracts contravened a key requirement of the Qld Code pursuant to section 100(1)(i) of the Qld Code, by reason of the operation of section 14(2) of the 1994 Act and/or section 33(2) of the Qld Act.

Further particulars of the brokerage fee and interest charge on that fee imposed upon each of the Group Members will be provided after a trial of the common issues.

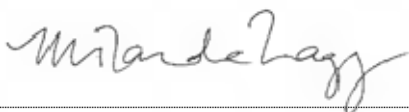
56. In the alternative to the claim pleaded in paragraph 55, pursuant to section 12GF(1) [or section 12GM\(1\)](#) of the ASIC Act, each Group Member is entitled to recover the amount of his or her loss and damage in respect of the contraventions pursuant to section 12GF(1) [or section 12GM\(1\)](#) of the ASIC Act.

Particulars

The Group Members claim repayment of the brokerage fee and interest on those fees.

Further particulars of the Group Members' loss and damage will be provided after a trial of the common issues.

Date: 23 October 2018



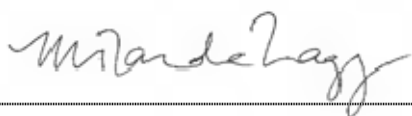
Signed by Miranda Nagy
Lawyer for the applicant

This further amended pleading was prepared by John Sheahan QC and Rachel Francois of counsel.

Certificate of lawyer

I, Miranda Nagy certify to the Court that, in relation to the further amended statement of claim filed on behalf of the applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 23 October 2018

A handwritten signature in cursive script that reads "Miranda Nagy". The signature is written in black ink and is positioned above a horizontal line.

Signed by Miranda Nagy
Lawyer for the applicant

Schedule

No. NSD 900 of 2015

Federal Court of Australia

District Registry: NSW

Division: General

Respondents

Second Respondent:

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