

BANKING ROYAL COMMISSION – VICTIM STATEMENT

Parties: Elliot & Cybil Sgargetta

Bank: [REDACTED]

t. [REDACTED]

e. [REDACTED]

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To whom it may concern,

Please find herein an outline of what occurred to my family.

Our matter had such public importance that it was aired on ABC TV news twice and other media sources.

See here:

<https://www.youtube.com/watch?v=J5gC3gLeuP4>

<https://www.youtube.com/watch?v=VS9zHfKlApA>

We have been involved in a substantial dispute with [REDACTED] for approximately 10 years now (From late 2008) which has manifested into damages and losses far and wide, including misconduct by judicial members that ha.

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The NAB payout notice dispute

- 1) I, Elliot Sgarretta and my now wife Cybil, had a mortgage/loan with ██████ in 2008 on our existing home in Kalorama, Victoria.
- 2) With plans of marriage and starting a family, we were in need of a larger home. We met with our ██████ banker who assessed our financials and advised that ██████ would extend further lending on a new home purchase and therefore would simply move the current loan to the new home with an extension on the lending (known as security swap). Importantly, NAB had advised us (after assessing our financials) of what our maximum purchasing amount was, so that we knew what our budget was when sourcing properties.
- 3) After months of inspecting properties and submitting them to ██████ for approval, we entered into a contract of sale on a home in Sassafras. Again, this was after presenting this property to ██████ for their approval, in which they gave. Now that our new home purchase and lending was all set, we then sold our Kalorama home to my wife's parents as they were retiring and therefore could be near us.
- 4) All these contracts were submitted to ██████ and our conveyancer.
- 5) Some weeks had passed and we then received a call from ██████ that they could not extend the loan as they first advised. Obviously we were quite upset about this, as ██████ had misled us into these contracts, contracts that were now unconditional. Little did we know what further misconduct was around the corner from ██████
- 6) Despite having little time now we were able to find ██████ to now finance the new purchase. So crisis averted. So we thought. In order to approve the lending ██████ requested a written payout notice from ██████ pursuant to s.76 of the Uniform Consumer Credit Code (Now repealed by s.83 of the NCCP). This legislation requires by law that upon the written request of the borrower the bank must provide a written payout notice advising the amount required to payout their loan including all fees and charges, within 7 days of the written request.
- 7) Therefore, we emailed our ██████ banker requesting a written payout notice. Our conveyancer also faxed him this request which actually warned ██████ of the requirement under s.76 by law.
(See exhibit - PN4_WrittenRequestPayoutHomeConvey)
- 8) On 6 November 2008, ██████ submitted their payout notice to us and our conveyancer.
(See exhibit - PN1_█████PayoutNotice)

- 9) Pursuant to this payout notice we then coordinated our lending with [REDACTED] and other fiscal arrangements which were a bit more involving as we were settling on the same day on both houses. i.e. selling and buying simultaneously. Nonetheless everything was now set and settlement was booked for 1 December 2008.
- 10) On the eve of settlement we received a call from [REDACTED]. They advised us that they made a mistake and required a further \$24,000 in order to allow the settlements to occur. Obviously we were outraged.
- 11) Settlement fell over (because we did not have a spare \$24,000) and a dispute broke-out between us lasting approx. 4 years, before proceeding into the County Court in August 2012.
- 12) [REDACTED] sought possession and 4 years of interest.
- 13) We sought relief against the damages caused for [REDACTED] false & misleading payout notice, and negligence for failing to advise nor clarify the further \$24,000 charge or fee at the time the payout notice was issued (a month earlier). Therefore unconscionable for hindering and ultimately causing the settlement to collapse by not seeking to resolve their errors.

Court proceedings – Mediation & Settlement Deed

To resolve this dispute and the damages caused, on 28 September 2012 Justice Anderson of the County Court ordered that we undertake a mediation to see if we could resolve the matter.

- 1) The mediation occurred on 5 February 2013 at [REDACTED] Melbourne office.
- 2) The parties that were present in the mediation was a mediator [REDACTED]
[REDACTED] and myself.
- 3) The result of the mediation was a settlement deed in which [REDACTED] put to me to sign, and threaten that if we did not sign [REDACTED] would take our home and thus destroy our business.

The critical clause/s of the deed were:

2.1(a) *by 5pm on 25 February 2013 Mr Sgarretta must provide to [REDACTED] solicitors, [REDACTED] a conditional letter of approval for finance on terms acceptable to [REDACTED] and for an amount equal to or greater than \$299,000;*

2.1(b) *by 5pm on 15 April 2013 Mr Sgarretta must:*

(i) pay the [REDACTED] the sum of \$299,000 in cleared funds; and

(ii) withdraw his Defence and Counterclaim in the proceedings;

- 4) I signed and returned the deed the next day, however [REDACTED] did not sign until 19 February 2013, and this was after two written reminders, leaving us just four days to comply with the 2.1(a) clause. I sought an extension of time on the 2.1(a) clause, due to [REDACTED] tardiness, but [REDACTED] rejected the extension.
- 5) Despite having just four days to comply with 2.1(a) I managed to facilitate this one-sided clause (i.e. ...terms acceptable to [REDACTED] were not disclosed) and submitted to [REDACTED] loan offers, proposals and guarantees affirming to the \$299,000 payment being made. [REDACTED] rejected them all without reason, claiming pursuant to this 2.1(a) clause they were not acceptable to [REDACTED] and pressed on with the proceedings. I sought the intervention of the mediator because I had raised my concern about the lack of detail of this clause to him, in which he advised at the time that I should not be pedantic about this clause and just get the money to [REDACTED] and all will be fine. The mediator did not respond to my email, and he was clearly wrong. It has been said by the multitude of legals whom have handled this matter that the 2.1(a) clause was engineered so that we would default on the deed.

\$299,000 bank cheque paid to [REDACTED] to save our house

- 1) My family were fed up and furious with [REDACTED] deceptive and disingenuous conduct.
- 2) My family rallied together and organised a bank cheque for the amount of \$299,000 from the [REDACTED]
(See exhibit - EDS5_ [REDACTED] SettlementDeed5FEB13)
- 3) On 20 March 2013 before the hearing in the County Court Victoria, a barrister that was appointed to us by the court [REDACTED] gave the bank cheque to [REDACTED] counsel [REDACTED] [REDACTED] present.
- 4) It's important to note the settlement deed required that we pay [REDACTED] the sum of \$299,000 by 15 April 2013, so this was almost a month earlier than due.
- 5) Shockingly [REDACTED] rejected the \$299,000 payment and continued on with the litigation. It was apparent then that they had an ulterior motive.
- 6) The trial was set for 26 August 2013 with Justice Cosgrave to preside.
- 7) Our core two grounds were:
 - [REDACTED] payout notice was a breach of the consumer credit code. It was false and misleading, and;
 - [REDACTED] were negligent and ultimately unconscionable for preventing the settlements from occurring, and;
 - [REDACTED] settlement deed was complied with, where they had received the sum of \$299,000 via bank cheque on 20 March 2013, in order to save our home.
- 8) The court ordered that we were to receive pro bono assistance in order to quickly and simply amend our statement of claim, [REDACTED] was the barrister that put it together and filed it.
- 9) I was a self-litigant (Obviously for financial reasons) and undertook the four-day trial in August 2013 to save our home and overall livelihood.

Trial Judgment & Appeal Judgment

- 1) The trial judge, Justice Cosgrave, determined that:
 1. In regard to [REDACTED] false and misleading payout notice, it was not unconscionable and because the assigned barrister failed/forgot the specific sections of the act (i.e. s.52 & s.53 of the TPA) no determination was made,

And;
 2. That we did not pay [REDACTED] \$299,000 because it was paid on a without prejudice basis.
- 2) We obviously appealed these orders, and thus more court assigned pro bono lawyers were engaged to compile the appeal documents and address the appeal hearing.

The core appeal grounds were:

1. We did in fact pay [REDACTED] \$299,000, **not** on a without prejudice basis, and that [REDACTED] were perjurious in stating in court under-oath that no payment was made.

(See exhibits -
 EDS3_TrialTrans_ConfirmAvailableAgreement_NoPayment_[REDACTED]
 EDS5B_TrialTrans_[REDACTED]ChequePayment1
 EDS5F_TrialTrans_[REDACTED]ChequePayment4a)
2. That clause 2.1(a) of the [REDACTED] settlement deed was void for uncertainty, as [REDACTED] did not disclose the terms they deemed acceptable to facilitate this clause, and were unconscionable in denying all offers, proposals and guarantees, however most importantly confirming in their opening statement in trial that their deed was available for performance, therefore rendering this 2.1(a) clause absolutely nugatory/void.

(See exhibit - EDS3_TrialTrans_ConfirmAvailableAgreement_NoPayment_[REDACTED])
3. [REDACTED] was in breach of the consumer credit code for issuing a false and misleading payout notice where they had failed to advise or include the \$24,000 oversight break fee. We never claimed [REDACTED] was unconscionable as Cosgrave J established, thus was an absurd ruling. Our claim was that they were false and misleading by issuing an erred payout notice.

3) Justice Whelan & Justice Santamaria (the appeal court judges) determined that:

1. We **did** pay [REDACTED] the sum of \$299,000.
(See exhibit - EDS4_AppealJudgmentConfirmChequePaymentA)
2. The 2.1(a) ground that this clause was void and severable was expressly abandoned by our assigned legal counsel [REDACTED] thus no consideration was made to this submission.
This is highly controversial because [REDACTED] submits that the judges were wrong, he did not abandon this critical ground to the case.
**(See exhibits -
AP5_AppealJudgmentAbandonmenta
AP2A_AppealTrans_NotToAbdandonArguments
AP2B_AppealTrans_NotToAbdandonArgumentsa
AP2E_AppealTrans_NotToAbdandonArgumentsc)**
3. **Most critically**, despite that the [REDACTED] had unequivocally submitted in trial that their deed was potentially available to us, the judges controversially evaded this crucial submission and evidence, and never made a determination on it but used [REDACTED] [REDACTED] as the scapegoat, stating he abandoned the ground that related to this evidence.
4. That the argument that [REDACTED] breached the consumer credit code for issuing a false and misleading payout was not determined by Justice Cosgrave, so it is too late to raise it in the appeal. However, it was raised in the trial and many many times throughout the proceedings. This whole case was triggered by this payout notice, it ought to have been ventilated and appropriately litigated, not blocked.

(See exhibit - PN16_Transcript_Trial_PayoutSubmission)

The Hush Deed

- 1) On 3 February 2015 [REDACTED] provided us another deed that sought that I and my family stop proceeding with further matters in exchange for the [REDACTED] not pursuing us for their awarded legal costs. It also sought to stop my family from pursuing current and future employees of [REDACTED]

(See exhibit - hush_deed)

- 2) I submitted this deed to two lawyers for review as it seemed to be unlawful, and quite frankly and understandably we did not, and do not trust [REDACTED] whatsoever.
- 3) Both lawyers submitted that we should not sign it and that it was unlawful by dragging parties in that were not connected to the case. In many respects it sought to silence my family and not go public with these matters.

(See exhibits –

HushDeed_Review_[REDACTED]

HushDeed_Review_[REDACTED]

HushDeed_Review_[REDACTED]

- 4) It is unlawful and contemptuous for a party to use such deeds/agreements after the courts have made their determination, thus using the courts orders as a bargaining or bribery mechanism to prevent further actions and claims against them. This a serious offence and should not be ignored.

In conclusion & current status

Consumer Credit Code Breach

No determination was ever made despite it was the catalyst of our dispute.

We had submitted and outlined the actual breaches in my statement of claim throughout all the proceedings, but suspiciously because these court assigned barristers had failed/forgot to place these sections in our amended statement of claim the judges refused to run this critical ground. We sought to pursue these barristers ([REDACTED]) for failing to outline these sections, but they are protected by advocates immunity.

(See exhibit – Sgargetta_Orig_SOC)

2. I even sought to litigate it in the trial, but Justice Cosgrave stopped me because again these barristers failed to include the sections.

(See exhibit - PN16_Transcript_Trial_PayoutSubmission)

3. Justice Cosgrave affirmed that this ground was virgin territory yet would not make a determination on it because again the sections were not included in the amended statement of claim.

(See exhibit - PN19_VirginTerritory)

Perjury

An application to Magistrates Court will be prepared in respect to [REDACTED] committing perjury and thus effecting judgment against us.

i.e. Submitting in their opening statement to the court that their deed was potentially available for performance, but at no time did they receive payment of \$299,000.

(See exhibits -

EDS3_TrialTrans_ConfirmAvailableAgreement_NoPayment_ [REDACTED]

EDS5F_TrialTrans_ [REDACTED] ChequePayment4a)

So once it was determined in the appeal that they did in fact receive payment, this then unequivocally establishes an offence of perjury for submitting in trial that no payment was made.

However we are hoping the Royal Commission will aid us in this matter first and thus await the conclusion of the commissioner.

Unconscionable judicial members

[REDACTED]

[REDACTED]

We took this to the public to get their view on whether judicial members should be allowed to preside over a matter when they have a vested interest in the parties. The public voted, and the majority voted 'no'.

(See exhibit - MS48_JudgesBankShares_PublicResponse)

These judicial members saw this offence by [REDACTED] lying in court, and did nothing about it.

In fact they skirted around the matter, which was very alarmingly to witness.

We have transcripts to corroborate these allegations, and the Chief Justice did nothing to address our complaints.

Please exhibit – AttorneyGen_emails of recent correspondence with Mr Pakula in respect to this matter.

Loan Payout Legislation

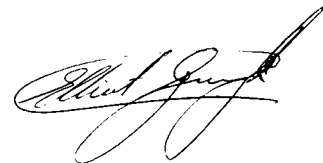
Banks are still breaching this important payout legislation (See s.83 of the National Consumer Credit Protection Act. 2009) to date. Adding last minute fees, misquoting balances etc. where borrowers are stuck in a 'no-choice' position.

Many borrowers are forced to refinance due to financial issues, and thus are stuck in a no-choice position when last minute fees and charges are suddenly imposed. They have no time to review the payout conditions in their loan agreements nor seek advice from regulators or experts, thus forced to capitulate and find a way fast to pay these fees.

It is evident in our 'virgin' case that a precedent needed to be set, because if a review was made on these payout matters (which the Royal Commission ought to be pursuing) we would find that banks and financiers have breaching this legislation for decades, by either not providing a payout notice or adding last minute fees and charges that are unconscionable and unlawful.

In our matter [REDACTED] could not advise how these fees are calculated, and confirmed these were not releveled to the public.

See our trial transcript excerpt of this confirmation – **(See exhibit - PN22_1 [REDACTED] AboutEcoFee)**



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Elliot Sgargetta