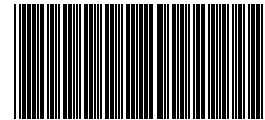




Filed: 28 October 2016 1:12 PM



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Form 7A/B
UCPR 14.3

DEFENCE

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2016/00086790

TITLE OF PROCEEDINGS

First Plaintiff	Australian Retirement Group Pty Limited ACN 097623704
Second Plaintiff	Peter Gower Walsh
First Defendant	The Commonwealth Bank of Australia Limited

FILING DETAILS

Filed for	The Commonwealth Bank of Australia Limited, Defendant 1
Legal representative	Cameron Hanson
Legal representative reference	
Telephone	
Your reference	82528073

NOTICE OF LISTING

This matter has been listed with the statement of claim.

AFFIDAVIT

Deponent Name	Kate Erin Brown
Sworn/Affirmed on	28 Oct 2016

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Defence (e-Services), along with any other documents listed below, were filed by the Court.

Defence (UCPR 7A/7B) (ARG Defence (signed) (28.10.16).PDF)

[attach.]

Form 7A (version 5)
UCPR 14.3

DEFENCE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Representative Proceedings
Registry	Sydney
Case number	2016/86790

TITLE OF PROCEEDINGS

First plaintiff	Australian Retirement Group Pty Limited ACN 097 623 704
Second plaintiff	Peter Gower Walsh
Defendant	Commonwealth Bank of Australia ACN 123 123 124

FILING DETAILS

Filed for	Commonwealth Bank of Australia, defendant
Legal representative	Cameron Hanson, Herbert Smith Freehills
Legal representative reference	82528073
Contact name and telephone	Cameron Hanson, (02) 9225 5224
Contact email	cameron.hanson@hsf.com

HEARING DETAILS

If the proceedings do not already have a listing date, they are to be listed at

PLEADINGS AND PARTICULARS

To the first and second plaintiffs' Further Amended Statement of Claim dated 12 July 2016, the defendant says as follows (adopting the definitions and headings contained in the Further Amended Statement of Claim unless otherwise indicated):

A. The Group Members

- 1 It does not plead to paragraph 1 because it says that no material allegation of fact is made against it.
- 2 It does not plead to paragraph 2 because it says that no material allegation of fact is made against it.
- 3 It does not admit the allegations in paragraph 3.

B. The Common Questions

- 4 It does not plead to paragraph 4 because it says that no material allegation of fact is made against it.

C. The Plaintiffs and the Defendant

- 5 It admits the allegations in paragraph 5.
- 6 As to paragraph 6:
- a. it admits that at all material times the second plaintiff was a director of ARG;
 - b. it admits that the second plaintiff executed a guarantee in favour of the Bank of Western Australia Ltd (**Bankwest**) on 11 October 2006 in relation to a facility agreement between Bankwest and the plaintiff dated 5 October 2006 and remained a guarantor throughout the period 19 December 2008 to 1 October 2012;
 - c. it otherwise denies the allegations therein.
- 7 It admits the allegations in paragraph 7.
- 8 As to paragraph 8:
- a. it says that it acquired Bankwest from HBOS Australia Pty Ltd (ACN 070 002 587) with effect from 19 December 2008;
 - b. it otherwise denies the allegations therein.
- 9 Subject to referring at trial to the full terms and effect of the certificate of transfer, it admits the allegations in paragraph 9.
- 10 It does not plead to paragraph 10 because it says that no material allegation of fact is made against it.
- 11 As to paragraph 11:
- a. subject to referring at trial to the full terms and effect of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cth), it admits that by virtue of the transfer pursuant to the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cth) pleaded in paragraph 9 of the Further Amended Statement of Claim, it is responsible for the liabilities of Bankwest;
 - b. it otherwise denies the allegations therein.

FACTS

D. The review of the Group Members' banking facilities

- 12 As to paragraph 12:
- a. it admits that prior to 19 December 2008 Bankwest provided facilities to ARG (**ARG Loan**) and that the second plaintiff provided a guarantee for those facilities;
 - b. it denies that ARG and the second plaintiff are Group Members because, although ARG fell within the definition of a “small business” customer contained in the Code of Banking Practice and entered into a facility agreement with Bankwest prior to 19 December 2008, ARG’s loan facility was not the subject of the review alleged in paragraph 13 and was placed into CAM prior to the conduct of that review;
 - c. it otherwise does not admit the allegations therein.
- 13 As to paragraph 13 (as particularised in the plaintiff’s particulars dated 9 September 2016):
- a. It admits that in or about May and June 2010 it conducted a review of performing loans for the purpose of ensuring that Bankwest had accurate and up to date information on its commercial loans portfolio and that appropriate risk gradings and provisions were applied to the portfolio, as per accounting and prudential standards;
 - b. it says that the ARG Loan was not included in the review set out in (a) above;
 - c. it otherwise denies the allegations therein.
- 14 As to paragraph 14:
- a. it refers to and repeats paragraph 13;
 - b. it otherwise denies the allegations therein.
- 15 As to paragraph 15:
- a. it says that Bankwest’s Non-Retail Credit Grade Classes Policy was altered on 8 occasions between 19 December 2008 and 1 October 2012;

Particulars

Version 11 published 21 May 2009

Version 12 published 12 March 2010

Version 13 published 27 November 2010

Version 14 published 6 April 2011

Version 15 published 11 July 2011

Version 16 published 2 December 2011

Version 17 published 28 February 2012

Version 18 published 30 August 2012.

b. it otherwise denies the allegations therein.

16 As to paragraph 16:

a. it says that as a result of the review referred to in paragraph 13 above a number of loans were transferred to CAM;

b. it otherwise denies the allegations therein.

17 It denies the allegations in paragraph 17.

18 As to paragraph 18:

a. it says that all loans the subject of the review conducted by Bankwest in or about May and June 2010 (referred to in paragraph 13 above) were performing loans;

b. it says further that it was not necessary for a customer to have committed an event of default before their loan was placed into CAM;

c. it otherwise denies the allegations therein.

19 It denies the allegations in paragraph 19.

20 As to paragraph 20:

a. it says that, in respect of some loans, where it was entitled to do so under the terms of the facility agreement, Bankwest charged default rates of interest, imposed fees and charges, issued payment demands, issued notices of default and/or terminated facility agreements;

b. it otherwise denies the allegations therein.

21 As to paragraph 21:

a. it says that, in respect of some loans, where it was entitled to do so under the terms of the facility agreement, Bankwest appointed receivers who sold secured properties;

b. it otherwise denies the allegations therein.

22 As to paragraph 22:

a. it refers to and repeats paragraph 21 above;

b. it otherwise denies the allegations therein.

23 As to paragraph 23:

a. it says that, in respect of some loans, where it was entitled to do so under the terms of the relevant guarantee, Bankwest made demands under guarantees provided to Bankwest in respect of any shortfall following a sale of the assets of the customer by a receiver;

- b. it otherwise denies the allegations therein.

E. The Facility Agreements and the Banking Code of Practice

24 As to paragraph 24:

- a. it admits that the facility agreements entered into between Bankwest and its small business customers were generally similar and consisted of:
 - i. an Offer Letter from Bankwest;
 - ii. Facility Terms attached to the Offer letter; and
 - iii. from December 2007, BankWest's General Terms for Business Lending dated December 2007.
- b. it refers to paragraphs 28 and 29 below;
- c. it otherwise denies the allegations therein.

25 As to paragraph 25:

- a. it admits that the facility agreement entered into between Bankwest and ARG included a clause in the terms set out in paragraph 25(i);
- b. it admits that the terms of the facility agreements entered into between Bankwest and its small business customers generally included a clause similar to that set out in paragraph 25(i);
- c. it will otherwise refer at trial to the full terms and effect of each relevant facility agreement.

26 Subject to referring at trial to the full terms and effect of Bankwest's "General Terms for Business Lending dated December 2007", it admits paragraph 26.

27 It admits paragraph 27 on the basis Group Members are defined in paragraph 2(i) as borrowers who fall within the definition of "small business" customers contained in the "Banking Code of Conduct", which the defendant understands to be a reference to the Code of Banking Practice.

28 It admits that the terms of the Code of Banking Practice set out in Paragraph 28 are relevant terms for the purpose of clause 20.1 of Bankwest's "General Terms for Business Lending dated December 2007".

29 As to paragraph 29:

- a. subject to referring at trial to the full terms and effect of Bankwest's "General Terms for Business Lending dated December 2007", it admits that the terms set out in paragraph 28 above applied to those of Bankwest's

facility agreements with its small business customers which were subject to Bankwest's "General Terms for Business Lending dated December 2007";

b. it otherwise denies the allegations therein.

30 As to paragraph 30:

a. it admits that Bankwest's facility agreements with its small business customers were generally required to be supported by a guarantee;

b. it otherwise denies the allegations therein.

31 As to paragraph 31:

a. it admits that Bankwest's facility agreements with its small business customers generally contained common terms including terms similar to those set out in paragraph 31(i) and (ii);

b. it will otherwise refer at trial to the full terms and effect of each relevant facility agreement.

F. The Guarantee

32 As to paragraph 32:

a. it admits that guarantees provided in respect of Bankwest's facility agreements with its small business customers:

i. generally contained terms which were materially the same; and

ii. generally contained clauses similar to clause 23.2 set out in paragraph 32;

b. it will otherwise refer at trial to the full terms and effect of each relevant guarantee.

33 As to paragraph 33:

a. subject to referring at trial to the full terms and effect of each relevant guarantee, it admits that the relevant provisions of the Code of Banking Practice apply to guarantees containing a term to the effect set out in paragraph 32;

b. it otherwise denies the allegations therein.

THE PLAINTIFF(S) CLAIMS

G. Claims by ARG

34 As to paragraph 34:

- a. it admits that as at 25 October 2006, the plaintiff was the registered proprietor of Lots 49, 51, 101, 105 and 106;
 - b. it otherwise does not admit the allegations therein.
- 35 As to paragraph 35:
- a. subject to referring at trial to the full terms and effect of the development approval, it admits that ARG had approval from Port Macquarie Hastings Council dated 14 March 2006, for the development of 102 serviced self-care dwellings within the meaning of the State Environmental Planning Policy Seniors Living 2004;
 - b. it otherwise does not admit the allegations therein.
- 36 Subject to referring at trial to the full terms and effect of the facility agreement it admits the allegations in paragraph 36.
- 37 It admits the allegations in paragraph 37.
- Particulars*
- The facility agreements comprised letters and attachments executed by Bankwest and the plaintiffs on or about:*
- 5 October 2006, 24 November 2006, 14 February 2007, 6 June 2007, 28 December 2007, 8 September 2008, 27 November 2008, 30 March 2009, 17 August 2009, 2 September 2009, 18 September 2009*
- 38 It admits the allegations in paragraph 38 on the basis that those allegations concern ARG rather than Group Members generally.

H. ARG's Facility Agreements

- 39 As to paragraph 39:
- a. it admits that in 2009 Bankwest agreed to lend ARG additional funds to fund stage 1A of the Carnegie Cove development;
 - b. it refers to and repeats paragraphs 40, 41, 42, 51-53 and 55 below;
 - c. it otherwise does not admit the allegations therein.
- 40 Subject to referring at trial to the full terms and effect of the Offer Letter from Bankwest dated 30 March 2009, it admits the allegations in paragraph 40.
- 41 Subject to referring at trial to the full terms and effect of the Facility Terms attached to the Offer Letter dated 30 March 2009, it admits the allegations in paragraph 41.
- 42 It admits the allegations in paragraph 42.
- 43 It does not admit the allegations in paragraph 43.

44 It admits the allegations in paragraph 44.

45 It admits the allegations in paragraph 45.

46 As to paragraph 46:

- a. it says that by letter dated 19 June 2009 it engaged RLB (**RLB Engagement Letter**) to prepare a report for the Carnegie Cove Project;
- b. subject to referring at trial to the full terms and effect of the RLB Engagement Letter, it admits that the RLB Engagement Letter provided that RLB was to prepare a monthly report to assess the progress claim of Bendix and certify the value of work completed;
- c. it otherwise denies the allegations therein.

47 As to paragraph 47:

- a. it admits that on or about 15 June 2009 it entered into a Building Contract Tripartite Deed with ARG and Bendix (**Tripartite Deed**);
- b. subject to referring at trial to the full terms and effect of the Tripartite Deed, it says that it was a term of the Tripartite Deed that *"The Bank agrees with the Builder to pay to the Builder any progress claims which are properly certified by the quantity surveyor for the Works as being valid and payable, in accordance with the financial accommodation provided by the Bank to the Customer. The Builder must provide with its claim evidence (to the satisfaction of the Bank and its quantity surveyor) that all major subcontractors who were to be paid have been paid"*;
- c. it otherwise denies the allegations therein.

48 It admits paragraph 48.

49 As to paragraph 49:

- a. it admits that building works had not commenced by 30 April 2009 and that the condition precedent referred to in paragraph 41 was not satisfied;
- b. it says that in the period between July 2009 and January 2010, RLB provided Bankwest with 7 Progress Drawdown reports in relation to the work undertaken by Bendix on the Carnegie Cove Project, each of which provided a certification and assessment of the work undertaken by Bendix in relation to the period, the subject of the claim;

Particulars

RLB provided Bankwest with Progress Drawdown Reports as follows:

*Progress Drawdown report No.1 dated June 2009 for \$181,893.38
(exc GST)*

*Progress Drawdown report No.2 dated August 2009 for \$40,982.32
(exc GST)*

*Progress Drawdown report No.3 dated September 2009 for
\$222,402.26 (exc GST)*

*Progress Drawdown report No.4b dated October 2009 for \$164,388.32
(exc GST)*

*Progress Drawdown report No.5 dated November 2009 for
\$563,358.71 (exc GST)*

*Progress Drawdown report No.6 dated December 2009 for
\$166,793.69 (exc GST)*

*Progress Drawdown report No.7 dated January 2010 for \$198,453.05
(exc GST)*

- c. it admits that it paid the amounts certified in each of the 7 Progress Drawdown reports from RLB;
- d. it otherwise denies the allegations therein.

50 As to paragraph 50:

- a. it admits that it paid the amounts certified in each of the 7 Progress Drawdown reports from RLB referred to in paragraph 49 above:

Particulars

Payments of the amounts specified in each of the Progress Drawdown reports were paid on or about the following dates:

Progress Drawdown report No.1 - 23 July 2009

Progress Drawdown report No.2 - 2 September 2009

Progress Drawdown report No.3 - 29 September 2009

Progress Drawdown report No.4B - 22 October 2009 and 27 October 2009

Progress Drawdown report No.5 - 23 November 2009

Progress Drawdown report No.6 - 17 December 2009

Progress Drawdown report No.7 - 27 January 2010

- b. it otherwise denies the allegations therein.

51 As to paragraph 51, subject to referring at trial to the full terms and effect of an Offer Letter from Bankwest dated 2 September 2009 and the attached Facility Terms, which were executed by the plaintiff on or about 3 September 2009, it admits that the facility agreement was varied on or about 4 September 2009.

I. The 18 September 2009 Facility Agreement

52 As to paragraph 52:

- a. subject to referring at trial to the full terms and effect of the Offer Letter dated 18 September 2009, it admits that by letter dated 18 September 2009, Bankwest sent an Offer Letter in which it advised, amongst other things that:
 - i. it had agreed to vary ARG's existing facilities;
 - ii. from the date of acceptance of the Offer Letter the terms and conditions for all existing Facilities are set out in the Offer Letter and the attached Facility Terms (**18 September 2009 Facility Terms**) and the General terms for Business Lending dated December 2007.
- b. it otherwise denies the allegations therein.

53 It admits the allegations in paragraph 53.

54 It admits the allegations in paragraph 54.

55 It denies the allegations in paragraph 55.

J. Breach of Facility Agreement – Claims by ARG

56 As to paragraph 56:

- a. it denies the allegations therein;
- b. it says further that responsibility for ARG was transferred to CAM on or about 11 February 2009.

57 It admits the allegations in paragraph 57.

K. Events following transfer into CAM

58 As to paragraph 58:

- a. it says that on or about 29 January 2010, Bendix submitted Progress Claim 8 to RLB for its assessment;
- b. it otherwise denies the allegations therein.

59 It admits the allegations in paragraph 59.

60 As to paragraph 60:

- a. it says that by letter dated 17 March 2010, the defendant's solicitors, Blake Dawson, wrote to ARG and told it, amongst other things that:

- i. *"a number of issues were identified in the Progress Drawdown report Number 8 dated 26 February 2010 provided by Rider Levett Bucknall. In particular, the following is noted: 1. The report does not confirm that the contingency allowance is adequate to complete the Building Works to practical completion. (This information is a condition precedent to a Drawing pursuant to clause 4 of the Facility Terms.) 2. There is a contingency over-run identified. (Pursuant to clause 6.9(c) of the Facility Terms, if at any time the quantity surveyor identifies any actual or potential cost overrun, your client must pay an amount equal to the actual or potential cost overrun towards the cost of the Building Works from its own resources before Bankwest will permit any further Drawing.) 3. The practical completion date has been revised to 28 August 2010, representing a significant delay from the original practical completion date.*
- In the circumstances and consistently with the Facility Agreement, Bankwest at this time will not allow the requested Drawing."*

- b. it otherwise denies the allegations therein.

61 As to paragraph 61:

- a. it says that on or about 22 March 2010, Bendix submitted Progress Claim 9 to RLB for its assessment;

Particulars

Progress Claim 9 is in writing

- b. it otherwise denies the allegations therein.

62 As to paragraph 62:

- a. it says that by Progress Drawdown Report No 9 dated May 2010, RLB provided a certification and assessment of the work undertaken by Bendix in relation to the period, the subject of the progress claim, in the sum of \$83,721.60 (exc GST);

Particulars

Progress Drawdown report No 9 is in writing

- b. it otherwise denies the allegations therein.

63 As to paragraph 63:

- a. it refers to and repeats paragraphs 59 and 60;

- b. it says that on 23 February 2010, Bendix submitted a Revised Progress Claim 8 to RLB for \$128,334.25 (inc GST);
- c. it further says that by Progress Drawdown Report No 8 – Rev A, dated 21 April 2010 RLB provided a certification and assessment of the work undertaken by Bendix to Bankwest in relation to the period, the subject of Revised Progress Claim 8, in the sum of \$128,334.25 (inc GST) and that Bankwest paid that amount on or about 27 April 2010;
- d. it admits that it did not pay the amount certified by RLB in Progress Drawdown Report No 9, or any amount in relation to Progress Claim 9;
- e. it otherwise denies the allegations therein.

64 It denies the allegations in paragraph 64.

65 It admits the allegations in paragraph 65.

66 As to paragraph 66 (as particularised in the plaintiffs' particulars dated 5 October 2016):

- a. it admits that it requested Ms Forbes to provide a further valuation of the Secured Property;
- b. it says that by email dated 22 March 2009 and addressed to Ms Karen Ford of Bankwest, copied to Ms Lara Mulligan of Bankwest, Ms Patricia Forbes provided a "Desk Top" valuation in relation to the Secured Property;
- c. it otherwise denies the allegations therein.

67 It repeats paragraph 66 above and denies the allegations in paragraph 67.

68 As to paragraph 68 (as particularised in the plaintiffs' particulars dated 9 September 2016):

- a. it admits that Bankwest obtained a valuation of the Secured Property after March 2010;

Particulars

A written valuation was obtained from Colliers International dated 6 August 2010.

- b. it otherwise denies the allegations therein.

69 As to paragraph 69 (as particularised in the plaintiffs' particulars dated 9 September 2016):

- a. it admits that a meeting took place on 19 April 2010 between representatives of Bankwest and Bendix;

Particulars

The meeting took place at the offices of Bankwest in Sydney attended by Mr Rod Baptist and Mr Jonathan Clements from Bankwest Mr Lincoln Daley of Bendix and Mr John Cameron.

b. it otherwise denies the allegations therein.

70 It refers to and repeats paragraph 63 above.

71 It admits the allegations in paragraph 71.

72 It admits the allegation in paragraph 72.

73 As to paragraph 73:

a. it says that Bankwest did not pay Progress Drawdown Report Number 8 dated 26 February 2010 (**Payment 8 Report**) because ARG was in breach of the terms of the Facility Agreement;

Particulars

Breaches of the terms of the Facility Agreement included:

- (i) *The Payment 8 Report did not confirm that the contingency allowance was adequate to complete the Building Works to practical completion which was a condition precedent to payment pursuant to clause 4 of the facility terms;*
- (ii) *There was a contingency overrun identified. Pursuant to clause 6.9(c) of the facility terms in these circumstances ARG was required to pay an amount equal to the overrun from its own resources before payment could be made in accordance with Payment Report 8;*
- (iii) *The practical completion date had been revised to 28 August 2010, contrary to the date provided for in clause 6.9(f) of the Facility Agreement of 30 April 2010.*

The basis for not paying the amount in the report is explained in correspondence between Blake Dawson (solicitors for Bankwest) and Atkinson Vinden (solicitors for ARG) dated 17 March 2010 and 19 May 2010.

b. it says that Bankwest did not pay Progress Drawdown Report Number 9 dated 5 May 2010 (**Payment 9 Report**) because ARG was in breach of the terms of the Facility Agreement;

Particulars

Breaches of the terms of the Facility Agreement included that the practical completion date had been revised to 17 November 2010

contrary to the date provided for in clause 6.9(f) of the Facility Agreement of 30 April 2010.

The basis for not paying the amount in the report is explained in correspondence between Blake Dawson (solicitors for Bankwest) and Atkinson Vinden (solicitors for ARG) dated 19 May 2010.

- c. it otherwise denies the allegations therein.
- 74 Subject to referring at trial to the full terms and effect of a letter from Port Macquarie Hastings Council dated 25 May 2010, it admits the allegations in paragraph 74.
- 75 As to paragraph 75:
- a. it admits that it paid the Port Macquarie Hastings Council the sum of \$300,000 in response to the claim referred to in paragraph 74 above;
 - b. it says that it was required to pay that sum in accordance with the terms of a Bank Guarantee Contingent Instrument facility in favour of Port Macquarie Hastings Council;
 - c. it denies the allegations in paragraph 75(i);
 - d. it does not admit the allegations in paragraph 75(ii).
- 76 Subject to referring at trial to the full terms and effect of a letter from Blake Dawson addressed to the plaintiff and dated 10 June 2010, it admits the allegations in paragraph 76.
- 77 Subject to referring at trial to the full terms and effect of a letter from Bankwest addressed to the plaintiff and dated 17 September 2010 (**17 September 2010 letter**), it admits the allegations in paragraph 77.
- 78 Subject to referring at trial to the full terms and effect of the 17 September 2010 letter, it admits the allegations in paragraph 78.
- 79 Subject to referring at trial to the full terms and effect of the 17 September 2010 letter, it admits the allegations in paragraph 79.
- 80 Subject to referring at trial to the full terms and effect of the 17 September 2010 letter, it admits the allegations in paragraph 80.
- 81 Subject to referring at trial to the full terms and effect of the 17 September 2010 letter, it admits the allegations in paragraph 81.
- 82 It denies the allegations in paragraph 82.
- 83 Save that it says that the correct names of the receivers were Mr Philip Campbell-Wilson and Mr Keiran Hutchison, it admits the allegations in paragraph 83.

84 It denies the allegations in paragraph 84.

85 It denies the allegations in paragraph 85.

86 It denies the allegations in paragraph 86.

L. Group members – Breaches of Contract by Bankwest

87 It refers to and repeats paragraphs 12 to 33 above.

88 It denies the allegations in paragraph 88.

89 It does not plead to paragraph 89 because it says that no material allegation of fact is made against it.

90 As to paragraph 90:

- a. it refers to and repeats paragraphs 87-89;
- b. it otherwise denies the allegations therein.

M. Breaches of Implied terms and Duty to act reasonably by Bankwest

91 As to paragraph 91:

- a. it refers to and repeats paragraphs 24-29 above;
- b. it otherwise denies the allegations therein.

N. ARG – Breaches of implied terms and Duty to act reasonably

92 As to paragraph 92:

- a. it refers to and repeats paragraphs 84-86 and 91 above;
- b. it otherwise denies the allegations therein.

93 It denies the allegations in paragraph 93.

O. Group Members – Breaches of Implied terms and duty to act reasonably by Bankwest

94 It does not plead to paragraph 94 because it says that no material allegation of fact is made against it.

95 It refers to and repeats paragraph 91 above.

96 As to paragraph 96:

- a. it refers to and repeats paragraphs 88 and 91 above;
- b. it otherwise denies the allegations in paragraph 96.

97 It does not plead to paragraph 97 because it says that no material allegation of fact is made against it.

98 As to paragraph 98:

- a. it refers to and repeats paragraph 96 above;
- b. it otherwise denies the allegations therein.

P. Unconscionable conduct by Bankwest

99 It denies the allegations in paragraph 99.

100 It denies the allegations in paragraph 100.

101 It denies the allegations in paragraph 101.

102 It denies the allegations in paragraph 102.

103 It denies the allegations in paragraph 103.

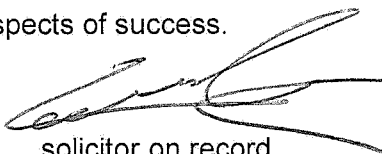
COMMON QUESTIONS

104 It does not plead to paragraph 104 because it says that no material allegation of fact is made against it.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

solicitor on record

Date of signature

28 October 2016

AFFIDAVIT VERIFYING

Name

Kate Erin Brown

Address

Commonwealth Bank of Australia
Level 5, Tower 1, Darling Park
201 Sussex Street
SYDNEY NSW 2000

Occupation

Head of Major DR and ER Legal, Group Corporate Affairs,
Commonwealth Bank of Australia

Date

28 October 2016

I Kate Erin Brown, affirm:

- 1 I am the Head of Major DR and ER Legal in Group Corporate Affairs of the defendant in these proceedings and I am authorised to make this affidavit on the defendant's behalf.
- 2 I believe that the allegations of fact contained in the defence are true.
- 3 I believe that the allegations of fact that are denied in the defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

Affirmed at SYDNEY

Signature of deponent



Name of witness

Cameron Hanson

Address of witness

Level 34, 161 Castlereagh Street
SYDNEY NSW 2000

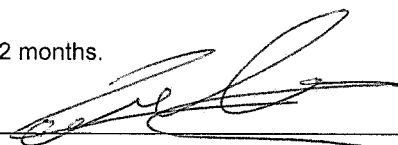
Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.
