

FEDERAL COURT OF AUSTRALIA

Scordo v Commonwealth Bank of Australia [2024] FCA 359

File number(s): VID 354 of 2023

Judgment of: **BUTTON J**

Date of judgment: 12 April 2024

Catchwords: **PRACTICE AND PROCEDURE** – application for review of a decision of a Registrar pursuant to s 35A(5) of the *Federal Court of Australia Act 1976* (Cth) (the **Act**) and for recusal – where the Registrar determined competing summary judgment applications – where the Registrar summarily dismissed the proceeding as disclosing no reasonable cause of action and having no reasonable prospects of success – where re-hearing is required to proceed *de novo* – where applicant’s claims are based on pseudo-legal arguments that are unmeritorious – where proceeding lacks any reasonable prospect of success – application dismissed

Legislation: *Constitution* s 51
A New Tax System (Goods and Services Tax) Act 1999 (Cth) s 195-1
Australian Securities and Investments Commission Act 2001 (Cth) ss 12CB, 12DA
Banking Act 1959 (Cth) s 39
Bills of Exchange Act 1909 (Cth) s 89
Competition and Consumer Act 2010 (Cth) Sch 2
Australian Consumer Law
Corporations Act 2001 (Cth) ss 126, 127
Criminal Code Act 1995 (Cth) Sch 1 *The Criminal Code* s 131.7
Currency Act 1965 (Cth) ss 8, 9
Federal Court of Australia Act 1976 (Cth) ss 31A, 35A
Foreign Judgments Act 1991 (Cth) s 6
National Consumer Credit Protection Act 2009 (Cth) Sch 1
National Credit Code s 8
Trade Practices Act 1974 (Cth)
Federal Court Rules 2011 (Cth) r 26.01
Taxation Administration Regulations 1976 (Cth) reg 18
Transfer of Land Act 1958 (Vic) s 76

Cases cited:

AZC20 v Secretary, Department of Home Affairs [2023] FCA 1252
Blakeley v National Australia Bank [2017] FCA 835
Crocker v Toys 'R' Us (Australia) Pty Ltd (No 3) [2015] FCA 728
Dowling v Commonwealth Bank of Australia [2008] FCA 59
Drummond v Canberra Institute of Technology (No 3) (2022) 294 FCR 346; [2022] FCAFC 169
Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337; [2000] HCA 63
Geneva Laboratories Ltd v Nguyen (2014) 110 IPR 295; [2014] FCA 1270
Kimber v Owners Strata Plan No 48216 [2016] FCA 1090
Knight Frank Australia Pty Ltd v Paley Properties Pty Ltd (2014) 120 SASR 523; [2014] SASCFC 103
Mazukov v University of Tasmania [2004] FCAFC 159
Bechara v Bates (2021) 286 FCR 166; [2021] FCAFC 34
Minister for Immigration & Multicultural Affairs v Jia Legeng (2001) 205 CLR 507
Pathmanathan v Healthscope Operations Pty Ltd [2020] FCA 65
Prior v South West Aboriginal Land and Sea Council Aboriginal Corporation [2020] FCA 808
QYFM v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs (2023) 409 ALR 65; [2023] HCA 15
Re Magistrate M M Flynn; ex parte McJannett [2013] WASC 372
Rossiter v Adelaide City Council [2020] SASC 61
Sayed v Salvation Army Housing [2023] FCA 526
Singh v Owners Strata Plan No 11723 (No 3) (2012) 207 FCR 390; [2012] FCA 1121
SmithKline Beecham (Australia) Pty Ltd v Chipman [2002] FCA 674
Sun v Minister for Immigration & Ethnic Affairs (1997) 81 FCR 71
ThoughtWare Australia Pty Ltd v IonMy Pty Ltd [2023] FCA 906
Totef v Sfar (2008) 167 FCR 193; [2008] FCAFC 35
Woods v T&FS Woods Pty Ltd (2023) 325 IR 464; [2023] FCA 1108

Division:

General Division

Registry:	Victoria
National Practice Area:	Commercial and Corporations
Sub-area:	Commercial Contracts, Banking, Finance and Insurance
Number of paragraphs:	111
Date of hearing:	22 March 2024
Counsel for the Applicant:	The Applicant was self-represented
Counsel for the Respondent:	A Kouloubaritsis
Solicitor for the Respondent:	Gadens Lawyers

ORDERS

VID 354 of 2023

BETWEEN: **JOSEPH-ROBERT SCORDO**
Applicant

AND: **COMMONWEALTH BANK OF AUSTRALIA**
Respondent

ORDER MADE BY: **BUTTON J**

DATE OF ORDER: **12 APRIL 2024**

THE COURT ORDERS THAT:

1. Pursuant to s 31A of the *Federal Court of Australia Act 1976* (Cth) and r 26.01(a)–(c) of the *Federal Court Rules 2011* (Cth), the proceeding be dismissed.
2. The applicant’s interlocutory application dated 3 December 2023 be dismissed.
3. The applicant’s interlocutory application dated 13 March 2024 be dismissed.
4. The applicant pay the respondent’s costs of the proceeding, to be taxed if not agreed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BUTTON J:

INTRODUCTION

- 1 The applicant commenced proceedings against the respondent, the Commonwealth Bank of Australia (**CBA**) by an originating application dated 10 May 2023. I will refer to the applicant as **Mr Scordo** in these reasons, although I recognise that he rejects that name. Mr Scordo has told the Court he considers that form of address a “legal fiction”, and described it as a “statute name”, whereas he does not consider himself to be “a creature of statute”.
- 2 In essence, Mr Scordo’s claim seeks to avoid the loan and mortgage he took out with the CBA. Mr Scordo entered into a loan agreement with the CBA dated 12 June 2015 (the **Loan Agreement**) for a loan of \$357,889.00 for the purchase of the property at 22 Wicklow Drive, Invermay Park, Victoria (the **Property**). The loan was secured by a mortgage (with the number AM039377G) secured on the title to the Property on 20 July 2015 (the **Mortgage**), which is when Mr Scordo took title to the Property.
- 3 The first case management hearing was fixed for 14 July 2023 by orders made by Judicial Registrar Wilson on 19 June 2023.
- 4 At the first case management hearing, both sides foreshadowed making a summary judgment application against the other. By orders made on 14 July 2023, I directed that any summary judgment or summary dismissal applications be referred to a Registrar of the Court for hearing.
- 5 The CBA filed its summary judgment application on 26 July 2023. Mr Scordo’s claim to summary judgment was advanced irregularly (by proposed orders initially dated 12 July 2023, and then filed on 28 July 2023) but was treated as an application for summary judgment.
- 6 The two applications for summary judgment were determined by Judicial Registrar Wilson. The Registrar made orders on 17 November 2023. The Registrar determined that, pursuant to s 31A of the *Federal Court of Australia Act 1976* (Cth) (the **Act**) and r 26.01 of the *Federal Court Rules 2011* (Cth) (the **Rules**), the proceeding was to be dismissed.
- 7 By an application dated 3 December 2023, Mr Scordo applied for review of the Registrar’s decision under s 35A(5) of the Act. Mr Scordo also contended, by that application, that I should recuse myself “due to a conflict of interest with the Applicant”. The nature of that conflict was not specified.

8 The hearing of this application was set down for 8 March 2024, but was adjourned to 22 March 2024 at Mr Scordo’s request. Due to some indications Mr Scordo may have other issues to raise, he was required to file any further interlocutory applications by 15 March 2024. Mr Scordo then filed an additional interlocutory application on 13 March 2024, the terms of which I set out below.

MR SCORDO’S CLAIMS IN THE PROCEEDING

9 The originating application is largely (but not entirely) unintelligible pseudo-legal gibberish. It runs to 17 pages, and comprises eight sections.

10 While the originating application is littered with bible quotations and Latin maxims, it is tolerably clear that, in essence, Mr Scordo’s claim seeks to avoid the Loan Agreement and Mortgage he took out with the CBA. Doing the best I can to discern the legal basis for such contentions from his originating application, Mr Scordo appears to advance a case with the following main components:

- (a) That Mr Scordo’s execution of the Loan Agreement was a promissory note, promissory notes are “money”, the CBA received this note/currency, and the CBA was therefore “double dipping” by relying on the loan to require repayment of funds advanced. He runs a similar claim in respect of the certificate of title of the Property, asserting the certificate of title was also “money” and was received by the CBA. It is contended that this was not disclosed to Mr Scordo when he signed the Loan Agreement and Mortgage, giving rise to claims under the Australian Consumer Law (being Sch 2 to the *Competition and Consumer Act 2010* (Cth)) (the **ACL**) and that the CBA’s insistence on repayments by cash is fraudulent and unconscionable, and contravened s 12CB of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**).
- (b) There was non-compliance with s 127 of the *Corporations Act 2001* (Cth) (the **Corporations Act**) in respect of entry into the Mortgage and Loan Agreement.
- (c) That Mr Scordo was forced to pay for insurance of the loan when it was “fraudulent” as the insurance product did not have a PDS or terms and conditions. This is said to be contrary to s 12CB of the ASIC Act.
- (d) That Mr Scordo is entitled to remedies in equity following various unilateral documents served on, and demands made of, the CBA and its CEO, Matt Comyn. Those demands included seeking an equitable remedy to discharge the Mortgage as Mr Scordo was no longer able to honour it (he said elsewhere in his application that he in on Centrelink

payments, has dependents, and no meaningful assets other than a car) and seeking to position the CBA's failure to satisfy demands made by him as resulting in some kind of agreement.

11 The following paragraphs of the originating application seek relief (emphasis in original):

23. **THAT the Applicant now seeks equitable remedy from the court by way of enforcement of the deed of rescission, served on the Respondent, from all the alleged mortgage contracts and agreements;**

- i. THAT in contract law, rescission is an equitable remedy which allows a contractual party to cancel the contract;
- ii. THAT Parties may rescind if they are the victims of a vitiating factor, such as misrepresentation, mistake, duress, or undue influence;
- iii. THAT Rescission is the unwinding of a transaction. This is done to bring the parties, as far as possible, back to the position in which they were before they entered into a contract- **the status quo ante.**

...

40. **THAT the Applicant now seeks equitable remedy from the court by way of enforcement of the private agreement between the parties, which come by equitable estoppel-**

- i. THAT he who leaves the field of battle first (does not respond to Affidavit) loses by default. See Book of Job; Matt 10:22. Legal maxim: 'He who does not repel a wrong when he can occasions it.'
- ii. THAT an unrebutted affidavit stands as truth in law

...

Section 6 – The Applicant seeks the following orders for equitable remedy and restitution of property ownership-

59. THAT an order pursuant to section 236 and/or 237 of the Competition and Consumer Act 2010 and/or section 33ZF of the Federal Court of Australia Act 1976 (Cth) be as follows:

- a) THAT the Respondent is to comply with the deed of rescission served on them, document number 21112022-2;
- b) THAT the Respondent is to comply with the rescinding of contracts/agreements that give them full Powers of Attorney over the Applicant;
- c) THAT the Respondent is to comply with the rescinding of all trusts, and collapse all trusts created by and for the COMMONWEALTH BANK OF AUSTRALIA for the mortgage;
- d) THAT the Respondent is to relinquish all claims of right to the property;
- e) THAT the Respondent is to give back the Certificate of Title of the property, to the Applicant;

- f) THAT the Respondent is to remove ‘COMMONWEALTH BANK OF AUSTRALIA’ and any and all other legal entities from being a security interest on the property on all paper and digital systems in Australia and the world abroad;
 - g) THAT the Respondent is to remove the property from any systems designating it as collateral;
 - h) THAT the Respondent is to return to the Applicant, the money he was forced/coerced/compelled to pay for the insurance of the mortgage loan, which according to banking and insurance policies is fraudulent, as the product does not have a PDS statement of the insurance terms and conditions;
60. THAT the Applicant makes supplication to the court enforce the **terms of equity**, ordering the Respondent to pay four times the amount of the mortgage to the Applicant for their involvement in this misrepresentation, in order to make the Applicant whole-
- i. THAT ‘Cujus per errorem dati repetitio est, ejus consult dati 4erminus est.’- Whoever pays by mistake what he does not owe, may recover it back; but he who pays, knowing he owes nothing; is presumed to give.
 - ii. THAT ‘Contestio litis eget 4 erminus contradictaris.’- An issue requires terms of contradiction; that is, there can be no issue without an affirmative on one side and a negative on the other.
61. THAT in exchange of rescinding all mortgage contracts and agreements, the Applicant offers to give back **all** benefits and privileges he has received;
62. Any other orders the Court deems fair and equitable;

MR SCORDO’S 13 MARCH 2024 INTERLOCUTORY APPLICATION

12 Mr Scordo’s interlocutory application dated 13 March 2024, was in the following terms (emphasis in original):

- 1. On the grounds stated in the Originating Application, accompanying affidavit which has been submitted earlier on the 3rd March 2024, and all other documents prescribed by the Rules, the Applicant wishes the following-
- 2. The Applicant wishes to invoke the Jurisdiction of Equity on the Court, for matter number VID354/2023;
 - a. The Applicant accepts the following claim made by the Court- “the Court is a superior court of record and a court of law and equity.” – <https://www.fedcourt.gov.au/about/jurisdiction>;
 - b. That “**21. In Equity, norms and values permeate – as maxims, principles, doctrines, and rules. Equitable intervention in commerce is not exceptional.**” – W A Lee Equity Lecture 2021 – <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-sderrington/s-derrington-j-20211118>;
 - c. The Applicant recognises Equity is justice according to natural law or right;

- d. The Applicant recognises Equity does what is right, not what is legal;
3. The Applicant now petitions the court for **equitable relief and remedy**, as the Applicant cannot perform the unconscionable terms of the home loan and mortgage contract(s);
 - a. **‘Impotentia excusat legem.’ “Impossibility excuses the law.” Co. Litt. 29 – Maxim of Law;**
 - b. **‘Ultra posse nemo obligatur.’ “No one is obliged beyond what he is able to do.” – Maxim of Law;**
4. According to The Judicature Act 1883, the Court **must** provide the petitioner relief upon any equitable ground against any **deed, instrument or contract**, as stated below-

[https:// www5.austlii.edu.au/au/legis/vic/hist_act/tja1883153/](https://www5.austlii.edu.au/au/legis/vic/hist_act/tja1883153/)

8 . In every civil cause or matter commenced in the Court law and equity shall be administered by the Court according to the Rules following :—

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the Court, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court in its equitable jurisdiction in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

5. According to Judicature Reform – Supreme Court of Judicature Act 1873 (Imp) Section 25(11); the Rules of Equity shall prevail in this matter, as stated below.
 - a. **Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.**
6. The Applicant being a petitioner, makes his Claim of Right, that the Applicant is entitled to all equitable estate and right, seeks **equitable relief and remedy** upon all grounds against mortgage instrument and contract; numbered-AM039377G and the Home Loan instrument and contract; numbered- 87 4640770;
 - a. **‘Impossibilium nulla obligatio est.’ “The impossible is no legal obligation.” – Maxim of Law**
 - b. **‘Lex non cogit ad impossibilia.’ (COKE, LITT. 92. A.). “The law forces not to impossibilities.” – Maxim of Law**
7. The Applicant will defer to the Court, **who will act in the best interest for the Applicant**, to prescribe equitable relief and remedy to the Applicant as it sees fit;
 - a. **“When acting for another, act in the best interest for that other” – One of six fundamental norms of behaviour identified by Commissioner**

Hayne;

- b. ‘Lex semper dahit remedium.’ (3 BOU.INST. 2411). “Law will always give a remedy.” – Maxim of Law

SUBMISSIONS AND EVIDENCE

13 Timetabling orders made in respect of the two applications made provision for Mr Scordo to file evidence and written submissions. He did not file any written submissions, but filed an affidavit dated 28 February 2024.

14 So as to avoid any potential confusion, Mr Scordo was asked to identify, before the hearing of his two applications, the affidavits and any other document he intended to rely on at the hearing. In answer to that request, Mr Scordo sent copies of two affidavits: one affirmed by him on 28 February 2024, and a further affidavit affirmed by him on 3 March 2024.

15 Mr Scordo’s 28 February 2024 affidavit referred to the affidavit of Norisha Young dated 22 February 2024 (relied on by the CBA) and said as follows (emphasis in original):

1. We are a Claimant, a FACT, having full knowledge that we are a FACT, not a “Legal Fiction”, “Norn de Guerre” or a “Dead Person”, answering to :Joseph-Robert, of Ballarat, Victoria, a free man of the land, our yes be yes, our no be no, do state the facts herein are of first-hand personal knowledge, true, correct, complete, certain and not misleading in any way;
2. That the Applicant is rebutting the Gadens Affidavit tendered into the Court on 23-02-2024 by Norisha Lee Young, the deponent for that affidavit;
3. That the Applicant sincerely believes the Affidavit is fraudulent and is knowingly misleading and mis-represents the Applicant and the Deponent of that Affidavit;
4. That the Affidavit states “**JOSEPH-ROBERT SCORDO**”, is the Applicant; refer to exhibit JRS1, page 1;
5. That the affidavit also states the following- refer to exhibit JRS1, page 2: “**I, NORISHA LEE YOUNG of Level 13, Collins Arch, 447 Collins Street, Melbourne, Victoria 3000, solicitor, SOLEMNLY AND SINCERELY DECLARE AND AFFIRM:**”;
6. That we- :Joseph-Robert, cannot read the statements above, and do not understand them, as it is not written in English;
7. The Applicant now asks Norisha Lee Young to produce answers and positive proof of the following questions in order to clarify the matter at hand-
 - a. What language is the Affidavit written in?
 - b. Which styles manual did Norisha Lee Young use to write the Affidavit?
 - c. Does the Court accept affidavits written in a foreign language?

- d. Who is “JOSEPH-ROBERT SCORDO”?
 - e. Who is “NORISHA LEE YOUNG”?
 - f. Is “NORISHA LEE YOUNG” able to declare and affirm an affidavit?
8. It is with the stipulation, that any man or woman having first hand knowledge of all the facts asserted herein and having absolute power and authority to rebut this affidavit, must rebut in their private capacity under their full commercial liability, with the rebutting party’s own signature and endorsement notarised, under the penalty of perjury and willing to testify, and executed as true and correct, and complete with positive proof attached. Absent positive proof, any rebuttal shall be deemed null and void having no force or effect, hereby waiving any rights to claim. When a rebuttal is not received by the Applicant within 72 hours, of this affidavit and default provisions below (a.) shall be deemed true and correct;
- a. That Norisha Lee Young has knowingly committed fraud and misrepresentation, designed to mislead and harm the Applicant: Joseph_Robert. Norisha Lee Young will be made liable for the damages and tort caused by this fraud and mis-representation against the Court and against the Applicant;

Further we saith not.

- 16 The 3 March 2024 affidavit was largely in the form of a submission, stating that Mr Scordo sought “equitable relief and remedy” as he could not perform the terms of the home loan and mortgage contracts. Mr Scordo’s affidavit set out bases upon which he considered the Court should grant him such equitable relief. The affidavit included a part wherein Mr Scordo stated that he “rebutts all presumptions and assumptions of the Court” and went on to set out a number of “presumptions”, the meaning and content of which remains unclear.
- 17 In a section headed “The Applicants [sic] grievances against the Respondents [sic]-”, Mr Scordo stated that, under contract law and equity, the CBA had a “lawful duty to act, and therefore, have a lawful duty to reply to their customers when sent lawful notices to do so”. This apparently founds a further submission that the CBA’s failure to respond to various of Mr Scordo’s communications (addressed further below) constitutes acceptance by silence which founds an equitable estoppel.
- 18 The affidavit included a section “The Applicants [sic] grievances against the Court-” which stated (emphasis in original):
- 9. That the Applicant at no time, has received any direct rebuttals to the contents of any and all Affidavits tendered into the Court by the Applicant, for matter number VID354/2024, from any parties, whatsoever;
 - 10. That the Applicant at all times has petitioned the Court for an equitable remedy in this matter numbered- VID354/2023 and all derivatives and deviations thereof;

11. That the Court has thus far refused to give the Applicant, a living man, equitable relief and remedy, instead opting to entrap the Applicant in some type of joinder to a legal fiction called “Mr Scordo”, which the Applicant does not understand, nor has been given full disclosure regarding this entrapment process adopted by the Court;

a. The Court is now been asked to provide full disclosure regarding this process it is using, to supposedly entrap the Applicant into becoming a creature of statute;

19 The affidavit also contains a section detailing grievances against me. I refer to those matters further in addressing Mr Scordo’s recusal application. The affidavit then set out “The Applicants [sic] Grievance against Joanne Wilson-” (ie Judicial Registrar Wilson, who initially decided the two summary judgment applications). Those grievances focus on the perceived content and consequences of Registrar Wilson’s decision.

20 The 3 March 2024 affidavit concludes by again demanding that the Court act in Mr Scordo’s best interests and “prescribe equitable relief and remedy”.

21 Mr Scordo also filed written submissions before the initial hearing of the summary judgment applications by the Registrar. Those submissions were dated 21 August 2023. I have had regard to those submissions, even though it was not entirely clear whether Mr Scordo wished to rely on them on the re-hearing.

22 I began the hearing on 22 March 2024 by identifying the matters raised by the two interlocutory applications, and referred to Mr Scordo’s identification of only two affidavits as the material he wished to rely on. Through discussion, Mr Scordo clarified that he also wished to rely on his originating application (which would of course have been considered given the nature of the summary judgment applications) as well as his initiating affidavit, dated 2 March 2023.

23 Mr Scordo’s initiating affidavit comprises 26 paragraphs, setting out the equitable relief which he seeks, describing each of the notices that he has sent to the CBA, and the CBA’s alleged “failure of their duties and obligations” to Mr Scordo. The affidavit exhibits copies of each of the notices which Mr Scordo has sent to the CBA.

24 On the rehearing, the CBA relied on the submissions it advanced in support of its summary judgment application dated 10 August 2023 and its 18 August 2023 submissions against Mr Scordo’s summary judgment application. It also put on further submissions dated 15 March 2024.

25 The CBA relied on the following affidavits:

- (a) affidavit of Anna Koumides dated 26 July 2023;
- (b) affidavit of Michael Hewitson dated 9 August 2023;
- (c) affidavit of Susan Verginis dated 10 August 2023; and
- (d) affidavit of Norisha Young dated 22 February 2024.

26 Those affidavits exhibited the Loan Agreement and Mortgage documentation and the demand issued by the CBA, a form completed by Mr Scordo regarding taking out mortgage insurance, and various documentation issued by Mr Scordo, as well as correspondence with Mr Scordo.

REVIEW OF A DECISION OF A REGISTRAR

27 Section 35A(5) of the Act provides that a party to proceedings in which a Registrar has exercised any of the powers of the Court under s 35A(1) may apply to the Court to review the exercise of the powers of the Court by a Registrar. A review of such a decision is by way of a hearing de novo: *Mazukov v University of Tasmania* [2004] FCAFC 159 at [22]–[24] (Keifel, Weinberg and Stone JJ). The matter is to be considered afresh on the evidence and law at the time of the review: *Bechara v Bates* (2021) 286 FCR 166; [2021] FCAFC 34 at [17] (Allsop CJ, Markovic and Colvin JJ). On such a review, the Court is exercising its original jurisdiction which, pursuant to s 20(1) of the Act, is to be exercised by a single judge, except where otherwise provided: *Totef v Sfar* (2008) 167 FCR 193; [2008] FCAFC 35 at [12]–[13] (per Emmett J).

RECUSAL APPLICATION

28 At the start of the hearing on 22 March 2024, I explained that recusal applications can be advanced based on either actual or apprehended bias, or on both bases. I explained the legal tests for each to Mr Scordo.

29 I invited Mr Scordo to make his submissions in support of his recusal application. Mr Scordo said he did not want to make any submissions and would “prefer just to contend with the equitable relief and remedy”. It seems, however, that Mr Scordo also did not withdraw the application, so I will address it as best I can given the circumstances.

30 It remains the position that Mr Scordo has not detailed the basis on which he contends I should recuse myself. I can only infer that his concern relates to the matters raised in his 3 March 2024 affidavit concerning his grievance with me. In that part of his affidavit, Mr Scordo asserted that I did not answer his questions about being an “agent of the Crown”, thereby “seeding [sic

ceding] commercial energy to the Applicant”, and that I signed a “Contract of Appointment” appointing me his fiduciary to settle his alleged debts to the CBA, and that I had failed to perform this obligation, committed “misfeasance in public office” and “caused a tort” against the applicant, in respect of which “tort” Mr Scordo sought an equitable remedy of four times the value of the Property. The document said to have been signed was “JRS 3” to that affidavit. That document was a copy of the Court’s timetabling orders dated 14 July 2023, on which Mr Scordo crossed out some things, wrote various other things, applied his thumb prints and some postage stamps.

31 In its submissions on the recusal application, the CBA pointed to the orders I made in exercise of the Court’s powers, all of which were procedural in nature. It submitted that there was no basis for a bias application.

32 The tests for actual and apprehended bias are well established.

33 In *Drummond v Canberra Institute of Technology (No 3)* (2022) 294 FCR 346; [2022] FCAFC 169, the Full Court (Rangiah, Charlesworth and Banks-Smith JJ) set out the test for actual bias (at [45]–[48]). Their Honours relied on the decision of North J in *Sun v Minister for Immigration & Ethnic Affairs* (1997) 81 FCR 71 where his Honour observed (at 134–5) that:

Actual bias exists where the decision-maker has prejudged the case against the applicant, or acted with such partisanship or hostility as to show that the decision-maker had a mind made up against the applicant and was not open to persuasion in favour of the applicant.

...

proof of actual bias by inference from the facts and circumstances of the case will usually involve an assessment of a series of actions by the decision-maker which, when taken together, form a whole picture leading to the conclusion of pre-judgment. It is unlikely that one single action, as distinct from a pattern of conduct, will demonstrate actual bias.

...

actual bias does not necessarily involve deliberate, knowing, or wilful prejudice against an applicant ... A decision-maker may not be open to persuasion and, at the same time, not recognise that limitation.

34 The Full Court also relied on the reasons of Gleeson CJ and Gummow J in *Minister for Immigration & Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 where their Honours observed (at [71]–[72]):

Decision-makers including judicial decision-makers, sometimes approach their task with a tendency of mind, or predisposition, sometimes one that has been publicly

expressed, without being accused or suspected of bias. The question is not whether a decision-maker's mind is blank; it is whether it is open to persuasion ... The state of mind described as bias in the form of prejudgment is one so committed to a conclusion already formed as to be incapable of alteration, whatever evidence or arguments may be presented.

35 The applicable test for apprehended bias has been described as the “double might” test: a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide. This test was confirmed as the relevant test by the High Court (Gleeson CJ, McHugh, Gummow and Hayne JJ) in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; [2000] HCA 63 (***Ebner***), and was recently affirmed in *QYFM v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs* (2023) 409 ALR 65; [2023] HCA 15 (see, eg, [37]–[38] per Kiefel CJ (as her Honour then was) and Gageler J (as his Honour then was), [67] per Gordon J and [119] per Edelman J).

36 While there are many first instance decisions explaining and applying the test, the principles were helpfully summarised by Kennett J in *AZC20 v Secretary, Department of Home Affairs* [2023] FCA 1252 at [10]–[11]:

The principles to be applied are not in contest. A reasonable apprehension of bias requires that there be a possibility, real and not remote, that a fair-minded and appropriately informed lay observer might reasonably apprehend that the decision-maker might not bring a fair, impartial and independent mind to the determination of the matter on its merits. Recently in *QYFM v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs* [2023] HCA 15; 97 ALJR 419 at [38], Kiefel CJ and Gageler J identified the inquiry as involving the following steps:

Application of the criterion was identified in *Ebner*, and has been reiterated, logically to entail: (1) identification of the factor which it is said might lead a judge to resolve the question other than on its legal and factual merits; (2) articulation of the logical connection between that factor and the apprehended deviation from deciding that question on its merits; and (3) assessment of the reasonableness of that apprehension from the perspective of a fair-minded lay observer.

It is important to note that ‘It is an open, and not an empty, mind that must be kept’: *SZQYM v Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs* [2020] FCA 779; 169 ALD 579 at [102] (Allsop CJ). Thus, preliminary views — even fairly strong ones — about the merits of an issue do not found a reasonable apprehension of bias. To put it another way, an apprehension that the decision maker is likely to come to a certain conclusion is not an apprehension of bias in the relevant sense. What must be shown is a reasonable apprehension that the decision maker might not resolve the question on its merits.

37 While Mr Scordo may hold some views as to the matters referred to in his 3 March 2024 affidavit, those views do not touch on the applications I am considering. It is not apparent how

it would be that any of the matters raised by Mr Scordo would lead to a conclusion that I had prejudged the substance of the applications, or that a fair-minded lay observer might conclude that I might not bring a fair, impartial and independent mind to the disposition of the applications. Nor does the procedural history of the litigation to date — involving my exercise of the Court’s jurisdiction in making procedural orders — suggest the existence of any matter that would warrant my not hearing and determining the applications.

38 The recusal application is refused.

PRINCIPLES CONCERNING SUMMARY JUDGMENT APPLICATIONS

39 The CBA’s application for summary judgment was brought under s 31A of the Act, and r 26.01(1)(a)–(c) of the Rules. Mr Scordo’s summary judgment application was advanced under r 26.01(1)(e) of the Rules.

40 Section 31A(2) of the Act provides as follows:

- (2) The Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
 - (a) the first party is defending the proceeding or that part of the proceeding; and
 - (b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.

41 Section 31A(3) provides that a defence or a proceeding (or part of a proceeding) need not be hopeless or bound to fail for it to have no reasonable prospect of success.

42 As the CBA noted in its submissions, the legislative purpose of s 31A is to strengthen “the powers of the court to deal with unmeritorious matters by broadening the grounds on which federal courts can summarily dispose of unsustainable cases”: *Pathmanathan v Healthscope Operations Pty Ltd* [2020] FCA 65 at [8] (Steward J). Further, the Court’s power to give judgment under s 31A does not involve “mere pleading points” but is concerned with substance: *Singh v Owners Strata Plan No 11723 (No 3)* (2012) 207 FCR 390; [2012] FCA 1121 at [39] (Griffiths J).

43 Rule 26.01(1) provides as follows:

- (1) A party may apply to the Court for an order that judgment be given against another party because:
 - (a) the applicant has no reasonable prospect of successfully prosecuting the proceeding or part of the proceeding; or

- (b) the proceeding is frivolous or vexatious; or
- (c) no reasonable cause of action is disclosed; or
- (d) the proceeding is an abuse of the process of the Court; or
- (e) the respondent has no reasonable prospect of successfully defending the proceeding or part of the proceeding.

44 A respondent may establish that a case has no reasonable prospects of success where the applicant has not identified any valid claim in the materials placed before the court or where the applicant has not provided any factual material that could amount to a valid claim, justifying the conclusion that there is not, and never will be, a valid claim that should be taken to trial: *Dowling v Commonwealth Bank of Australia* [2008] FCA 59 at [30] (Reeves J).

45 The principles concerning summary judgment applications based on a lack of reasonable prospects (rr 26.01(a) and (e)) were summarised by O’Callaghan J in *Sayed v Salvation Army Housing* [2023] FCA 526 (**Sayed**) (at [45]):

The essential requirement for an order under s 31A or r 26.01 is that the court be satisfied that the Applicant has no reasonable prospect of successfully prosecuting the claim: *Spencer v Commonwealth* (2010) 241 CLR 118 at 131-32 [24]–[25] (French CJ and Gummow J) and 141 [60] (Hayne, Crennan, Kiefel and Bell JJ). As *Spencer* makes clear, this is a lower standard than the “General Steel test” of “hopeless” or “bound to fail” (see *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 and *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125). In *Sop and Sop Pty Ltd v Commissioner of Taxation* [2019] FCA 102 at [14]–[15], Kenny J said that “when well-established propositions of law deny the prospect of success” summary judgment is available. Although, as her Honour said, summary dismissal is a “serious step taken only with great care and if it is possible to conclude with confidence that there is no reasonable prospect of success”, quoting *Danthanarayana v Commonwealth* [2016] FCAFC 114 at [4] (Jagot, Bromberg and Murphy JJ).

46 Mr Scordo and the CBA each seek summary judgment on the basis that the other party’s position lacks a reasonable prospect of success.

47 Summary judgment may also be given because the proceeding is frivolous or vexatious: r 26.01(1)(b). The CBA invokes this provision against Mr Scordo. A matter will be one that is frivolous and vexatious where the “cause of action is one which on the face of it is clearly one which no reasonable person could properly treat as bona fide, and contend that he had a grievance which he was entitled to bring before the court”: *Geneva Laboratories Ltd v Nguyen* (2014) 110 IPR 295; [2014] FCA 1270 at [56] (Gleeson J).

48 The difference between “frivolous” and “vexatious” was considered by Reeves J in *Crocker v Toys ‘R’ Us (Australia) Pty Ltd (No 3)* [2015] FCA 728 (at [9]), exposing that a “frivolous” matter is one that lacks substance or is groundless or fanciful, or where a party is trifling with

the court or wasting its time. By contrast, a proceeding is “vexatious” if it is without foundation, cannot succeed or is brought for an ulterior and collateral purpose.

49 A proceeding may be summarily dismissed on the basis that no reasonable cause of action is disclosed (r 26.01(1)(c), which the CBA invokes against Mr Scordo) if it is so obviously untenable that it cannot succeed: *SmithKline Beecham (Australia) Pty Ltd v Chipman* [2002] FCA 674 at [29] (Weinberg J). Where pleadings consist of “scandalous, conclusory allegations, with no attempt to plead any material facts upon which the allegations are made and which raise no reasonable cause of action”, the proceeding may be one in which no reasonable cause of action is disclosed: *Prior v South West Aboriginal Land and Sea Council Aboriginal Corporation* [2020] FCA 808 at [33] (McKerracher J); see also *Kimber v Owners Strata Plan No 48216* [2016] FCA 1090 at [72] (Perry J) and *Sayed* at [46] (O’Callaghan J).

50 Observations have been made by judges in other cases pointing to the waste of scarce judicial resources involved in addressing the pseudo legal claims of sovereign citizens (whether or not Mr Scordo identifies with that group need not be explored). In *Re Magistrate M M Flynn; ex parte McJannett* [2013] WASC 372 at [15], McKechnie J said:

Finally, judges administer justice according to law. They are not required to expend judicial time, a scarce public resource, on applications that have no legal foundation and involve deluded understanding of the law.

51 Similarly, in *Rossiter v Adelaide City Council* [2020] SASC 61, Livesey J said:

Various terms have been used to describe “pseudo legal arguments” such as those advanced by the appellant in this case. They have without reservation been rejected as involving both legal nonsense and an unnecessary waste of scarce public and judicial resources. So too here.

52 Other litigants are also vexed by having to expend time and resources on such claims.

53 The Court’s resources are finite. Parliament has, through s 31A, equipped the Court with power to avoid the waste of those resources by unmeritorious claims (and defences). While granting summary judgment is a serious matter as it brings to an end a litigant’s ability to pursue claims (or defences) to trial, the Court should not shy away from exercising its powers in an appropriate case: *ThoughtWare Australia Pty Ltd v IonMy Pty Ltd* [2023] FCA 906 at [53] (Derrington J); *Woods v T&FS Woods Pty Ltd* (2023) 325 IR 464; [2023] FCA 1108 at [33] (Thomas J).

THE CBA'S SUMMARY JUDGMENT APPLICATION

54 I will address the CBA's summary judgment application first. Given that Mr Scordo's summary judgment application relies on r 26.01(e) — the respondent has no reasonable prospect of successfully defending the proceeding or part of the proceeding — it clearly will have no life if the CBA succeeds on its summary judgment application.

Factual summary

55 The factual summary set out below draws on the CBA's submissions. I am satisfied that the facts, as summarised by the CBA are supported by the affidavits and documents annexed to the affidavits in evidence. I am also satisfied that the facts are established to the level necessary on a summary, interlocutory basis, albeit mindful of the serious consequences of summary dismissal of Mr Scordo's claims.

56 On 10 June 2015, the CBA and Mr Scordo entered a loan contract for \$357,889.

57 On 12 June 2015, Mr Scordo signed a form titled "Insurance Options for Home Loan Customers". On that form, Mr Scordo checked the box next to "Yes" to indicate that he was interested in "Buying Loan Protection". That form included the note "it is not compulsory to take out Loan Protection or other life insurance products when arranging a home loan with the Commonwealth Bank".

58 The CBA's record of the details of Mr Scordo's loan protection insurance application shows that Mr Scordo agreed to proceed with the insurance application and was provided with both the PDS and FSG [financial services guide] for the insurance product.

59 On 7 July 2015, the funds were deposited into a Commonwealth Bank account in Mr Scordo's name.

60 On 20 July 2015 in dealing AM039377G, Mr Scordo mortgaged all his estate and interest in the Property to secure repayment of the amount owing under the Loan Agreement and Mortgage. The Mortgage is registered on the title to the Property.

61 The Loan Agreement does not provide for Mr Scordo to satisfy his repayment obligations by tendering promissory notes.

62 Mr Scordo then issued a number of documents that I will refer to as the **Unilateral Documents**, while acknowledging that Mr Scordo does not see them as unilateral.

63 The Unilateral Documents were as follows:

- (a) On 24 October 2022, Mr Scordo sent to Mr Matt Comyn, the CEO of the CBA, a “Notice of Petition of Equitable Relief” (the **Notice of Petition**). The Notice of Petition advised the CBA that Mr Scordo has been unable to work, is low on income and asked the CBA to grant equitable relief, presumably by refraining from enforcing the Mortgage.
- (b) On 22 November 2022, Mr Scordo sent to Mr Comyn a “Deed of Rescission,” which has not been executed by the CBA (the **Deed of Recission**). The Deed of Rescission purported to rescind all signatures made by Mr Scordo on any contract he had with the CBA and demanded that the CBA release him from his obligations under the Mortgage.
- (c) On 22 November 2022, 22 December 2022, 4 January 2023 and 20 January 2023, Mr Scordo sent to Mr Comyn a:
 - (i) “Notice of Restoration of Our Property”;
 - (ii) “Second Notice of Restoration of Our Property”;
 - (iii) “Further Second Notice of Restoration”; and
 - (iv) “Final Notice of Restoration”all of which purported to rescind all signatures made by Mr Scordo on any contract pursuant to the Deed of Rescission, and demand that the CBA release him from his obligations under the Mortgage.
- (d) On 3 February 2023, Mr Scordo sent to Mr Comyn an “Irrevocable Estoppel by Acquiescence” (**Irrevocable Estoppel by Acquiescence Notice**). The Irrevocable Estoppel by Acquiescence Notice purportedly declared that due to the CBA’s failure to respond to previous notices, the CBA:
 - (i) is irrevocably estopped from bringing any legal action against Mr Scordo; and
 - (ii) has agreed that the Loan and Mortgage have been fully settled and that the matter is permanently closed.
- (e) Also on 3 February 2023, Mr Scordo sent to Mr Comyn an “Affidavit of Notice of Commercial Default” (**Notice of Commercial Default**). The Notice of Commercial Default purported to declare that:
 - (i) the CBA is irrevocably estopped from bringing any legal action against Mr Scordo; and

- (ii) the CBA has agreed that the Loan and Mortgage have been fully settled and that the matter is permanently closed.

64 Each of the Unilateral Documents is, one way or another, referred to in the originating application (see [20], [24]–[25], [26]–[27], [41] and [58]).

65 The proceeding was then commenced on 10 May 2023.

66 After the proceeding was issued, further events took place.

67 On 14 June 2023, the CBA’s solicitors, Gadens, issued a “Notice of Default and Notice of Demand” pursuant to s 88 of the *National Credit Code* (being Sch 1 to the *National Consumer Credit Protection Act 2009* (Cth)) and s 76 of the *Transfer of Land Act 1958* (Vic) to Mr Scordo (the **Demand**). The Demand demanded payment of the amount of \$9,553.64, being the arrears of \$9,297.39 plus enforcement expenses of \$256.25 by 24 July 2023, failing which the full amount would be owing and without further notice Mr Scordo would be required to pay the full amount owing under the loan (as of 10 June 2023, being \$310,257.09) and that the CBA would exercise its power of sale over the Property.

68 Mr Scordo then purported to tender a “promissory note” dated 14 July 2023 to the CBA, and thereby claimed to have paid the CBA the amount of \$400,000.

69 On 19 June 2023, Gadens received from Mr Scordo a “Notice of Non-Consent to Contract and Notice of Faulty Demand and Notice of Court Proceedings against you” (**Non-Consent to Contract Notice**). By the Non-Consent to Contract Notice, Mr Scordo:

- (a) returned a copy of the Demand with a thumb print and hand-written annotation which read “We do not accept your offer to contract, Refused for cause without dishonour, We do not consent to this matter proceeding at your request, Settled privately, Returned to sender within 72 hours or receipt, By order of :Joseph-Robert Scordo”;
- (a) purportedly rejected the Demand;
- (b) claimed to have settled the matter and to be awaiting the Federal Court Proceeding to make an order in Mr Scordo’s favour; and
- (c) requested that the CBA cease and desist with any further action.

70 On 26 July 2023, the CBA rejected the promissory note as payment for the amount owing under the Loan Agreement and Mortgage and informed Mr Scordo that the amount owing under the Loan Agreement and Mortgage remained due and payable.

71 The same day, 26 July 2023, the CBA issued its interlocutory application seeking summary judgment against Mr Scordo.

72 Mr Scordo's effective interlocutory application was advanced, by his proposed orders, two days later, on 28 July 2023.

Claims regarding entry into the Loan Agreement and Mortgage

Misleading or deceptive conduct claims

73 As best I can understand it, Mr Scordo's case contends that, by entering into the Loan Agreement, he issued a promissory note, and the CBA failed to tell him that the promissory note is money, that it would be deposited into the CBA's bank account and would be used by the CBA thus resulting in "double dipping". The originating application cites the following legislative provisions in support of the contention that promissory notes are money: s 39 of the *Banking Act 1959* (Cth); ss 8–9 of the *Currency Act 1965* (Cth); *A New Tax System (Goods and Services Tax) Act 1999* (Cth) "as amended compilation start date: 1 March 2013 – Part 6-3 Dictionary – 195 – 195-1 (a) (b) (c) (d)" (I infer from this description that Mr Scordo is referring to sub-paragraphs (a)–(d) of the definition of "money" in s 195-1); s 131.7(4) of the **Criminal Code** (being the Schedule to the *Criminal Code Act 1995* (Cth)); reg 18 of the *Taxation Administration Regulations 1976* (Cth) (which regulations were repealed on 1 October 2017 by Sch 3 of the *Taxation Administration Regulations 2017* (Cth)); and s 89(1) of the *Bills of Exchange Act 1909* (Cth). The originating application also refers to s 51(xvi) of the Constitution.

74 The originating application referred to the ACL, and the superseded provisions of the *Trade Practices Act 1974* (Cth) (the **TPA**). Although those provisions of the TPA are no longer in force, and the ACL does not apply to the supply, or possible supply, of services that are financial services, or of financial products (s 131A), neither of those matters is dispositive. Mr Scordo is self-represented, and the ASIC Act also contains, by s 12DA, similar provisions in respect of misleading or deceptive conduct.

75 Rather, what is fatal, is the underlying premise the Mr Scordo's entry into the Loan Agreement amounted to him providing "money" to the CBA, meaning it was double-dipping by taking that "money" and also requiring him to make repayments under the Loan Agreement.

76 Contrary to Mr Scordo's submissions, the legislative provisions referred to above do not establish that promissory notes are "money" for all purposes. Of the provisions cited by

Mr Scordo, only two refer to a promissory note as constituting currency or money in any way. The first is s 39 of the *Banking Act 1959* (Cth). That section is entitled “Power to make regulations”. It appears within Part 3 of that Act, which is titled “Foreign exchange, foreign investment etc.”. Section 39 prescribes the purposes for which, and matters about which, the Governor-General may make regulations relating to foreign exchange and investments. Subsection 39(8) provides definitions of various terms for the purposes of “this section” including “Australian currency” and “foreign currency” both of which include promissory notes. It is clear from the language of s 39(8) that the definitions of Australian currency and foreign currency are intended to apply only for the purposes of that Act and do not establish any general proposition that a promissory note is “money” such as to provide any conceivable foundation for Mr Scordo’s contention that the CBA engaged in misleading or deceptive conduct by failing to alert him to this, and thereby “double dipping”. The second is s 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). There, “money” is defined at (b) of the definition as including “promissory notes and bills of exchange”. Section 195-1 appears within Chapter 6, which is titled “Interpreting this Act”. The definitions set out in the dictionary in Division 195 apply only for the purposes of that Act. The definition of “money” in that Act does not provide any support for Mr Scordo’s broader proposition that promissory notes are “money” for all purposes.

- 77 This claim is entirely misconceived. It does not enjoy a reasonable prospect of success and does not disclose a reasonable cause of action. The claim is also frivolous or vexatious.

Unconscionable conduct claims

- 78 The originating application advances a related claim that the CBA engaged in unconscionable conduct by asserting that Mr Scordo was required to pay off the loan by making cash repayments when “a promissory note does NOT pay a debt (ONLY DISCHARGES a liability!)” and “[t]here is no legal tender in circulation at this time, that has the ability to ‘pay off debt’”.
- 79 The claims are incomprehensible and absurd. They do not enjoy a reasonable prospect of success and do not disclose a reasonable cause of action. The claims are also frivolous or vexatious.

Mortgage insurance claims

80 The originating application suggests that Mr Scordo was “forced/coerced/compelled” to pay for mortgage insurance and that the insurance product “did not have a PDS statement of the insurance terms and conditions in contravention to” s 12CB of the ASIC Act.

81 Evidence tendered by the CBA included the form signed by Mr Scordo stating that he wished to take out loan protection insurance. That form made no mention of the insurance being compelled. CBA also relied on a business record of a computer system entry recording that Mr Scordo was provided with the PDS and FSG [financial services guide]. Despite this evidence of the CBA, Mr Scordo did not seek to contest the CBA’s account that the insurance was taken out voluntarily and that Mr Scordo was provided with the PDS and FSG.

82 This claim does not enjoy reasonable prospects of success.

Claim under s 127 of the Corporations Act

83 Mr Scordo’s originating application said as follows concerning his claim regarding s 127 of the Corporations Act:

THAT the Applicant does not believe the execution of the mortgage contract is enforceable as it does not comply with section 127 of the Corporations Act 2001 (Cth);

- i. Relevant case law: Knight Frank Australia Pty Ltd & Anor v Paley Properties Pty Ltd & Ors [2014] SASCFC 10[3]; is an example of a \$1.5 million-dollar contract being incorrectly signed by a corporation.

84 At the first case management hearing on 14 July 2023, I asked Mr Scordo to explain his concerns about how the Loan Agreement and Mortgage were entered into. In addition to making points already addressed, Mr Scordo said as follows in relation to his complaint about the signatures on the documents:

Also, I have complaints about how the mortgage agreements and the contracts were executed. I don’t believe the witnesses – witness signatures for – I don’t believe the mortgage contracts were executed correctly, in the fact that, in regards to the witness signatures, and the fact that the – the witness – and the fact that the – the signatures are on – seem to be on different pages, so there’s a discontinuity of the contract as the signatures are on different pages of the agreements and the contracts.

85 The title in evidence records a mortgage no AM039377G. That dealing was in evidence (along with the incorporated Memorandum of Common Provisions). It does not show any irregularities in execution. The Loan Agreement comprised a schedule, signed by Mr Scordo, and an incorporated set of CBA’s “Usual Terms and Conditions for Consumer Mortgage Lending”. It is not apparent that there is any irregularity in the execution of the schedule either.

86 At the hearing on 22 March 2024, I asked Mr Scordo to clarify his complaint. In substance, his contention was that neither document (the Loan Agreement or the Mortgage) was signed by the CBA; they were only signed by him. Mr Scordo submitted that the agreements were therefore not executed by the CBA in accordance with the requirements of s 127 of the Corporations Act and this fact rendered the agreements unenforceable and “void” from the outset.

87 Both the Loan Agreement and Mortgage were signed by Mr Scordo. The CBA drew attention to the fact that the Loan Agreement was electronically signed “for and on behalf of the Commonwealth Bank of Australia” on 10 June 2015 by Mr Brian Moseley, who was the General Manager of Retail Customer Service. The Mortgage clearly identifies that the Mortgagor is Mr Scordo, the Mortgagee is the CBA and is executed by Mr Scordo, whose signature was witnessed.

88 Mr Scordo’s argument based on s 127 of the Corporations Act does not enjoy reasonable prospects of success. The fundamental difficulty with that argument is that it wrongly treats s 127 as an exhaustive and prescriptive code specifying the ways in which contracts *must* be executed. Section 127 is not a provision of that kind. Section 127(4) provides that s 127 “does not limit the ways in which a company may execute a document (including a deed)”. The case cited by Mr Scordo, *Knight Frank Australia Pty Ltd v Paley Properties Pty Ltd* (2014) 120 SASR 523; [2014] SASCFC 103, does not assist as that was a case in which it was asserted that a contract had been executed in accordance with s 127. No deficiency in the execution of the Loan Agreement or the Mortgage (other than the asserted non-compliance with s 127) was alleged.

89 Further, and in any event, I note that Mr Scordo did not contest that the CBA advanced the funds under the Loan Agreement and that the Mortgage was registered on the title.

Claims to avoid the Loan Agreement and Mortgage by reference to the Unilateral Documents

90 The content of the Unilateral Documents has been set out above.

91 Mr Scordo’s claim to equitable relief rests on his assertion that the CBA’s failure to respond to the Unilateral Documents and various demands made therein, has resulted in a “permanent and irrevocable [e]stopper by acquiescence”, which renders the matter “legally/lawfully closed and properly settled”.

92 The CBA submitted, and I accept, that the arguments Mr Scordo advances in the Unilateral Documents are without merit.

93 Contrary to Mr Scordo's submission, the Unilateral Documents do not have the effect of imposing any contractual or other obligations on the CBA. To this end, the CBA referred the Court to the various pieces of correspondence in which it has advised Mr Scordo that it disputes and rejects any and all of the claims made in the Unilateral Documents.

94 The Unilateral Documents are of no legal effect. They do not absolve Mr Scordo of his obligations under the Loan Agreement or the Mortgage. Mr Scordo's claims based on the Unilateral Documents lack any reasonable prospect of success.

Claim that the Loan Agreement and Mortgage was discharged by the 14 July 2023 promissory note

95 At the first case management hearing on 14 July 2023, Mr Scordo purported to discharge his liabilities under the Loan Agreement and Mortgage by attempting to serve a promissory note in the amount of \$400,000 on the CBA.

96 At the hearing on 22 March 2024, Mr Scordo submitted that, because the CBA has held his promissory note for more than 72 hours, the CBA has agreed to a "contract in equity" and are taken to have accepted the promissory note. In Mr Scordo's submission, the bank "has taken the 400,000 credits ... on that promissory note and have used it for their own good".

97 The CBA referred the Court to a letter dated 26 July 2023, addressed to Mr Scordo, which referred to the 14 July promissory note and stated that the CBA "rejects the Promissory Note as payment of the amount due and owing by you under the Agreement and the Mortgage". The letter continued, stating that the "current amount owing under the Agreement and Mortgage remains due and payable for you".

98 Mr Scordo maintained that the CBA had accepted the promissory note. In support of this position, Mr Scordo submitted that the CBA's letters rejecting the promissory note were of no legal standing given they were not prepared "under oath and under penalty of perjury", that the CBA has not claimed that the note is faulty or insufficient, and that the CBA has not acceded to his requests that the promissory note be returned to him and in continuing to hold the promissory note are signalling their acceptance.

99 Mr Scordo’s submissions as to the effect of the 14 July 2023 promissory note are without merit. It is clear that the promissory note was not accepted by the CBA and has no effect on Mr Scordo’s liabilities under the Loan Agreement and Mortgage.

OTHER ISSUES

Enforcement of “contract” to Registrar Wilson

100 By paragraph 4 of his 3 December 2023 interlocutory application, Mr Scordo seeks “the court to uphold and enforce the legally binding contract, sent to [R]egistrar Wilson to execute the instruction therein, instrument number VID354/2023-4 dually [sic] signed and witnessed by all parties, with consideration offered and registered with the universal postal union: RPP44639000510030882995601”.

101 On 5 February 2024, I made orders requiring Mr Scordo to file, and email to the CBA, a copy of the document referred to in paragraph 4 of his 3 December 2023 application. No document meeting the description in paragraph 4 has been filed with the Court, nor was it in evidence by reason of having been exhibited to an affidavit on which Mr Scordo relies on this application. Mr Scordo also did not pursue this matter in his submissions.

Mr Scordo’s enforcement of a foreign judgment claim

102 The CBA’s submissions addressed Mr Scordo’s apparent desire, at one point, to have this Court make orders enforcing “orders” and a “judgment” issued by Mr Scordo’s self-created “court” under the *Foreign Judgments Act 1991* (Cth) (the **Foreign Judgments Act**). No application was ever issued by Mr Scordo pursuing this matter. It does not arise under either of the interlocutory applications before me.

103 It is, in any event, hopelessly misconceived. A pseudo “court” created by an individual is not a “court” whose judgments may be enforced under the Foreign Judgments Act.

104 As the CBA submitted, a “judgment” issued by a “court” invented by Mr Scordo is not one that is amenable to registration pursuant to s 6(2) of the Foreign Judgments Act, nor is Mr Scordo’s “court” a specified court listed in the *Foreign Judgments Regulations 1992* (Cth). Any application seeking registration or enforcement of the “judgment” and “orders” is thus bound to fail.

MR SCORDO'S 13 MARCH 2024 INTERLOCUTORY APPLICATION

- 105 There are a number of problems with this application.
- 106 First, it does not seek any interlocutory orders. Rather, it seeks orders in the nature of final relief.
- 107 Secondly, it advances matters outside the case specified in the originating application.
- 108 Thirdly, it seeks what is described as “equitable relief and remedy”, although the precise nature of the remedy sought is not specified (paragraph 7 says the Applicant will “defer to the Court, **who will act in the best interest for the Applicant**, to prescribe equitable relief and remedy to the Applicant as it sees fit” (emphasis in original). The Court is not any fiduciary of Mr Scordo so as to act and exercise its powers in his best interests.
- 109 Fourthly, and importantly, no recognised legal basis for the exercise of any equitable jurisdiction has been identified. The only asserted basis (set out in paragraph 3) is that the Mr Scordo cannot perform the “unconscionable terms of the home loan and mortgage contract”. However, impossibility of performance does not automatically attract an equitable remedy. Nor does the mere assertion that the terms of the Loan Agreement and Mortgage are unconscionable (even if that assertion did not go beyond the case specified in the originating application, which it does).

CONCLUSION

- 110 I have conducted a review of the decision of Judicial Registrar Wilson and have, in so doing, heard the summary judgment applications of both parties de novo. The CBA's summary judgment application is granted. I will make orders dismissing the proceeding. The applicant's application for summary judgment is refused, the applicant's interlocutory application dated 3 December 2023 is otherwise dismissed, and his interlocutory application dated 13 March 2024 is dismissed.
- 111 The applicant is to pay the respondent's costs of the proceeding, to be taxed if not agreed.

I certify that the preceding one hundred and ten (111) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Button.

Associate:

Dated: 12 April 2024