

This is the Annexure marked H referred to  
in the attached Affidavit of *Matti Turner*  
sworn before me at **Wollongong** this *6th*  
day of *May* 20*16*

Solicitor/Judge of the Peace

# Deed of Settlement and Release

**Steven Navrozoglou by his tutor Alan Navrozoglou**

**ICM Group Finance Pty Limited**

**ICM Group Pty Limited**

**Michael O'Shea**

**LEGAL AID NSW**

Groavac House  
73 Church Street  
WOLLONGONG NSW 2500

Tel: 4228 8288  
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Ref: 2014233849

# Deed of Settlement

Dated: **5 May 2016**

## Parties

### Plaintiff

Steven Navrozoglou by his tutor Alan Navrozoglou (**plaintiff**)

## Defendants

ICM Group Finance Pty Limited (**first defendant**)

ICM Group Pty Limited (**second defendant**)

Michael O'Shea (**third defendant**)

(collectively, **defendants**).

## Recitals

A. On 27 February 2015 the plaintiff commenced proceedings number 2015/62086 in the Supreme Court of New South Wales under Part 10 of the Civil Procedure Act 2005 (**representative proceedings**) on his own behalf and on behalf of group members defined as follows:

- (1) Natural persons who entered or have entered into a contract with the first and the second defendants under which:
  - (a) they were or have been provided with credit wholly or predominantly for personal, domestic or household purposes and under which they were or are bound to repay to the first defendant the loan amount consisting of a loan establishment fee and the net loan amount;
  - (b) they authorised the second defendant on behalf of the first defendant to cash a bill of exchange drawn by the first defendant in favour of the group member for the net loan amount presented to the group member and for that service paid a fee to the second defendant;
  - (c) they received from the second defendant a cash amount being the difference between the net loan amount and the fee paid to the second defendant;

(2) Alternatively to sub-paragraph (1) above, natural persons who entered or have entered into the following contracts:

- (a) a contract with the first defendant under which they were or have been provided with credit wholly or predominantly for personal, domestic or household purposes and under which they were or are bound to repay to the first defendant the loan amount consisting of a loan establishment fee and the net loan amount;
- (b) a contract with the second defendant as agent of the first defendant under which they authorised the second defendant to cash a bill of exchange drawn by the first defendant in favour of the group member for the net loan amount presented to the group member and for that service paid a fee to the second defendant and under which they received from the second defendant a cash amount being the difference between the net loan amount and the fee paid to the second defendant.

B. In the representative proceedings the plaintiff alleged:

(1) Each group member entered into an individual contract with the first defendant and the second defendant described as a **Multi-Party Credit Contract** defined as a contract which:

- (a) specified the loan amount, the loan establishment fee, the net loan amount, the commencement date, the due date, the amount and frequency of repayments, the first payment date and the last payment date, and fees and charges being a dishonour fee and a late payment fee;
- (b) provided that there is no interest payable by the group member;
- (c) provided that the first defendant agrees to lend the loan amount to the group member and the group member agrees to repay the loan amount to the first defendant;
- (d) provided that the group member authorised the second defendant on behalf of the first defendant to cash a bill of exchange drawn by the first defendant in favour of the group member for the net loan amount presented to the group member and for that service agreed to pay a fee to the second defendant (**Multi-Party Bill Cashing Fee** and **Multi-Party Bill Cashing Term** respectively);

- (e) provided that the second defendant would pay to the group member a cash amount being the difference between the net loan amount and the Multi-Party Bill Cashing Fee;
- (2) Alternatively to sub-paragraph B(1) above, each group member:
- (a) Entered into an individual contract with the first defendant described as a **Credit Contract** defined below; and
  - (b) Entered into an individual contract with the second defendant described as a **Bill Cashing Contract** defined below.
  - (c) The Credit Contract was defined as a contract which
    - (i) specified the loan amount, the loan establishment fee, the net loan amount, the commencement date, the due date, the amount and frequency of repayments, the first payment date and the last payment date, and fees and charges being a dishonour fee and a late payment fee;
    - (ii) provided that there is no interest payable by the group member;
    - (iii) provided that the first defendant agrees to lend the loan amount to the group member and the group member agrees to repay the loan amount to the first defendant;
  - (d) The Bill Cashing Contract was defined as a contract which
    - (i) provided that the group member authorised the second defendant to cash a bill of exchange drawn by the first defendant in favour of the group member for the net loan amount presented to the group member and for that service agreed to pay a fee to the second defendant (**Bill Cashing Fee** and **Bill Cashing Term** respectively);
    - (ii) provided that the second defendant would pay to the group member a cash amount being the difference between the net loan amount and the Bill Cashing Fee.
- (3) In performance of the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract on the commencement date the second defendant paid the cash amount to the group member.

- (4) At the time of entry into the Multi-Party Credit Contract or alternatively the Credit Contract and the Bill Cashing Contract the first defendant did not draw and present to the group member a bill of exchange within the meaning of the *Bills of Exchange Act 1909* (Cth) in favour of the group member for the net loan amount.
- (5) Prior to entry into each Multi-Party Credit Contract or alternatively each Credit Contract and each Bill Cashing Contract the first defendant and/or the second defendant made the following representations to each group member **(Representations)**:
  - (a) that the Multi-Party Credit Contract is exempt, or alternatively the Credit Contract and the Bill Cashing Contract are exempt, from the provisions of the National Credit Code **(First Representation)**;
  - (b) that the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee is a reasonable amount **(Second Representation)**;
  - (c) that the second defendant would cash a bill of exchange drawn in favour of the group member by the first defendant for the net loan amount and presented to the group member **(Third Representation)**;
  - (d) that there is no interest payable by the group member for the loan **(Fourth Representation)**;
  - (e) that the second defendant is entitled to charge the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee **(Fifth Representation)**.
- (6) Each group member entered into a Multi-Party Credit Contract or alternatively a Credit Contract and Bill Cashing Contract in reliance on the Representations.
- (7) The Multi-Party Credit Contract to the extent of the Multi-Party Bill Cashing Fee or alternatively the Credit Contract and the Bill Cashing Contract to the extent of the Bill Cashing Fee is a sham and the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee is properly to be regarded as a lump sum interest charge for the provision of credit.
- (8) Alternatively to sub-paragraph B(7) the Multi-Party Bill Cashing Term or alternatively the Bill Cashing Term is inconsistent with the substance and reality of the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee being a lump sum interest charge for the provision of credit and on its proper construction provides for the payment of a lump sum interest charge by the group member.

(9) The conduct of the first defendant and the second defendant in connection with each Multi-Party Credit Contract or alternatively each Credit Contract and Bill Cashing Contract and the Representations was in breach of the following legislation:

- (a) The *National Credit Code* (Cth);
- (b) The *Credit (Commonwealth Powers) Act 2010* (NSW);
- (c) The *Australian Securities and Investment Commission Act 2001* (Cth);
- (d) The *Fair Trading Act 1987* (NSW);
- (e) The *Australian Consumer Law* (NSW).

(10) The third defendant was a person involved in contraventions of:

- (a) The *National Credit Code* (Cth);
- (b) The *Australian Securities and Investment Commission Act 2001* (Cth);
- (c) The *Fair Trading Act 1987* (NSW);
- (d) The *Australian Consumer Law* (NSW).

(11) Each Multi-Party Credit Contract or alternatively each Credit Contract and Bill Cashing Contract was unjust in the circumstances relating to it or them at the time it was or they were made within the meaning of s 7 of the *Contracts Review Act 1980* (NSW).

(12) There was a total failure of consideration under each Multi-Party Credit Contract or alternatively each Credit Contract and Bill Cashing Contract being the payment by the group member to the second defendant, or alternatively the retention by the second defendant, of the Multi-Party Bill Cashing Fee or alternatively the Bill Cashing Fee.

C. In the representative proceedings the plaintiff claimed relief in the form of:

- (1) Judgment for an amount equal to the Multi-Party Cheque Cashing Fee or alternatively the Bill Cashing Fee;
- (2) Declarations of breaches by the first defendant and/or the second defendant of key requirements of the National Credit Code;

- (3) Penalties under the National Credit Code;
  - (4) Damages;
  - (5) Injunctions;
  - (6) Relief from the Multi-Party Credit Contract or alternatively the Credit Contract and Bill Cashing Contract and consequential orders;
  - (7) Interest; and
  - (8) Costs.
- D. The defendants deny or do not admit the substantive allegations against them in the statement of claim.
- E. There are approximately 8,000 group members as defined in the statement of claim.
- F. The defendants claim that the income and profits received from the business of entering into contracts with group members of the kind described by the plaintiff as Multi-Party Credit Contracts or alternatively as Credit Contracts and Bill Cashing Contracts have been expended or distributed and that they do not have other interests or assets that might satisfy the money claims against the defendants.
- G. The plaintiff and the defendants have agreed to settle the proceedings in the manner set out in this deed, subject to the approval of the Court.
- H. On 18 March 2016 the defendants undertook to immediately cease collection activity on all outstanding loans to group members.
- I. On 18 March 2016 the defendants undertook to provide on or before 24 March 2016 the plaintiff's solicitor with a copy of the letter to all agents engaged in collection activity on outstanding loans to group members instructing those agents to cease collection activity.

### **Operative Provisions**

1. The parties consent to orders in the form of Schedule A to this deed.
2. The defendants warrant that they have ceased collection activity on all outstanding loans to group members in accordance with their undertaking referred to in recital H.
3. The third defendant will pay to or as directed by the plaintiff's solicitor the amount of:

- 3.1. \$15,000 on or before 7 July 2016; and
- 3.2. \$15,000 on or before 7 July 2017.
4. In pursuance of operative provision 3, unless the third defendant is able to make the payments referred to in operative provision 3 without recourse to his superannuation fund, the third defendant will:
  - 4.1. On or before 7 July 2016 do all things necessary to withdraw from his superannuation fund sufficient funds to make the payment referred to in operative provision 3.1; and
  - 4.2. On or before 7 July 2017 do all things necessary to withdraw from his superannuation fund sufficient funds to make the payment referred to in operative provision 3.1;
5. Provided the third defendant performs his obligations under operative provision 3 and, as necessary, operative provision 4; the plaintiff will accept the sum of \$30,000.00 in full satisfaction of the defendants' liability for costs pursuant to any costs orders of the Court made with the consent of the parties.
6. The plaintiff will not take any enforcement action on costs orders of the Court made with the consent of the parties unless the third defendant defaults in his obligations under operative provision 3 and, as necessary, operative provision 4 of this deed.
7. On or before 12 April 2016 the defendants will provide to the plaintiff's solicitor for filing in the proceedings an affidavit of financial circumstances of all the defendants:
  - 7.1. Stating the number of group members affected by transactions of the kind described by the plaintiff as Multi-Party Credit Contracts or alternatively as Credit Contracts and Bill Cashing Contracts (**affected contracts**);
  - 7.2. Stating where the cheque cashing fee income derived by the defendants under the affected contracts was distributed;
  - 7.3. Annexing the trust deeds of any entity involved in the transactions either as a party or as a recipient of cheque cashing fee income;
  - 7.4. Containing statements of the present financial circumstances of each defendant including:



7.4.1. Assets;

7.4.2. Liabilities;

7.4.3. Income;

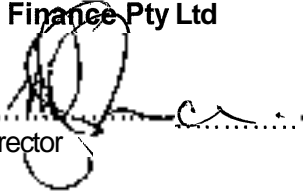
7.4.4. Expenditure.

7.5. Annexing documents verifying the matters in 7.4.

8. These terms are subject to approval by the Court in accordance with section 173 of the *Civil Procedure Act 2005*.

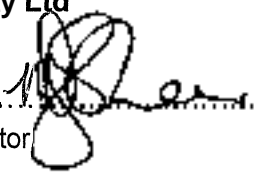
**Executed as a Deed**

**Signed sealed and delivered on behalf of  
ICM Group Finance Pty Ltd**

  
.....  
Secretary Director

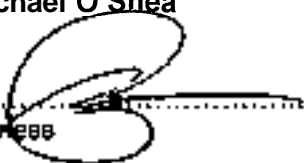
.....MICHAEL O'SHEA.....  
Print Name

**Signed sealed and delivered on behalf of  
ICM Group Pty Ltd**

  
.....  
Secretary Director

.....MICHAEL O'SHEA.....  
Print Name

**Signed sealed and delivered on behalf of  
Michael O'Shea**

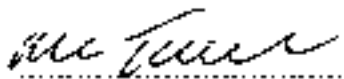
  
.....  
Witness

.....PHILLIP O'SHEA.....  
Print Name

  
.....  
**Michael O'Shea**

.....73 BARRAN AVE BARRAN POINT NSW 2528.....  
Print Address

**Signed sealed and delivered on behalf of  
Alan Navrozoglou as Tutor for Steven Navrozoglou**

  
.....  
Witness

.....Matt Turner.....  
Print Name

  
.....  
**Alan Navrozoglou**

.....Print Name Church St, Wollungah, 2500.....  
Print Address

Print Address

## Schedule A

1. The first defendant and the second defendants are restrained by themselves and by their servants, employees or agents from engaging in the following conduct:
  - (a) entering into a Multi-Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
  - (b) making the First to Fifth Representations in connection with the provision or possible provision of credit to any person;
  - (c) entering into a contract or arrangement that is substantially similar to a Multi-Party Party Credit Contract containing a Multi-Party Bill Cashing Term or alternatively a Credit Contract and a Bill Cashing Contract containing a Bill Cashing Term;
  - (d) making representations that are substantially similar to the First to Fifth Representations in connection with the provision or possible provision of credit to any person.
  
2. The third defendant is restrained by himself and by his servants, employees or agents from:
  - (a) aiding, abetting, counselling or procuring;
  - (b) inducing or attempting to induce;
  - (c) being in any way, directly or indirectly, knowingly concerned in;

the first and the second defendants, or alternatively the first defendant, or alternatively the second defendant, and further or alternatively any other person, from engaging in the conduct in one or all of paragraphs 1(a) to 1(c) above.
  
3. The defendants are restrained by themselves and by their servants, employees or agents from engaging in credit activity within the meaning of s 6 of the National Credit Code.
  
4. The defendants are to pay the plaintiff's costs of the proceedings fixed in the amount of \$50,000.00
  
5. The first second and third defendants are restrained personally and by their servants, employees agents and assigns from collecting or accepting payment on any outstanding loans to group members."

6. Pursuant to s 183 of the Civil Procedure Act 2005 **(Act)** the Court dispenses with compliance with s 162 and s 175 of the Act.
7. Pursuant to s 173 of the Act the Court approves the settlement of the proceedings as set out in the Deed of Settlement dated 5 May 2016 and these orders.
8. Pursuant to s 76 of the Act the Court approves the settlement of the proceedings as set out in the Deed of Settlement dated 5 May 2016 and these orders.