

DUPLICATE

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

CIV 2021-404-1190

**UNDER THE CREDIT CONTRACTS AND CONSUMER
FINANCE ACT 2003 AND HIGH COURT RULE 4.24**

**BETWEEN Anthony Paul Simons & Ors suing as representatives
under High Court Rule 4.24**

PLAINTIFFS

AND ANZ Bank New Zealand Limited

FIRST DEFENDANT

AND ASB Bank Limited

SECOND DEFENDANT

REPRESENTATIVE ORDERS UNDER HIGH COURT RULE 4.24



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REPRESENTATIVE ORDERS UNDER HIGH COURT RULE 4.24

To: ANZ Bank New Zealand Limited

ASB Bank Limited

1. The amended interlocutory applications made by the plaintiffs on 28 January 2022 were determined by the Honourable Justice Venning on 29 July 2022.
2. The determination was made following a hearing held on 26 and 27 May 2022. At the hearing, the plaintiffs were represented by Davey Salmon QC and Ali van Ammers. The first defendant was represented by Stephen Hunter QC, Sophie East, Jenny Stevens and Sam Hiebendaal. The second defendant was represented by Jenny Cooper QC, Kirsten Massey and Jeremy Upson.
3. On 1 September 2022, the Honourable Justice Venning made further orders correcting and completing the orders made on 29 July 2022 with the consent of the parties.
4. The following orders were made in respect of the second plaintiffs' application:
 1. Leave is granted to the second plaintiffs (the **ANZ representative plaintiffs**) to bring the proceeding against ANZ as a representative action on behalf of all persons who have the same interest in the subject matter of the proceeding on the basis that:
 - (i) they entered into one or more home or personal loans with ANZ between 6 June 2015 and 28 May 2016 (the **refined ANZ relevant period**) which were or are consumer credit contracts under the CCCFA (**ANZ Loan**);
 - (ii) they requested and ANZ made one or more agreed changes to the terms of one or more of their ANZ Loans during the refined ANZ relevant period in relation to which ANZ was required to provide them with variation disclosure under s 22 (**agreed changes**); and



(iii) ANZ sent them at least one loan variation letter intended to disclose the full particulars of the agreed changes which, as a result of the loan calculator error contained incorrect information in respect of one or more of the following:

- (A) the total amount payable under the loan;
- (B) the total amount of interest payable under the loan;
- (C) the amount of the new regular payment;
- (D) the total number of payments to be made;
- (E) the date of the final payment;

(the **ANZ class members**).

2. Pending any further order of the Court, any ANZ class member may opt out of the ANZ representative plaintiffs' action by completing an opt out form approved by the High Court for that purpose, which can be completed online at www.bankingclassaction.com or downloaded from the website and emailed to Russell Legal at scott.russell@russelllegal.co.nz, by 5pm on a date to be fixed by the High Court. Russell Legal is to promptly distribute the opt out notices to external legal counsel for the relevant Bank. Pending further order of the Court, all personal information in those notices is to be kept confidential on a counsel-only basis.
3. Pending any further order of the Court, any ANZ class member may proactively opt in to the ANZ representative plaintiffs' representative action by completing the online registration process at www.bankingclassaction.com by 5pm on a date to be fixed by the High Court.
4. Any ANZ class member who neither opts out of or in to the ANZ representative plaintiffs' representative action shall remain an ANZ class member represented by the ANZ representative plaintiffs in the representative action.



5. The ANZ representative plaintiffs will notify ANZ and the Court periodically of details of opt ins.
 6. The ANZ representative plaintiffs may only settle or discontinue this proceeding with leave of the Court.
 7. This order is to take effect from the date on which the proceeding was commenced.
 8. Leave is reserved to all parties to apply for further directions that may be necessary or appropriate in relation to the representative orders.
 9. The application for a CFO at this stage of the proceeding is dismissed but with leave reserved to renew the application for a CFO after the completion of the stage 1 hearing.
 10. The opt out election form in Schedule 1 is approved for the purposes of order 2 above.
5. The following orders were made in respect of the first and third to fifth plaintiffs' application:
1. Leave is granted to the first and third to fifth plaintiffs (the **ASB representative plaintiffs**) to bring the proceeding against ASB as a representative action on behalf of all persons who have the same interest in the subject matter of the proceeding on the basis that:
 - (i) they had one or more home or personal loans with ASB between 6 June 2015 and 18 June 2019 (**ASB relevant period**) which were or are consumer credit contracts to which the CCCFA applied or applies (**ASB Loan**);
 - (ii) they requested and ASB made one or more agreed changes to one or more of their ASB Loans during the ASB Relevant Period (**agreed changes**); and
 - (iii) ASB did not provide them with disclosure under s 22 of the CCCFA in relation to the agreed changes within the prescribed timeframes;



(the **ASB class members**).

2. Pending any further order of the Court, any ASB class member may opt out of the ASB representative plaintiffs' action by completing an opt out form approved by the High Court for that purpose, which can be completed online at www.bankingclassaction.com or downloaded from the website and emailed to Russell Legal at scott.russell@russelllegal.co.nz, by 5pm on a date to be fixed by the High Court. Russell Legal is to promptly distribute the opt out notices to external legal counsel for the relevant Bank. Pending further order of the Court, all personal information in those notices is to be kept confidential on a counsel-only basis.
3. Pending any further order of the Court, any ASB class member may proactively opt in to the ASB representative plaintiffs' representative action by completing the online registration process at www.bankingclassaction.com by 5pm on a date to be fixed by the High Court.
4. Any ASB class member who neither opts out of or in to the ASB representative plaintiffs' representative action shall remain an ASB class member represented by the ASB representative plaintiffs in the representative action.
5. The ASB representative plaintiffs will notify ASB and the Court periodically of details of opt ins.
6. The ASB representative plaintiffs may only settle or discontinue this proceeding with leave of the Court.
7. This order is to take effect:
 - (i) in relation to "SOP Variations" (being changes to loan repayment date, amount, or frequency made by ASB branch and call centre staff at class members' requests in the period 6 June 2015 to 18 June 2019 (the "ASB Relevant Period")) the date on which the statement of claim dated 25 June 2021 was filed;



(ii) in relation to “Other Variations” (as defined in the amended statement of claim dated 28 January 2022) the date on which the amended statement of claim dated 28 January 2022 was filed;

but in each case without extending the scope of the representative orders in [1].

8. Leave is reserved to all parties to apply for further directions that may be necessary or appropriate in relation to the representative orders.
9. The application for a CFO at this stage of the proceeding is dismissed but with leave reserved to renew the application for a CFO after the completion of the stage 1 hearing.
10. The opt out election form in Schedule 2 is approved for the purposes of order 2 above.

27th July
Dated this day of September 2022

Susan Parker

(Deputy) Registrar

