

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

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

COMMERCIAL PANEL

CIV 2021-404-1190

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

**BETWEEN Anthony Paul Simons, suing as a representative under
High Court Rule 4.24**

FIRST PLAINTIFF

**AND Andrew John Beavan and Mei Lim, suing as
representatives under High Court Rule 4.24**

SECOND PLAINTIFFS

PLAINTIFFS' REPLY TO FIRST DEFENDANT'S STATEMENT OF DEFENCE

Dated: 20 April 2022

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Philip Charles Dunbar and **Sheryn Valeri Dunbar**, suing
as representatives under High Court Rule 4.24

THIRD PLAINTIFFS

Bruno Robert Bickerdike and **Emma Renae Punter**, suing
as representatives under High Court Rule 4.24

FOURTH PLAINTIFFS

Glenn Jonathan Marvin and **Anna Mary Cuthbert**, suing
as representatives under High Court Rule 4.24

FIFTH PLAINTIFFS

AND

ANZ Bank New Zealand Limited

FIRST DEFENDANT

AND

ASB Bank Limited

SECOND DEFENDANT

PLAINTIFFS' REPLY TO FIRST DEFENDANT'S STATEMENT OF DEFENCE

In response to the first defendant's statement of defence dated 1 April 2022 the second plaintiffs say:

1. PARTIES

Plaintiffs

1.1 They admit the positive allegation in paragraph 1.1 and say further that there is a typographical error in paragraph 1.1 of the amended statement of claim.

1.6 In relation to paragraph 1.6:

(a) They admit the positive allegations in paragraphs 1.6(a) and 1.6(c).

(b) They admit that the loan was closed on 3 September 2019. Save as expressly admitted, they deny paragraph 1.6(b) and say further that the final repayments were made on 2 September 2019 and processed on 3 September 2019.

Defendants

1.10 They say that there is a typographical error in paragraph 1.10 of the amended statement of claim, which is intended to refer to the Reserve Bank of New Zealand Act 1989.

2. BACKGROUND IN RELATION TO THE CLAIM AGAINST ANZ

ANZ's conduct

2.3 They apprehend they are not required to plead to the positive allegations in paragraph 2.3, which are allegations of law. They say further that, by virtue of s 13 of the CCCFA, the ANZ Loans are presumed to be consumer credit contracts unless the contrary is established.

2.6 They admit the positive allegations in paragraph 2.6.

2.9 They apprehend they are not required to plead to the positive allegation in paragraph 2.9, which is an allegation of law.

2.10 They deny the positive allegations in paragraph 2.10.

2.12 They have insufficient knowledge of, and therefore deny, the positive allegations in paragraph 2.12.

2.15 In relation to paragraph 2.15:

(a) They deny the positive allegation in paragraph 2.15(d).

(b) They have insufficient knowledge of, and therefore deny, the positive allegations in paragraphs 2.15(a) to (c) and (f).

2.16 They have insufficient knowledge of, and therefore deny, the positive allegation in paragraph 2.16(b).

The Coding Error is identified

2.18 They have insufficient knowledge of, and therefore deny, the positive allegations in paragraph 2.18.

2.19 They have insufficient knowledge of, and therefore deny, the positive allegation in paragraph 2.19.

Commerce Commission investigation and settlement

2.24 They have insufficient knowledge of, and therefore deny, the positive allegation in paragraph 2.24.

2.31 They say that there is a typographical error in paragraph 2.31 of the amended statement of claim, which is intended to refer to 6 June 2015 rather than 5 June 2015.

2.32 They have insufficient knowledge of, and therefore deny, the positive allegations in paragraph 2.32.

2.33 They have insufficient knowledge of, and therefore deny, the positive allegation in paragraph 2.33.

2.34 In relation to paragraph 2.34:

- (a) They deny the positive allegations in paragraphs 2.34(a), (c) and (d).
- (b) They have insufficient knowledge of, and therefore deny, the positive allegation in paragraph 2.34(b).

The ANZ representative plaintiffs are Affected ANZ Borrowers

2.35 They admit the positive allegations in paragraph 2.35.

2.36 They admit the positive allegation in paragraph 2.36.

2.38 They deny the positive allegation in paragraph 2.38.

2.39 In relation to paragraph 2.39:

- (a) They deny the positive allegation in paragraph 2.39(a).
- (b) They admit the positive allegations in paragraphs 2.39(b) and (c).

2.44 In relation to paragraph 2.44:

- (a) They deny the positive allegations in paragraphs 2.44(a) and (c).
- (b) They admit that ANZ sent a further loan variation letter to the second plaintiffs on or around 22 November 2018. Save as expressly admitted, they deny the positive allegation in paragraph 2.44(b).

The Affected ANZ Borrowers form a class of persons having the same interest in this proceeding

2.47 They have insufficient knowledge of, and therefore deny, the positive allegation in paragraph 2.47(c).

4. FIRST CAUSE OF ACTION – BREACH OF SECTION 22 OF THE CCCFA

4.2 They deny the positive allegation in paragraph 4.2.

4.3 In relation to paragraph 4.3:

- (a) They have insufficient knowledge of, and therefore deny, the positive allegation in paragraph 4.3(b).
 - (b) They deny the positive allegation in paragraph 4.3(c).
- 4.4 They deny the positive allegations in paragraph 4.4.
- 4.5 They deny the positive allegation in paragraph 4.5.
- 4.7 They deny the positive allegations in paragraph 4.7.
- 4.8 They admit that, where ANZ has failed to comply with s 22 of the CCCFA, it is open to ANZ to make corrective disclosure. Save as expressly admitted, they deny the positive allegations in paragraph 4.8.
- 4.10 In relation to paragraph 4.10:
 - (a) They deny the positive allegations in paragraphs 4.10(a) and (b).
 - (b) They have insufficient knowledge of, and therefore deny, the positive allegation in paragraph 4.10(c).
- 4.12 In relation to paragraph 4.12:
 - (a) They deny the positive allegation in paragraph 4.12(a) and repeat paragraph 4.12 of the amended statement of claim.
 - (b) They have insufficient knowledge of, and therefore deny, the positive allegations in paragraphs 4.12(b) to (d).

6. AFFIRMATIVE DEFENCES

Limitation – loans entered into prior to 6 June 2015 – section 99(1)

- 6.1 They apprehend they are not required to plead to paragraph 6.1, which is an allegation of law.
- 6.2 They apprehend they are not required to plead to paragraph 6.2, which is an allegation of law.

6.3 They deny paragraph 6.3 and say further that:

(a) As pleaded in paragraph 4.11 of the amended statement of claim, ANZ has not fully refunded or credited the ANZ Breach Period Payments to the ANZ representative plaintiffs or the other Affected ANZ Borrowers and in some cases continues to receive them, and is therefore in continuing breach of s 48 of the CCCFA.

(b) None of the claims are statute barred.

Limitation – loans entered into prior to 6 June 2015 – statutory damages

6.4 They apprehend they are not required to plead to paragraph 6.4, which is an allegation of law.

6.5 They apprehend they are not required to plead to paragraph 6.5, which is an allegation of law.

6.6 They deny paragraph 6.6 and say further that:

(a) As pleaded in paragraph 2.34 of the amended statement of claim, ANZ has not provided Variation Disclosure to the ANZ representative plaintiffs or the other Affected ANZ Borrowers in relation to agreed changes made to their ANZ Loans during the ANZ Relevant Period, and is therefore in continuing breach of s 22 of the CCCFA.

(b) None of the claims are statute barred.

Limitation – loans entered into on or after 6 June 2015 – section 99(1)(A)

6.7 They apprehend they are not required to plead to paragraph 6.7, which is an allegation of law.

6.8 They deny paragraph 6.8.

6.9 They deny paragraph 6.9 and say further that none of the claims are statute barred.

Limitation – loans entered into on or after 6 June 2015 – statutory damages

6.10 They apprehend they are not required to plead to paragraph 6.10, which is an allegation of law.

6.11 They deny paragraph 6.11 and say further that none of the claims are statute barred.

Discretion to decline relief

6.12 They apprehend they are not required to plead to paragraph 6.12, which is an allegation of law.

6.13 They deny paragraph 6.13 and say further that the Court does not have a discretion to decline relief in circumstances where a creditor is in breach of s 48 of the CCCFA.

Section 95A

6.14 They apprehend they are not required to plead to paragraph 6.14, which is an allegation of law.

6.15 They apprehend they are not required to plead to paragraph 6.15, which is an allegation of law.

6.16 They deny paragraph 6.16.

Statutory damages – reasonable mistake defence

6.17 They apprehend they are not required to plead to paragraph 6.17, which is an allegation of law.

6.18 They deny paragraph 6.18.

Extinguishment/reduction of statutory damages

6.19 They apprehend they are not required to plead to paragraph 6.19, which is an allegation of law.

6.20 They apprehend they are not required to plead to paragraph 6.20, which is an allegation of law.

6.21 They deny paragraph 6.21.

Set-off

6.22 They have insufficient knowledge of, and therefore deny, paragraph 6.22.

6.23 They deny paragraph 6.23 and repeat paragraph 6.22 above.