Signed by AustLII

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT

Not Restricted

S CI 2016 02053

JAMS 2 PTY LTD	First Plaintiff
CONTERRA PTY LTD	Second Plaintiff
JANACO PTY LTD	Third Plaintiff
v	
JEFFREY WILLIAM STUBBINGS	Defendant
TRAYAN TZOUNTZOURKAS	First third party
JORDAN TOPALIDES	Second third party

JUDGE:	ROBSON J
WHERE HELD:	Melbourne
DATE OF HEARING:	6, 12–13, 17–18, 20, 24–5 September, 2–3 October 2018
DATE OF JUDGMENT:	14 March 2019
CASE MAY BE CITED AS:	Jams 2 Pty Ltd & Ors v Stubbings (No 3)
MEDIUM NEUTRAL CITATION:	[2019] VSC 150 First revision: 22 July 2019

EQUITY – Asset-based loan organised and implemented by solicitors – Loan structured by the solicitors to avoid *National Credit Code* – Loan to a company and guaranteed by a person who is the person receiving and using the money lent – Unconscionable conduct on the part of the lenders – Unconscionable dealing – Mortgages – Special disadvantage – Plaintiff's knowledge of special disadvantage – Plaintiff's wilful blindness – Mortgage brokers.

NEGLIGENCE – Claim against accountant – Breach of duty found.

Retrieved from AustLII on 29 November 2026 at 15:42:58

Verify version

Signed by AustLII

APPEARANCES:	Counsel	Solicitors
For the Plaintiffs	J D Mattin	Ajzensztat Jeruzalski & Co
For the Defendant	In person	
For the First Third Party	In person	
For the Second Third	In person	

Retrieved from AustLII on 29 November 2026 at 15:42:58

Verify version

Signed by AustLII

TABLE OF CONTENTS

Introduction 1
Background facts and parties 2
Statement of claim 5
Defence and counterclaim 7
Third party claims 11
Structure of loans adopted by AJ Lawyers 12
Mr Stubbings' personal and financial circumstances 23
Alleged representations by Mr Zourkas to Mr Stubbings 27
Certificate of Independent Legal Advice 44
Certificate of Independent Financial Advice 45
Resolution of issues 52
The alleged misleading and deceptive conduct of the plaintiffs 52
National Consumer Credit Code 54
Unconscionability 59
Catching bargains 62
Was Mr Stubbings under a special disadvantage? 67
Knowledge of improvidence of transaction 69
Did AJ Lawyers act unconscionably in procuring the loans to Mr Stubbings? 72
The conduct of Mr Zourkas 73
The system of conduct 74
Third party claims 79
Claim against Mr Topalides 85
Orders 87

Retrieved from AustLII on 29 November 2026 at 15:42:58

Verify version

Signed by AustLII

HIS HONOUR:

Introduction

1 In this proceeding, the plaintiffs lent money to Victorian Boat Clinic Pty Ltd ('VBC') of which the defendant, Jeffrey William Stubbings ('Mr Stubbings'), was sole director and shareholder. VBC was a shell company with no assets. The loan was guaranteed by Mr Stubbings, who also gave mortgages in support of the guarantee over two existing properties he owned and over a third property acquired with the loan moneys by Mr Stubbings. VBC defaulted on the loan and the plaintiffs have sought to enforce the guarantee and execute on the mortgages. The two existing properties have been sold by the plaintiffs, and in this proceeding they seek possession, as mortgagees, of the third.

2 Previously, the plaintiffs had sought summary judgment against Mr Stubbings from an associate judge for possession of the three properties under the three mortgages. The associate judge made orders granting possession on 23 March 2017. The summary judgment was granted essentially on reasons for judgment published previously by the associate judge on 28 November 2016.[1]

3 In her reasons for judgment, her Honour found that Mr Stubbings had no real prospect of success in defending the mortgagees' claims, but on 5 December 2016 ordered the proceeding to trial under s 64(b) of the *Civil Procedure Act 2010* (Vic), on the grounds that the dispute was of such a nature that only a full hearing on the merits was appropriate.

4 As her Honour found that Mr Stubbings obtained a benefit from the transaction with respect to pre-existing obligations, the orders made on 5 December 2016 also required Mr Stubbings to provide security to the satisfaction of the Senior Master in the sum of $240,124.42. Her Honour ordered that in the event this security was not provided by 30 January 2017, the mortgagees were entitled, on notice, to seek summary judgment (again). Mr Stubbings failed to provide the security ordered,

---

[1] *Jams 2 Pty Ltd v Stubbings* [2016] VSC 711.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

and as indicated above, summary judgment for possession was granted. Mr Stubbings appealed from the orders made by the associate justice granting possession and that security be provided. The appeal came on before Justice Elliott.

5 His Honour found that the associate judge was in error in finding that there was no real prospect of success with respect to Mr Stubbings' defence.[2] Accordingly, his Honour ordered that the appeal from the orders of the associate judge be allowed and leave to defend be granted. His Honour found that, in circumstances where the mortgagees had already realised amounts from a mortgagee's sale of one of the properties pursuant to the orders, far in excess of the security previously ordered, there was no need to consider the correctness or otherwise of the order for security. Accordingly his Honour granted leave to defend without any condition with respect to the provision of security.

6 In the matter before Justice Elliott, Mr Stubbings was represented by counsel. In the matter before me, however, Mr Stubbings was unrepresented by either counsel or solicitors. The plaintiffs were represented by Mr Mattins before me and in the earlier proceedings, instructed by Ajzensztat Jeruzalski & Co.

7 Mr Stubbings joined as third parties Mr Trayan Tzountzourkas ('Mr Zourkas'), who played a vital role on behalf of the plaintiffs in organising the loan and who also assisted Mr Stubbings to obtain the loan, and Mr Jordan Topalides ('Mr Topalides'), an accountant who advised Mr Stubbings on the loan. Mr Zourkas and Mr Topalides were also unrepresented. The appearance of three unrepresented parties presented difficulties in the conduct of the trial. Mr Mattin graciously agreed to assist, where possible, by putting Mr Stubbings' case to the relevant witnesses and parties, as that task was well beyond Mr Stubbings. Mr Zourkas and Mr Topalides were able to argue their cases satisfactorily without the benefit of counsel.

Background facts and parties

8 Mr Stubbings owned two houses in Narre Warren, located at 4 Westleigh Crescent,

---

[2] *Stubbings v Jams 2 Pty Ltd* [2017] VSC 404.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Narre Warren ('Westleigh Crescent') and 5 Ashton Rise, Narre Warren ('Ashton Rise'). They each secured a loan from the Commonwealth Bank of Australia ('CBA') to Mr Stubbings. Both of the houses were leased — one of them to his son. Mr Stubbings had been living at other premises at Boneo, where he worked repairing boats. Mr Stubbings had fallen out with the owner of the Boneo property, Mr Paul Drennan, and needed to move. He sought to buy another property in which to live and store some boats he owned, and needed to borrow to do so.

9 Mr Stubbings found a property of about five acres with two houses on it located at 380 Truemans Road, Fingal, on the Mornington Peninsula ('Fingal property'). It was for sale for $900,000. He tried to borrow from a bank to purchase the property, but was unsuccessful. Mr Stubbings was then introduced to Mr Zourkas, who calls himself a 'consultant'.

10 Mr Zourkas carries on a business, inter alia, of introducing potential borrowers to Ajzensztat Jeruzalski & Co ('AJ Lawyers'). AJ Lawyers provides a service to various clients to arrange to provide loans by the clients on security to borrowers. Mr Zourkas plays an important and essential role in this business in introducing potential borrowers to AJ Lawyers. In each instance, the loan arranged by AJ Lawyers is made to a company controlled by the person wishing to borrow moneys, to avoid the application of the *National Credit Code* (the 'Code') to the loan. Loans to companies are not governed by the Code. Mr Zourkas was not remunerated by AJ Lawyers for the services he provided to them to assist in making the loan, but was paid by AJ Lawyers a fee deducted from the borrowed money at the expense of the borrower.

11 The service provided by Mr Zourkas to AJ Lawyers is essential to the way AJ Lawyers conducts its loan business with those introduced by Mr Zourkas, as it avoids AJ Lawyers dealing directly with the borrower and the guarantor, and thus assists in immunising AJ Lawyers from being tainted with any knowledge of the financial and personal circumstances of the guarantor and the borrower. I say tainted, as AJ Lawyers are aware that even though the loans are not governed by the

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

Code, knowledge by them of the guarantor's financial and personal circumstances may expose the loan to the risk of being set aside as being unconscionable. This would be most unfortunate for their clients.

12 In the loan the subject of this proceeding, AJ Lawyers arranged for the loan to be made to VBC by the three plaintiffs, Jams 2 Pty Ltd ('Jam 2'), Conterra Pty Ltd ('Conterra') and Janaco Pty Ltd ('Janaco'), who were clients of the firm.

13 In these reasons, I may refer to Mr Stubbings as the borrower, because that is what he was in substance. He was the recipient of the moneys and the person to whom the lenders looked for repayment. By adopting that description, I am not ignoring the actual structure of the loan but merely seeking to identify the substance of the transaction.

14 Mr Stubbings was told by Mr Zourkas he needed to take out a first and second mortgage over the three properties to enable him to pay out his existing loan to the CBA, pay commissions to Mr Zourkas and AJ Lawyers, meet other expenses, and to finance the purchase of the Fingal property.

15 According to Mr Stubbings, he and Mr Zourkas worked out a plan to ensure Mr Stubbings could meet his commitments under the proposed loan. Under the plan, Mr Stubbings would use some of the borrowed moneys to renovate the two existing residences he owned and pay the interest on the loan while he conducted the renovations. He would then sell the renovated houses and refinance the borrowings through a bank after two or three months. Mr Stubbings would then be left with the Fingal property and a serviceable debt.

16 In reality there were no circumstances in which the plan could work. VBC had no assets at all. It was a mere shell. Under the loans arranged with AJ Lawyers, VBC was contractually prevented from repaying the loans for a period of six months. Further, after commissions and expenses, paying off the CBA and financing the purchase of the Fingal property, only about $6,000 was left. This was insufficient to do renovations or pay interest as had been planned.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

17 Interest was payable monthly. The loan set aside the first month's interest. Mr Stubbings says that he managed to pay the second month's interest, but he has not been able to pay any further interest. Mr Stubbings, as the guarantor, was bound to lose his existing properties and the new Fingal property from the moment the loan was made, as Mr Zourkas would have well known and which AJ Lawyers should have known, but for their deliberate policy of avoiding any knowledge of the financial and personal circumstances of the borrower or guarantor, save for their knowledge of the security offered. Any person with a modicum of intelligence, who was apprised of the actual nature of the loan and Mr Stubbings' circumstances, would not have proceeded with the loan. It was bound to end with serious losses and damage to Mr Stubbings.

18 In May 2016, AJ Lawyers started proceedings to obtain possession of all three properties to sell and recover the debts owed by Mr Stubbings under the first mortgage. Mr Stubbings' position under the second mortgage was not canvassed at the trial. There was no point in suing VBC as it was a mere shell.

19 The plaintiffs sold the two Narre Warren properties as mortgagees and in these proceedings they seek possession of the Fingal property as mortgagees. The plaintiffs also seek judgment for the outstanding debt on the first mortgage, interest, and costs.

Statement of claim

20 The following allegations are pleaded by the plaintiffs in their statement of claim.

21 By a registered first mortgage dated 30 September 2015 between Mr Stubbings and the plaintiffs (the 'mortgage'), Mr Stubbings mortgaged all his interest in the Westleigh Crescent, Ashton Rise, and Fingal properties to the plaintiffs to secure the repayment of the principal sum of $1,059,000 advanced by the plaintiffs to Mr Stubbings. The mortgage provided for interest on that principal sum at the higher rate of 17 per cent per annum and the lower rate of 10 per cent per annum.

22 Pursuant to the terms of the mortgage, Mr Stubbings covenanted to repay the

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

plaintiffs the principal sum together with interest on 30 September 2016. Mr Stubbings further covenanted that, so long as the principal sum remained unpaid, he would pay the plaintiffs interest by way of monthly instalments in advance in the sum of $8,825.00 at the lower rate and $15,002.50 at the higher rate, commencing on 30 September 2015.

23 Mr Stubbings paid to the plaintiffs the interest instalments due on 30 October 2015 and 30 November 2015. However, Mr Stubbings failed to pay the whole of the instalments of interest due on 30 December 2015, 30 January 2016, 29 February 2016, 30 March 2016 and 30 April 2016, and the same are now in arrears and are required to be paid at the higher rate under the mortgage.

24 By a written Notice to Pay dated 25 March 2016, the plaintiffs demanded payment of the principal sum and interest from Mr Stubbings. Mr Stubbings has failed or refused to pay the moneys so demanded. The amount remaining due under the mortgage is the principal of $1,059,000, together with interest and legal costs on default, totalling $1,149,944.56.

25 Mr Stubbings has failed and/or refused to give up possession of the Westleigh Crescent, Ashton Rise and Fingal properties, despite requests from the plaintiffs to do so. Accordingly, the plaintiffs are entitled to possession of the land pursuant to *Transfer of Land Act 1958* (Vic) ss 78(1) and 81(1).

26 The plaintiffs claim possession of Westleigh Crescent, Ashton Rise and the Fingal Property, together with payment in the sum of $1,149,944.56, plus further interest and costs.

27 The mortgage that Mr Stubbings signed is in the form of a pro forma mortgage. Under notes to the mortgage, it is stated that: 'This mortgage also operates as a loan agreement. The relevant Interest, Instalment, Advance, and Due Date panel must be completed.'[3] These parts of the document were duly completed.

---

3 CB 415.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

28 The annexure page contained further covenants. Covenant 1 provided that:

> The Mortgagors covenant and agree to observe and comply at all times with the terms and conditions of or contained in the Mortgagee's letter of offer/loan agreement AND IN THE EVENT of any inconsistency between any term contained in the letter of offer/loan agreement and any term contained in the Memorandum of Common Provisions No AA1955 then the terms of the letter of offer/loan agreement shall prevail.

29 Further, provision was made for the mortgagor to repay the whole of the advance at any time upon giving one month's notice.

30 The mortgage noted that the mortgagees — ie the plaintiffs — held the advance as tenants in common: Conterra held $370,000; Janaco held $300,000; and Jams 2 held $389,000.

31 Clause 1.2 of the Memorandum of Common Provisions provided that the 'Mortgagor promises to pay all the Secured Money to the Mortgagee to the extent it has not already been paid on the Due Date.' Under clause 4.2 of the memorandum, there are provisions that apply when any person is named as guarantor in the Titles Office Form. There then follow clauses proscribing the obligations of the guarantor to make payment and the like. Under the mortgage executed by Mr Stubbings, he was not identified as a guarantor on the Titles Office Form. There is no reference on the mortgage to the loan between the plaintiffs and VBC.

32 On 21 September 2016, Lansdowne AsJ granted leave to the plaintiffs to amend the statement of claim which alleged that the moneys were advanced by the plaintiffs to Mr Stubbings, to allege that the moneys were advanced to VBC.

Defence and counterclaim

33 Mr Stubbings raises various defences to the plaintiffs' claim.[4] Mr Stubbings at this stage had the assistance of solicitors or counsel.

34 Mr Stubbings admits signing the mortgage in favour of the plaintiffs, together with

---

4 CB 31–44.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

two loan agreements dated 30 September 2015, and further admits the terms of the mortgage as pleaded in the plaintiffs' statement of claim.

35 Mr Stubbings also admits that the sum of $1,059,000 ('the loan') was advanced by the plaintiffs. However, Mr Stubbings alleges that the sum was advanced to him for personal use and was not advanced to or for the benefit of VBC. Mr Stubbings says that the loan was in the name of VBC at the direction of the plaintiffs, but VBC was an inactive corporate entity that had not traded at any point since its incorporation.

36 Mr Stubbings denies that the mortgage and loan agreements are enforceable on the following bases:

(a) the plaintiffs engaged in misleading and deceptive conduct pursuant to s 18 of the *Australian Consumer Law* ('ACL') and pursuant to s 12DC of the *Australian Securities and Investments Commission Act 2001* (Cth) ('ASIC Act');

(b) the National Credit Code, as schedule 1 to the *National Consumer Credit Protection Act 2009* ('Code'), applies to the mortgage and loan agreements, and the plaintiffs failed to comply with the provisions of the Code.

37 Mr Stubbings alleges in his defence that at the time of making the loan and entering into the mortgage and loan agreements:

(a) he did not have any income;

(b) he had no other property or assets other than the three properties;

(c) he had only $100 deposit to contribute to the purchase of the Fingal property; and

(d) VBC had not traded and had been inactive since its incorporation.

38 Mr Stubbings alleges that before he entered into the mortgage and loan agreements, the plaintiffs represented and warranted to Mr Stubbings that:

(a) the plaintiffs were willing and able to advance a loan sufficient to purchase

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

the Fingal property, together with an additional sum of $53,000, for Mr Stubbings to:

(i) pay the first two monthly interest repayments due and payable pursuant to the loan; and

(ii) perform renovations on the Westleigh Crescent and Ashton Rise properties;

(b) as soon as the funds were advanced as a result of the loan, the plaintiffs would assist Mr Stubbings to make an application to Westpac to refinance the loan at a standard interest rate;

(c) the interest repayments made by Mr Stubbings for the loan would demonstrate serviceability to Westpac, and Westpac would then refinance the loan;

(d) while the interest rate of 10 per cent for the loan was high, the refinance via Westpac would occur within about two months, and the interest rate payable as a result of the refinance would be the standard interest rate; and

(e) it was ordinary procedure for the plaintiffs to process loans in the name of a company rather than an individual, regardless of the purpose (of the loan).

39 Mr Stubbings says the representations were oral and were made by Mr Zourkas on behalf of the plaintiffs during a series of telephone conversations and meetings between Mr Stubbings and Mr Zourkas between July and September 2015.

40 Mr Stubbings pleads that the plaintiffs knew or ought to have known that Mr Stubbings would rely on the representations, which he did, to enter into the mortgage and loan agreements.

41 Mr Stubbings alleges that the plaintiffs did not provide the amount of $53,000 to him at settlement of the loan; only $6,959.90 in additional funds were provided to him. Mr Stubbings claims that it is not ordinary industry procedure to apply for finance in

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

the name of a non-trading company.

42 Mr Stubbings alleges that by virtue of this conduct the plaintiffs have engaged in misleading and deceptive conduct pursuant to s 18 of the ACL and s 12DC of the ASIC Act.

43 Mr Stubbings also alleges that the plaintiffs have engaged in conduct that in all the circumstances is unconscionable pursuant to section 21 of the ACL, section 12CB of the ASIC Act, and unconscionable at law.

44 In support of his allegation that both the mortgage and loan agreements are contracts to which the Code applies, Mr Stubbings pleads that he is a natural person and a mortgagor to the loan which was a credit advanced by the plaintiffs. He says that the credit advance was provided wholly for personal or domestic purposes and that a charge by way of interest payments was to be paid for the provision of credit. He says that the plaintiffs provided the credit in the course of carrying on a business of providing credit.

45 Mr Stubbings alleges that, by virtue of s 13(3) of the Code, the plaintiffs:

(a) knew or ought to have known that the loans were for a purpose under the Code;

(b) would have known that Mr Stubbings was borrowing and using the money for the dominant purpose of settlement of the purchase of the Fingal property, a property he intended to occupy as his residential home; and

(c) knew or ought to have known that the funds were to be used to purchase, renovate or improve residential property for residential and investment purposes.

46 Mr Stubbings alleges that the plaintiffs were obliged to comply with the provisions of the Code and that, in breach of the Code, the plaintiffs failed to:

(a) comply with the required pre-disclosure obligations pursuant to s 16 of the

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Code;

(b) ensure the Mortgage and the loan agreements complied with the provisions of s 17 of the Code;

(c) ensure that they were licensed credit providers pursuant to the *National Consumer Credit Protection Act 2009* (Cth), as at the time of entering into the loan agreements the plaintiffs did not hold an Australian Credit Licence;

(d) issue to Mr Stubbings the prescribed notice of default pursuant to s 88 of the Code before they issued these proceedings;

(e) ensure that the interest rate and loan fees complied with the provisions of the Code; and

(f) make the required assessments whether the mortgage and loan agreements were suitable for Mr Stubbings pursuant to ss 116, 119, and 131 of the Code.

Third party claims

47 Mr Stubbings also joined three third parties: Mr Zourkas, Mr Topalides, and Mr Con Kiatos ('Mr Kiatos'). Mr Topalides purportedly gave Mr Stubbings financial advice on the loan. Mr Kiatos purportedly gave Mr Stubbings legal advice on the loan. Mr Kiatos has settled the claim against him by Mr Stubbings.

48 The claim against Mr Zourkas is that he engaged in misleading and deceptive conduct pursuant to s 18 of the ACL by:

(a) wrongfully making an Application for Finance in the name of a corporate entity when knowing that the loan was for a personal purpose; and

(b) making false representations for the purpose of inducing Mr Stubbings into entering into the loan agreement.

49 One of the claims against Mr Topalides is that he also engaged in misleading and deceptive conduct contrary to s 18 of the ACL. Further, he faces claims of negligence

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

and breaches of his duty of care to Mr Stubbings on the grounds that he:

(a) failed to provide financial advice to Mr Stubbings when engaged to do so;

(b) signed a Certificate of Independent Financial Advice, notwithstanding that he gave no such advice; and

(c) failed to make the necessary inquiries to ensure Mr Stubbings was capable of maintaining the loan.

50 Further, or in the alternative, Mr Stubbings makes either or both of the following allegations against Mr Topalides:

(a) he was negligent in his failure to provide financial advice to Mr Stubbings when engaged to do so;

(b) he breached his duty of care to Mr Stubbings, by failing to provide financial advice to Mr Stubbings when engaged to do so.

51 Further, Mr Stubbings alleges that Mr Zourkas and Mr Topalides have been unjustly enriched because of their actions. The alleged unjust enrichment is cash that they allegedly received from Mr Stubbings, and funds they received directly from AJ Lawyers after settlement of the loan.

Structure of loans adopted by AJ Lawyers

52 Mr Myer Jeruzalski ('Mr Jeruzalski') is a member of the firm of solicitors, AJ Lawyers, that acted for the plaintiffs in making the loan and acts for the plaintiffs in this proceeding. According to the letterhead, he and Mr Michael Ajzensztat are the sole partners. As well as being a witness, Mr Jeruzalski was instructing Mr Mattin, counsel for the plaintiffs, at the Bar table.

53 AJ Lawyers acts for clients who wish to lend money.[5] Mr Jeruzalski has about 10 to 15 clients who wish to lend money, and use the services of AJ Lawyers to do so.

---

5 Transcript of Proceedings (13 September 2018) 206.2.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

54 In his oral evidence, Mr Jeruzalski confirmed that his primary practice involves the lending of money and that he has been so involved for approximately 30 years.[6] Mr Jeruzalski also confirmed that he was now required, by the provisions of the *Legal Profession Act 2004* (Vic), to be registered with ASIC to be involved in financial lending.

55 The procedure that Mr Jeruzalski generally follows in making a secured loan, and which he adopted in essence in the case of Mr Stubbings, is set out below.

56 Mr Jeruzalski is approached by other solicitors, accountants, or brokers seeking a loan for a client, for example, by Mr Zourkas, who has introduced many borrowers to him in the past. Mr Zourkas fulfils two roles. First, he assists the client to apply for the loan from Mr Jeruzalski as discussed below. Secondly, he assists Mr Jeruzalski in arranging for the loan documentation to be executed by the client and in obtaining certificates of independent advice from a solicitor and accountant. Mr Zourkas describes himself as a consultant. He could best be described as a facilitator or intermediary. His role is essential to Mr Jeruzalski making loans to borrowers introduced by Mr Zourkas.

57 Mr Jeruzalski will only make loans on behalf of clients to companies. He will not make loans to individuals, as they might be governed by the Code. Mr Jeruzalski will not make loans governed by the Code. The loans must be secured by a mortgage given by an individual who also must guarantee the loan. Mr Jeruzalski gives no weight to the ability of the borrower or guarantor to repay the loan, other than from the mortgaged security. In order for him to entertain making an offer of a loan, he first obtains details of the land offered as security. It is usual for the valuation to be provided by the intermediary seeking the loan on behalf of a borrower. Apart from checking to see that the directors or guarantors are not bankrupt, Mr Jeruzalski does not seek or want any further information about the guarantor or his or her personal or financial circumstances.

---

6 Transcript of Proceedings (17 September 2018) 257.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

58 Mr Jeruzalski does not want to know whether the guarantor is employed, unemployed, educated, not educated, burdened with debt or any other matter bearing on his circumstances or ability to pay the loan. I understood from his evidence that he would prefer not to know these things in case his knowledge would in some way undermine his clients' ability to recover their loans.

59 If Mr Jeruzalski is of the view that the security is satisfactory, he will approach one or more of his clients to ascertain whether or not they are interested in making the loan. Mr Jeruzalski will provide the valuations to the prospective lenders.

60 Mr Jeruzalski does not offer any advice to his clients. He says they are experienced business people who make their own decision whether to lend or not. In the case of first mortgage secured loans, he will not lend more than two-thirds of the valuation of the land offered as security.

61 Mr Jeruzalski will not entertain an application for a secured loan by the prospective individual borrower. Mr Jeruzalski will only entertain making a loan if approached by an intermediary such as Mr Zourkas. Mr Jeruzalski does not make any inquiries into the ability of the borrower or guarantor to meet the interest payments or to repay the loan. Mr Jeruzalski relies solely on the security to ensure that his clients are paid interest and repaid the principal.

62 Mr Jeruzalski does not meet the prospective borrower or guarantor, or have any contact with the borrower or guarantor save through correspondence. Mr Jeruzalski obtains all the details he needs of the borrower and guarantor from the intermediary acting for or advising the borrower and guarantor.

63 If Mr Jeruzalski's clients wish to make the loan, then Mr Jeruzalski will make a formal written offer to the borrower and to the mortgagor guarantor. The borrower and the guarantor are asked to sign the letter of offer if they wish to proceed with the loan and return it to AJ Lawyers.

64 Mr Jeruzalski then prepares the loan and security documents and forwards them

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

through the intermediary in an envelope to the borrower and the guarantor. The documents include a loan agreement, guarantee, mortgage, and the like.

65 Any information Mr Jeruzalski wishes to convey to the borrower is conveyed by the intermediary either by the intermediary passing on a written document from AL Lawyers or orally informing the borrower.

66 Mr Jeruzalski does not seek to obtain from the intermediary details of what if any representations have been made by the intermediary to the borrower, despite the large financial rewards reaped by the intermediary if they succeed in securing a loan through LJ Lawyers, and the temptation that must provide for the intermediary to secure the loan.

67 Importantly, the package of documents sent to the borrower and mortgagor guarantor contains draft certificates of independent advice that have to be signed and returned with the executed loan and security documents. One is a draft certificate to be signed by a solicitor, the other by an accountant.

68 In the case of the loan to Mr Stubbings, Mr Jeruzalski was approached by Mr Zourkas. According to Mr Jeruzalski, Mr Zourkas spoke with him about whether or not he was able to source funds for Mr Stubbings.[7] Mr Jeruzalski said that before agreeing to source the funds from his clients, he obtained a valuation for each of the three properties: the Fingal property, the Westleigh Crescent property, and the Ashton Rise property.[8]

69 Mr Mark Mote (a director of Jams 2), Mr Jacques Cooper (a director of Janaco) and Ms Anne Rudowski (a director of Conterra) gave evidence that they each:

(a) do not know the borrowers and did not meet them;[9]

---

7 Transcript of Proceedings (13 September 2018) 206.25.

8 Transcript of Proceedings (13 September 2018) 206.27–207.21.

9 Transcript of Proceedings (12 September 2018) 84.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

(b) made their decision to lend based on the valuations of Mr Stubbings' properties alone;[10] and

(c) had never met Mr Zourkas or Mr Topalides.

70 Mr Jeruzalski gave evidence that he ultimately received instructions from the plaintiffs to proceed with the loan for $1,059,000.[11] He agreed that the instructions were to proceed on the basis of 'various loan documents' to be signed by Mr Stubbings.[12] Mr Jeruzalski identified the following relevant documents:

(a) An indenture note dated 30 September 2015 between VBC as borrower and Mr Stubbings as the guarantor.[13]

(b) An acknowledgement from the borrower, which was signed and executed by VBC, and dated 19 September 2015.[14]

(c) A Certificate of Independent Legal Advice headed 'Acknowledgment by Guarantor'. This document is dated 19 September 2015, signed by Mr Stubbings and witnessed by Mr Kiatos.[15]

(d) A resolution of the director of VBC dated 19 September 2015 and signed by Mr Stubbings.[16]

(e) A certificate of execution by company dated 19 September 2015 and signed by Mr Kiatos, with an attached document to satisfy the statutory requirements as

---

10 Transcript of Proceedings (12 September 2018) 89.

11 Transcript of Proceedings (13 September 2018) 208.4.

12 Transcript of Proceedings (13 September 2018) 208.5.

13 Ex P 14, CB 387–99.

14 Ex P 15, CB 401.

15 Ex P 16, CB 402–3.

16 Ex P 17, CB 404.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

to identity.[17]

(f) A deed made 30 September 2015, and signed, sealed and delivered by Mr Stubbings.[18]

(g) A statutory declaration made by Mr Stubbings on 30 September 2015, and witnessed before Mr Kiatos.[19]

(h) A Certificate of Independent Financial Advice produced by Mr Topalides to Mr Stubbings.[20]

(i) An acknowledgment by Mr Stubbings that he had received the memorandum of common provisions.[21]

71 In the case of Mr Stubbings, the offer was subject to the loan not being for personal, domestic, or household purpose, or otherwise under the Code. This condition is insisted on to remove any risk that the loan might be caught by the Code.

72 Mr Jeruzalski gave evidence that those documents are 'pro forma' and that he prepares and advances all his loans in that manner.[22]

73 Mr Jeruzalski said that, before the mortgage was settled, Mr Stubbings signed a disbursement authority dated 19 September 2015, with an attached invoice.[23] Mr Jeruzalski said that on 19 September 2015 Mr Stubbings signed a second disbursement authority, 'which relates to an amount of $12,292.50'[24] that was

---

17 Ex P 18, CB 405–6.

18 Ex P 19, CB 407–9.

19 Ex P 20, CB 410–11.

20 Ex P 21, CB 412.

21 Ex P 22, CB 413.

22 Transcript of Proceedings (13 September 2018) 206.6.

23 Plaintiffs, 'Outline of Evidence of Myer Jeruzalski', signed 13 September 2018, [5]; exhibit P 32, CB 437.

24 Plaintiffs, 'Outline of Evidence of Myer Jeruzalski', signed 13 September 2018, [7]; exhibit P 33, CB

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

payable to AJ Lawyers. This fee appears to have been a commission payable to AJ Lawyers. Mr Jeruzalski also said that on 22 August 2015 Mr Stubbings 'signed a mandate on behalf of The Victorian Boat Clinic agreeing to pay a consultant's fee of $27,000.00.'[25] Mr Jeruzalski said that the mandate was a commitment between the broker and an applicant for finance.[26]

74 Mr Jeruzalski said that he doubted Mr Zourkas came into his office to discuss the loans with him. Mr Jeruzalski was asked, referring to the mandate given to Mr Zourkas by Mr Stubbings, 'Does that authorise a consultancy fee to Mr Zourkas?' Mr Jeruzalski replied, 'Correct'.[27]

75 As I discuss later, this evidence is significant, as Mr Jeruzalski understood that Mr Zourkas was not being paid as a broker but as a consultant. The mandate itself makes it clear that the $27,000 fee was described as a 'consultancy fee' and that it was payable to 'the Consultant referred to below.' The mandate provided:[28]

> If the loan does not proceed, once the letter of offer has been signed by the borrower, the borrower will be liable for the consultancy fee as set out above and by signing this Agreement with the due payment of such consultancy fee and acknowledges that this charge creates an estate or interest in the said real estate entitling the consultant to lodge a Caveat on the title to the said real estate to secure such payment.

76 At the foot of the document appears Mr Zourkas' name as 'Consultant's Name' and the 'Consultant's Signature' with Mr Zourkas' signature.

77 As previously mentioned, the lenders required certificates of advice be provided by a solicitor and by an accountant. The relevant certificate to be signed by a solicitor in this case is headed 'Certificate of Independent Legal Advice.'[29] It is addressed to the

---

450.

25 Plaintiffs, 'Outline of Evidence of Myer Jeruzalski', signed 13 September 2018, [6]; exhibit P 34, CB 439.

26 Transcript of Proceedings (13 September 2018) 206.

27 Transcript of Proceedings (17 September 2018) 262.

28 Exhibit P 34, CB 439–40.

29 Exhibit P 16, CB 402–3.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

three plaintiffs. The borrower and guarantor are identified. Under the heading 'Acknowledgement by Guarantor' is a list of questions which are to be answered by the guarantor writing his reply in the right hand column.

78 The questions asked of Mr Stubbings were as follows:

> 1 Have you received copies of the documents described under the heading 'Security Documents' below?
>
> 2 Have you been given an opportunity to read those Security Documents?
>
> 3 Have the Security Documents been fully explained to you by your solicitor?
>
> 4 Do you understand the effects of the Security Documents and the consequences to you if the Borrower defaults on its obligations to the Lender?
>
> 5 In particular, do you understand that if the Borrower fails to pay all of the moneys due to the Borrower to the Lender then the Lender will be entitled to call on you as Guarantor to recover the moneys due to it?
>
> 6 Was this Acknowledgement read and signed by you BEFORE you signed the Security Documents?

79 The Security Documents are defined as the Loan Agreement & Debenture Charge.

80 Beside each of these questions is the written answer yes. The answers were written in by Mr Kiatos, a solicitor from whom Mr Stubbings sought advice, and not by Mr Stubbings.

81 The form continues:

> I confirm the accuracy of the answers to the above questions and acknowledge that the Lender will be relying on these answers in respect of giving the loan to THE VICTORIAN BOAT CLINIC PTY LTD.

82 The form was signed by Mr Stubbings and witnessed by Mr Kiatos.

83 Below the signatures is a 'Certificate by Independent Solicitor' as follows:

> Before the Security Documents were executed by the Guarantor/s I explained the contents, nature and effect of them to the Guarantor/s. In particular, I explained and advised on the consequences of default under the relevant Security Documents, including the Lender/Mortgagee's right to sell the property constituting the security. The Guarantors appeared to be aware of

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

and to understand the terms, nature and effect of the Security Documents and their obligations under them. I have made a diary note of the advice and explanation give to the Guarantor/s.

84 I discuss below the evidence of Mr Kiatos and Mr Stubbings about the circumstances in which the certificates were signed. It suffices to say at this stage that the loan documentation is also to be signed in the presence of the solicitor and witnessed by the solicitor. The packages of signed documents are then returned by the intermediary to Mr Jeruzalski. In this case, the documents were returned by Mr Zourkas, the 'consultant'.

85 In this case, the Certificate of Independent Financial Advice was signed by Mr Topalides, an accountant. Under the certificate, Mr Topalides certified as follows:

> 1 I have been instructed by THE VICTORIAN BOAT CLINIC PTY LTD ACN 601 712 172 to explain the financial risks being assumed:-
>
> (a) by executing the security documents in respect of the financial accommodation to be provided by the Lender which security documents are referred to in Item 1 of the Schedule below ('the Security');
>
> (b) by the application of the said financial accommodation for the purposes referred to in Item 2 of the Schedule below.
>
> 2 Before the Security was executed by the Borrower, I explained the financial risk being assumed by executing the Security and by the application of the aforesaid financial accommodation in the manner stated in Item 2 of the Schedule.
>
> 3 To the best of my knowledge and belief and in my opinion the Borrower appears to understand the nature and extent of the financial risk which the Security places and the nature and extent of the financial risk which will be assumed by the application of the aforesaid financial accommodation in the manner stated in Item of the Schedule.
>
> 4 I have been engaged by the Borrower in advising and have given this Certificate entirely independently of any other Borrower or Guarantor.
>
> 5 The Loan herein is required for business purposes.

86 The certificate was given by Mr Topalides in circumstances I will discuss below.

87 The certificate made provision for the insertion of the purpose of the borrowings.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Mr Topalides inserted the words 'Set up & Expand the business'.[30]

88 Mr Jeruzalski was asked in relation to Mr Stubbings' loan what Mr Zourkas told him about the purpose of the loan. Mr Jeruzalski said that he was told it was a business loan and it was mainly concerned with boat repairs.[31]

89 The evidence disclosed that all these communications to and from Mr Stubbings to AJ Lawyers were conveyed through Mr Zourkas, and at no stage was there any direct communication to or from Mr Stubbings with AJ Lawyers.

90 Despite his evidence that he was told the loan was a business loan for boat repairs, Mr Jeruzalski also gave evidence that he was aware that Mr Stubbings proposed to sell the two Narre Warren properties and then refinance the loan over the Fingal property within the six-month period.[32] Mr Jeruzalski was asked whether that was the reason for the six-month right to redeem. Mr Jeruzalski was asked in his experience how long it would take for those two properties to be sold. He said that they could be sold within three months and then settle two months later.

91 It was put to Mr Jeruzalski that it had been suggested by Mr Stubbings that the representation was made that the loans would be refinanced or that the properties would be sold within two months. Mr Jeruzalski's response was that this was impossible.[33]

92 Mr Jeruzalski was then asked whether he knew that Mr Stubbings had no income when he made the loans to him. I will set out the evidence in full.

> Counsel: Now, in relation to the allegations that Mr Stubbings has made just this morning, were you aware that he did not have, as he alleged, any income?
>
> Mr Jeruzalski: Was I aware? I don't seek income particulars.

---

30 Exhibit P 21, CB 412.

31 Transcript of Proceedings (17 September 2018) 260.

32 Transcript of Proceedings (17 September 2018) 264.

33 Transcript of Proceedings (17 September 2018) 264.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

Judge: Pardon?

Mr Jeruzalski: I'm aware now.

Judge: No, at the time you advanced the moneys, were you aware?

Mr Jeruzalski: Most — most probably.

Judge: —that he alleges that he had no income?

Mr Jeruzalski: Most probably.

Judge: Were you aware of that?

Judge: Pardon?

Mr Jeruzalski: Most probably I was aware of that.

Judge: You were?

Mr Jeruzalski: Yeah.

Judge: That he had no income?

Mr Jeruzalski: Well, I'm lending on the assets.

Judge: You may want to get the witness to expand.

Counsel: Would you please expand on that?

Mr Jeruzalski: I have here three valuations on the three properties and we were told that, um, he was setting up a business.

Judge: He was setting up a business?

Mr Jeruzalski: That's right. He had a — he had — he had a business running before but he wanted to buy this property, so that he could further expand the business. The business was boat repair and so on. Most of the people who come and see — seek funds —

Judge: But the question was, as I understand it, were you aware that he had income or had asserted to the broker or someone else that he had no income? Were you aware of that at the time?

Mr Jeruzalski: I just can't remember.

Judge: You can't remember?

Mr Jeruzalski: Mmm. I said most probably I would've been aware he had no income. If he — sorry.

Counsel: Is that upon the basis of that it was an asset loan or something that may have been told to you?

Mr Jeruzalski: Correct. I'm not looking for income figures. And a borrower goes away to seek independent accounting advice and legal

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

> advice as to whether he can perform and — and honour the obligations under the mortgage. If he had an income sufficient to service a loan of that amount, he would've gone to a bank.

93 Mr Jeruzalski said that if Mr Stubbings or VBC had no income, then, from his experience, a first-tier bank would not have lent money to him.[34] Mr Jeruzalski said that his firm would not assist somebody like Mr Stubbings to obtain a bank loan.

94 Mr Jeruzalski was referred to Mr Stubbings' allegation that he had no financial records or tax returns. Mr Jeruzalski said that without that information he (Mr Stubbings) could not get a loan from either a first- or second-tier lender such as a co-op, or societies, as they require income figures and taxation returns.[35]

95 Mr Jeruzalski agreed that the plaintiffs had no evidence and did not request any evidence regarding Mr Stubbings' ability to repay or the capacity of VBC to repay the loan.[36] Despite this, Mr Jeruzalski denied it was the intention of the plaintiffs that any amount owing to the plaintiffs would be recovered on the basis of enforcing and selling the properties.

96 Mr Jeruzalski was aware that Mr Stubbings only placed a $100 deposit on the contract dated 30 June 2015. He became aware of that when he saw the contract (for the purchase of the Fingal property).[37]

Mr Stubbings' personal and financial circumstances

97 Mr Stubbings reached fourth form in his schooling, before leaving school at approximately 16 years old. Mr Stubbings studied modified mathematics, a third form subject. Mr Stubbings repeated modified mathematics in fourth form, but once again failed. Mr Stubbings also failed English in fourth form, and barely passed

---

34 Transcript of Proceedings (17 September 2018) 275.

35 Transcript of Proceedings (17 September 2018) 276.

36 Transcript of Proceedings (17 September 2018) 295.

37 Transcript of Proceedings (17 September 2018) 277.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

social studies.[38] When Mr Stubbings left school at 16 years old, he did a motor mechanic trade course and then worked for Preston Motors.[39] In his own words, 'my trades were excellent but academically I wasn't doing any good.'[40]

98 In early September 2015, Mr Stubbings was working for Victorian Outboard Wreckers at Browns Road, Boneo ('Browns Road') as an employee of Paul Drennan ('Mr Drennan'). Mr Stubbings resided at Browns Road and the rent was deducted from his wage. In addition, Mr Stubbings would receive a percentage of commission for any parts of existing boat motors he sold.[41]

99 On or about 30 September 2015, Mr Stubbings ceased employment with Mr Drennan, following a falling out.[42] Mr Stubbings was also told to leave the Browns Road property.[43]

100 One of Mr Stubbings' two sons was living in the property at Westleigh Crescent, which was starting to be renovated.[44] Mr Stubbings' partner, Ms Wendy Santo ('Ms Santo'), was also not employed and received approximately $400 per week in a disability pension. Ms Santo had her own home but stayed with Mr Stubbings occasionally.[45]

101 Mr Stubbings' financial position was bleak. He had no savings, and his son gave him an old car to use. Mr Stubbings was not receiving any Centrelink payments. Mr Stubbings had old boats, some with damage, but they did not have motors. They

---

38 Transcript of Proceedings (20 September 2018) 472.28–9.

39 Transcript of Proceedings (20 September 2018) 472–3.

40 Transcript of Proceedings (20 September 2018) 472.1–6.

41 Transcript of Proceedings (20 September 2018) 460.

42 Transcript of Proceedings (20 September 2018) 460.

43 Transcript of Proceedings (20 September 2018) 470–1.

44 Transcript of Proceedings (20 September 2018) 470.

45 Transcript of Proceedings (20 September 2018) 470.20–7.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

were given to him by people who did not want them.[46]

102 Mr Stubbings also had some debts. He owed approximately two years' arrears of rates to Casey Council, which he was paying off.[47]

103 Mr Stubbings admitted that he could not budget, and that he did not understand a balance sheet. Mr Stubbings cannot work out an interest rate, for example, at 18 per cent.[48] He said that he could calculate a rate of 10 per cent, but then said that 10 per cent of 130,000 was 1,300.[49]

104 By his own admission, Mr Stubbings is not very good at paperwork.[50] Mr Stubbings is unsure of the last time he filed a tax return,[51] and is unsure if he has an ABN or is registered for GST.[52]

105 Mr Stubbings' properties at Westleigh Crescent and Ashton Rise were his only assets. There were two mortgages outstanding for these properties, totalling $240,000. One mortgage repayment was approximately $100 per week and the other was $160 or $180 per week.[53] The outstanding mortgages were quite low because he had only paid $100,000 for the Ashton Rise property and $160,000 for the Westleigh Crescent property.[54]

106 Mr Stubbings explained that when he needed to leave the Browns Road property, he did not want to live at one of his Narre Warren properties, because he preferred

---

46 Transcript of Proceedings (20 September 2018) 471.

47 Transcript of Proceedings (20 September 2018) 471.

48 Transcript of Proceedings (20 September 2018) 472.

49 Transcript of Proceedings (20 September 2018) 472.

50 Transcript of Proceedings (24 September 2018) 611.11.

51 Transcript of Proceedings (24 September 2018) 608.

52 Transcript of Proceedings (24 September 2018) 609.

53 Transcript of Proceedings (20 September 2018) 473.

54 Transcript of Proceedings (20 September 2018) 473.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

living on the Mornington Peninsula. Mr Stubbings thought that by having only small mortgages on the Narre Warren properties he could borrow a little more to get a small house on the Mornington Peninsula.[55]

107 At the time, Mr Stubbings was doing handyman work and was not contemplating boating repairs. Mr Stubbings said that there were many boat repairers on the Mornington Peninsula, so it was 'just not something that you'd go into. There's so many.'[56] Mr Stubbings said that he never had any intention of carrying out a wrecking business from the Fingal property. The boats he has on his property, he explained, are not for business purposes, they have just been collected over time and are mostly parts or shells of boats.[57]

108 Mr Stubbings was introduced to a Mr Theo Kassinidis ('Mr Kassinidis') by a friend of a friend who knew Mr Stubbings had to leave Browns Road. Mr Kassinidis was not called to give evidence by either party. Mr Stubbings said that Mr Kassinidis met with him at the Browns Road property and prepared an application to ANZ on behalf of Mr Stubbings, so that Mr Stubbings could get an idea of what he could buy. After a couple of days, Mr Kassinidis got back to Mr Stubbings, advising that the application had been declined because Mr Stubbings had no financial records, such as tax returns or statements.[58] It is unclear in what capacity Mr Kassinidis did this; as an intermediary, broker or consultant.

109 According to Mr Stubbings, Mr Kassinidis then told him, 'Look, I'll put you on to someone else and they will be able to help you out.' Mr Kassinidis told Mr Stubbings to expect a call from a 'Johnny Tee'.[59] 'Johnny Tee' was in fact Mr Zourkas — in his evidence Mr Zourkas confirmed that he did in fact call Mr Stubbings. The

---

55 Transcript of Proceedings (20 September 2018) 474.

56 Transcript of Proceedings (20 September 2018) 477.2–3.

57 Transcript of Proceedings (20 September 2018) 550.1-121.

58 Transcript of Proceedings (20 September 2018) 461.23–31.

59 Transcript of Proceedings (20 September 2018) 476.1–5.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

evidence was unclear as to the relationship between Mr Zourkas and Mr Kassinidis. Interestingly, Mr Topalides calls himself 'John', and his email address is johntee1946@gmail.com. In these reasons, I will only refer to 'Mr Zourkas', notwithstanding that Mr Stubbings knew Mr Zourkas as 'Johnny Tee'.

Alleged representations by Mr Zourkas to Mr Stubbings

110 It will be recalled that Mr Stubbings alleges he was induced to enter the mortgage and loan agreements on the basis of representations made by Mr Zourkas. Accordingly, I propose to set out in some detail the conflicting evidence given by Mr Stubbings and Mr Zourkas in respect of these alleged representations.

111 I will start with the evidence of Mr Stubbings.

112 Mr Stubbings received a telephone call from Mr Zourkas as foreshadowed by Mr Kassinidis. Mr Zourkas made some general inquiries, telling Mr Stubbings he would be able to secure a loan for Mr Stubbings to purchase a property.[60]

113 Six meetings between Mr Zourkas and Mr Stubbings were to follow this initial telephone call.

114 The first meeting was held at a taxi cafe on Stuart Street. Mr Stubbings said that he wanted to buy a little house, but Mr Zourkas said that there would not be a problem going bigger and getting something with land.[61] In this conversation, boat repairs were not contemplated; it was only for the purposes of a residence.[62] This is important evidence as it suggests that the objective of the loan was for a residence and not business purposes. Mr Stubbings' son was allegedly with him at the time of this meeting with Mr Zourkas. Mr Stubbings, however, did not call his son to give evidence, explaining that his son had just started a new job and taking a day off might put his job in jeopardy.

---

60 Transcript of Proceedings (20 September 2018) 461.30–31.

61 Transcript of Proceedings (20 September 2018) 476.19–22.

62 Transcript of Proceedings (20 September 2018) 476.23–8.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

115 At the time of this first meeting, Mr Zourkas knew about Mr Stubbings' two Narre Warren properties, as he had a notepad and was making inquiries as to what Mr Stubbings owned, what value they had, and what amounts were owing on them. Mr Stubbings believed he had equity of about $400,000.[63]

116 After the first meeting, Mr Zourkas said he would be in contact and organised a second meeting at Balaclava. In the meantime, Mr Stubbings went looking for properties.[64]

117 Mr Stubbings found the Fingal property, which was listed for $900,000. Mr Stubbings offered the vendor $850,000 and eventually it was reduced to $815,000, following an agreement on rubbish to be left at the Fingal property by the vendor.[65] While Mr Stubbings was in negotiations with the vendor, he did not know how much the repayments of a loan of $815,000 would be.[66]

118 At the second meeting in Balaclava, Mr Stubbings told Mr Zourkas that he had found a property that looked good. Mr Zourkas asked Mr Stubbings a little about it and then told him to get a section 32 vendor statement. Mr Stubbings did not tell Mr Zourkas the price of the Fingal property at that stage.[67]

119 The sale price on the vendor statement was $900,000. Mr Stubbings put down a $100 deposit.[68]

120 A third meeting was held between Mr Stubbings and Mr Zourkas in Elsternwick.[69] At this meeting, Mr Stubbings showed Mr Zourkas the price of the Fingal property

---

63 Transcript of Proceedings (20 September 2018) 478.1–7.

64 Transcript of Proceedings (20 September 2018) 478.

65 Transcript of Proceedings (20 September 2018) 478.

66 Transcript of Proceedings (20 September 2018) 478.30.

67 Transcript of Proceedings (20 September 2018) 480.1-2.

68 Transcript of Proceedings (20 September 2018) 480.2-18.

69 Transcript of Proceedings (20 September 2018) 480.20-22.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

and he said 'Yeah, that's not a problem.'[70]

121 Mr Stubbings said that he and Mr Zourkas discussed how much Mr Stubbings would need to repay. Mr Zourkas had a notepad and did some workings, stating 'We'll get a bit of surplus because that'll pay – your three months' repayment'[71] (meaning three months of interest payments). Mr Zourkas suggested the loan would be around $1,059,000, which apparently was to include $240,000 to pay out the two CBA loans, $900,000 purchase price of the Fingal property and the three months' interest repayments (I note that the amount needed just to pay out the CBA loans, together with the Fingal purchase price already exceeded $1,059,000). Mr Zourkas did some calculations and told Mr Stubbings it would cost him $8,000 per month.[72]

122 Mr Stubbings said that Mr Zourkas never asked him whether he could cover the $8,000 per month. 'No, he never asked that at all.'[73] 'He also didn't tell me that there was also going to be a second mortgage that come later.'[74]

123 Mr Stubbings understood that the loan was on the basis that it would all be borrowed and Mr Stubbings would not have to find any money. He alleges Mr Zourkas said: 'Your stamp duty will be covered. All your fees are covered. Everything will be covered.'[75]

124 Mr Stubbings said it was at this third meeting with Mr Zourkas where Mr Zourkas explained how the Fingal property purchase would be financed.[76] Mr Stubbings was to get the loan through Mr Zourkas for two or three months. Three months of paying $8,000 would apparently show a bank that Mr Stubbings was able to

---

70 Transcript of Proceedings (20 September 2018) 480.27.

71 Transcript of Proceedings (20 September 2018) 481.2-3.

72 Transcript of Proceedings (20 September 2018) 481.8-19.

73 Transcript of Proceedings (20 September 2018) 481.26-27.

74 Transcript of Proceedings (20 September 2018) 481.20.23.

75 Transcript of Proceedings (20 September 2018) 481.30-31.

76 Transcript of Proceedings (20 September 2018) 485.4-6.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

refinance. Mr Zourkas would then organise a loan with Westpac Bank 'because he knew one of the managers'.[77] The surplus funds included in the loan would allow Mr Stubbings to pay the first three months' interest then switch to a bank rate.[78]

125 Mr Stubbings believed that, after selling the Narre Warren properties, he would only have a minimal mortgage of $300,000 and would be in a position to service the loan with his handyman business.[79]

126 Mr Stubbings signed the section 32 vendor statement, following which he held the Fingal property conditionally to give him time to obtain finance. If he could not obtain finance, he would only forfeit $100.[80]

127 After the third meeting, the real estate agent informed Mr Stubbings that there were difficulties with the lawyer listed on the contract of sale, and that the vendor was almost at the stage of pulling out. Mr Stubbings notified Mr Zourkas of this development, and they arranged to meet at a café in Rosebud.[81] This would be the fourth meeting.[82]

128 Mr Zourkas suggested that they go see the vendor. Mr Zourkas explained to the vendor that there had been a couple of complications but the money was fine and 'We'll make the contract unconditional.'[83] The vendor was satisfied with this arrangement.[84]

129 A new section 32 vendor statement was issued which stated that the contract was

---

77 Transcript of Proceedings (20 September 2018) 482.11-13.

78 Transcript of Proceedings (20 September 2018) 482.

79 Transcript of Proceedings (20 September 2018) 482.

80 Transcript of Proceedings (20 September 2018) 484-485.3.

81 Transcript of Proceedings (20 September 2018) 485.14-28.

82 Transcript of Proceedings (20 September 2018) 487.2-4.

83 Transcript of Proceedings (20 September 2018) 485-486.8.

84 Transcript of Proceedings (20 September 2018) 486.9-10.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

unconditional. The price was $815,000 at that stage.[85]

130 Although at the time of signing the contract of sale Mr Stubbings had little or no income,[86] Mr Stubbings signed the contract as he was told that he would not have a problem in obtaining finance.[87] Mr Stubbing said that Mr Zourkas told him to sign the contract.[88]

131 A fifth meeting took place between Mr Zourkas and Mr Stubbings in either Balaclava or Elsternwick on or around 21 August 2015.[89] Mr Stubbings had been asked by Mr Zourkas to bring $1,000 in cash to the meeting. At the meeting, Mr Stubbings gave Mr Zourkas the cash, and Mr Zourkas gave Mr Stubbings some documents to sign. Mr Stubbings signed three forms that day, two of which he believes were letters of offer for each of the two mortgages, and the third form was a mandate.[90]

132 Mr Zourkas gave Mr Stubbings the mandate and told him to fill it all out.[91] Mr Stubbings says that, despite not understanding the document at the time, he signed it.[92] He did not date it. Mr Stubbings now understands that the document is reference to paying a consultancy fee.[93] Mr Stubbings confirmed in his evidence that it was his handwriting on the document, except the reference to $27,000. Mr Stubbings believes this figure was written in at some stage afterwards.[94] This belief is supported by the fact that the mandate is dated 22 August 2015, being the day

---

85 Transcript of Proceedings (20 September 2018) 486.

86 Transcript of Proceedings (20 September 2018) 536.21.

87 Transcript of Proceedings (20 September 2018) 537.1-7.

88 Transcript of Proceedings (20 September 2018) 537.27.

89 Transcript of Proceedings (20 September 2018) 487.

90 Transcript of Proceedings (20 September 2018) 491.2-3.

91 Transcript of Proceedings (20 September 2018) 488.

92 Transcript of Proceedings (20 September 2018) 489.8-17.

93 Transcript of Proceedings (20 September 2018) 489.16-19.

94 Transcript of Proceedings (20 September 2018) 489.4-7.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

after Mr Stubbings' meeting with Mr Zourkas.

133 The next contact Mr Stubbings had with Mr Zourkas was a phone call arranging a meeting at a little café near the offices of AJ Lawyers.[95]

134 At this sixth meeting on 19 September 2015, Mr Stubbings collected two envelopes from Mr Zourkas. One envelope said 'accountant' and the other said 'solicitor'. Mr Zourkas gave Mr Stubbings two telephone numbers (one on a business card, being Mr Kiatos').[96] Mr Stubbings says he was told to go and see Mr Topalides and Mr Kiatos: 'Take these documents, get them signed, and bring them back.'[97] Mr Stubbings said that on the following Monday he returned the documents to Mr Zourkas, who took them back to AJ Lawyers' office.[98] Mr Stubbings said that the documents were sealed when he got them and sealed when they went back.[99]

135 At this meeting, Mr Zourkas allegedly told Mr Stubbings that 'it was all done' and now Mr Stubbings owned the Fingal property.[100]

136 According to Mr Stubbings, at no stage did Mr Zourkas ever ask him about tax returns or other financial documentation.[101] Mr Stubbings said that he did not tell Mr Zourkas about his outstanding rates because he did not ask.[102]

137 Mr Stubbings alleges that he was told by Mr Zourkas that he would have $53,000 plus 'a bit for a holiday' after settlement of the Fingal property.[103]

---

95 Transcript of Proceedings (20 September 2018) 492.7-19.

96 Transcript of Proceedings (20 September 2018) 494.1-4; CB 260.

97 Transcript of Proceedings (24 September 2018) 598.27-28.

98 Transcript of Proceedings (24 September 2018) 598.

99 Transcript of Proceedings (24 September 2018) 600.11-12.

100 Transcript of Proceedings (20 September 2018) 507.7-15.

101 Transcript of Proceedings (20 September 2018) 545.

102 Transcript of Proceedings (20 September 2018) 556.12-21.

103 Transcript of Proceedings (24 September 2018) 671, 672.9-11.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

138 Mr Stubbings' evidence as to his understanding of the arrangement was as follows: $30,000 would be needed to cover the first three months' interest repayments; and $20,000 would be available for renovations.[104] Mr Stubbings was going to renovate his two Narre Warren properties, sell them, and apply the proceeds in reduction of the Fingal property loan.[105] If he could sell the Narre Warren properties for approximately $700,000 to $800,000, he would be able to reduce his debt to approximately $400,000.[106] Mr Zourkas was then going to organise for Mr Stubbings to refinance with a bank at a lower interest rate.[107]

139 Mr Stubbings said that he never had any intention of carrying out a wrecking business from the Fingal property. The boats he has on the Fingal property, he explained, are not for business purposes, but are just from his collection over time. These are mostly parts or shells of boats.[108] Mr Stubbings said that he intended on making the mortgage repayments by doing handyman work with the business name AAA Handyman.

140 It was put to Mr Stubbings that the numbers on the loan did not add up and there could not possibly be $53,000 left over to pay three months' interest and a little bit for a holiday.[109] Mr Stubbings said he was not initially informed of the disbursement figures, saying all he had was the two letters of offer. He also agreed that when he signed the mandate, it did not have the $27,000 figure written on it.

141 Mr Stubbings said that he did not know about the other fees and disbursements until after the loan was made when he received a pack of letters which showed AJ

---

104 Transcript of Proceedings (20 September 2018) 508.

105 Transcript of Proceedings (20 September 2018) 553.7-16.

106 Transcript of Proceedings (24 September 2018) 573.1-9.

107 Transcript of Proceedings (20 September 2018) 507.26-30.

108 Transcript of Proceedings (20 September 2018) 550.1-121.

109 Transcript of Proceedings (24 September 2018) 572.11-19.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Lawyers were charging $19,000 and $12,000.[110] Mr Stubbings was apparently also unaware of moneys from settlement being paid to the agent for the vendors, to utility companies and to clear outstanding rates. Mr Stubbings had an obvious lack of understanding of the detail of the loan and the disbursements.[111]

142 Mr Stubbings moved into the Fingal property, around 28 or 29 September 2015, and received mail, around 30 September 2015, which included the mortgage documents and a breakdown of the figures.[112]

143 Mr Stubbings telephoned AJ Lawyers asking why so much was taken out (referring to the consultancy fees of $19,000 and $12,000). He was told that is the way the loan operates.[113]

144 Mr Stubbings said that after receiving only approximately $6,900 from settlement, rather than the expected $53,000, he also called Mr Zourkas to query him about the amount of money left over. Mr Zourkas' explanation was allegedly that moneys had to be taken out to pay council rates.[114]

145 Mr Stubbings covered the first interest payment by selling valuables he owned. He applied the $6,900 from settlement toward the second interest payment, and was able to make up the difference.[115] Mr Stubbings was obviously confused on this issue, as the first interest payment was meant to be set aside under the loan agreement. His confusion was entirely consistent with his lack of understanding of the details of the loan and his ability to finance it.

146 Mr Stubbings started to renovate Westleigh Crescent, because a real estate agent he

---

110 Transcript of Proceedings (24 September 2018) 574.

111 Transcript of Proceedings (24 September 2018) 574-575.

112 Transcript of Proceedings (20 September 2018) 508.

113 Transcript of Proceedings (20 September 2018) 510.19-29.

114 Transcript of Proceedings (20 September 2018) 512.

115 Transcript of Proceedings (20 September 2018) 512.10-31.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

contacted suggested he finish the renovations before selling the house.[116] The agent then notified Mr Stubbings that AJ Lawyers were blocking the sale pursuant to a mortgage.[117] Mr Stubbings did not understand this, as he assumed that he was the proprietor of the Westleigh Crescent property and could sell it.[118] This again demonstrates Mr Stubbings non-comprehension of the loan agreements he had entered into.

147 Mr Stubbings signed consent documents with an agent to allow Ashton Rise to be sold. However, it was also blocked from being sold by AJ Lawyers. At this stage, Mr Stubbings started to panic and did not know what to do.[119]

148 Mr Stubbings contacted AJ Lawyers in an attempt to arrange a negotiation. This did not eventuate. According to Mr Stubbings, neither the plaintiffs nor AJ Lawyers ever contacted him in relation to the problem. He said that they only sent a notice to pay.[120]

149 Eventually both Narre Warren properties were sold, as the lenders obtained summary judgment against Mr Stubbings from Associate Justice Lansdowne.[121]

150 Mr Stubbings claims that, despite requests, he never received notification of what he actually owed to the plaintiffs.[122] Mr Stubbings said that he is still unsure of how much he actually owes them.[123] Mr Stubbings said that he only received the

---

116 Transcript of Proceedings (20 September 2018) 515.1-8.

117 Transcript of Proceedings (20 September 2018) 515.9-30.

118 Transcript of Proceedings (20 September 2018) 516.1.

119 Transcript of Proceedings (20 September 2018) 516.

120 Transcript of Proceedings (20 September 2018) 517.10-17.

121 Transcript of Proceedings (20 September 2018) 520-521.1.

122 Transcript of Proceedings (20 September 2018) 522-523.2.

123 Transcript of Proceedings (20 September 2018) 523.7.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

summons to attend court.[124]

151 At the time of giving evidence, Mr Stubbings said that he could not say how much he currently earned per week.[125] He said that he had not lodged any tax returns since being at the Fingal property, because he does not make a lot of money.[126]

152 Mr Stubbings agreed that after three months he would have been unable to pay $10,000 per month.[127] Mr Stubbings denied being told that he would need to make payments for at least six months before being able to transfer the loan to a top-tier bank.[128]

153 I turn now to the evidence of Mr Zourkas.

154 Mr Zourkas gave his occupation as 'finance consultant.'[129] Mr Zourkas knew Mr Kassinidis as Mr Kassinidis had referred four or five clients to Mr Zourkas to see if Mr Zourkas could arrange finance for them.

155 Mr Zourkas said that he had been a 'broker' for 35 years. Mr Zourkas had known Mr Jeruzalski for 25 years but had only dealt with him for three or four years.[130] Mr Zourkas said that over the past three or four years he had referred 30 to 40 clients to Mr Jeruzalski for loans that went through and were settled. Mr Zourkas said that he had also referred another 30 or 40 people to Mr Jeruzalski for a loan, whom Mr Jeruzalski had rejected.[131]

---

124 Transcript of Proceedings (20 September 2018) 523.18.

125 Transcript of Proceedings (24 September 2018) 659.20.

126 Transcript of Proceedings (24 September 2018) 659.23-24.

127 Transcript of Proceedings (24 September 2018) 663.15-16.

128 Transcript of Proceedings (24 September 2018) 664.13-16.

129 Transcript of Proceedings (18 September 2018) 365.

130 Transcript of Proceedings (18 September 2018) 366.

131 Transcript of Proceedings (18 September 2018) 366.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

156 A minor, but not insignificant, matter arose when Mr Zourkas was given the opportunity to cross-examine Ms Rochelle Robinson, personal assistant to Mr Jeruzalski. He said, 'no questions for Rochelle.' Then, in a friendly and knowing tone, Mr Zourkas said, 'Thank you, Rochelle.' This incident suggested that Rochelle, the personal assistant of Mr Jeruzalski, was apparently well known to Mr Zourkas.[132]

157 Mr Zourkas knew Mr Topalides, but Mr Zourkas had not referred any clients to Mr Topalides until the referral of Mr Stubbings. Mr Zourkas had referred a couple of clients to Mr Kiatos and sees Mr Kiatos once every six or 12 months.

158 Mr Zourkas confirmed he was contacted by Mr Kassinidis on behalf of Mr Stubbings. Mr Zourkas was told that Mr Kassinidis had a client that wanted to buy a property. Mr Zourkas understood that Mr Stubbings referred to him as 'Johnny Tee', as Mr Kassinidis did not want his clients to know Mr Zourkas' real name, so that they could not go behind Mr Kassinidis' back.[133]

159 Mr Zourkas said that he spoke to Mr Stubbings on the telephone. Mr Stubbings told him he had two houses. He was living in one and his son in the other. Mr Zourkas said that he would get valuations of those properties and if those stacked up then he could borrow money on those two properties to purchase the one he was currently living in and working from. Mr Zourkas said that Mr Stubbings told him he wanted to purchase the property for his boat business — boats and jet skis. Mr Zourkas said that Mr Stubbings told him that he was operating a business, but not where it was operating from. Mr Zourkas said that he did not really care.

160 Mr Zourkas was taken to the mandate dated 22 August 2015, pursuant to which Mr Stubbings agreed to pay Mr Zourkas the consultancy fee of $27,000.[134] Mr Zourkas said that the figure of $27,000 was not in his handwriting but that of Mr Stubbings.

---

132 Transcript of Proceedings (12 September 2018) 119.

133 Transcript of Proceedings (18 September 2018) 368.

134 Exhibit P 34, CB 439.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

161 Mr Zourkas said that he only dealt with Myer (Mr Jeruzalski) and Rochelle (Mr Jeruzalski's assistant), not the lenders. Mr Zourkas was asked:[135]

> How did you arrive at the consultancy fee of $27,000?
>
> Mr Zourkas: Well, first of all, he said, 'If you can push it quick I'll give you whatever you want', so I asked for 20, but then Theo Kassinidis — then Theo Kassinidis wanted 7,000, so then I charged him 27. If I had to drop all my other work to run around for a client, I would charge him extra.

162 Mr Zourkas said that Mr Stubbings told him what he was earning:[136]

> Counsel: Now, in terms of what was required to enable the purchase to go through, did Mr Stubbings tell you what he was earning?
>
> Mr Zourkas: Yes, he did. I asked him the question.
>
> Counsel: And what did he say?
>
> Mr Zourkas: And he said, 'Five to six thousand dollars a week. That's why I want to purchase the new property, so I can put more boats and jet skis and make a fortune.' That's what I was told.

163 On these figures, Mr Stubbings would be earning over $250,000 per year. For reasons discussed below, I do not accept this evidence of Mr Zourkas. In fact, Mr Zourkas believed that Mr Stubbings had "no money."

164 Mr Zourkas was asked about whether Mr Stubbings owed rates and consultancy fees:[137]

> Counsel: Now, did he tell you that there were outstanding rates on the loan?
>
> Mr Zourkas: No, I asked him the question, 'Are your rates up to date?' 'Yes, they are', and they weren't.
>
> Counsel: Did he tell you that there were outstanding moneys to the South East Water?
>
> Mr Zourkas: No, nothing at all. I asked him the questions. He said, 'No, we didn't owe any money.'

---

135 Transcript of Proceedings (18 September 2018) 370.

136 Transcript of Proceedings (18 September 2018) 370–1.

137 Transcript of Proceedings (18 September 2018) 371.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

….

Counsel: Now, in relation to the consultancy fees to Ajzensztat and Jeruzalski and the disbursements that — that wouldn't have been a matter that you discussed with him? — The — the disbursement — Fees —?

Mr Zourkas: No, no, I – look, I did say to the man, 'You should end up with twenty to thirty thousand dollars in your hand,' right? But I said, 'Are your rates paid up to date and your water?' He said, 'Yes, they are.' At the end of the day, they weren't, so then Rochelle had to pay the overdue rates, and that's how we ended up with virtually zero.

165 Mr Zourkas denied ever telling Mr Stubbings that he would be left with $53,000.[138] Mr Zourkas was asked whether he had ever arranged or sought to procure loans in relation to asset lending without income. Mr Zourkas said, 'Never.'

166 Mr Zourkas denied that Mr Stubbings told him that he wanted to borrow enough to pay the first two months' interest, or that he wanted to perform renovations on the Narre Warren properties.

167 Mr Zourkas was asked about helping Mr Stubbings to obtain a loan from Westpac:[139]

Counsel: He alleges that prior to his signing the mortgage and loan agreements — that the plaintiff, via you — if I can clarify that — represented it and warranted to him that as soon as the funds were advanced as a result of the loan the plaintiffs would assist the defendant to make an application to Westpac to refinance the loan at a standard interest rate. Did you tell them that?

Mr Zourkas: After — with the settlement, you're saying?

Counsel: No, before the settlement?

Mr Zourkas: No. No, I did mention it, yes. But I told them after six months, and his payments had to be paid on time.

….

Counsel: He says as soon as the funds were advanced as a result of the loan the plaintiffs, via you, would assist him to make an application to Westpac; did you say that?

Mr Zourkas: No.

---

138 Transcript of Proceedings (18 September 2018) 372.

139 Transcript of Proceedings (18 September 2018) 375.2–12, 375.15–376.2.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

Counsel: What did you say to him about a Westpac loan?

Mr Zourkas: It wasn't Westpac. It was ANZ and the Commonwealth Bank.

Counsel: Commonwealth Bank?

Mr Zourkas: Correct.

Counsel: What would you say to them about the loan?

Mr Zourkas: I would say exactly what I said. I said to him if — the loan has to run for six months. Your loan repay —

Counsel: Slow down. Just slow down, please?

Mr Zourkas: Sorry.

Counsel: Slow down?

Mr Zourkas: Okay.

Counsel: Keep going?

Mr Zourkas: Your loan repayments have to be paid on time. And then after six months I've got a friend of mine who's a broker who deals with the ANZ and Commonwealth. He's going to give me two years financials. I asked him a question: 'Have you got a clean CRA?' He said, 'Yes, I have.' Then I was going to put it onto my —

Counsel: Colleague?

Mr Zourkas: So-called friend, yeah.

168 Mr Zourkas said that Mr Stubbings did not at any stage tell him that he did not have financial records or tax returns. Mr Zourkas said that it was none of his business to ask him.[140]

Counsel: Now, he then says that you said that the interest repayments made by him for the loan would demonstrate the serviceability of Westpac — in Westpac, but then refinance the loan. Did you say that?

Mr Zourkas: No.

Counsel: In fact, do you, as a broker, involve yourself in making loan applications with Westpac?

Mr Zourkas: I never deal with banks.

Counsel: Never?

140 Transcript of Proceedings (18 September 2018) 376.11–377.30.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Mr Zourkas: Never have. Never have.

…

Counsel: You're talking about first-tier lenders?

Mr Zourkas: Yeah. I just deal with solicitors, and half the solicitors in Melbourne know me very well.

Counsel: But you agree that you did say to him that you would put him on to someone to refinance if the payments were up to date after six months?

Mr Zourkas: Correct.[141]

Counsel: Now, he also says that, whilst the interest rate of 10 per cent for the loan was high, the refinance via Westpac would occur within about two months. Did you say that?

Mr Zourkas: Incorrect. Not at all.

Counsel: And then he alleges that you said that the interest rate payable as a result of the refinance would be the standard interest rate; did you say that?

Mr Zourkas: Not at all. Like I said, I don't deal with banks, so I wouldn't know what the rate was. I've never, ever dealt with a bank.

Counsel: And, finally, that it was the ordinary procedure for the plaintiffs to process loans in the name of a company; did you say that to him? A company's the only [sic] that can borrow funds today. You must have a company. You told him?

Mr Zourkas: I told him that, yes. And I asked him a question: 'Have you got a company?', 'Yes, I do.'

Counsel: And what was the name of that company?

Mr Zourkas: Oh, look, I don't remember. I'm not going to lie to you. It's something to do with boats. Victorian Boats or whatever.

Counsel: He told you that?

Mr Zourkas: Yes.

Counsel: He then also says that it was the ordinary procedure to process the loans in the name of a company rather than as an individual regardless of the purpose. Did you use those last — ?

Mr Zourkas: No, not at all.

Counsel: Not at all?

---

141 Transcript of Proceedings (18 September 2018) 376.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Mr Zourkas: Not at all.

Counsel: Is it fair to say that in obtaining finance via Mr Jeruzalski that you left the paperwork and the details to him — to sort the paperwork out?

Mr Zourkas: Which paperwork are you talking about?

Counsel: The loans, the mortgage documents and so on?

Mr Zourkas: What do you mean? Like —

Counsel: Sorry, I'll rephrase the question. In terms of the paperwork that's required to enable the loan to be processed, do you have any involvement with that?

Mr Zourkas: No, not at all.

Counsel: Okay?

Mr Zourkas: The only involvement I got is my mandate, and usually Myer will arrange the valuation or I will, it doesn't really matter.

169 I have quoted the transcript at length to attempt to convey the flippant manner in which Mr Zourkas answered questions. The manner in which he answered questions added to my doubtfulness as to the accuracy of his evidence, which I will deal with later.

170 Mr Zourkas agreed that he picked up the relevant papers from Mr Jeruzalski and gave them directly to 'the client'. Mr Zourkas agreed that he told Mr Stubbings that he needed to see a solicitor in front of whom he would sign the document, and to see an accountant. Mr Zourkas said that Mr Stubbings told him he did not have a solicitor or an accountant. Mr Zourkas said he then put Mr Stubbings onto two solicitors and two accountants. He said that the other accountant (besides Mr Topalides) was Mr David Jaffe in Toorak, but that Mr Jaffe turned out to be too busy. I am satisfied that Mr Zourkas contacted the solicitor and accountant to see if they would assist.

171 Mr Zourkas denied telling Mr Stubbings that he had to pay the accountant and the solicitor $2,500. He said, 'Absolute lie.'

172 Mr Zourkas was asked about discussions with Mr Stubbings about refinancing the

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

loan:[142]

> Counsel: Now, finally, he then says that you — that you had completed this process on numerous occasions before and there was no reason to think that the refinance with Westpac would not be approved. Did you say that?
>
> Mr Zourkas: I don't deal with banks. I wouldn't know how banks operate, so I wouldn't have said that.
>
> Counsel: So therefore, you had never ever completed a process with Westpac or any other bank for approval of a loan?
>
> Mr Zourkas: Never, no. I don't know why Westpac keeps on getting brought up all the time. It was the ANZ and Commonwealth Bank.

173 Mr Zourkas was asked about meeting Mr Stubbings in Carlton. Mr Zourkas said that he never went to Carlton with him but that they usually met in Elsternwick. Mr Zourkas explained why they met in Elsternwick: 'Because what I said to him, "I'll meet you halfway" — save him from using fuel. 'Cause he had no money.'[143]

174 The admission by Mr Zourkas that he knew Mr Stubbings had no money does not fit well with Mr Stubbings telling Mr Zourkas that he earned between $5,000 and $6,000 per week, or Mr Zourkas believing that statement, if it was made.

175 Mr Zourkas said that he got the terms of the loan to Mr Stubbings from AJ Lawyers. He added that he always phoned (presumably AJ Lawyers) before he wrote it down on his mandate.[144] Previously, Mr Zourkas said that he did not fill in the mandate form but that Mr Stubbings filled it in. Mr Zourkas said that it was not in his handwriting.

176 Under cross-examination by Mr Stubbings, Mr Zourkas admitted visiting the Fingal property and meeting the vendor, but denied that he told the vendor that Mr Stubbings would sign an 'unconditional s 23' because there was no problem with

---

142 Transcript of Proceedings (18 September 2018) 382.

143 Transcript of Proceedings (18 September 2018) 392.

144 Transcript of Proceedings (18 September 2018) 398.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

the money.

177 Mr Zourkas said he had been a registered broker, but the government decided not to renew licences again.[145] Mr Zourkas agreed that it was the duty of a consultant to ascertain whether his client was able to finance the loan.

178 I found Mr Zourkas to be an unreliable witness. He did not answer questions directly, but sought to argue. I formed the view that Mr Zourkas was clearly speculating rather than giving evidence from memory. He was dismissive, flippant, arrogant, patronising, and rude. He was hostile to Mr Stubbings and dismissive of anything Mr Stubbings suggested.

179 Mr Zourkas contradicted himself on two important occasions. He said that Mr Stubbings told him he was making between $5,000 and $6,000 per week; however, Mr Zourkas agreed to meet Mr Stubbings in Elsternwick to save him petrol, as Mr Stubbings did not have any money. Further, Mr Zourkas said that he did not fill in the mandate, but then said that he always filled in the mandate with information provided by Mr Jeruzalski. I consider it most unlikely that Mr Stubbings filled in the mandate. I doubt that he had the intelligence to do so.

180 After viewing Mr Zourkas' demeanour in the witness box, the way he answered questions and taking into account the inconsistencies in his evidence, I am not prepared to accept Mr Zourkas' evidence on any relevant issues, unless corroborated.

Certificate of Independent Legal Advice

181 Mr Stubbings was referred by Mr Zourkas to Mr Con Kiatos ('Mr Kiatos'), a sole practitioner solicitor, in order to obtain a Certificate of Independent Legal Advice with respect to the proposed loan through AJ Lawyers. Mr Stubbings had been given by Mr Zourkas an envelope containing the relevant loan documentation and certificate for Mr Kiatos to complete.

---

145 Transcript of Proceedings (18 September 2018) 411.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

182 Mr Kiatos gave evidence that he had previously dealt with Mr Jeruzalski on a 'handful' of occasions. He had known Mr Topalides (the accountant on whom Mr Stubbings subsequently attended for independent accounting advice) for 25 years. Mr Zourkas had previously referred clients to him for loan purposes.

183 Following his meeting with Mr Stubbings, Mr Kiatos received $1,650 from AJ Lawyers, as payment for his services.

184 The evidence of Mr Stubbings and of Mr Kiatos as to the meeting held on 19 September 2015 varied significantly. Matters in dispute included the duration of the meeting, the extent to which Mr Stubbings' true financial position was divulged, the extent and nature of legal advice provided by Mr Kiatos, and whether Mr Stubbings provided $1,500 cash to Mr Kiatos (as Mr Stubbings alleges he was instructed to do by Mr Zourkas). I note that Mr Stubbings' version of events was supported in key respects by evidence given by his partner, Ms Santo, who attended with him at Mr Kiatos' office.

185 Mr Kiatos had previously been joined as a third party to the proceeding by Mr Stubbings, but the claim against him was resolved and he was released from the action. As a result, it is unnecessary for me to make any findings with respect to the inconsistent evidence of Mr Stubbings and Mr Kiatos, as it relates to the 19 September 2015 meeting.

186 Mr Stubbings and Mr Kiatos, however, both gave evidence that Mr Stubbings signed the relevant documentation in Mr Kiatos' presence, before Mr Stubbings attended on Mr Topalides.[146] As will become apparent, this contradicts evidence given by Mr Topalides and is therefore relevant to my assessment of Mr Topalides' evidence.

Certificate of Independent Financial Advice

187 Mr Topalides has been an accountant for 35 to 40 years. Mr Topalides has known Mr Kiatos since the mid-1990s and is his accountant. Mr Topalides had met

146 Transcript of Proceedings (20 September 2018) 498; Exhibit P 15, CB 401.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Mr Zourkas three or four times. Mr Topalides said that he had only been referred a client by Mr Zourkas once before Mr Stubbings. Mr Topalides' evidence was that he did not know Mr Jeruzalski as at 19 September 2015.

188 The agreed facts as to Mr Stubbings' meeting with Mr Topalides on 19 September 2015 are few. Mr Zourkas or Mr Kiatos called Mr Topalides to see he if was available to explain certain mortgage contracts to a client. Mr Stubbings then attended on Mr Topalides, bringing with him documentation pertaining to the first and second mortgage and the certificate.

189 Mr Stubbings' version of the meeting is as follows.

190 Mr Topalides' office looked like a shopfront, which was full of rubbish. Mr Stubbings and his partner, Ms Santo, sat on one side of the room because they were not able to sit in front of Mr Topalides' desk.[147] Mr Topalides asked Mr Stubbings whether he had anything to give him. Mr Stubbings handed Mr Topalides the envelope that said 'accountant' and $1,000 cash.[148]

191 Mr Topalides looked through the envelope (while Mr Stubbings and Ms Santo were across the room) and pulled from the envelope a couple of documents to be signed. Mr Stubbings went over to Mr Topalides, who was smoking, and signed the documents that Mr Topalides requested be signed.[149]

192 According to Mr Stubbings, Mr Topalides did not ask Mr Stubbings what he was earning,[150] what he did,[151] and did not advise Mr Stubbings how much he needed to be earning per month to cover repayments of the loan.[152] Allegedly, Mr Topalides

147 Transcript of Proceedings (20 September 2018) 500.17-31.

148 Transcript of Proceedings (20 September 2018) 501.2-9.

149 Transcript of Proceedings (20 September 2018) 502.1-9.

150 Transcript of Proceedings (20 September 2018) 502.10-13.

151 Transcript of Proceedings (20 September 2018) 503.

152 Transcript of Proceedings (20 September 2018) 502.13-17.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

asked no questions at all of Mr Stubbings, and the meeting took approximately 15 minutes.[153]

193 Mr Stubbings' oral evidence was that he did not understand the function of Mr Topalides and concedes he should have inquired.[154] Mr Stubbings says that he was supposed to be an independent accountant advising him, but at the time he thought he was just signing documents.[155]

194 Mr Topalides' recollection of the meeting with Mr Stubbings differs completely. According to Mr Topalides, he went through the loan documentation, mortgage and personal guarantee with Mr Stubbings. Mr Stubbings allegedly told Mr Topalides that he wanted the loan (and the Fingal property) to relocate and expand his existing business of boat repairs and boat building.[156] Notwithstanding, Mr Topalides wrote on the documentation that the loan was to 'establish the business'.[157]

195 Mr Topalides did not see the contract to buy the Fingal property, but understood that the loan was to enable Mr Stubbings to buy a million dollar property, and that a second mortgage of approximately $500,000 would be taken out over and above the existing CBA mortgage to do some renovations on the Narre Warren properties. Mr Topalides understood that Mr Stubbings had a 10 per cent deposit for the Fingal property (in fact, Mr Stubbings had a $100 deposit). It is apparent from this evidence that Mr Topalides did not understand the financing that was to take place.

196 Mr Topalides said he calculated and conveyed to Mr Stubbings that Mr Stubbings would need a minimum of $16,000 clear per month in order to service the loan (this did not include the repayments on the CBA loan which Mr Topalides understood

---

153 Transcript of Proceedings (20 September 2018) 502.9-12.

154 Transcript of Proceedings (20 September 2018) 503.16-25.

155 Transcript of Proceedings (20 September 2018) 504.

156 Transcript of Proceedings (18 September 2018) 424.

157 Transcript of Proceedings (18 September 2018) 425.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

were covered by rent).[158]

197 Mr Stubbings allegedly said that he was making more than that, and moving to the new property, his income would increase to $20,000 to $25,000 per month.[159] In his oral evidence, Mr Topalides accepted that he did not ask for any proof of income from Mr Stubbings, saying that he accepted Mr Stubbings at his word.[160]

198 It is apparent from the evidence of Mr Topalides that Mr Stubbings did not bring to the meeting any financial documents, such as tax returns, or any documents disclosing his assets, liabilities, income or expenses.

199 Mr Topalides recollects that Mr Stubbings told him he was going to have $53,000 left over to cover interest payments and renovations. This corroborates Mr Stubbings' evidence that he expected to have this amount in his hand to meet interest and the renovation expenses. Mr Topalides allegedly suggested to Mr Stubbings that he would not have that much left over, as six months' interest alone would amount to $65,000 to $70,000, and there were other fees and stamp duty to be paid.[161]

200 Mr Topalides allegedly advised Mr Stubbings that if the company defaulted, Mr Stubbings would personally be liable by virtue of his personal guarantee, and therefore his personal assets were in jeopardy until the debt was satisfied. Mr Topalides insisted that he made this clear to Mr Stubbings.

201 When asked if Mr Topalides advised Mr Stubbings to proceed with the transaction, Mr Topalides' evidence was that Mr Stubbings was in no frame of mind to take advice. Mr Topalides described Mr Stubbings as being in a hurry, disinterested in any explanation, and only interested in obtaining Mr Topalides' signature on the certificate. Mr Topalides conceded that he did not tell Mr Stubbings not to proceed

---

158 Transcript of Proceedings (18 September 2018) 424.

159 Transcript of Proceedings (20 September 2018) 443.25–28.

160 Transcript of Proceedings (20 September 2018) 443.29.

161 Transcript of Proceedings (18 September 2018) 428.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

with the transaction 'in so many words', but said that he tried to make it clear to Mr Stubbings that it was not a loan that he would recommend to Mr Stubbings (in circumstances where Mr Stubbing believed he would have $53,000 left over and that was not the case).

202 Mr Topalides, in his oral evidence, was taken to the Certificate of Independent Legal Advice to be returned to AJ Lawyers and confirmed that he had done as the certificate stated.

203 Four further aspects of Mr Topalides' evidence are particularly relevant.

204 First, Mr Topalides said that when Mr Stubbings attended at his office with documentation pertaining to the first and second mortgage, the documents were not signed.[162] As previously mentioned, according to both Mr Stubbings and Mr Kiatos the documents had been signed by Mr Stubbings in the presence of Mr Kiatos prior to Mr Stubbings' meeting with Mr Topalides.

205 Second, Mr Topalides' evidence was that he spent more than two hours going through the documentation with Mr Stubbings before Mr Topalides signed the certificate.[163]

206 Third, Mr Topalides denied that he received cash from Mr Stubbings, a suggestion he described as 'repugnant'.[164]

207 Last, Mr Topalides was unable to recall Mr Stubbings' partner, Ms Santo, attending with Mr Stubbings at his office.[165]

208 Mr Topalides' evidence (that he did not recall any signatures on the documents at the time he saw Mr Stubbings) is clearly inconsistent with Mr Stubbings' and Mr

---

162 Transcript of Proceedings (20 September 2018) 443.14–20.

163 Transcript of Proceedings (18 September 2018) 423.

164 Transcript of Proceedings (20 September 2018) 439.16–19.

165 Transcript of Proceedings (20 September 2018) 452.19–24.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Kiatos' version of events, in which the documents were signed at Mr Kiatos' office, and prior to Mr Stubbings' meeting with Mr Topalides. The evidence that they were signed in the presence of Mr Kiatos does not sit easily with Mr Topalides' evidence that he had a two-hour thorough consultation with Mr Stubbings, where he allegedly carefully explained those documents. If the documents he was explaining were those signed at Mr Kiatos' office, it is reasonable to infer that, in those circumstances, Mr Topalides would have realised the documents were signed.

209 Further, Mr Topalides was unable to recall who, if anyone, was with Mr Stubbings at his office, notwithstanding that, on Mr Topalides' version of events, Mr Stubbings spent two hours at his office. Mr Topalides' inability to remember that Ms Santo was even present at his office suggests that his purported recollection of what took place at the meeting may not be reliable.

210 Ms Santo gave evidence that she saw Mr Stubbings give Mr Topalides money with an envelope. She did not know how much money.[166] Mr Topalides denies receiving cash from Mr Stubbings at the meeting, but admits receiving $300 from AJ Lawyers after settlement.

211 Mr Topalides did not open a new client file for Mr Stubbings, explaining 'I knew I was never going to see him again'. Accordingly, it is unlikely he retained information of where to send an invoice to Mr Stubbings. Mr Topalides gave evidence that he believed he forwarded an invoice (presumably to AJ Lawyers). Mr Topalides said that otherwise he would not have been paid his fee of $300 from settlement.[167]

212 If settlement had not occurred, Mr Topalides would not have been paid for the consultation. This suggests that Mr Topalides may have accepted cash from Mr Stubbings, as Mr Stubbings contends.

---

166 Transcript of Proceedings (25 September 2018) 719.28–720.3.

167 Transcript of Proceedings (20 September 2018) 455.9–11.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

213 Mr Topalides also gave evidence that he was apparently satisfied by Mr Stubbings' alleged claim that he was making $16,000 per month and this would increase to $20,000 to $25,0000 per month when he moved to the Fingal property. This evidence does not fit easily with his previous evidence that he tried to tell Mr Stubbings that it was not a loan he would recommend to Mr Stubbings in his circumstances.

214 The certificate signed by Mr Topalides stated 'To the best of my knowledge and belief and in my opinion the borrower appears to understand that nature and extent of financial risk'. Mr Topalides conceded that making the certificate involved taking into account Mr Stubbings' current financial position. Mr Topalides' position seemed to be that he had taken into account Mr Stubbings' current financial position by explaining to Mr Stubbings what he would need to earn to service the loan. Notwithstanding that Mr Topalides, by his own admission, did not obtain a statement of Mr Stubbings' assets or liabilities, credit card debt, car repayments or similar, Mr Topalides signed the certificate because he 'was satisfied that [he had] done [his] job of explaining to [Mr Stubbings] what his risks were'.[168]

215 Mr Topalides said that the rate of interest being charged to Mr Stubbings was the normal interest rate for a borrower who did not qualify to get a loan from first-tier lenders, namely, the banks.[169]

216 Mr Topalides says he signed (presumably the certificate) based on Mr Stubbings' having a 10 per cent deposit and that Mr Stubbings understood everything Mr Topalides allegedly explained to him.[170] There is an inference open from Mr Topalides' evidence that Mr Topalides was satisfied on this basis and that he did not satisfy himself by looking at paperwork, figures or asking Mr Stubbings about the overall arrangement.

217 The evidence discloses that Mr Topalides did not understand the transaction into

---

168 Transcript of Proceedings (20 September 2018) 456.23-5.

169 Transcript of Proceedings (20 September 2018) 440.11–14.

170 Transcript of Proceedings (20 September 2018) 449.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

which Mr Stubbings was proposing to enter.

Resolution of issues

218 Subject to the defences and counterclaim of Mr Stubbings, there is no dispute that the plaintiffs would otherwise be entitled to judgment, involving possession of the three parcels of land and judgment for the sum outstanding, plus interest and costs.

219 The various defences are that the mortgage and loans are not enforceable as:

(a) the plaintiffs have engaged in misleading and deceptive conduct in breach of s 18 of the ACL and s 12DC of the ASIC Act;

(b) the National Consumer Credit Code applies to the mortgage and loan agreements;

(c) the provisions of the mortgage and the loan agreements were unjust, harsh, excessive, unconscionable and oppressive;

(d) the terms of the loan agreements are unjust, as the rates of interest under the mortgage are a penalty and void;

(e) the plaintiffs have engaged in conduct that is unconscionable pursuant to s 21 of the ACL and s 12CB of the ASIC Act and unconscionable at law.

The alleged misleading and deceptive conduct of the plaintiffs

220 It will be recalled that the allegations facing the plaintiffs include that before Mr Stubbings entered into the mortgage and loan agreements, the plaintiffs, through Mr Zourkas, represented and warranted to Mr Stubbings that:

(a) the plaintiffs were willing to advance a loan sufficient to purchase the Fingal property, together with an additional sum of $53,000 for Mr Stubbings to:

(i) pay the first two monthly interest repayments due and payable pursuant to the loan; and

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

(ii) perform renovations to the Narre Warren property and the Narre Warren South property;

(b) as soon as the funds were advanced as a result of the loan, the plaintiffs would assist Mr Stubbings to make an application to Westpac to refinance the loan;

(c) the interest repayments made by Mr Stubbings for the loan would demonstrate serviceability to Westpac and Westpac would then refinance the loan;

(d) while the interest rate of 10 per cent for the loan was high, the refinance via Westpac would occur within two months, and the interest rate payable as a result of the refinance would be the standard rate; and

(e) it was the ordinary procedure for the plaintiffs to process the loans in the name of a company rather than as an individual regardless of the purpose.

221 In this case, I am satisfied that Mr Zourkas did introduce Mr Stubbings to AJ Lawyers as a potential borrower from their clients. I am satisfied that AJ Lawyers relied on Mr Zourkas to obtain relevant information from Mr Stubbings to enable the loan documents to be drawn up and provide information on the securities, to convey information and documents to Mr Stubbings, to organise the signing of the relevant loan documents by Mr Stubbings and his company, to organise retaining a solicitor and accountant to sign the certificates required by AJ Lawyers, to ensure that the solicitor and accountant did so, and generally to do all things necessary with Mr Stubbings to ensure the loan to VBC was made and Mr Stubbings guaranteed the loan.

222 As to the representations, I am satisfied that Mr Zourkas at least knew that Mr Stubbings believed the matters set out in paragraph [220] (a)–(e) above.

223 However, I am not satisfied that Mr Zourkas was acting as an agent of the plaintiffs or their solicitors in the making of the loan. I am not satisfied that Mr Zourkas had

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

any authority to contract on behalf of the plaintiffs or otherwise make representations on their behalf.

224 I find, however, that Mr Zourkas was acting as an intermediary or facilitator for AJ Lawyers, who were the agents of the plaintiffs, in facilitating the making of the loan. As already discussed, AJ Lawyers relied on and used Mr Zourkas to introduce potential borrowers for their clients.

225 Accordingly, I find that the claims of misleading and deceptive conduct as alleged against the plaintiffs are not made out.

National Consumer Credit Code

226 Mr Stubbings alleges that the Code applies to the mortgage agreement and loan agreements.

227 The plaintiffs submit that the mortgage given by Mr Stubbings is not subject to the provisions of the Code. The plaintiffs submit that the mortgage was not a separate credit contract to which the Code applied due to s 7 of the Code, and it was not given as security for a loan to which the Code applied, as the loan itself was made to a corporation.

228 Section 5 of the Code relevantly provides:

> **5 Provision of credit to which this Code applies**
>
> (1) This code applies to the provision of credit…if when the credit contract is entered into…
>
> (a) the debtor is a natural person or a strata corporation; and
>
> (b) the credit is provided for or intended to be provided wholly or predominantly:
>
> (i) for personal, domestic or household purposes; or
>
> (ii) to purchase, renovate or improve residential property for investment purposes; or
>
> (iii) to refinance credit that has been provided wholly or predominantly to purchase, renovate

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

or improve residential property for investment purposes…

229 Section 7 relevantly provides:

> **7 Mortgages to which this Code applies**
>
> (1) This code applies to a mortgage if:
>
> (a) it secures obligations under a credit contract or related guarantee; and
>
> (b) the mortgagor is a natural person or a strata corporation.
>
> (2) If any such mortgage also secures other obligations, this Code applies to the mortgage to the extent only that it secures obligations under the credit contract or related guarantee.

230 Finally, s 13 provides (in summary) that there is a presumption that the Code applies to a credit contract, mortgage or guarantee unless the contrary is established, unless the debtor declares that the credit they are provided under the contract is to be applied wholly, or predominantly for a purpose that is not a Code purpose. In that case, a presumption that the Code does not apply arises, and that must be rebutted by the debtor.

231 The mortgage executed by Mr Stubbings provided that the mortgage also operated as a loan agreement. The mortgage also provided that:

> Provided interest is paid on time the Mortgagor shall for the term of the mortgage pay to the Mortgagees calendar monthly interest as follows:
>
> (a) to Conterra the sum of $3,083.33
>
> (b) to Janaco the sum of $2,500 and
>
> (c) to Jams 2 the sum of $3,241.67
>
> Commencing on the commencement date herein and all such interest payments shall be made to such place or places as the Mortgagees from time to time in writing direct.

232 There is no doubt, however, that the loan was made to VBC and that the mortgage was given solely as security for the guarantee provided by Mr Stubbings. There is no suggestion that the loan was a sham and was in fact made to Mr Stubbings. All but approximately $6,000 of the loan moneys were expended to or for the benefit of

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

Mr Stubbings in the purchase of the Fingal property and the discharge of the loans he owed to the CBA.

233 In *Devon v Thirteenth Kaysan Pty Ltd*,[171] (Davies J) and on application for leave to appeal *Devon v Thirteenth Kaysan Pty Ltd*,[172] (Middleton J) the Federal Court of Australia dealt with a similar loan structure to that adopted in this case. The applicant claimed, amongst other things, that the loan and mortgage were covered by the Code. The first, second, third and twelfth respondents applied for summary dismissal of the applicant's claim. Davies J upheld the application to dismiss summarily the proceeding. The applicant sought leave to appeal, which was dismissed with costs by Middleton J.

234 The applicant sought relief against the respondents under a number of Acts, including the Code, the ASIC Act, the *Corporations Act 2001* (Cth), and the ACL. Davies J observed at trial that the statement of claim and the originating process were 'largely unintelligible.' The applicant was self-represented.

235 The claim related to two loans advanced to the applicant. Both loans were advanced to a company, Southco Enterprises Pty Ltd, of which the applicant was the sole director. The loans were secured in two ways: by a personal guarantee from the applicant, and a mortgage over a property he owned in his personal capacity.

236 The applicant submitted that the Code applied to the loans and the mortgage, and the respondents had breached the Code's licensing and responsible lending requirements. The respondents submitted that the Code did not apply to the loans or mortgage.

237 The applicant had signed various statements in both the loan and mortgage documents that acknowledged that the loan and the mortgage were not provided for a Code purpose. These statements included:

---

171 [2016] FCA 357.

172 [2016] FCA 1026.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

(a) On the letter of offer, a statement that provided the loan was conditional on 'not being for personal, domestic or household purposes or otherwise not being regulated under [the Code]';

(b) In the mortgagor's declaration, a statement that the credit provided was to be 'applied wholly or predominantly for business or investment purposes';

(c) In the Certificate of Independent Financial Advice, a statement that the loan was for business purposes.[173]

238 Even so, Davies J held that the applicant may have been able to rebut the presumption that therefore arose under s 13 that the Code did not apply.[174]

239 However, Davies J held that no real issue of fact arose as to s 5(1)(a), namely the loans were clearly not made to a natural person or to a strata corporation. This was for two reasons:

(a) the applicant did not allege that the mortgage constituted a separate credit contract. Even if it did, s 7 of the Code would operate to exclude that possibility; and

(b) it was 'clear and unequivocal from the terms of the loan agreement… that the mortgage was given as security for the loan.'[175]

240 As the mortgage secured a loan that was given to a company and not to the applicant in his personal capacity, the Code did not apply (due to the operation of s 5(1)(a)). Her Honour further held that there was no evidence of a sham, that is a mutual agreement to provide credit to the company rather than the applicant in his personal capacity.[176]

---

173 *Devon v Thirteenth Kaysan Pty Ltd* [2016] FCA 357 [17].

174 Ibid [21].

175 Ibid [23].

176 *Devon v Thirteenth Kaysan Pty Ltd* [2016] FCA 357 [25]–[26].

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

241 On the application for leave to appeal, Middleton J summarised Davies J's reasoning in the trial judgment as to the application of the Code to the mortgage document:

> As to the application of the Code, it is a requirement that the loan be made to a natural person (or strata corporation). The trial judge's analysis was correct: the mortgage agreement itself was not a 'credit contract' (either in its terms or operation), and the mortgage was clearly given as security. The actual loan or credit contract (if not a sham) was clearly not made to a natural person.[177]

242 Under the deed of 30 September 2015 between VBC, the plaintiffs and Mr Stubbings, recital E provided that the purpose of the loan was not for personal, domestic, or household purposes.

243 The deed also provided:

1 The borrower covenants and agrees that the purpose of the loan is for business purposes.

2 The borrower covenants and agrees that the purpose of the loan is not for personal, domestic or household purposes.

3 The borrower covenants and agrees that the purpose of the loan is not to purchase, renovate, or improve the residential property for investment purposes.

4 The borrower covenants and agrees that the purpose of the loan is not to refinance credit that has been provided wholly or predominantly to purchase renovate or improve residential property for investment purposes.

5 The guarantor/mortgagor covenants and agrees that the purpose of the loan is for business purposes.

6 The guarantor/mortgagor covenants and agrees that the purpose of the loan is for personal, domestic or household purposes.

7 The guarantor/mortgagor covenants and agrees that the purpose of the loan is not to purchase renovate, or improve the residential property for investment purposes for business purposes.

8 The guarantor/mortgagor covenants and agrees that the purpose of the loan is not to refinance credit that has been provided wholly or predominantly to purchase, renovate, or improve residential property for investment purposes.

244 The plaintiffs also refer to *Equititrust Ltd v SLJM*,[178] where Gzell J of the Supreme

---

177 *Devon v Thirteenth Kaysan Pty Ltd* [2016] FCA 1026 [12].

178 [2010] NSWSC 1059.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

Court of New South Wales held that guarantors of a loan to a corporation were not debtors within the meaning of the Code.

245 As stated above, the mortgage provides that it also operated as a loan agreement between the plaintiffs and Mr Stubbings. In my opinion, when construed in the light of the other loan and security documents executed as part of the package of loan documents, it is, and would be construed as no more than a guarantee. In my opinion, the mortgage given by Mr Stubbings is not governed by the Code.

246 I find that the guarantee and mortgage given as security by Mr Stubbings were not governed by the Code.

Unconscionability

247 Mr Stubbings alleges that the loan agreements were unjust, harsh excessive, unconscionable and oppressive.[179]

248 Further, Mr Stubbings alleges that the lenders entered into the mortgage and loan agreements and conducted the mortgage and loan agreements in the following manner:

(a) Funds were advanced on asset-based lending, being that the lenders would rely on the properties for repayment, and the lenders knew that Mr Stubbings had and would only contribute $100 towards the purchase of the Fingal property.

(b) The lenders had no evidence and did not request any evidence regarding Mr Stubbings' ability to repay, or the capacity of VBC to repay, the loan.

(c) It was the lenders' intention that any amount owing to them would be recovered on the basis of enforcing and selling the properties.

(d) Notwithstanding that the purported purpose of the loan was for VBC to 'set

---

179 ADACC of 25 January 2018 [21] ('ADACC').

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

up and expand the business', the lenders were at all times aware that the entire funds and the loan were to be used for the acquisition of property.

(e) Notwithstanding that the lenders had not had any prior dealings with Mr Stubbings, no loan application was required by the lenders.

(f) The lenders purported to advance money to VBC when the company was inactive and never had traded.

(g) The lenders paid, without Mr Stubbings' authority, disbursements to third parties, being AJ Lawyers and Mr Zourkas.

(h) The lenders made an application in these proceedings for summary judgment and possession of the properties under the mortgage knowing that Mr Stubbings had no income, had no other property or assets other than the two houses, had only $100 deposit to contribute to the purchase of the Fingal property, had signed an unconditional contract of sale for the purchase of the Fingal property, and VBC had not traded and had been inactive since incorporation, and that the loan agreements and mortgage were regulated under the Code.

(j) The lenders failed to allow Mr Stubbings to sell the Narre Warren properties to third parties, thereby increasing the amount of interest owing by Mr Stubbings to the lenders.

249 Mr Stubbings alleges that the lenders have engaged in conduct that in all the circumstances is unconscionable pursuant to s 21 of the ACL and s 12CB of the ASIC Act, and is unconscionable at law.

250 Section 21 of the ACL provides, in part:

21 Unconscionable conduct in connection with goods or services

(1) A person must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to a person (other than a listed public company); or

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

(b) the acquisition or possible acquisition of goods or services from a person (other than a listed public company);

engage in conduct that is, in all the circumstances, unconscionable.

…

(3) For the purpose of determining whether a person has contravened subsection (1):

(a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) the court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

(4) It is the intention of the Parliament that:

(a) this section is not limited by the unwritten law relating to unconscionable conduct; and

(b) this section is capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour; and

(c) in considering whether conduct to which a contract relates is unconscionable, a court's consideration of the contract may include consideration of:

(i) the terms of the contract; and

(ii) the manner in which and the extent to which the contract is carried out;

and is not limited to consideration of the circumstances relating to formation of the contract.

251 Section 22 of the ACL sets out the matters to which the court may have regard for the purposes of section 21 of the ACL.

252 Section 12CB of the ASIC Act provides, in part:

Unconscionable conduct in connection with financial services

(1) A person must not, in trade or commerce, in connection with:

(a) the supply or possible supply of financial services to a person (other than a listed public company); or

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

(b) the acquisition or possible acquisition of financial services from a person (other than a listed public company);

engage in conduct that is, in all the circumstances, unconscionable.

…

(3) For the purpose of determining whether a person has contravened subsection (1):

(a) the court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

(b) the court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.

(4) It is the intention of the Parliament that:

(a) this section is not limited by the unwritten law of the States and Territories relating to unconscionable conduct; and

(b) this section is capable of applying to a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour; and

(c) in considering whether conduct to which a contract relates is unconscionable, a court's consideration of the contract may include consideration of:

(i) the terms of the contract; and

(ii) the manner in which and the extent to which the contract is carried out; and is not limited to consideration of the circumstances relating to formation of the contract.

…

Catching bargains

253 In Meagher, Gummow, and Lehane, *Equity: Doctrines & Remedies*,[180] the learned authors address the well-developed jurisdiction in equity to set aside catching and unconscientious bargains. They say that:

> The jurisdiction is a branch of the general equitable jurisdiction in fraud. It is raised 'whenever one party to a transaction is at a special disadvantage in

180 J D Heydon, M J Leeming, P G Turner, '*Meagher, Gummow & Lehane's Equity: Doctrines & Remedies* (LexisNexis Butterworths, 5th ed, 2015) 502 [61-010] ('*Meagher, Gummow & Lehane*').

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

> dealing with the other party because illness, ignorance, inexperience, impaired faculties, financial need or other circumstances affect his ability to conserve his own interests, and the other party unconscientiously takes advantage of the opportunity thus placed in his hands.'[181] …. It will be seen that essence of these situations is (a) parties who meet on unequal terms, (b) the stronger party takes advantage of this, (c) to obtain a beneficial bargain. When this is shown by the weaker party, the onus will pass to the stronger party to show that the conduct was fair, just and reasonable.[182]

254 The learned authors say that the principles were expanded on in *Commercial Bank of Australia Ltd v Amadio*,[183] where the High Court held that it was sufficient to attract their operation that instead of actual knowledge of the plaintiff's special disadvantage in relation to an intended transaction the defendant was merely aware of the possibility that the situation might exist or of facts that would raise that possibility in the mind of any reasonable person.[184]

255 In *Equity and Trusts in Australia*,[185] Professor G E Dal Pont says that the adjective 'special' applied to 'disadvantage' 'aims to disavow any suggestion that the jurisdiction is triggered simply due to a difference in the parties' bargaining power.[186] He says that the word 'special' also emphasises that 'the disability condition or circumstance is one which *seriously* affects the ability of the innocent party to make a judgment in his own best interests.'[187]

256 In *Perpetual Trustees Australia Ltd v Schmidt*,[188] a loan was set aside on the grounds that it was procured by unconscionable conduct. Mr Schmidt was induced to invest in a property scheme by a fraudster, Mr Maddocks. Mr Schmidt was in his 60s.

---

181 *Blomley v Ryan* (1956) 99 CLR 362, 415.

182 *Fry v Lane* (1888) 49 Ch D 312, 322.

183 (1983) 151 CLR 447 ('*Amadio*').

184 Meagher, Gummow, and Lehane (n 899) 502 [16–010].

185 G E Dal Pont, *Equity and Trusts in Australia* (Thomson Reuters, 6th ed, 2015) ('*Dal Pont*').

186 Ibid [9.25].

187 *Amadio* (1983) 151 CLR 447, 462 (Mason J).

188 [2010] VSC 67 ('*Schmidt*').

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

Mr Maddocks said he could obtain a further loan for Mr Schmidt (to invest with) using his home as security. Mr Maddocks engaged Medallion Finance Concepts Pty Ltd ('Medallion') a finance broker to obtain the loan. Medallion approached Violet Home Loans Australia Pty Ltd ('Violet') as a mortgage originator to obtain the loan. Violet sourced the loan from Perpetual Trustees Australia Ltd.

257 It was Violet's task to obtain details for a loan application. In doing so, Violet was given inconsistent information about Mr Schmidt's earnings and failed to clarify his financial position. Violet, as the agent for Perpetual Trustees, was also to conduct a personal interview with Mr Schmidt which it failed to do. J Forrest J of this Court held in favour of Mr Schmidt. He held that Violet acted unconscionably and in breach of general law, s 51AC of the Trade Practices Act and s 12CB of the ASIC Act.

258 The parent company of Violet was Violet Homes Loans Pty Ltd ('VHL'). It had effectively indemnified Perpetual for any loss sustained by reason of Violet's conduct. VHL unsuccessfully appealed against the orders of J Forrest J.[189]

259 The Court of Appeal noted that the trial judge treated the loan as an asset-based loan — that is, the loan was not based on Mr Schmidt's ability to repay. The Court of Appeal noted that J Forrest J held that that was not sufficient to make the loan unconscionable.[190]

260 The Court referred with approval to the New South Wales Court of Appeal decision in *Tonto Home Loans Australia Pty Ltd v Tavares*.[191] In particular, the Court cited Allsop P (as he then was) as follows:

> Allsop P (with whom Bathurst CJ and Campbell JA agreed) held that the mortgage and loan contract were unjust within the meaning of the *Contracts Review Act 1980* (NSW). His Honour also considered whether the conduct of Tonto, and through it the lender, was unconscionable under the *ASIC Act* or the *TPA*. Commencing with a series of propositions extracted from a number of cited appellate decisions, Allsop P said:

---

189 *Violet Home Loans Pty Ltd v Schmidt* (2013) 44 VR 202 ('*VHL v Schmidt*').

190 *VHL v Schmidt* (2013) 44 VR 202, [32].

191 [2011] NSWCA 389 ('*Tonto Home Loans*').

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

> Aspects of the content of the word 'unconscionable' include the following: the conduct must demonstrate a high level of moral obloquy on the part of the person said to have acted unconscionably…; the conduct must be irreconcilable with what is right or reasonable…; factors similar to those that are relevant to the [*Contracts Review Act*] are relevant…; the concept of unconscionable in this context is wider than the general law and the provisions are intended to build on and not be constrained by cases at general law and equity…; the statutory provisions focus on the conduct of the person said to have acted unconscionably…. It is neither possible nor desirable to provide a comprehensive definition. The range of conduct is wide and can include bullying and thuggish behaviour, undue pressure and unfair tactics, taking advantage of vulnerability or lack of understanding, trickery or misleading conduct. A finding requires an examination of all the circumstances.[192]

Allsop P was not satisfied that there was unconscionability on the part of Tonto. He observed:

> Streetwise was not Tonto HL's agent. That is of great importance in this enquiry. Not only does it remove attribution of the conduct of Streetwise and its knowledge, but it also removes the finding of asset lending in the way his Honour found it. There remain the breaches of the guidelines and the lack of attention and care to serviceability and suitability based upon primary reliance upon security. There also remains the objective risk that existed by the employment of a company such as Streetwise together with the additional arrangement of not approaching borrowers. Whilst these are facts which all amount to circumstances and conduct which, for the reasons I have already given, are sufficient to justify relief being given against the lenders under the *[Contracts Review Act]*, they do not in my view amount to unconscionability. There is no real suggestion in the argument or the evidence that those at Tonto HL understood the actuality of the trickery and lies that were being undertaken by Streetwise or had any notice of them. I do not think that the structural creation of risk and the heightening of that risk by the arrangements with Streetwise meet the notion of moral obloquy required. The true facts are now known, but in circumstances where those at Tonto HL were innocent of the conduct at the time it is not unconscionable to be seeking to maintain the transaction.[193]

His Honour described his conclusion as to unconscionability as an evaluative one, and continued:

> Spigelman CJ in *World Best Holdings* at 583 [121] referred to a 'high level' of moral obloquy. Whether that is too stringent and whether 'significant' or 'real' may be preferable need not be decided. What is required is some degree of moral tainting in the transaction of a kind that permits the opprobrium of unconscionability to characterise the

192 Ibid [291] (citations omitted).

193 Ibid [292].

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

> conduct of the party. Here, without a finding of some knowledge or complicity, the circumstances do not reach that level.[194]

261 The Court of Appeal also cited with approval Hargrave J in *Director of Consumer Affairs (Vic) v Scully (No 3)*,[195] where Hargrave J said:

> It follows that the conduct in question must be more than negligent. It will usually involve some deliberate wrongdoing, although there may be cases where recklessness will suffice. For example, cases involving wilful blindness. Ultimately, as the cases demonstrate, each case must depend upon its own circumstances and the Court must make a value judgment as to whether to characterise the conduct with 'the opprobrium of unconscionability'.
>
> The concept of statutory unconscionability is embodied in legislation across the states, territories and the Commonwealth. Uniformity of decision-making must be preferred unless I am convinced that the interpretation placed on the legislation in the authorities is plainly wrong. I am not.[196]

The Court of Appeal agreed with the analysis of Hargrave J.[197] The Court of Appeal held that 'recklessness, in the form of wilful blindness, may in some cases supply the necessary element of moral obloquy.'[198]

262 Several principles may be distilled from these authorities. These are not meant to be exhaustive.

(a) The unconscionable conduct should involve some deliberate wrongdoing, or in some cases recklessness may suffice.[199]

(b) Wilful blindness may constitute sufficient recklessness to invoke unconscionability.

(c) The conduct must demonstrate a high level of moral obloquy on the part of

---

194 Ibid [293].

195 [2012] VSC 444, [24]–[34].

196 Ibid [31]–[32] (citations omitted). See also *Butler v Vavladelis* [2012] VSC 186, [17]–[23] (Hargrave J).

197 See also *Australian Competition and Consumer Commission v Lux Distributors Pty Ltd* [2013] FCA 47, [6]–[10] (Jessup J).

198 *VHL v Schmidt* (2013) 44 VR 202, [58].

199 *VHL v Schmidt* (2013) 44 VR 202, [58].

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

the person said to have acted unconscionably.[200]

(d) The range of unconscionable conduct is wide and may include taking advantage of vulnerability, or lack of understanding, trickery, or misleading conduct.

Was Mr Stubbings under a special disadvantage?

263 In *Schmidt*, J Forrest J said that he:[201]

> formed the view that Mr Schmidt was vulnerable in the sense that he was an unsophisticated and naïve man who had little financial nous. His financial dealings throughout his time in this country were minimal. He was putty in the hands of Maddocks. His demeanour and answers to questions when giving evidence were consistent with a man with limited education and only a rudimentary knowledge of the English language.

264 Similar to Mr Schmidt in *Perpetual Trustees v Schmidt*, I find that Mr Stubbings was unsophisticated, naïve and had little financial nous. I consider that he was also unrealistic in the management of his financial affairs and demonstrated a complete lack of business understanding.[202]

265 Mr Stubbings demonstrated his unsophisticated nature during the hearing. I accept that, to the uninformed, legal proceedings must appear daunting and difficult to understand. Mr Stubbings' demeanour during the trial, however, indicated that he was completely lost, totally unsophisticated, incompetent and vulnerable. Mr Stubbings did not grasp the gravity of the occasion. He did not bring any relevant documents to court. It didn't occur to him that they might be needed. He behaved as if he could have been at a social gathering. He could not differentiate between serious matters and incidental matters. In fact, in many ways, he behaved, much as you would expect a child to behave. As mentioned, he was not able to put his case to any of the witnesses. He didn't appear to understand the concept or the consequences of not putting his case to the witnesses.

---

200 *Tonto Home Loans* [2011] NSWCA 389, [291].

201 *Schmidt* [2010] VSC 67, [211].

202 See also *Familiar Pty Ltd v Samarkos* (1994) 115 FLR 443.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

266 I am satisfied that Mr Stubbings was under a special disadvantage in giving the guarantee and mortgages. Mr Stubbings, by his deficiencies mentioned above, misunderstood his rights and obligations under the loan agreements. In lay terms, he was completely out of his depth. As mentioned above, a person with even a modicum of intelligence who understood the nature of the transaction and the financial circumstances Mr Stubbings was in, would not have entered into the proposed transaction. The fact that Mr Stubbings, in the financial circumstances he was in, agreed to such a transaction, evidences his vulnerability.

267 I am satisfied that, when entering into the loan agreements with the plaintiffs, Mr Stubbings believed that he would receive some $53,000 from the loan sufficient to meet three months' interest and to enable him to start renovating his two existing properties. I am satisfied that he believed that he could sell the properties and use the proceeds to pay off the mortgage after three months. I am satisfied that he believed that he could, after three months, switch the balance of the loan to a bank at a lower interest rate. I am satisfied that he believed Mr Zourkas would help him obtain the loan from a bank.

268 I am satisfied that Mr Zourkas made representations to Mr Stubbings that gave rise to these beliefs held by Mr Stubbings. Further, if I am wrong in coming to that decision, I am satisfied that Mr Zourkas knew that Mr Stubbings held those beliefs at the time he entered into the loan and knew that Mr Stubbings' beliefs were wrong.

269 Mr Stubbings had little or no financial nous. He was unable to carry out a simple calculation such as 10 per cent of $130,000. He failed third form maths when he repeated it in fourth form. He did not understand that the loans he was taking out could not be repaid for six months. He misunderstood how much he was to receive from the loan. He thought it was $53,000. I am satisfied that Mr Stubbings did not carry out any calculation to calculate the figure of $53,000. I am satisfied that the figure was conveyed to him by Mr Zourkas and he naïvely accepted the figure.

270 When he borrowed the money he was unemployed and earning money from being a

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

handyman, doing things such as replacing tap washers and mowing lawns. He was in no financial position to borrow over $1.2 million on the first and second mortgage. Any person with any financial nous would have realised that Mr Stubbings was in no financial position to meet the interest commitments on the loan and that he would be severely damaged by taking the loan. I am satisfied that Mr Zourkas was well aware of these characteristics of Mr Stubbings. It was readily apparent from the way Mr Stubbings spoke in the witness box and conducted himself in court that he was precisely the sort of person who needed protection and was vulnerable to being exploited. I find that Mr Zourkas well understood this vulnerability of Mr Stubbings.

271 I am satisfied that Mr Zourkas failed to protect Mr Stubbings and took advantage of his obvious weaknesses and misunderstanding. An honest man would have told Mr Stubbings he should have nothing to do with borrowing on an asset-based loan. I am satisfied that Mr Zourkas was not an honest man, but a man prepared to prey upon the weak and vulnerable like Mr Stubbings.

272 I am satisfied that Mr Stubbings was at a special disadvantage as that term is used in equity in catching bargains in giving the guarantee and mortgages under the plaintiffs' loans.

Knowledge of improvidence of transaction

273 In *Equity and Trusts in Australia*,[203] Professor G E Dal Pont states:

> the providence or otherwise of the transaction sought to be impugned is particularly relevant to the issue of the stronger party's knowledge of any special disadvantage in the weak party. This is because the improvidence apparent on the face of a transaction may raise a need to inquire whether the weaker party was labouring under a special disadvantage in entering into it. So even in the absence of actual knowledge of special disadvantage in the weaker party, the requisite knowledge, or at least the need to make this inquiry, can in some circumstances be derived from the improvidence of the transaction.[204]

---

203 Dal Pont (n 904).

204 Ibid [9.90] (citations omitted).

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

274 In making this statement, reference is made by the learned author to the New South Wales Court of Appeal decision in *Elkofairi v Permanent Trustee Co Ltd* ('*Elkofairi*').[205]

275 In *Elkofairi*, the appellant and her husband gave a mortgage to the respondent over their jointly owned home ('Castle Hill property') as security for a loan of approximately $750,000. Of that amount, about $470,000 was applied in discharge of the existing mortgage over the Castle Hill property and the remainder was put to unidentified 'business purposes'. No monies were paid off the mortgage loan, and accordingly the respondent brought possession proceedings for default.

276 The appellant sought relief from her obligations under the mortgage under the principles stated in *Yerkey v Jones*, *Commercial Bank of Australia v Amadio*, or under the *Contracts Review Act 1980* (NSW).

277 The Court, comprising Beazley and Santow JJA and Campbell AJA, had no problem concluding that the appellant suffered from a special disadvantage. The appellant was born in rural Syria; was completely uneducated, being unable to read or write in either her first language of Arabic or English, and able only to understand a few very simple spoken English expressions; had obtained an apprehended violence order against her husband yet had returned to the family home in order to maintain her relationship with her children; and was precluded by her husband from retaining any income she earned or being involved in any financial or business decisions made by her husband, including the purchase and sale of businesses and of residential properties, the titles of which may or may not have also been in the appellant's name.

278 The pro forma loan application required an applicant to set out details of assets and liabilities and the income of each of the borrowers. The husband disclosed assets of $1.2 million (Castle Hill property) and a motor vehicle worth $40,000.00. The only liability disclosed was the existing mortgage over the Castle Hill property. The income section was left blank.

---

205 [2002] NSWCA 413 ('*Elkofairi*').

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

279 It was noted that the appellant's education background, inability to read or write English and her difficult domestic circumstances, were completely unknown to the respondent. Accordingly, the court had to consider whether there were any other features of the transaction which made it unconscientious for the respondent to enter into the transaction with the appellant given the circumstances in which her execution of the contract was procured.

280 Beazley JA's comments are, in my view, useful to the facts as I have found them in this matter:

> 54 …On the face of application form neither Mr Elkofairi nor the appellant was in receipt of any income, as in fact was the case.
>
> 55 ...Whether the respondent actually appreciated this or not, the total absence of financial information, both in the application form and in the information provided by the accountants and the fact that no income was stated for either Mr or Mrs Elkofairi, should certainly have sounded a warning bell to a lender in respect of any borrowing, let alone a borrowing in the order of three quarters of a million dollars… Nor did it have any information as to her ability, existing or prospective, to service the loan.
>
> 56 In my opinion, notwithstanding that the respondent did not have knowledge of the appellant's lack of education and her language and domestic difficulties, her lack of income, in the circumstances of this transaction – that is a large borrowing secured over her only asset, in circumstances where the application form failed to disclose any income for either husband or wife – placed her in a special position of disadvantage. Though the full extent of that special position of disadvantage was not known to the respondent, nonetheless the absence of any relevant financial information was sufficient to put the respondent on notice of the appellant's lack of capacity to meet the repayment obligations under the mortgage. That left as the only source of repayment the selling of her only asset, as again the respondent must be taken to have known.
>
> 57 Counsel for the respondent submitted that the respondent did not need to be concerned with the fact that the borrowers, or the appellant at least, had no income. It was sufficient for its purposes that the loan was amply secured. That was a position, according to the respondent, which the respondent was entitled to take. I do not agree. In fact, it demonstrates the unconscientious nature of the transaction and the advantage the respondent took of the appellant's disadvantageous position. On its own submission, the respondent was only concerned with its ability to recoup any amount outstanding on the loan in circumstances where it must be taken to have known, because on the only information the respondent had, the appellant had no income, that the appellant, who was exposed to liability for the whole of the

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

> loan, had no ability to make even the first payment. The unconscientious nature of the transaction was that she was thereby at risk of losing her only asset. That risk was both immediate and real.
>
> 58 It is no answer that the respondent was content with the transaction because the loan was well secured…
>
> 59 In my opinion, therefore, it was unconscientious for the respondent to lend a large sum of money to a person with no income with full knowledge that if the repayments under the loan were not met, it could sell that person's only asset.

Did AJ Lawyers act unconscionably in procuring the loans to Mr Stubbings?

281 There are several factors that are relevant in considering whether or not AJ Lawyers, and thus the plaintiffs, acted unconscionably in obtaining the mortgage and guarantee from Mr Stubbings.

282 First are the deliberate steps taken by AJ Lawyers to ensure that they did not ascertain any information about Mr Stubbings' financial circumstances and his ability to service the loan, particularly in circumstances where they believed that there was a real risk that he may not have had a sufficient income to service the loan.

283 Second is the knowledge of AJ Lawyers that the loan they were making on behalf of the lenders could cause severe damage to the guarantor if the guarantor was not able to service the loan. In other words, AJ Lawyers knew that the loan could be a dangerous product in the wrong hands and wreak significant damage on the guarantor.

284 Third is the reliance AJ Lawyers placed on Mr Zourkas to obtain and procure the custom of Mr Stubbings and, consequently, the deliberate steps taken by AJ Lawyers to ensure that they were not informed of the representations and inducements made by Mr Zourkas, or his knowledge of Mr Stubbings' mistaken beliefs, in entering into loan transaction.

285 Fourth are the steps taken by AJ Lawyers to immunise themselves from the taint of any knowledge that might expose them to a claim that they had acted unconscionably in making the loan requested by Mr Stubbings. This included

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

ensuring they did not meet Mr Stubbings or obtain any information about Mr Stubbings, and using Mr Zourkas as a shield to protect them from any knowledge of Mr Stubbings' special disadvantage.

286 Fifth are the false representations made by Mr Zourkas to Mr Stubbings, or at least his knowledge of Mr Stubbings' misunderstandings about the loan as discussed above, and his conduct generally to procure Mr Stubbings' custom for AJ Lawyers.

287 Sixth is the failure by AJ Lawyers to avail themselves of the contractual right the plaintiffs had to obtain information from the borrower.[206]

288 Seventh is the system of conduct used by AJ Lawyers to procure and make the loan sought by Mr Stubbings.

The conduct of Mr Zourkas

289 I have no doubt that Mr Zourkas acted unconscionably in procuring Mr Stubbings to borrow through AJ Lawyers. In his evidence, Mr Zourkas showed that he was smart, quick, and cunning. I am satisfied that he knew that Mr Stubbings was easily manipulated, vulnerable, and lacking in financial nous. He took advantage of these characteristics to encourage Mr Stubbings to keep his existing two houses and buy the Fingal property. I have given my findings above as to Mr Zourkas' knowledge of Mr Stubbings' false beliefs that led him to enter into the guarantee. In addition, Mr Zourkas knew that Mr Stubbings had unsuccessfully sought to borrow from a bank to buy the Fingal property. He knew that Mr Stubbings was unemployed and earning little if any income. Mr Zourkas knew that Mr Stubbings was unable to service the loan.

290 Mr Zourkas charged an obscene fee for his services. Mr Zourkas' fee was $27,000, although $7,000 of that was to go to Mr Kassinidis as a spotter's fee. I am satisfied that Mr Zourkas inserted his fee in the mandate after Mr Stubbings signed it.

---

206 Exhibit P38 (r).

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

291 Nevertheless, as stated above, I am not satisfied that Mr Zourkas was the agent of AJ Lawyers. Mr Zourkas carried out certain functions as the 'consultant' to Mr Stubbings that assisted AJ Lawyers. For example, Mr Zourkas picked up documents and had Mr Stubbings sign them. These actions also assisted Mr Stubbings. AJ Lawyers had no control over Mr Zourkas or the way he conducted his business. Mr Zourkas was not able to make any agreements on behalf of AJ Lawyers, or do any actions on their behalf. I consider the relationship was one of principal-to-principal.

292 On the other hand, Mr Zourkas carried out a central part of AJ Lawyers' system of conduct in procuring loans on behalf of clients and immunising AJ Lawyers' from information about borrowers (such as Mr Stubbings) that may have threatened the enforceability of the loan

The system of conduct

293 AJ Lawyers adopted a system of conduct in making asset-based loans that sought to immunise them and their clients from the risk that their loans may be characterised as unconscionable at law or by statute.[207] The system of conduct was applied in obtaining the guarantee from Mr Stubbings.

294 The system of conduct involved using the services of Mr Zourkas to procure customers in need of a loan. As mentioned above, Mr Zourkas gave evidence that over the last three or four years he had referred 30 to 40 clients who successfully obtained loans through AJ Lawyers and 30 to 40 that had been rejected by AJ Lawyers. Plainly, Mr Zourkas was a significant source of income for AJ Lawyers and vice versa.

295 The system of conduct assisted AJ Lawyers to make loans on behalf of clients that brought in healthy commissions and fees. The system of conduct enabled Mr Zourkas to earn an income from procuring borrowers and being paid his fee directly from AJ Lawyers out of the borrowed moneys.

---

207 The term 'system of conduct' is used in s 12CB(4) of the ASIC Act when dealing with 'unconscionable conduct.'

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

296 The system of conduct using Mr Zourkas enabled AJ Lawyers to avoid being tainted with knowledge of the borrower's financial circumstances. The system of conduct ensured that Mr Zourkas was not the agent of AJ Lawyers. Accordingly, under the system of conduct that AJ Lawyers adopted, AJ Lawyers sought to avoid being imputed with knowledge of the representations and inducements made by Mr Zourkas to procure the borrower. AJ Lawyers were not imputed with knowledge of what Mr Zourkas knew about the borrower's financial and personal circumstances. Mr Zourkas ensured that the borrower did not meet anyone from AJ Lawyers and thus circumvent the wall of secrecy that AJ Lawyers maintained as to the borrower's financial and personal circumstances.

297 I am satisfied that under this system of conduct, AJ Lawyers did not ask Mr Zourkas any questions that may have elicited information about the financial or personal circumstances of the guarantor that AJ Lawyers wished to avoid knowing.

298 If Mr Zourkas was aware of circumstances that would have led a court to find he acted unconscionably if he had been the lender, then the system of conduct that AJ Lawyers adopted ensured that they were immunised against being imputed with Mr Zourkas' knowledge.

299 AJ Lawyers were fully aware that the asset-based loan was a dangerous product in the hands of the wrong person. The system of conduct was designed to ensure that they would not know that the loan was being made to the wrong person.

300 *In this case,* the proposed guarantee to be given by Mr Stubbings was risky and dangerous. In default of payment, interest would accrue at 17 per cent per annum on the first mortgage and 25 per cent per annum on the second mortgage. The secured properties would be sold and the damage to Mr Stubbings' accumulated savings would be severe. As explained below, the damage to Mr Stubbings' savings would probably exceed $100,000.

301 The second mortgage for $133,500 was for one year only at 18 per cent per annum.[208]

---

208 Exhibit P 39.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

The default rate was 25 per cent per annum. There was a procuration fee of 5 per cent — that is, $6,675.

302 Interest payments per month were $8,825 pursuant to the first mortgage and $1,552.50 pursuant to the second mortgage. The total interest payments were $10,377.50 per month.

303 Mr Stubbings had managed to acquire significant equity in his two Narre Warren properties. This equity was likely the only equity he would take with him into retirement. The proposed first and second mortgages put that equity at risk. Mr Stubbings faced the risk of the cost of forced sales, interest accumulating at a high rate and the consequential impact on his accumulated savings in the form of his equity in his two existing homes that a default would incur.

304 Mr Jeruzalski knew that the Ashton Rise property was valued at $395,000,[209] and the Westleigh Crescent property was valued at $375,000.[210] They totalled $770,000. The two mortgages to the CBA stood at $240,124.42,[211] which meant that Mr Stubbings had equity of approximately $530,000.

305 If one assumes that his equity in the two Narre Warren properties stood at approximately $530,000, then it is clear that the failure of the loans offered by AJ Lawyers could have reduced that sum significantly. Mr Stubbings would lose sums equivalent to the non-legal fees charged by Mr Zourkas and AJ Lawyers, being $27,000 to Mr Zourkas and procuration fees payable to AJ Lawyers of $10,950 on the first mortgage and $6,675 on the second mortgage. The total in non-legal fees is thus $44,625. Legal costs and other costs incurred by Mr Stubbings in the event of the loans' failures were likely to be well over $100,000. This amount constituted about 20 per cent of Mr Stubbings' equity in the two properties he owned.

---

209 CB 473–80.

210 CB 466–72.

211 Exhibit P 43.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

306 The first loan was only for three years. The second loan was for one year. If Mr Stubbings were unable to roll over the loan, then the secured properties would all have to be sold. Interest pursuant to the first mortgage in default would accrue for about three months while Mr Stubbings' properties were sold. Interest at 17 per cent would be approximately $50,000. Interest pursuant to the second mortgage for three months at 25 per cent would be approximately $8,000. Thus the total is approximately $58,000.

307 Without taking into account legal fees, a failure by Mr Stubbings to meet his commitments under the loans would likely cost him in excess of $100,000, being interest and wasted procurement fees alone.

308 I have little doubt that Mr Jeruzalski knew that the loans were a risky and dangerous undertaking for Mr Stubbings. Mr Jeruzalski has experience as a solicitor practising in the area of making loans on behalf of clients. He would have known that if Mr Stubbings defaulted in payment, then the cost and hardship that the loan agreements would impose on Mr Stubbings would be substantial. Mr Jeruzalski was thus aware that the loans were a risky and dangerous undertaking for Mr Stubbings.

309 In those circumstances, the standards of ethical conduct would impose on Mr Jeruzalski a moral duty to satisfy himself that Mr Stubbings was not unreasonably exposing himself to the significant financial risks accompanying the loans. This moral duty is compounded by Mr Jeruzalski's being a practising solicitor and as such an officer of the Supreme Court of Victoria.

310 In my opinion, Mr Jeruzalski's moral and ethical obligations were also enlivened because he suspected that Mr Stubbings would not have the income to service the loans. As discussed above, Mr Jeruzalski said that if Mr Stubbings had had a sufficient income to service the loans, then he would have not needed to borrow from AJ Lawyers. Under the system of conduct that AJ Lawyers adopted, Mr Jeruzalski deliberately chose not to obtain information on Mr Stubbings' ability to service the loans. Mr Jeruzalski did not wish to see Mr Stubbings. Mr Zourkas told

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

Mr Stubbings that he could not go to AJ Lawyers' offices. Mr Zourkas went to the offices of AJ Lawyers to obtain the relevant unsigned loan documents and to obtain the two envelopes to take to the solicitor and the accountant. Mr Stubbings was instructed to wait in the car outside AJ Lawyers' offices.

311 Mr Jeruzalski knew that Mr Stubbings had no solicitor acting for him (save for a conveyancing firm acting in the purchase of the Fingal property). Mr Jeruzalski knew that Mr Zourkas had introduced Mr Stubbings to AJ Lawyers, and that Mr Zourkas was receiving a fee of $27,000. Mr Jeruzalski knew that Mr Zourkas had a significant financial incentive in Mr Stubbings' decision to proceed with the loan and guarantee. Mr Jeruzalski did not satisfy himself as to whether or not Mr Zourkas had misled or deceived Mr Stubbings, or had knowledge that would indicate Mr Stubbings' mistaken understanding of the loan and guarantee. Mr Jeruzalski deliberately chose not to interview Mr Stubbings to put to rest any doubts he may have had that Mr Stubbings misunderstood the loans, expected to receive more than he did, or misunderstood his rights under the loans.

312 I am satisfied that under the system of conduct that AJ Lawyers adopted, Mr Jeruzalski knowingly and deliberately failed to make any inquiries about Mr Stubbings and whether Mr Zourkas had misled him about Mr Stubbings' ability to service the loans, about Mr Stubbings' understanding of the loans, or about Mr Stubbings' financial nous and vulnerability. Mr Jeruzalski knowingly and deliberately failed to make the inquiries because he was concerned that, or suspected that, the answers he may have received would have given him information that could form the basis for setting the loans aside on the grounds of unconscionability, and thus preventing his making the loans on behalf of the lenders.

313 In my opinion, the system of conduct that AJ Lawyers adopted in the circumstances demonstrated a high level of moral obloquy. My finding is not lessened by Mr Jeruzalski's apparent smugness when he gave evidence that, in his eyes, AJ Lawyers' business model immunised them and their clients from the breach of equity to protect the likes of Mr Stubbings. Regrettably for AJ Lawyers and the

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

plaintiffs, I do not agree.

314 Mr Jeruzalski ensured that Mr Stubbings received legal advice and accounting advice by requiring certificates from a solicitor and an accountant. Mr Jeruzalski must have suspected that Mr Stubbings would be guided by Mr Zourkas as to which solicitor and accountant to approach. I see this conduct as part of the system of conduct adopted by AJ Lawyers to immunise the firm from knowledge that might threaten the enforceability of the loan. As far as Mr Jeruzalski was concerned, the accountant and the solicitor would only be paid if the loans went ahead. There was no incentive for them to withhold the certificates. If they withheld the certificates, then they would receive nothing for their services. To characterise them as independent is perhaps a bridge too far.

315 In my opinion, the actions of AJ Lawyers in adopting and applying the system of conduct to Mr Stubbings constitute wilful blindness on their part as to Mr Stubbings' financial and personal circumstances.

316 In my opinion, Mr Jeruzalski's behaviour constituted unconscionable conduct. Mr Jeruzalski knowingly and deliberately shut his eyes to Mr Stubbings' circumstances. Mr Jeruzalski shut his eyes to ensure that the loans would go through and that he would earn his fees. Asset-based lending coupled with the system of conduct adopted by AJ Lawyers, leads me to conclude that they AJ Lawyers must be treated as knowing of Mr Stubbings' personal and financial circumstances.

317 I uphold Mr Stubbings' defence that the loan, first mortgage and guarantee were procured by unconscionable conduct. Accordingly, I propose to order that the loan, guarantee, and mortgage be set aside, on condition that Mr Stubbings is not unjustly enriched.

Third party claims

318 Mr Stubbings also makes third-party claims against Mr Zourkas and Mr Topalides.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

319 The claim against Mr Zourkas is that he engaged in misleading and deceptive conduct pursuant to s 18 of the ACL by:

(a) wrongfully making an Application for Finance in the name of a corporate entity when knowing that the loan was for a personal purpose; and

(b) making false representations for the purpose of inducing Mr Stubbings into entering into the loan agreement.

320 As a preliminary matter it should be noted that since 11 March 2002, misleading or deceptive conduct by persons in relation to the provision of 'financial services' in trade and commerce has been prohibited by s 12DA(1) of the ASIC Act, rather than s 18 of the ACL.[212] Mr Stubbings has not pleaded that Mr Zourkas engaged in misleading or deceptive conduct in contravention of the ASIC Act.

321 A person provides a 'financial service' if they, among other things, 'provide financial product advice',[213] 'deal in a financial product',[214] or 'provide a service that is otherwise supplied in relation to a financial product'.[215] Financial products include credit facilities.[216]

322 The authorities indicate that the phrase 'in relation to' is broadly construed, extending to conduct that induces a person to acquire a financial product from a third party.[217]

---

212 Colin Lockhart, *The Law of Misleading or Deceptive Conduct* (LexisNexis Butterworths, 5th ed, 2019) 9 [1.6].

213 *Australian Securities and Investments Commission Act 2001* (Cth) ('*ASIC Act*') s 12BAB(1)(a), which is a 'recommendation or statement of opinion, or report….that…is intended to influence a person in making a decision in relation to a particular financial product' or 'could be reasonable regarded as having that influence'.

214 ASIC Act s 12BAB(1)(b), which included 'issuing a financial product' or 'arranging for a person to apply for or acquire a financial product'.

215 ASIC Act s 12BAB(1)(g).

216 ASIC Act s 12BAA(7)(k).

217 *ACCC v Original Mama's Pizza & Ribs Pty Ltd* [2008] FCA 370 [120] (Madgwick J) ('*Mama's*'). See also *ASIC v Accounts Control Management Services Pty Ltd* [2012] FCA 1164 [334] (Perram J).

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

323 Consideration of Mr Stubbings' third-party claim against Mr Zourkas is complicated by the existence of authority to the effect that if the impugned conduct can fairly be characterised as being both in relation to financial services and otherwise, then the fact that it is so capable of the first characterisation is enough to produce the result that s 52 of the TPA (being the precursor to s 18 of the ACL) does not apply to the conduct.[218] Accordingly, if I conclude that Mr Zourkas' conduct was in relation to financial services, then it is conduct to which the ACL has no application.[219]

324 In *ACCC v Original Mama's Pizza & Ribs Pty Ltd*[220] ('*Mama's*'), Madgwick J helpfully set out the relevant provisions of the ASIC Act to determine whether a party who arranged for a person to acquire a financial product from a third party falls within s 12DA of the ASIC Act. I extract his judgment in part below:

> [89] …Section 12BAB (contained in Div 2 of Pt 2) of the ASIC Act sets out a lengthy definition of the term "financial service". Relevantly, that section provides:
>
> (1) For the purposes of this Division, subject to para (2)(b), a person provides a *financial service* if they [sic]:
>
> (a) provide financial product advice (see subs (5)); or
>
> (b) deal in a financial product (see subs (7)); or
>
> …
>
> (g) provide a service that is otherwise supplied in relation to a financial product; or
>
> (h) engage in conduct of a kind prescribed in regulations made for the purposes of this paragraph.
>
> [90] Section 12BAB(2) provides:
>
> The regulations may set out:
>
> (a) the circumstances in which persons facilitating the provision of a financial service (for example, by publishing information) are taken also to provide that service; or

---

218 *Mama's* [2008] FCA 370 [107] (Madgwick J); *Cleary v Australian Co-operative Foods (No.2)* (1999) 32 ACSR 701.

219 *Competition and Consumer Act 2010* (Cth) s 131(A)(1).

220 [2008] FCA 370.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

(b) the circumstances in which persons are taken to provide, or are taken not to provide, a financial service.

[91] Thus the meaning of "financial service" depends upon the definition of "financial product".

[92] It appears to be the case, as the applicants submit, that the leasing agreements with the third-party financiers are "financial products". By s 5 of the ASIC Act, "financial product" has the meaning, in Div 2 of Pt 2, assigned to it in s 12BAA of the ASIC Act. In turn, s 12BAA sets out a complex definition of "financial product". Section 12BAA(7) sets out a series of products which are taken to be "financial products" for the purposes of Div 2 of Pt 2 of the ASIC Act, and relevantly provides:

> (7) Subject to subs (8) [which sets out a series of products that are not financial products; subs (8) is not relevant in the circumstances of this case], the following are *financial products* for the purposes of this Division:
>
> …
>
> (k) a credit facility (within the meaning of the regulations);
>
> (m) anything declared by the regulations to be a financial product for the purposes of this subsection.

[93] The *Australian Securities and Investments Commission Regulations 2001* (Cth) (ASIC Regulations) make further provision regarding what constitutes a "credit facility" for the purposes of s 12BAA(7)(k) of the ASIC Act. In this regard, reg 2B(1) of the ASIC Regulation relevantly provides:

> (1) For para 12BAA(7)(k) of the Act, each of the following is a credit facility:
>
> (a) the provision of credit:
>
> (i) for any period; and
>
> (ii) with or without prior agreement between the credit provider and the debtor; and
>
> (iii) whether or not both credit and debit facilities are available;

[94] Regulation 2B(3)(b)(iv) of the ASIC Regulations provides that "credit" means a contract, arrangement or understanding for the hire, lease or rental of goods and services (subject to certain presently irrelevant exceptions). It follows that a goods rental agreement is a "credit facility" within the meaning of s 12BAA(7)(k) and thus a "financial product".

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

[95] In addition, reg 2B(1)(h) of the ASIC Regulations provides that a guarantee of obligations under a credit contract is a "credit facility" for the purposes of s 12BAA(7)(k) of the ASIC Act. It follows that wherever a proprietor has executed a guarantee in favour of a financier to secure rental payments (as happened in the cases of the Jefferys and Mr Nader), that is a further reason for characterising the agreement with the financier as a "financial product."

[96] Section 12BAB(1) of the ASIC Act (quoted in [89] above) includes in the various classes of persons who interact with a "financial product" and may be taken to provide a "financial service", a person who "deals" with a "financial product". The meaning of "dealing" is explained in s 12BAB(7) which provides:

> For the purposes of this section, the following conduct constitutes *dealing* in a financial product:
>
> (a) applying for or acquiring a financial product;
>
> (b) issuing a financial product;
>
> (c) in relation to securities or managed investment interests—underwriting the securities or interests;
>
> (d) varying a financial product;
>
> (e) disposing of a financial product.

[97] The applicants concede that the respondents did not engage in the kinds of conduct described in s 12BAB(7), taking the view that, in particular, they did not apply for or acquire the rental agreements. Rather, the proprietors applied for, and acquired those agreements. In the submission of the applicants, the fact that the respondents facilitated the making of those applications does not affect this conclusion. Further, it is the financiers who issued the rental agreements, not the respondents. This approach seems to me to be correct.

[98] However, s 12BAB(8) further extends the notion of "dealing" and provides:

> Arranging for a person to engage in conduct referred to in subsection (7) is also *dealing* in a financial product, unless the actions concerned amount to providing financial product advice.

[99] It appears correct to say that the respondents "arranged" for the proprietors to apply for and "acquire" the rental agreements, and so, pursuant to s 12BAB(8), the respondents would be taken to have dealt in "financial products". This has the result that the respondents were providing "financial services".

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

325 I interpolate to add that regulation 2B(1) of the ASIC Regulations also provides that the provision of a mortgage that secures obligations under a credit contract,[221] a guarantee relating to such a mortgage,[222] or a guarantee of obligations under a credit agreement[223] are each 'credit facilities'.

326 At paragraph [120], Madgwick J concludes:

> All that need be decided in this case is whether the conduct in respect of which complaint is made was engaged in relation to financial services. In this case, there is, in my opinion, a clear and material connection between the impugned conduct and the provision of the financial services. This is because it is alleged that the respondents' misrepresentations induced the shop owners to enter into long term equipment leases (which are "financial products"). More specifically, each of the impugned representations related to the financial product (the lease) because they were misrepresentations about the legal and financial effect of the lease, including the circumstances in which the lease could be brought to an end. The impugned representations did not in any way relate to the attributes or performance of the pizza oven system as such (although the proprietors were none too happy about such aspects). Further, it was integral to Mama's system of marketing as explained at [4] to [16] above that the "purchasers" of the pizza ovens should finance their acquisition by leases from third parties. That remains so, even if there were a couple of cases where Mr Hilder was able to sell the ovens for cash.

327 In this case, in my opinion, there is a clear and material connection between Mr Zourkas' impugned conduct and the provision of financial services. This is because it is alleged that Mr Zourkas' representations induced Mr Stubbings to enter into the loan, mortgage and guarantee (which are 'financial products' pursuant to the ASIC Regulations). More specifically, each of the impugned representations related to the financial products because they were misrepresentations about the practical, legal and financial effects of the loan and mortgage, including the circumstances in which they could be brought to an end (by way of refinance). As in *Mama's*, it was integral to the lenders' system of conduct that the borrowers should be assisted in applying for and obtaining the loan through a third party consultant. I therefore consider that Mr Zourkas' conduct was in relation to financial services.

---

221 *Australian Securities and Investment Commissions Regulations 2001* (Cth) reg 2B(1)(f).

222 Ibid reg 2B(1)(g).

223 Ibid reg 2B(1)(h).

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version

Signed by AustLII

328 The result of this conclusion is that s 18 of the ACL, as pleaded by Mr Stubbings, has no application to Mr Zourkas' conduct, either in respect of the application in the name of VBC or the representations. However, Mr Stubbings failed to plead a contravention of the ASIC Act by Mr Zourkas and I heard no argument in this respect. Accordingly, I do not consider it appropriate for me to make any findings in respect of any potential contravention of the ASIC Act by Mr Zourkas.

Claim against Mr Topalides

329 One of the claims against Mr Topalides is that he has engaged in misleading and deceptive conduct contrary to s 18 of the ACL. He also faces claims of negligence and breach of duty of care to Mr Stubbings on the grounds that he:

(a) failed to provide financial advice to Mr Stubbings when engaged to do so;

(b) signed a Certificate of Independent Financial Advice notwithstanding that he gave no such advice; and

(c) failed to make the necessary inquiries to ensure Mr Stubbings was capable of maintaining the loan.

330 Further, or in the alternative, Mr Stubbings makes either or both of the following allegations against Mr Topalides:

(a) he was negligent in his failure to provide financial advice to Mr Stubbings when engaged to do so;

(b) he breached his duty of care to Mr Stubbings by failing to provide financial advice to Mr Stubbings when engaged to do so.

331 Mr Stubbings has not properly identified what conduct or representations by Mr Topalides are alleged to fall foul of the ACL.

332 Mr Topalides was engaged by Mr Stubbings to provide him with independent financial advice in respect of the 'nature and extent of the financial risk' of the proposed transaction, and certification of said advice. In my view, it would have

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

been evident to Mr Topalides that his certification was important, and was foreseeably a prerequisite of the lenders prior to settlement of the loan.

333 I consider it uncontroversial that in those circumstances, Mr Topalides owed Mr Stubbings a duty to exercise reasonable care and skill in assessing and explaining the financial risk to Mr Stubbings under the proposed transaction, and a duty not to sign the Certificate of Independent Financial Advice (on which the lenders would foreseeably rely to proceed with the loan) unless and until he had assessed and explained the financial risk to Mr Stubbings.

334 The evidence discloses that Mr Topalides himself did not understand the transaction into which Mr Stubbings was proposing to enter. He did not understand that the CBA loans were being paid off. He did not find out the extent of Mr Stubbings' existing liabilities. Given my earlier assessment of the reliability of Mr Topalides' recollection, I am doubtful that Mr Stubbings ever stated that he was earning $16,000 per month. It may well have been the case that Mr Topalides advised Mr Stubbings how much he would need to service the loan each month, but he did not make proper inquiries as to how Mr Stubbings would earn $16,000 per month, or $200,000 per year.

335 Mr Topalides conceded that he did not ask to see any documentation to satisfy himself of Mr Stubbings' ability to service the loan. I am satisfied that Mr Topalides would have known that a person borrowing through solicitors on an asset-based loan is the type of person who could not raise the money at a bank or even a second-tier lender. Instead of declining to sign the certificate until he had seen such supporting documentation, Mr Topalides blamed Mr Stubbings for entering into a transaction not knowing his financial affairs and 'being prepared to lie'.[224]

336 The evidence discloses that Mr Topalides was not in a position to properly certify that Mr Stubbings understood the financial risk as Mr Topalides himself was not able, on the information he had, to properly assess and explain the financial risk to

224 Transcript of Proceedings (20 September 2018) 444.4.

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

Mr Stubbings. Mr Topalides certified that 'to the best of [his] knowledge and belief and in [his] opinion, [Mr Stubbings] appears to understand the nature and extent of the financial risk…'. As indicated above, however, Mr Topalides said that Mr Stubbings was not in a mind to take advice. Mr Topalides said that Mr Stubbings was in a hurry, disinterested and only interested in getting Mr Topalides to sign the certificate. In those circumstances, detailed by Mr Topalides himself, I cannot accept that Mr Topalides in fact believed that Mr Stubbings understood the nature and extent of the financial risk of the proposed transaction. Mr Topalides was not in a position to certify Mr Stubbings understood the nature and extent of the financial risk he was undertaking. If he had exercised reasonable care, he would not have done so.

337 I find that Mr Topalides breached his duty of care to Mr Stubbings.

338 It is clear from the evidence that the plaintiffs required a Certificate of Independent Financial Advice be provided together with the loan documentation. Although no evidence was led directly on this point, in light of the steps taken by AJ Lawyers to protect themselves and their clients from claims of the very kind now raised, I am satisfied that had no certificate been provided by Mr Topalides, the plaintiffs would not have proceeded with the loan to Mr Stubbings.

339 I conclude that Mr Topalides' breach caused Mr Stubbings the loss he has suffered by entering into the loan from the plaintiffs and securing it over his three properties.

Proposed Orders

340 Mr Stubbings has succeeded in his defence as against the plaintiffs and in his third-party claim against Mr Topalides.

341 However, the following matters prevent me from making final orders:-

(a) the existence of the second mortgage which was not canvassed during this trial;

(b) the failure of Mr Stubbings to fully particularise the damages sought against

Retrieved from AustLII on 29 November 2026 at 15:42:58 Verify version

Signed by AustLII

Mr Topalides; and

(c) further to (b) above, an inability to make an order for damages against Mr Topalides until the framing of the order setting aside the first mortgage has been reached.

342 Accordingly, I shall hear submissions from the parties on the appropriate orders to be made in the circumstances.

Final Orders

343 After hearing submissions from the parties on the appropriate orders to be made in the circumstances, my further reasons, including final orders, were published in *Jams 2 Pty Ltd & Ors v Stubbings (No 4)* [2019] VSC 482.

Retrieved from AustLII on 29 November 2026 at 15:42:58
Verify version