

Submissions

To a matter purportedly commenced by a mortgagee.

Filed at the Registry of WASC

Matter No CIV 2473/2012

Between

ELITE GRAINS PTY LTD (Corporate Sole)

Rodney Culleton

Ioanna Culleton

Ronald Culleton

Lesley Dianne Culleton

as First Plaintiff

as Second Plaintiff

as Third Plaintiff

as Fourth Plaintiff

as Fifth Plaintiff

Submissions

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A) INTRODUCTION

- 1) The First and Second Applicants (the Culleton Applicants):
 - a) are the guarantors to a line of credit, pursuant to the terms and conditions of the Master Trust Deed of the RURAL PROGRAM; and
 - b) in their capacity as guarantors remain the original proprietors of the Williams farming land and residential land as outlined below. **(the Culleton collective properties).**

- 1) The First Plaintiff is a Vita individual (Non-Corporate Sole under common law) and one of the original proprietors through 'proprietary' complete and unlimited ownership through 'fee simple' being freehold interest ownership rights granting exclusive use of the following lands (joint) in the Shire of Williams, Western Australia-

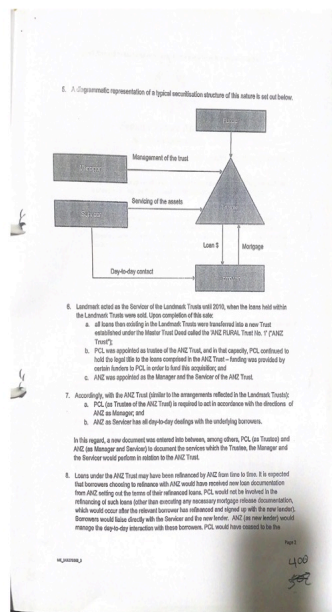
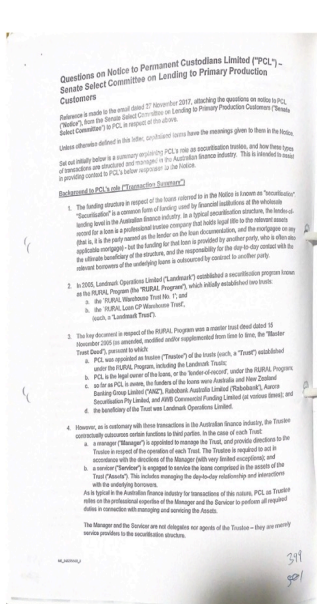
- (a) Lot 4561 on Deposited Plan 115707 being the whole land contained in Certificate of Title Volume 2654 Folio 341;
- (b) Lot 11583 on Deposited Plan 85525 being the whole land contained in Certificate of Title Volume 2654 Folio 342;
- (c) Lot 4562 on Deposited Plan 115705 being the whole land contained in Certificate of Title Volume 2127 Folio 680;

- (d) Lot 12085 on Deposited Plan 145002 being the whole land contained in Certificate of Title Volume 185 Folio 49A;
- (e) Lot 11634 on Deposited Plan 102368 being the whole land contained in Certificate of Title Volume 185 Folio 45A;
- (f) Lot 13061 on Deposited Plan 146803 being the whole land contained in Certificate of Title Volume 1514 Folio 738;
- (g) Lot 350 on Deposited Plan 302061 being the whole land contained in Certificate of Title Volume 1795 Folio 578.

(together the Culleton farming lands known and run as Wanerie Kata, Williams Western Australia)

- 2) The Second Plaintiff is a Vita individual (Non-Corporate Sole under common law) and one of the original proprietors of the following land through 'proprietary' ownership rights being fee simple granting exclusive use located at 6 View Court, Peppermint Grove Beach, Capel in the State of Western Australia being all of the land contained in Lot 147 on Diagram 69136 on Certificate of Title Volume 2053 folio 300

B The RURAL Program



**This pleading is based on evidence received by the Trustee of the Landmark Trust
PERMANENT CUSTODIANS LIMITED (PCL)**

At all material times, the named entities of the LANDMARK RURAL Program were companies incorporated under the laws of Australia performing certain functions of a Special Purpose Vehicle (SPV), pursuant to the strict terms of the MASTER TRUST DEED dated 15th November 2005.

- a) **“Arranger”** (a body corporate) being the originator of the Rural PROGRAM doing business as AWB LIMITED the Master Trust Deed known as the Rural PROGRAM;
- b) **“Manager”** means the manager of the trusts of the Rural PROGRAM a body corporate doing business as LANDMARK OPERATIONS LIMITED the Master Trust Deed known as the Rural PROGRAM;
- c) **“Servicer”** means a specialist independent contractor appointed as a specialist Rural Managers, a body corporate doing business as LANDMARK FINANCIAL SERVICES under the Master Trust Deed known as the Rural PROGRAM; and
- d) **“External Funders”** and investors of a securitisation program which purchased certain loans of third party note holders.

Particulars

Landmark Operations Limited (LOL) was a rural financier which offered loan facilities to the named plaintiffs.

- (I) In 2005, Landmark established a securitisation program known as the RURAL Program, which established two trusts;
 - a) The RURAL Warehouse Trust No 1; and
 - b) The RURAL Loan CP Warehouse Trust.

Particulars

- (II) The key document in respect of the RURAL Program was a **MASTER TRUST DEED** (MTD) dated 15th November 2005 pursuant to which-

- a) **PERMANENT CUSTODIANS LIMITED (PCL)** was appointed as TRUSTEE of the trusts established under the RURAL Program, including being TRUSTEE of the LANDMARK TRUSTS on the 30th November 2005.
 - b) PCL was the legal shell “lender of record” and not the mortgagee of the plaintiff’s facilities;
 - c) AWB LIMITED was the ORIGINATOR;
 - d) LANDMARK OPERATIONS LIMITED was contracted and appointed as Manager; and claimed to be mortgagee of the fifth and sixth defendant.
 - e) LANDMARK FINANCIAL SERVICES (LFS) was contracted as an authorised servicer in order to carry out the day-to-day contact with the relevant borrower of the underlying loans pursuant to a servicer power of attorney under the MTD.
- 5) The original funders of the loans were **AUSTRALIAN AND NEW ZEALAND BANKING GROUP LIMITED ACN (ACN 005 357 522), RABOBANK AUSTRALIA LIMITED (ACN 001 621 129), AURORA SECURITISATION PTY LIMITED (ACN 093 404 552), and AWB COMMERCIAL FUNDING LIMITED** including, but not limited to, Investors as third party note holders.

Further particulars

- 6) Landmark as servicer organised the advancement of funds to the plaintiffs capped at 60% on a Loan to value ratio (LVR) being that of the asset valuation at the time of the offer.
- 7) The servicer was duly authorised through a power of attorney (POA) to carry out land and asset valuations under the terms of the LANDMARK CREDIT Manual.

LANDMARK FINANCIAL SERVICES (role of “the Servicer”)

- 8) The servicer undertook the role of a Rural Manager to carry out the day- to- day servicing requirements of the Landmark borrower.
- 9) The servicer would canvas for rural clients under the trusted name of the Australian Wheat Board to join their specialist lending program.(Landmark Finance)
- 10) The financial offer made through a “Letter of Offer” triggered a unilateral mistake through the misrepresentation of a “mortgagee” claiming, among other things, that PCL was a contracting party to a mortgage contract.
- 11) The servicer placed PCL as mortgagee on the plaintiffs titles when PCL was only the “lender of record” as a named securitisation trustee under the RURAL Program.
- 12) Under the RURAL Program PCL did not advance any funds to the Plaintiffs Landmark facilities prior to the sale of the Landmark loan book.
- 13) There were expressed terms to the Landmark Facilities prior to execution which consisted of-
- 14) Original Letter of offer;
- 15) Copy of the Letter of Offer together with the Landmark General terms and Conditions;
- 16) Fixed and Floating Charge;
- 17) Settlement authority; and
- 18) Letter from Landmark respective Solicitors with its enclosures of mortgage documents absent of a Landmark Memorandum of Common Provisions.

Further Particulars

Landmark Financial Services provided Landmark Rural Managers as independent contractors duly authorised to act as servicer to the Elite facilities pursuant to the 2005 LFS Credit Manual Policy of the WA Loan Book and a Power of Attorney dated 28th February 2006. LFS would only seek rural customers that qualified the universal principles of Credit being the 5 C's;

- a) Character
- b) Capacity (Cashflow)
- c) Capacity
- d) Collateral; and
- e) Cash.

19) The Landmark facilities, both the Working Capital and Term Loan, were subject to 12 Month compulsory annual reviews by an authorised Rural contractor conducted on or about the 28th February of each consecutive year.

20) On acceptance of the offer made by the servicer, PCL as Trustee purported to act as a bona fide proprietor of the farming lands and later securitised up to 100% of the asset value without prior notice and consent of the borrower at the wholesale lending level.

21) Funding for the plaintiffs' facilities was provided by a third party as an undisclosed beneficiary of the structure and the day-to-day servicing was outsourced (LFS) being an independent contractor (third party) which are not delegates nor agents of the Trustee in relation to the ongoing functions of the securitisation structure.

C) Landmark Facilities

First and second plaintiffs guarantees for the Elite facilities

- a) On the 29th October 2008, the Directors of Elite Grains Pty Ltd (Elite) (liquidated) accepted a letter of offer from Landmark Financial Services (LFS), Bunbury, WA. A Landmark bank account was created for Elite to receive a payment by cheque created by commercial paper through the LANDMARK CP WAREHOUSE TRUST NO 1.
- b) On the 25th November 2008, the first and second plaintiffs, as unincorporated soles, conditionally signed a deed of individual guarantee and indemnity in favour of a Lender doing business as PERMANENT CUSTODIANS LIMITED (ACN 001 426 384) as claimed mortgagee under contract for answer of a combined debt of the Landmark borrowings,

in respect of the Elite Line of Credit and Term Loan Facility under what was to be taken as Common Law with all rights reserved.

- c) Prior to the standard compulsory annual review conducted on the 28th February, the Landmark facilities were increased as a joint venture by way of cheque deposited into s11 and s14 being Elite's Landmark trading accounts.

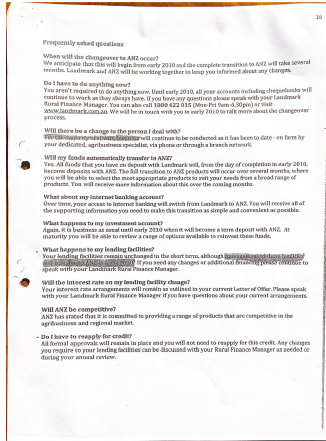
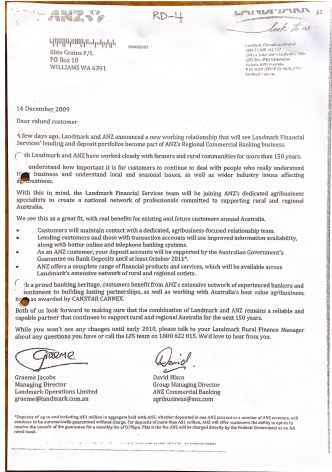
Particulars

Elite Grains Pty Ltd entered into two facilities with Landmark

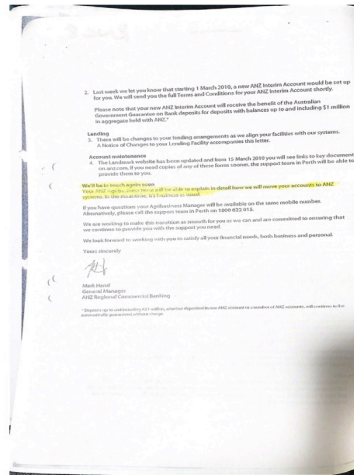
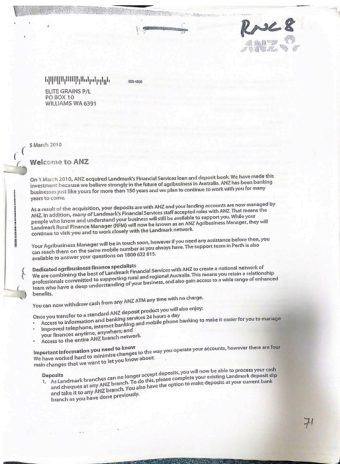
- a) Seasonal overdraft; (subject to annual review);and
- b) Line of credit to 2022 interest only for rural land.

D) Sale without notice to the Landmark borrower/guarantors of the Landmark loan book dated 8th December 2009

- a) Without notice to the applicants, ANZ Bank claimed *inter alia* through the purchase of the Landmark loan and deposit book automatically removed the Landmark borrower(s) and guarantor(s) without the production of a certificate and notice claiming to become ANZ customers bound to new terms and conditions.
- b) ANZ Bank claimed, pursuant to a newly created Supplemental Deed (SD) dated the 25th February 2010 to become a new mortgagee through the purchasing of certain Landmark assets that fell within the banks lending criteria.
- c) A written letter dated 17th December 2009 was circulated from Landmark executed by "Mr. Graham Jacobs" and Ors, announcing a new working relationship with ANZ Bank.
- d) The letter was attached with "*frequently asked questions*" claiming among other things the following-
- e) Landmark and ANZ Bank will be working together to keep the customer informed;
- f) You are not required to do anything now; and
- g) in early 2010, all deposits became ANZ Banks deposits, among other things.



h) A further letter from ANZ signed by Mr Mark Hand, dated 22 February 2010 was misleading and claimed at paragraph 2 that “nearly all the Landmark Financial Services team be joining ANZ.”



Particulars

Landmark Financial Services (LFS) was engaged as an independent contractor that held the requisite authorities to instruct the Trustee PCL as Trustee for the Landmark Trust,

to establish and lawfully transact the transfer proposal deed under the terms of the loan and carry on the day -day servicing of the Plaintiffs Landmark facilities. ANZ Bank acted in breach of the MTD by not engaging a independent contractor to act as a servicer. ANZ Bank is a corporate entity and cannot perform the functions of a servicer.

Particulars

Within 2 weeks of receiving the letter dated 22 February 2010, the Applicants received a further letter from Mr. Mark Hand of ANZ Bank dated 5 March 2010, titled as "*Welcome to ANZ*" claiming that on the 1st March 2010, all Landmark customers will become an ANZ Bank customer.

Particulars

The plaintiffs post 8 December 2009, were not put on notice of any sale of the Landmark facilities and were not subject to being provided any evidence of the ability to continue and/or fulfil all the requirements of a new valid contract prior to any alleged assignment.

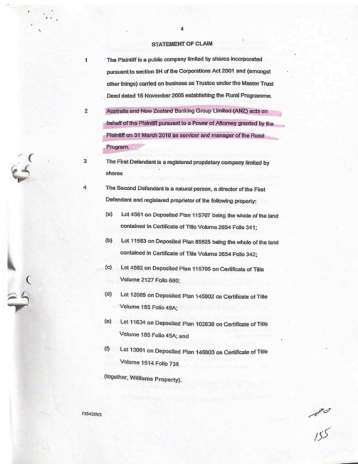
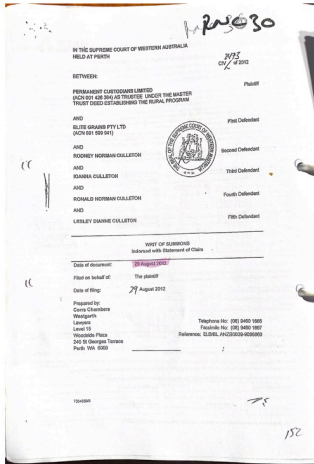
- i) ANZ Bank without notice placed the Plaintiffs landmark facilities into lending services to be managed by ANZ Managers and certain legal firms to manage the migration of all Landmark borrowers transferring to ANZ Bank
- j) ANZ Bank managers claimed to act under authority through a Power of Attorney in favour of the bank to shut down all existing landmark facilities which is not permitted under the MTD.
- k) Unsolicited Letter of Offers were made by a Mr Roland Andrew Davis and William Edward Foreman from ANZ lending services without a memorandum of mortgage transfer and or deed of assignment.
- l) ANZ managers tried to recontract in an attempt to alter the original terms without authority to meet ANZ lending standards in order to effect a valid assignment.

Particulars

The unsolicited offer made by ANZ Bank was without notice and did not reflect the true parties as per the landmark facilities. The Plaintiffs at all times remained an original Landmark customer and attempted to recontract without notice to the guarantors.

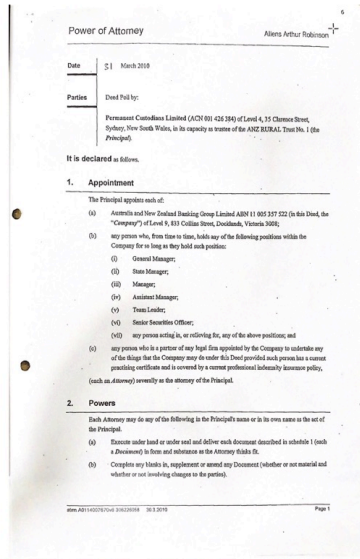
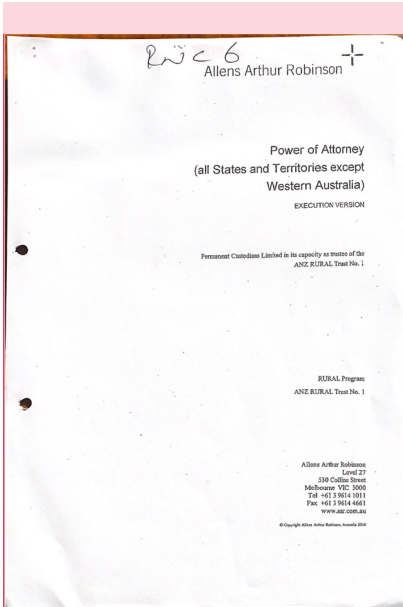
E) PCL and Elite Action

Cause of effect in the matter CIV 2473/2012 PERMANENT CUSTODIANS LIMITED (ACN 001426 384) AS TRUSTEE UNDER THE MASTER TRUST DEED ESTABLISHING THE RURAL PROGRAM v ELITE GRAINS PTY LTD And Ors

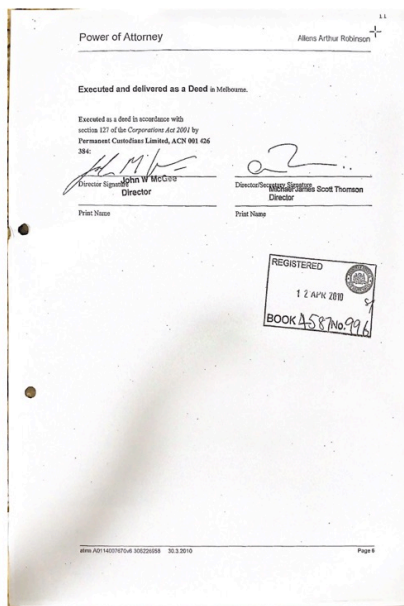


The Plaintiff was PERMANENT CUSTODIANS LIMITED (ACN 001426 384) AS TRUSTEE UNDER THE MASTER TRUST DEED ESTABLISHING THE RURAL PROGRAM. The action was purportedly commenced as ANZ Bank as a Corporate Sole, which is unable to act as a Power of Attorney under the Master Trust Deed see point 2 above; *“Australian and New Zealand banking Group Limited (ANZ) acts on behalf of the Plaintiff pursuant to a Power of Attorney granted by the Plaintiff on the 31st arch 2010 as servicer and manager of the Rural Program.”*

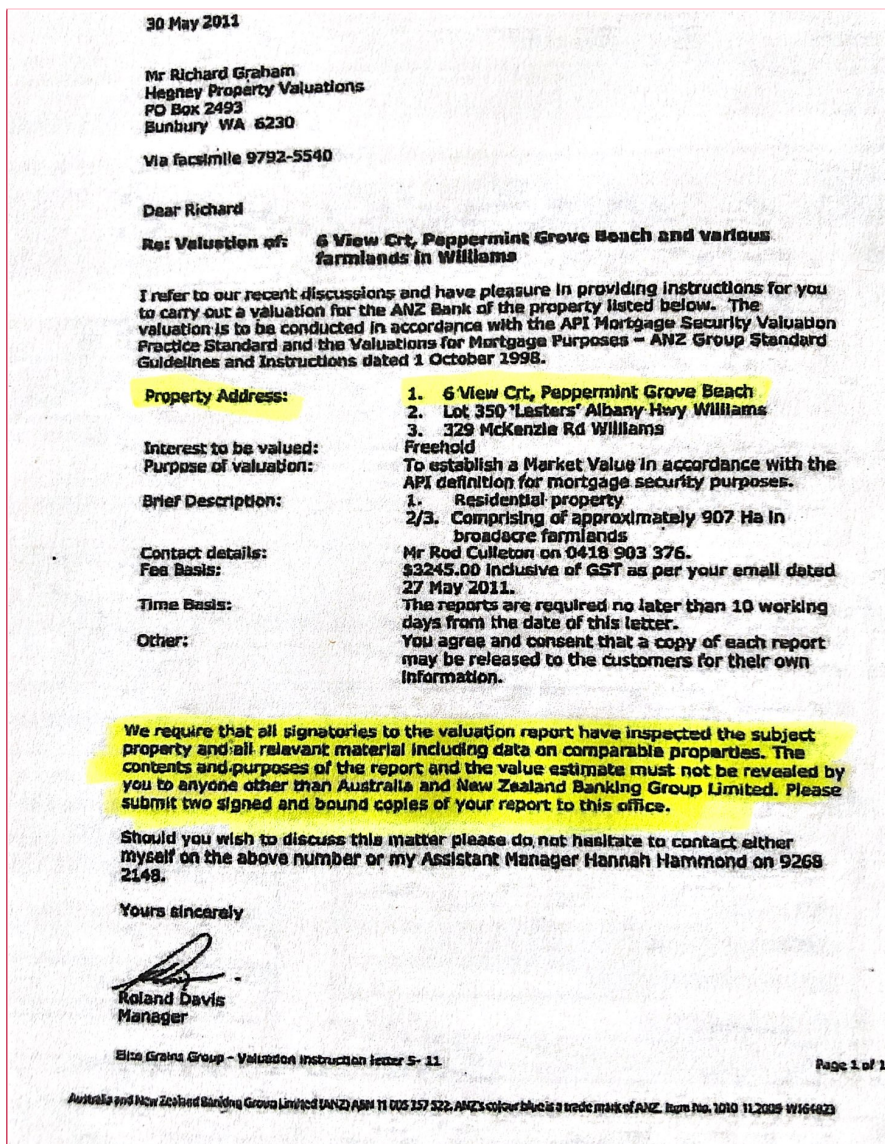
The above action claimed to have commenced in the jurisdiction of Western Australia. However, through the evidence obtained, Power of Attorney dated the 31st march 2010 did not list ANZ amongst the authority holders and held no legal power in Western Australia.



Commented [RC|GAP1]: "(all States and Territories except Western Australia)"
 No jurisdiction in WA to commence proceedings CIV 2473/2012

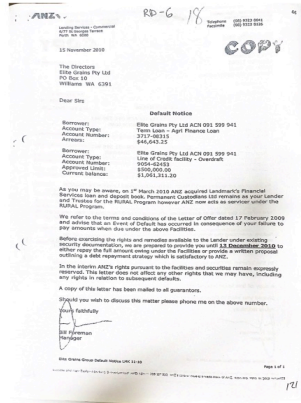
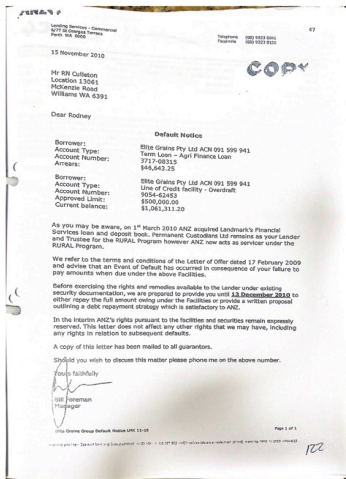


a) On the 3rd June 2011, without notice, the Directors of Elite and the First and second Plaintiff received an executed Letter of Offer from Mr Roland David from ANZ Lending Services. The further unsolicited offer was made without the knowledge of any annual review and submissions of financials, including but not limited to, without knowledge to the Second Plaintiff. Mr Davis undertook without knowledge or consent of the original proprietor an undisclosed valuation for ANZ Bank on the 30th May 2011.

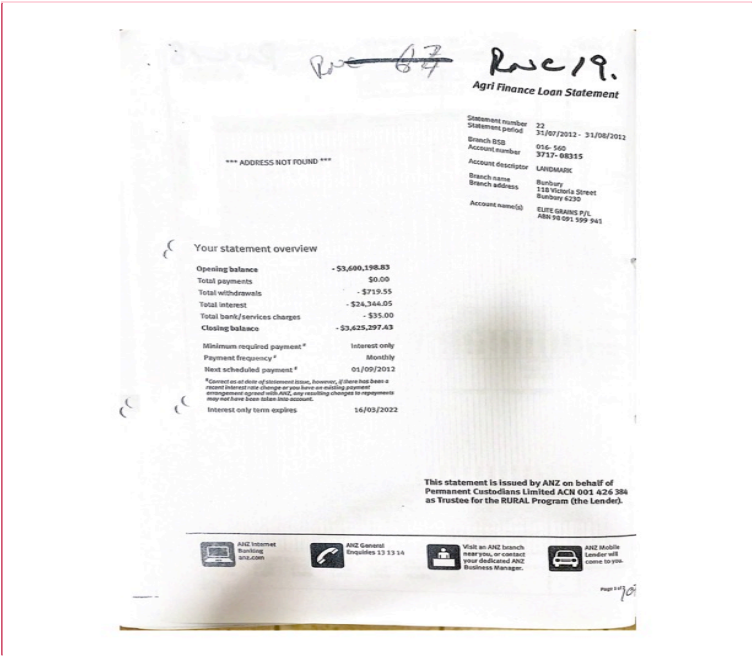


Commented [RC]GAP2]: Unauthorised valuations. "...value estimate must not be revealed by you to anyone other than Australia and New Zealand Banking group Limited."

b) On the 24th November 2011, ANZ sent a **NOTICE OF EVENT OF DEFAULT (NOTICE)** against the proposed new facilities. The ANZ Accounts were foreign to Elite as no consent to assignment pursuant to s 20 *Property Law Act (WA)* ever took place due to the lack of Rural Servicers.



Commented [RC|GAP3]: Defaults were issued under ANZ bank and not Landmark. Elite and its guarantors were ever notified of the creation of these foreign accounts. ANZ Acc Number 317-08315 and 9054-62453



Commented [RC|GAP4]: Elite Grains Pty Ltd did not exist on ANZ Records. No statements were ever received as the address was listed "Address Not Found"

1 2011 22:14 FAX 069652656

ELITE GRADING PTY LTD
 17/30/12
 Receipt 44

ANZ PAY
 our account

RECEIVED
 06-03-11

The total amount of interest paid to you
 This financial year : \$0.00

ELITE GRADING PTY LTD
 PO Box 10
 WILLIAMS WA 6501

050

ADVANTAGE VARIABLE STATEMENT

Use the following numbers for Electronic Direct Debit and
 repayments: BSB: 025-009 Account Number: 613764

Account Type: 914 Statement to: 30SEP10
 Number 6

Debit Date	Description	Debit	Credit	Balance
30/9/10	Opening Balance			\$0,000,000.00
	ANZ Bank	\$0,000,000.00		\$0,000,000.00
	Total Debits/Credits	\$0.00	\$0,000,000.00	\$0.00
	30SEP10 Current Balance			\$0.00

The lending variable Rate rate is 6.25%. This Rate Rate is adjusted
 monthly and does not include your applicable offset month.
 This statement is issued by Australian and New Zealand Banking Group Ltd
 ABN 11 085 237 622 on behalf of Permanent Custodians Limited ACN 001 425 568
 as Trustee for the Trust Program (the Landmark).

95T INTEREST RATES EFFECTIVE 01 October 10

Please notify us of any error or change of address

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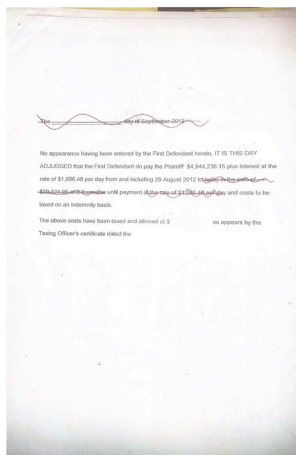
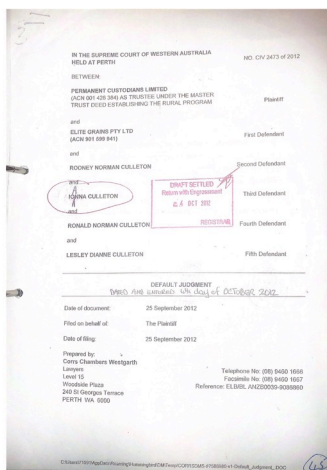
Commented [RC|GAP5]: Landmark account was S11 and S14 613754

- c) ANZ acted in absence of a transfer of mortgage to mislead the court to unlawfully commence a mortgage action in the Supreme Court of Western Australia in the name of a professional trustee for ANZ Bank and not Landmark without proving by way of certificate pursuant to the landmark the debts owing to ANZ Bank were due and payable.
- d) On or about early 2012, the First Defendant acted for ANZ Bank purporting to be mortgagee of the Elite facilities and the plaintiffs
- e) On or about the 4th October 2012, the First Defendant claimed to have a chose in action to commence proceedings in the Western Australian Supreme Court for a bona fide creditor doing business as "the bank" in finance.
- f) The originating application was commenced without authorisation claiming among other things, ANZ Bank was an authorised individual acting under a power of attorney in contravention to the Terms of the Master Trust Deed to unlawfully commence recovery for a different trust (ANZ TRUST No 1) not known to the plaintiffs.
- g) On the 20th December 2012, the First Defendant submitted by way of sworn affidavit of a Ms Bree Ludlow, claiming to have been sent to the First Plaintiff's

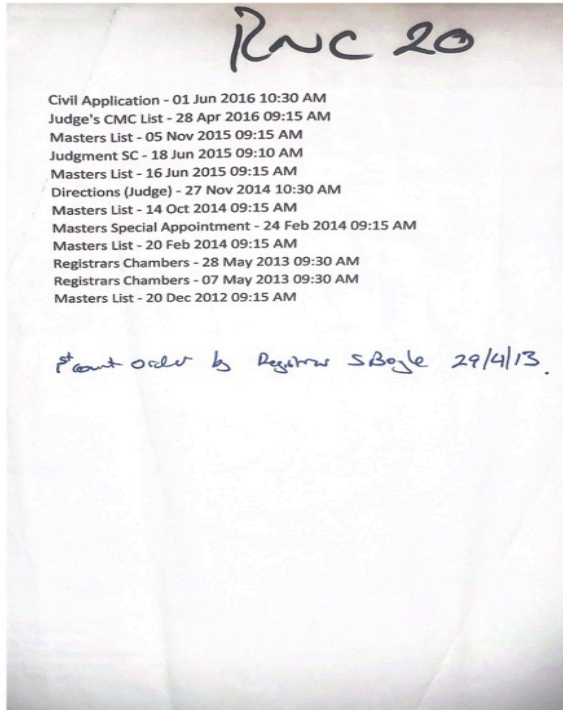
- h) email address of elitegrainsptyltd@bigpond.com.au which is not the email of the First Plaintiff.
- i) The 29th August 2012, a Statement of Claim (SOC) was again used by the First Defendant acting as an agent for ANZ Bank, purportedly again commenced an equitable chose in action by way of (SOC) bearing a number of defaced seals against the First and Second Plaintiffs as natural persons as pleaded in point 6 above and admitted at point 5 and 7 of the said SOC. The First Defendant inter alia filed an application under commerce being contract law claiming that a breach had occurred between PCL as mortgagee and the Landmark borrower

Particulars

The First Respondent purported to commence a mortgage action in the commerce division of the WESTERN AUSTRALIAN SUPREME COURT naming the alleged mortgagee as PERMANENT CUSTODIANS LIMITED (ACN 001426 384) AS TRUSTEE UNDER THE MASTER TRUST DEED ESTABLISHING THE RURAL PROGRAM claiming to hold a Default Judgement against Elite Grains PTY LTD to move against the guarantors.

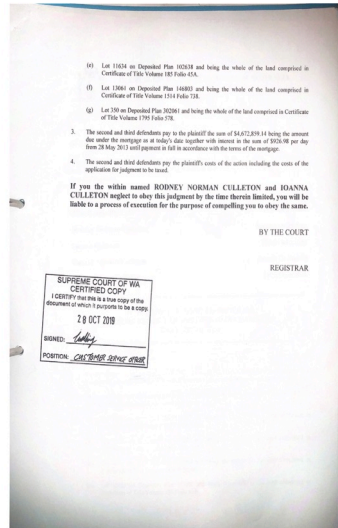
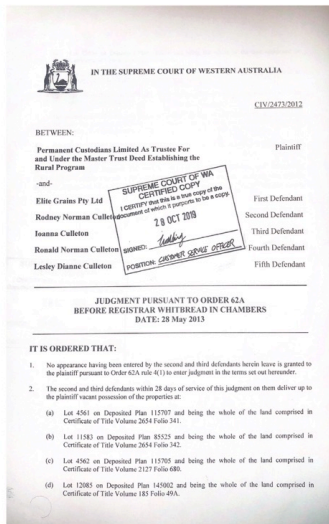


Commented [RC]GAP6: The alleged Default Judgement against the Landmark borrower was incurable and deficient. No transcript or Registrar can be found by the WASC.

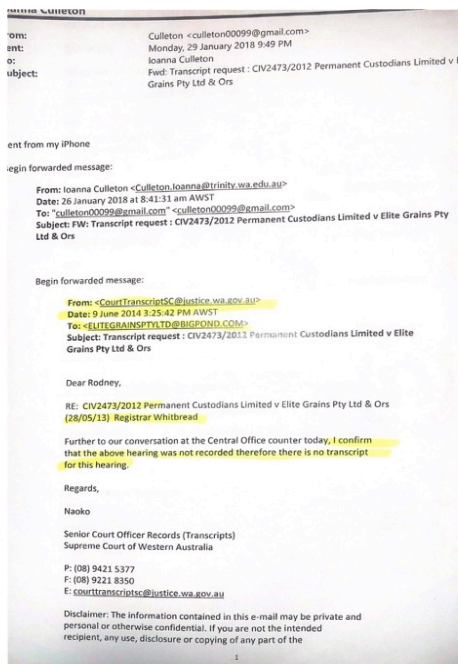


Commented [RC]GAP7: Default Judgement claimed to have been obtained on the 4th October 2012 was not listed with the Court. Matter No 2473/2012 did not commence until the 20th December 2012.

- j) Later without notice to the Landmark Guarantors (Culletons) another application was made under unenacted law of commerce (62A of the *Rules of the Supreme Court 1971*) claiming *inter alia* a different party PERMANENT CUSTODIANS LIMITED) AS TRUSTEE FOR AND UNDER THE MASTER TRUST DEED ESTABLISHING THE RURAL PROGRAM claiming to be bona fide creditor as mortgagee for standing.
- k) Subsequently, another Registrar issued a Default Judgement on the 28th May 2013.



Commented [RC|GAP8]: Registered certified copy obtained from the Supreme court of WA is absent of a seal and is not executed. Furthermore, The Plaintiff is listed different to the Statement of Claim and the Orders against Elite dated 4th October 2012 above.



Commented [RC|GAP9]: No Transcript of the matter 2473/2012 was available to obtain.

Our reference
EBIANZ0035-0066000

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**CORRS
CHAMBERS
WESTGARTH**
lawyers

Sy
Melb
Bris
P

5 June 2013

Rodney and Joanna Culleton
145 Anstey Street
South Perth WA 6151

Special Coun
Estelle Blewett (08) 9480 1
Email: estelle.blewett@corr.com

Dear Rod and Joanna

**Permanent Custodians Limited v Elite Grains Pty Ltd & Ors C1
2473 of 2012 (Action)**

I refer to the Orders made by Registrar Whillbread in chambers on 28 May 2013 (Orders).
The Orders were handed to you on 28 May however, I attach a further copy for your
reference.

In accordance with the Orders, you are required to provide vacant possession of the
property referred to in Orders 2(a) – 2(g) within 42 days. I calculate that period will expire
on 9 July 2013 (being 42 days from 28 May 2013).

Please advise whether you will be giving vacant possession of the property or refinancing
the debt.

If vacant possession is not voluntary provided on or before 9 July 2013, you may become
liable for further or additional costs, including but not limited to, Sheriff's fees, locksmiths
fees, removalist and storage costs.

If you have any queries, please contact me.

Yours faithfully
Corrs Chambers Westgarth



Estelle Blewett
Special Counsel

89478661

Commented [RC]GAP10: Second Version of Orders



CV2023/012

BETWEEN:

Permanet Custodians Limited As Trustee For and Under the Master Trust Deed Establishing the Rural Program	Plaintiff
-and-	
Elite Grains Pty Ltd	First Defendant
Rodney Norman Culleton	Second Defendant
Joanna Culleton	Third Defendant
Rosam Norman Culleton	Fourth Defendant
Lesley Dianne Culleton	Fifth Defendant



JUDGMENT PURSUANT TO ORDER 61A BEFORE REGISTRAR WHITBREAD IN CHAMBERS DATE: 28 May 2015

IT IS ORDERED THAT:

- No application having been entered by the second and third defendants herein leave is granted to the plaintiff pursuant to Order 61A rule 4(1) to enter judgment in the terms set out hereunder.
- The second and third defendants within 42 days of service of this judgment on them deliver up to the plaintiff vacant possession of the properties as:
 - Lot 4561 on Deposited Plan 112707 and being the whole of the land comprised in Certificate of Title Volume 2554 Folio 241.
 - Lot 11523 on Deposited Plan 82525 and being the whole of the land comprised in Certificate of Title Volume 2454 Folio 242.
 - Lot 4562 on Deposited Plan 112706 and being the whole of the land comprised in Certificate of Title Volume 2527 Folio 470.
 - Lot 32685 on Deposited Plan 145062 and being the whole of the land comprised in Certificate of Title Volume 183 Folio 49A.

- Lot 11624 on Deposited Plan 302038 and being the whole of the land comprised in Certificate of Title Volume 183 Folio 45A.
 - Lot 12663 on Deposited Plan 148893 and being the whole of the land comprised in Certificate of Title Volume 1114 Folio 17A.
 - Lot 319 on Deposited Plan 362061 and being the whole of the land comprised in Certificate of Title Volume 159 Folio 218.
- The second and third defendants pay to the plaintiff the sum of \$4,672,371.14 being the amount due under the mortgage as at 21st day after receipt with interest to the sum of \$205,048 per day from 28 May 2011 and interest to fall in accordance with the terms of the mortgage.
 - The second and third defendants pay the plaintiff's costs of the notice including the costs of the application for judgment to be made.

BY THE COURT

Registrar Whitbread
REGISTRAR

If you the within named RODNEY NORMAN CULLETON and IOANNA CULLETON neglect to obey this judgment by the time therein limited, you will be liable to a process of execution for the purpose of compelling you to obey the same.

Commented [RC|GAP11]: The Orders sent to the Culleton's were sealed and stamped "Registrar Whitbread" The Orders were made against **RODNEY NORMAN CULLETON AND IOANNA CULLETON**



Senator Fraser Anning
Senator for Queensland

QUESTIONS ON NOTICE TO PERMANENT CUSTODIANS LIMITED (PCL) (ACN 001 426

- (i) **What role and purpose did PCL perform in relation to the Rural Program (RP) defined in the Master Trust Deed (MTD), dated the 15th November 2005?**
Please see the Transaction Summary.
- (ii) **Was PCL ever the true mortgagee of the borrower or only lender of record?**
PCL has interpreted the reference to 'true mortgagee' to mean the party that was ultimate source of funding to the borrowers in the RURAL Program - in which case answer is "no". PCL was the lender of record in relation to the loans under the RP Program, and was recorded on title as mortgagee (as explained in the Transaction Summary above). However, funding was provided by financiers to PCL as Trustee order for PCL to in turn fund the underlying borrowers.
- (iii) **Did the directors of PCL understand their obligations as trustee for the RP as defined in the Master Trust Deed?**
Yes.

Did PCL as trustee have any legal standing to commence any action against (Borrower) the CP warehouse trust no 1 (Landmark Trust)?
Yes. As lender of record and mortgagee, PCL had legal standing to commence any action against the borrowers if and when the borrowers defaulted on their obligations under their respective loan agreement.

However, as Trustee, PCL does not initiate legal proceedings on its own volition to enforce/recover assets. Instead, the Servicer initiates such enforcement legal proceedings on behalf of and in the Trustee's name.

This is typical in the Australian loan origination and securitisation industry; servicers initiate and manage legal proceedings on behalf of trustees to recover and protect the trust assets when borrower defaults on its obligations under the loan agreement. In this regard, and in accordance with the transaction documents for the Landmark Trust, there are powers of attorney granted to certain individuals at the Servicer of the Landmark Trust empowering them to, among other things (broadly) (i) do anything and sign any document to enforce the terms of any document related to the Landmark Trust, (ii) commence, prosecute, defend, discontinue, compromise or settle any action, suit or proceeding relating to such enforcement, and (iii) do anything and sign any document dealing with any property (or any interest in any property) and out of or in connection with any document related to the Landmark Trust.

Could PCL as Trustee directly accept payments for any damages awarded with costs through any legal win in any court in Australia?
Yes, however please see our response above to Q2.

Commented [RC]GAP12: PERMANENT CUSTODIANS LIMITED represented by lawyers confirmed under oath that the alleged Plaintiff in the matter CIV 2473/2012 cannot commence legal proceedings (see 2nd last paragraph) and was not the mortgagee (see point ii)

MAGISTRATES COURT OF QUEENSLAND
 REGISTRY: CHARTERS TOWERS
 NUMBER: MAG-0013073419(7)

Complainant: **RODNEY NORMAN CULLETON**
 AND
 Defendant: **JANET DENISE WHITBREAD**


AFFIDAVIT IN SUPPORT OF APPLICATION PURSUANT TO THE JUSTICES ACT 1886 (QLD) SECTION 128C

I, Larissa Strk, Principal Registrar of the Supreme Court of Western Australia, David Malcolm Justice Centre, 28 Barrack Street, Perth in the State of Western Australia make oath and say as follows:

- I am the Principal Registrar of the Supreme Court of Western Australia.
- I swear this affidavit in support of an application by Registrar Janet Denise Whitbread, a Registrar of the Supreme Court of Western Australia, pursuant to the Justice Act 1886 (Qld) s 102C, for dismissal of a private complaint made by Rodney Norman Culleton in this proceeding.
- I swear this affidavit on the basis of facts within my own knowledge, or where I refer to records, based on my examination of records held by the Supreme Court, or based on my experience as the Principal Registrar of the Supreme Court.
- The defendant to the complaint, Janet Denise Whitbread, was appointed as a Registrar of the Supreme Court of Western Australia on 19 July 2010 and has held that office since that date.
- On 28 May 2013, in Supreme Court of Western Australia proceeding CIV 2473 of 2012 between Permanent Custodians Limited as trustee for and under the Master Trust Deed establishing the Rural Program as plaintiff and Ellie Grains Pty Ltd and others as defendants (including Rodney Norman Culleton as second defendant), Registrar Whitbread entered judgment for the plaintiff pursuant to the Rules of the Supreme Court of Western Australia 1971 (WA). Now produced and shown to me and marked 'LS-1' is a true copy of the orders for judgment made on 28 May 2013.
- On 27 November 2014, the Hon. Justice Kenneth Martin of the Supreme Court of Western Australia dismissed an application to set aside the judgment entered by Registrar Whitbread, for reasons published and cited as *Permanent Custodians Ltd v Ellie Grains Pty Ltd & Ors* [2014] WASC 495.
- The West Australian guidelines in relation to criminal proceedings against a Minister or officers provide that, normally, public service officers will provide their own representation and at the conclusion of proceedings may

plc. [Signature]

'LS-1'



IN THE SUPREME COURT OF WESTERN AUSTRALIA

CIV 2473/2012

BETWEEN:

Permanent Custodians Limited As Trustee For and Under the Master Trust Deed Establishing the Rural Program	Plaintiff
-and-	
Ellie Grains Pty Ltd	First Defendant
Rodney Norman Culleton	Second Defendant
Joanna Culleton	Third Defendant
Ronald Norman Culleton	Fourth Defendant
Lesley Dianne Culleton	Fifth Defendant

JUDGMENT PURSUANT TO ORDER 62A BEFORE REGISTRAR WHITBREAD IN CHAMBERS
DATE: 28 May 2013

IT IS ORDERED THAT:

- No agreement having been entered by the second and third defendants herein leave is granted to the plaintiff pursuant to Order 62A r6, 4(1) to enter judgment in the terms set out hereunder.
- The second and third defendants within 28 days of service of this judgment on them deliver up to the plaintiff vacant possession of the properties as:
 - Lot 4541 on Deposited Plan 115707 and being the whole of the land comprised in Certificate of Title Volume 2654 Folio 341.
 - Lot 11383 on Deposited Plan 85525 and being the whole of the land comprised in Certificate of Title Volume 2834 Folio 342.
 - Lot 4542 on Deposited Plan 115707 and being the whole of the land comprised in Certificate of Title Volume 2127 Folio 488.
 - Lot 12185 on Deposited Plan 145502 and being the whole of the land comprised in Certificate of Title Volume 187 Folio 416.

Commented [RC]GAP13: Third version contains no court seal and is executed by a Registrar

- Lot 11634 on Deposited Plan 102638 and being the whole of the land comprised in Certificate of Title Volume 185 Folio 45A.
 - Lot 13061 on Deposited Plan 146803 and being the whole of the land comprised in Certificate of Title Volume 1514 Folio 726.
 - Lot 350 on Deposited Plan 302061 and being the whole of the land comprised in Certificate of Title Volume 1795 Folio 278.
- The second and third defendants pay to the plaintiff the sum of \$4,672,859.14 being the amount due under the mortgage as at today's date together with interest in the sum of \$926.98 per day from 28 May 2013 until payment in full in accordance with the terms of the mortgage.
 - The second and third defendants pay the plaintiff's costs of the action including the costs of the application for judgment to be taxed.

BY THE COURT
 [Signature]
 REGISTRAR

If you the within named **RODNEY NORMAN CULLETON** and **JOANNA CULLETON** neglect to obey this judgment by the time therein limited, you will be liable to a process of execution for the purpose of compelling you to obey the same.

plc. [Signature]

- l) The First Defendant as agent for ANZ, misled the court by claiming that an event of default had occurred against the Landmark facilities by the borrower and that the First and Second Plaintiffs in respect of the indebtedness were liable under the guarantees.

Particulars

Post March 2010, the managing director of Elite made a number of efforts to redeem the Landmark facility by enquiring directly with the alleged mortgagee known as Permanent Custodians Limited (PCL) as a matter of right to prevent any risk of triggering a default under the Landmark general terms and conditions (Clause 9.1 and 9.2) by offering to pay out the facilities. The directors of PCL refused to accept payment as they claimed to be a lender of record and not a mortgagee to the Elite borrowings causing a Doctrine of frustration.

- m) On the 5th April 2013 at 9.10am, the First Defendant sent an email to the directors of Elite stating, among other things, the following-
- “Dear Mr Culleton
As you know, we act for Permanent Custodians Limited and the Australia and New Zealand Banking Group Limited (ANZ)”.*
- n) The First Defendant as agent for “the bank”, again without power or jurisdiction, purported to commence further proceedings in the Supreme Court of Western Australia against **IOANNA CULLETON AND LESLEY DIANNE CULLETON** as corporate soles under commerce and not common law/equity to obtain land as real property.
- o) At point 25 of the SOC, the First Defendant misled the court by falsely claiming the following-
- “From on or about March 2009, the Plaintiff advanced funds to the First Defendant pursuant to the loan agreement”.*

Particulars

Elite entered into two Landmark facilities as pleaded in point 5 and 12 above. PCL did not advance any funds to Elite as it was only the Lender of Record and not the mortgagee. The First and Second Plaintiffs contracted with the independent contractor known as Landmark Financial Services in their private capacity as guarantors for the two Landmark facilities.

- p) On the 28th May 2013, the First Defendant appeared in person with one of the directors of Elite before registrar Whitbread to whereby fraud was immediately raised.
- q) The reasoning behind the First Defendant appearing in person were for the following reasons-
- i. the matter listed did not list the true parties and matter number on the originating application (as pleaded in point 26);
 - ii. the party before the court was not a bona fide creditor of the First and Second Defendant;
 - iii. The First and Second Plaintiff were named as corporate soles; and

- iv. The court seal had been defaced.

- r) Orders were made by a registrar (Whitbread) with leave of the court in favour of an entity not known to the First Plaintiff. Leave can only be granted under the strict requirements of 9.4.1 of the Consolidated Practice Directions 2009.

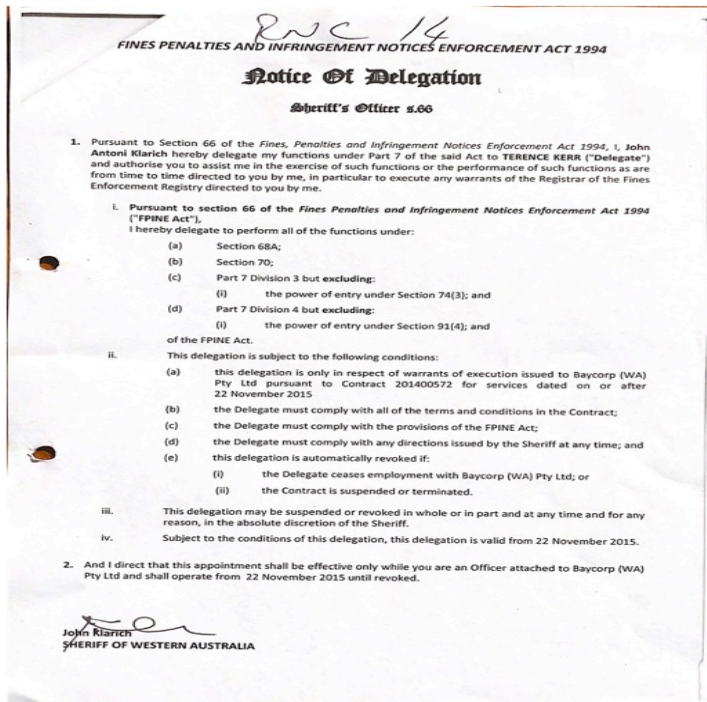
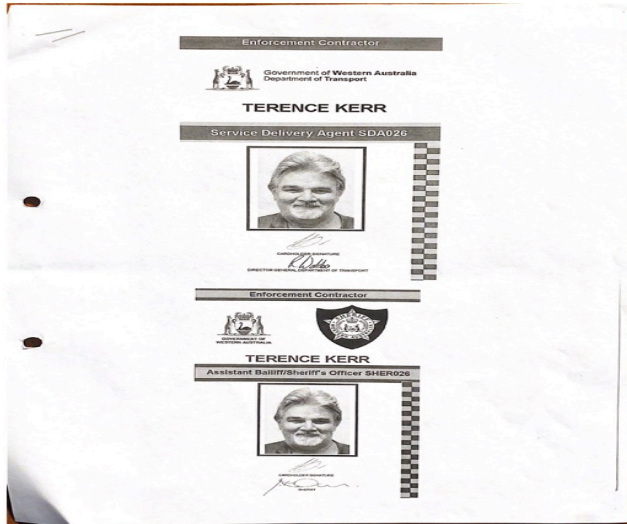
Particulars

The order made by the registrar (Whitbread) on the 28th May 2013 was pursuant to Order 62A rule 4(1) with leave of the court created a doctrine of frustration. The order at point 3 stated in expressed terms the following-
“The second and third defendants pay to the plaintiff the sum of \$4,672,859.14 being the amount due under the mortgage as at today’s date together with interest in the sum of \$926.98 per day from 28th May 2013 until payment in full in accordance with the terms of the mortgage”.

- s) The Default Judgement entered for non- appearance on the 28th May 2018 was not in favour of a creditor and is deemed of no legal effect as;
 - a) The order was not in the name of the applicant, as declared on the originating application;
 - b) The order addressed the First Plaintiff as a corporate sole who was not named as a party in the originating application by way of SOC dated 28th August 2012;
 - c) The First Defendant without notice to the First Plaintiff issues proceedings in the name of a non bona fide creditor in the absence of an ABN number;
 - d) The First Defendant issued proceedings without notice in a different trust known as the ANZ RURAL TRUST No 1 and not in the original LANDMARK TRUST; and
 - e) Did so claiming that the First and Second Plaintiffs were ANZ Customers in respect to the Landmark commercial borrowings.
- t) The First and Second Plaintiff could not accept the order of Whitbread as being of first-hand knowledge that the party before the court declared it was not a creditor and/or mortgagee and as such, did not consent to any demands made through the actions of the First Defendant.
- u) On the 17th July 2013, the First Defendant made an application to seize real property on behalf of PCL claiming to be a bona fide creditor to seize the Culleton lands as listed in (1) above.

Particulars

On or about 25th October 2013 at about 10.00am, a Mr Terrance Kerr arrived with the WA Police whilst the First Defendant was not home to exercise a Property Seizure Delivery Order in favour of an entity not known at law.



Commented [RC|GAP14]: TERENCE KERR only holds authority under the *Fines, Penalties and Infringements Notices Enforcements Act 1994* Which cannot apply to seizure of land.

Commented [RC|GAP15R14]:

25

PWC 68

WESTERN AUSTRALIA

**Civil Judgments Enforcement Act 2004,
Part 5 Division 1
FORM 36 – PROPERTY (SEIZURE AND
DELIVERY) ORDER – REAL PROPERTY**

Supreme Court of Western Australia

Location: Perth

Court Ref No:
SC/CIV/PER/CIV/2473/2012

Applicant	Permanent Custodians Limited As Trustee For and Under the Master Trust Deed Establishing the Rural Program
Lawyer/Estate Agent	
File Ref No	
Contact /Address Details	Corts Chambers Westgarth Level 15 Woodside Plaza 240 St Georges Terrace, PERTH, WA 6000

Obligated Person	<p>Name: Ioanna Culleton Address: Location 13061 McKenzie Road, WILLIAMS, WA 6391</p> <p>Name: Rodney Norman Culleton Address: Location 13061 McKenzie Road, WILLIAMS, WA 6391</p>
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REAL PROPERTY TO BE SEIZED AND DELIVERED

Property ordered to be seized and delivered

- (1) Location 13061 McKenzie Road, WILLIAMS, WA 6391, being lot 13061 on deposited plan 146803 and being the whole of the land comprised in Certificate of Title volume 1514 folio 738
- (2) Lot 4561 on deposited plan 115707 and being the whole of the land comprised in Certificate of Title volume 2654 folio 341
- (3) Lot 11583 on deposited plan 85525 and being the whole of the land comprised in Certificate of Title volume 2654 folio 342
- (4) Lot 4562 on deposited plan 115705 and being the whole of the land comprised in Certificate of Title volume 2127 folio 680
- (5) Lot 12085 on deposited plan 145002 and being the whole of the land comprised in Certificate of Title volume 185 folio 49A
- (6) Lot 11634 on deposited plan 102638 and being the whole of the land comprised in Certificate of Title volume 185 folio 45A
- (7) Lot 350 on deposited plan 302061 and being the whole of the land comprised in Certificate of Title volume 1795 folio 578.

**SUPREME COURT OF WA
CERTIFIED COPY**

I CERTIFY that this is a true copy of the document of which it purports to be a copy.

Application Fee		
Sheriff's Fee/Reissue .../20..	\$0.00	20 JUL 2020
Sheriff's Kilometrage	\$0.00	
Lawyers Costs	\$0.00	
SUB TOTAL	\$0.00	
Sheriff's Enforcement Costs	\$*	
Sheriff's Commission	\$242.00	
TOTAL	\$*	

*Amount to be advised by Sheriff/Bailiff

To the Sheriff of Western Australia

You are authorised and commanded by this Property (Seizure and Delivery) Order to enter the property named in the order, with or without force if necessary, evict persons not entitled to be there, take possession of the property and deliver it into the judgment beneficiary's possession.

19 JUL 2013

CENTRAL OFFICE
SUPREME COURT

17 JUL 2020

PERTH, WA

562

Commented [RC]GAP16: PSDO Order is not "like for like" pursuant to the Originating Application CIV 2473 ?2012. Take note of the following defects;

- The words "for and" have been added to the alleged plaintiff;
- ABN number has been removed;
- Not been executed;
- Court seal displays a J WHITBREAD; and
- No court seal and lacking details.

This has been declared by the court and Baycorp as the true original instrument claimed to have removed the Culleton's from their property.

v)

authorisation to act under an equitable interest to seek a court order to obtain real property being land.

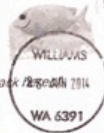
RNC 9.
NOTICE

This notice is addressed to: *Jesse David and Mathew Ronald Ford*; and
Graham Arthur Harding; and including but not limited to

the persons listed on the back of this notice

FARM PROPERTY AT WILLIAMS, W.A. ALLEGEDLY FOR SALE

specific details of the land are on the rear face hereof



You, yourself personally, as an agent, or your employing entity are involved in attempting an illegal property transfer. This attempt amounts to **FRAUD** and the legal and costs implications for you are most serious.

A Family Farm bounded by Albany Highway from McKenzie Road just north of Williams to the northern and western boundary of the town itself, owned by Rodney and Ioanna Culleton ("the Culletons") at Williams, W.A. is owned by them. It continues to be owned by them and after currently pending court actions that will become patently clear.

This is to **PUT YOU ON NOTICE**.

You are hereby **NOTIFIED** that any person (whether directly or as an agent or servant of a person (or corporation) involved may be liable for Criminal charges, Damages in money or other legal redress.

It is known that representations have been made to you by the Australia and New Zealand Banking Group Limited ("ANZ") and or Permanent Custodians Limited ("PCL") clearly implying that those Bank have the legal capacity to sell you some or all of the above farm property. This is not correct and any attempt to create such an outcome is being strongly resisted upon sound legal grounds.

To assist you, this notice is to advise you that misleading or false representations at the time of forming a Contract may lead to a legitimate Court claim being available to you to sue said Banks for all losses their conduct may have caused to you if you, as a genuine purchaser were misled.

The overriding peril for you, if you are attempting to purchase some or all of this property, is that you are now **ON NOTICE** with the result that the current legal actions will take some time to become final and after that, you are likely to become embroiled in further legal proceedings at your own significant cost, only to see it subsequently ordered by the Court that you must return any property you may have felt you acquired, to the original, legally proven to be legitimate owners, the Culletons.

You should obtain legal advice if you are attempting or considering purchasing any of the below-mentioned land.

Commented [RC]GAP17: Constructive Trustees still remain today on the properties despite repeated notices

In respect of the properties situate at or near 4 McKenzie Road, Albany Highway, Bates Road, Williams, Western Australia (WA) and more particularly described below:

6


- Lot 350 on deposited plan 302061 and being the whole of the land comprised in certificate of title volume 1795 folio 578
- Lot 4561 on deposited plan 115707 and being the whole of the land comprised in certificate of title volume 2654 folio 341
- Lot 1306 on deposited plan 146803 and being the whole of the land comprised in certificate of title volume 1514 folio 738
- Lot 4562 on deposited plan 115705 and being the whole of the land comprised in certificate of title volume 2127 folio 680
- Lot 11583 on deposited plan 85525 and being the whole of the land comprised in certificate of title volume 2654 folio 342
- Lot 11634 on deposited plan 102638 and being the whole of the land comprised in certificate of title volume 185 folio 45A
- Lot 12085 on deposited plan 145002 and being the whole of the land comprised in certificate of title volume 185 folio 49A

Hear ye, hear ye, hear ye

KNOWN PARTIES INVOLVED IN UNLAWFUL CONVERSION OF REAL ESTATE PROPERTY

- Lauren Schutz, Agribusiness Manager, Narrogin Agribusiness,
11 Fortune Street Narrogin WA 6312, tel 08 9881 9970, fax 1300 673 665;
- Matthew Ronald Ford, PO Box 271, Williams WA 6391, 0427 093 241, yorkgum@yahoo.com.au
- Jesse David Ford, PO Box 271, Williams WA 6391
- Graham Arthur Harding, PO Box 46, Williams WA 6391, c/- bob.baker@westernchoice.com.au
- Darryl O'Malley c/- South Perth Settlements, 1st Floor, 26 Lyall Street South Perth 6151;
PO Box 847, South Perth WA 6951, tel 08 9474 2424, fax 08 9474 1240, email spsetts@mutline.com.au
- Eden Cold c/- WA Property Lawyers fax 08 9388 3452 & 9831 1320
- Geoff Winter c/- WA Property Lawyers, gwinter@waproertylawyers.com.au
- Phillip Ronald Wilson, Lawyer Cors

CAVEAT EMPTOR other parties than those listed above also informed however for reasons of privacy are not disclosed at this point. This list is not comprehensive however all notified parties (displayed or withheld) are without excuse to proceed to obtain or convey title where unregistered equitable interests exist and to expect clear title irrespective of judgments held defective or otherwise.


Rodney Norman Cullen
Authorised Signer on behalf of himself and all persons guaranteeing in the last right, for the benefit and for those of the equities interest holders. All rights, powers, privileges, immunities and remedies, whether actual, contingent, common and/or procedural, are preserved. Approved