

Access to Justice (Federal Jurisdiction) Amendment Bill 2011

SCAG model bill concerning vexatious proceedings

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: legcon.sen@aph.gov.au

Dear Sir,

Re: SCAG Model Bill concerning vexatious proceedings

1 Identified shortcomings where complainants apply for unjustified vexatious proceeding orders

In 1999 a bank issued a certificate of debt in the Supreme Court for the purpose of recovering funds. The bank had ruled my for value account off, and issued a not for value account that included the original ruled off debt. This original ruled off debt was incorrect both procedurally and in fact on the face of the document, this was certified by my accountant and a later audit found the debt incorrect.

2 Efforts to show the falsification of the account

In 2000 I was bankrupted by the bank using unpaid legal costs. The bankruptcy trustee accepted the bank's account in full and charged interest on that account. The trustee has declined to investigate that account including demand, when he is required to complete such investigation under the Bankruptcy Act 1966. In order to get relief I brought a criminal action in the Magistrates Court, where the bank admitted the accounts may not be correct but were granted a vexatious order against myself.

3 Federal Court Jurisdiction

In 2003 the bank and trustee applied to have made vexatious in the Federal Court, the application was resisted and I prevailed.

4 The Injustice

The bank and the trustee sued my family for legal fees and interest in the bankruptcy claiming that the quantum did not cover the debt. This debt includes the falsified original account interest and costs that could have been avoided by honesty from the bank before these matters ever got to court. Once in the court the bank resisted any complaints about the accounting, however it is now a recorded fact that they do not audit or verify initial debits and credits to customers accounts exposed on the face of the statement.

5 Banks responsibility issuing bank statements

It is a legal fact that in Australia and England banks are responsible for the correctness of the statement. This failure to investigate the complaints against the initial entries on the statement means any Certificate of Debt issued on my account are not audited or verified by the bank totally. Therefore any debt they propose in my circumstances; can only rely on my accountant's and my audit. The bankruptcy trustee has refused to investigate the account as stated previously; consequently his notices cannot be correct. I have been retained in bankruptcy since 2000, had all my property and some of my families property used to satisfy the bankruptcy, when the bank told my family the funds would be sufficient to cover the debt. If a bank will do this to totally innocent third parties, and then not agree to annulment of my bankruptcy, then these facts go a long way to supporting evidence that they have an intention to deceive initially.

6 New Vexatious proceedings legislation

I find it very difficult to reconcile the legislation when in fact its shown through my cases to be supporting debt recovery actions that were not required in the first place. The fact one court found actions vexatious and another court on the same facts not vexatious, points to inconsistency in the aim of your legislation to standardise vexatious proceedings legislation. If the banks vexatious orders from the Supreme Court were allowed to be used in the Federal Court, a complete falsification of my accounting would have been made.

7 Social conditions of being made vexatious

Unfortunately I am a law abiding citizen, however I fear what will happen if people realise that they cannot pursue actions in the court to put aside claims they regard unlawful by banks and financiers where it is perceived their claims such as in my case are bogus. I give two examples of activities in neither case I do not know the names of those involved but are well recited in this area;

(i) a bank issued a customer what he considered to be a false statement, and the bank pursued him to recover the funds on the face of the statement, using what he considered was a false document in his mortgage portfolio. Whilst at the bank he produced a gun and told the bank manager so show him the correct document, this the bank manager did, where before he and the legal section of the bank had refused.

(ii) a bank manager in this area was loading accounts with interest and fees and the community was becoming frustrated, the manager went to inspect a property where beside a fence a hole was dug similar to a grave, with a front end loader parked beside it, the bank manager asked the customer what the hole was for, he was told that's for you if our account is not corrected.

These are the social conditions that apply when people are frustrated from being able to afford legal representation. Giving banks, debt collectors and others prone to falsify accounts and collect on the false value, is only going to bring more social conditions forcing desperation.

Yours faithfully