



Senate Economics References Committee
PO Box 6100
Parliament House
Canberra
ACT 2600

By email: economics.sen@aph.gov.au

Attention: Mr Mark Fitt

Dear Committee Secretary

Inquiry into consumer protection in the banking, insurance and financial sector

Re Response to submission of Allison Hale and Greg Saunders

We refer to your letter dated 12 April 2017 in relation to the submissions made by Alison Hale and Greg Saunders to the Senate Economics References Committee (**Saunders Submission**).

RHG Mortgage Corporation Ltd (**RHG**) welcomes the opportunity to respond to the Saunders Submission. The first relevant matter to note is that RHG has no relationship with Ms Alison Hale. Ms Hale was not at any point a customer of RHG or a borrower or mortgagor under the facility (**Facility**) the subject of the Saunders Submission.

Possession by order of the Supreme Court of New South Wales

RHG rejects the statement that possession of the property which secured the Facility (**Security Property**) was obtained illegally.

Possession of the Security Property was obtained in March 2016 pursuant to an order of the Supreme Court of New South Wales made on 15 December 2015, in the following circumstances:

- (a) In June 2015, consequent on default by Mr Saunders under the Facility, RHG served Mr Saunders with a notice pursuant to section 88 (**default notice**) of the National Credit Code (**NCC**) which is contained in Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**).
- (b) The default notice:
 - (i) required payment of the following missed payments: \$366.06 on 9 April 2015; \$406.41 on 16 April 2015, 30 April 2015, 21 May 2015 and 28 May 2015. The default notice also required payment of enforcement expenses of \$450;
 - (ii) provided Mr Saunders with a grace period of 31 days to rectify the default under the Facility.

- (c) Mr Saunders did not rectify the default in the grace period provided by the default notice with the consequence under the Facility that the full loan balance was due and payable.
- (d) On 2 July 2015, RHG sought possession of the Security Property by filing a statement of claim in the Supreme Court of New South Wales (**Supreme Court Proceedings**).
- (e) Mr Saunders did not file a defence in the Supreme Court Proceedings with the consequence that RHG was entitled to, and did on 15 December 2015, obtain, default judgment for possession of the Security Property (**Default Judgment**).
Before proceeding to obtain Default Judgment, RHG sent Mr Saunders the following SMS messages:

- On 2 November 2015: *"RHG will enter judgment against yourself without immediate payment of arrears"*
- On 19 November 2015: *"RHG is proceeding with a Judgement against yourself and [the property]"*
- On 24 November 2015: *"Due to ongoing arrears RHG must proceed with a Judgement application for [the property]"*.
- On 26 November 2015: *"Your RHG HL is \$1,982.22 behind and RHG is proceeding with the Judgment application"*.
- On 30 November 2015: *An application for Judgment against yourself has been submitted in the Supreme Court"*.

See the finding of the Supreme Court of New South Wales in judgment *RHG Mortgage Corporation Limited v Saunders* 2016 NSWSC 929 at [44] – [48].

- (f) On 19 May 2016, Mr Saunders filed a notice of motion (**Saunders' NOM**) in the Supreme Court of New South Wales seeking to set aside the Default Judgment on the basis of Mr Saunders' assertion that he was not served with the statement of claim which commenced the Supreme Court Proceedings.
- (g) On 23 July 2016, the day of hearing of the Saunders' NOM, Mr Saunders abandoned his assertion that he was not served with the statement of claim.

The Supreme Court of NSW found that Mr Saunders was served with the statement of claim on 28 July 2015: see *RHG Mortgage Corporation Limited v Saunders* 2016 NSWSC 929 at [43].

- (h) By judgment dated 6 July 2016, after a contested hearing with evidence, the Supreme Court of New South Wales dismissed the Saunders' NOM (**6 July 2016 Judgment**).
- (i) Mr Saunders sought to appeal the 6 July 2016 Judgment and successfully obtained orders restraining RHG from realising the Security Property. RHG was restrained from taking steps to realise the Security Property until 30 November 2016 when Mr Saunders abandoned the appeal and the New South Wales Court of Appeal formally dismissed the appeal.
- (j) After conducting repairs and improvements on the Security Property, RHG realised the Security Property on 23 March 2017, nearly 2 years after serving the Default Notice. There was a six figure shortfall between the net proceeds of sale of the Security Property and Mr Saunders' indebtedness to RHG under the Facility.

Origination and assertion of fraud

Mr Saunders applied for the Facility in September 2007. The loan under the Facility was advanced on 10 October 2007.

The Saunders' Submission notes, correctly, that the Facility was originated by Mr Saunders' bank manager, 'Mark from Holiday Coast Credit Union East Maitland' and originally funded by RAMS Home Loans.

RHG acquired a portfolio of loans from RAMS, which portfolio included the Facility. Issues of origination, including the assertion of inflated income and assets, should therefore be addressed to the Holiday Coast Credit Union East Maitland.

Hardship

In the period June 2011 to August 2013, Mr Saunders made at least five financial hardship applications in accordance with the NCCP Act and NCC. In accordance with the NCCP Act and NCC requirements imposed on RHG, RHG granted some of those applications and declined others. The Supreme Court of New South Wales found that Mr Saunders was well aware of the procedure for hardship applications under the NCCP Act and NCC (see: *RHG Mortgage Corporation Limited v Saunders* 2016 NSWSC 929 at [22]).

Interest of justice

The Supreme Court of New South Wales, ultimately found that it was not in the interests of justice to set aside the Default Judgment and return possession of the Security Property to Mr Saunders. Mr Saunders only started making part payments from 2 August 2016 because the Supreme Court of New South Wales ordered Mr Saunders to make part payments as a condition of the continued restraint on RHG from enforcing the Default Judgment.

From the date of the restraining order until Mr Saunders' appeal was dismissed, Mr Saunders made repayments in the order of \$8,000. As a gesture of good will RHG agreed to pay Mr Saunders \$8,000 out of the net proceeds of sale of the Security Property, despite RHG suffering a six figure shortfall on realisation of the Security Property.

Unfortunately, Mr Saunders did not receive the \$8,000 as RHG was directed to pay the Child Support Registrar all monies RHG had agreed to pay Mr Saunders. The direction to RHG was from the Commonwealth Government Department of Human Services pursuant to section 72A *Child Support (Registration & Collections) Act 1988* [REDACTED]

Conclusion

Any suggestion that RHG has acted contrary to the NCCP Act, the NCC, good industry practice or good conscience in respect of Mr Saunders is without foundation.

Ultimately to its own costs and detriment, RHG continually worked with Mr Saunders for a number of years to try and help him retain his home. If anything, this case is a prime example of a lender, despite complying with all relevant laws and good conscience, not being able to enforce its real property security in a timely manner.

The real world practical effect of cases like this is that lenders are increasingly unable to accurately price for risk when making loans with the very real possible consequence that the costs of capital are increased for all consumers, if it is available at all.

Regards,



Peter Fitzpatrick
Company Secretary
RHG Mortgages