

**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY**

No M219 of 2015

**ON APPEAL FROM THE FULL COURT OF THE FEDERAL COURT OF
AUSTRALIA**

BETWEEN

LUCIO ROBERT PACIOCCO
First Appellant

SPEEDY DEVELOPMENT GROUP PTY LTD
(ACN 006 835 383)
Second Appellant



AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522)
Respondent

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APPELLANTS' CHRONOLOGY

PART I: Certification re Internet Publication

1. This chronology is in a form suitable for publication on the internet.

16 October 2015
Filed on behalf of the Appellants
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PART II:¹ Chronology

| Date | Event | Ref |
|-----------|--|-------------------------|
| 16-Jun-06 | <p>The respondent (ANZ) informed the first appellant (Paciocco) by letter that he had been successful in his application for an ANZ Low Rate Mastercard account (number xxxx-xxxx-xxxx-9522) (First Card Account). The letter of offer stated, <i>inter alia</i>, in a section headed 'Credit Fees and Charges':</p> <p style="text-align: center;"><i>Late Payment Fee: A fee of \$35 will be charged to your credit card account if the "Monthly Payment" plus any "Amount Due Immediately" shown on the statement of account is not paid within 28 days of the end of the "Statement Period" shown on that statement.</i></p> | J[9], J[56] (AB[xx]) |
| 4-Sep-06 | A Late Payment Fee of \$35.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 4-Mar-07 | A Late Payment Fee of \$35.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 5-Aug-07 | A Late Payment Fee of \$35.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 4-Nov-07 | A Late Payment Fee of \$35.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 6-Apr-08 | A Late Payment Fee of \$35.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 6-Jul-08 | A Late Payment Fee of \$35.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 4-Aug-08 | A Late Payment Fee of \$35.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 4-Feb-09 | A Late Payment Fee of \$35.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |

¹ References in the chronology to 'J' are references to the reasons for judgment of the primary judge, which are reproduced at AB[xx]-[xx].

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| 24-Jul-09 | <p>ANZ informed Paciocco by letter that he had been successful in his application for an ANZ Low Rate Mastercard account (number xxxx-xxxx-xxxx-9629) (Second Card Account). The letter of offer stated, <i>inter alia</i>, in a section headed ‘Credit Fees and Charges’:</p> <p style="text-align: center;">Late Payment Fee</p> <p><i>A fee of \$35 will be charged to your credit card account if the “Monthly Payment” plus any “Amount Due Immediately” shown on the statement of account is not paid within 28 days of the end of the “Statement Period” shown on that statement.</i></p> | J[9], J[73] (AB[xx]) |
| Dec-09 | <p>The Late Payment Fee was amended from \$35.00 to \$20.00, with the amendment being published in the December 2009 fees and charges booklet, which relevantly stated:</p> <p style="text-align: center;">Late Payment Fee \$20</p> <p><i>Charged to your credit card account if the “Minimum Monthly Payment” plus any amount “Payable Immediately” shown on the statement of account is not paid by the “Due Date” shown on that statement.</i></p> | J[74] (AB[xx]) |
| 12-Jan-10 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 13-Jun-10 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 22-Sep-10 | <i>Andrews v Australia and New Zealand Banking Group Ltd</i> (VID811/2010) was commenced as a representative proceeding under Part IVA of the <i>Federal Court of Australia Act 1976</i> (Cth) (FCAA) | |
| 12-Jun-11 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 12-Oct-11 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 5-Dec-11 | The Federal Court (Gordon J) determined a series of separate questions in the <i>Andrews</i> proceeding including whether late payment fees were payable upon breach of contract, or alternatively whether they were capable of being characterised as a penalty even if not payable upon breach – late payment fees were held to be payable upon breach ² | |

² *Andrews v Australia and New Zealand Banking Group Ltd* (2011) 211 FCR 53; [2011] FCA 1376.

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| 4-Mar-12 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 6-May-12 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 11-May-12 | The High Court (French CJ and Crennan J) ordered the removal into that Court of an appeal by the applicants from the primary Judge's determination of the separate questions: [2012] HCATrans 104 | |
| 12-Jun-12 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 5-Aug-12 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 4-Sep-12 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 6-Sep-12 | The High Court delivered reasons for judgment, and made orders, in relation to the appeal from the primary Judge's determination of the separate questions in <i>Andrews</i> , declaring that the fact that certain fees (not including the late payment fees) were not payable upon breach of contract did not render them incapable of being penalties ³ | |
| 13-Jan-13 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 12-Feb-13 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 4-Mar-13 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 14-Mar-13 | <i>Paciocco v Australia and New Zealand Banking Group Ltd</i> (VID196/2013) was commenced as a representative proceeding under Part IVA of the FCAA, raising both the penalty claims and the statutory claims | |
| 4-Apr-13 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 3-May-13 | The Federal Court (Gordon J) determined that the <i>Paciocco</i> proceeding be determined prior to the balance of the <i>Andrews</i> proceeding | |

³ *Andrews v Australia and New Zealand Banking Group Ltd* (2012) 247 CLR 205; [2012] HCA 30.

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| 5-May-13 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 4-Jul-13 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 14-Jul-13 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 4-Aug-13 | A Late Payment Fee of \$20.00 was charged to the First Card Account | J[Ann 1] (AB[xx]) |
| 12-Aug-13 | A Late Payment Fee of \$20.00 was charged to the Second Card Account | J[Ann 1] (AB[xx]) |
| 2-4, 8-9 Dec-13 | Initial trial of the <i>Paciocco</i> proceeding in the Federal Court (Gordon J) | |
| 5-Feb-14 | The Federal Court (Gordon J) delivered reasons ⁴ in the <i>Paciocco</i> proceeding, to the effect that late payment fees were penalties at common law and in equity, and otherwise (save for an exception not presently relevant) dismissed the claims of the appellants ⁵ | (AB[xx]) |
| 13-Feb-14 | The primary Judge made final orders consequent upon the reasons for judgment in the <i>Paciocco</i> proceeding | (AB[xx]) |
| 5-Mar-14 | <i>Paciocco</i> filed a notice of appeal in respect of part of the orders made by the primary Judge (VID141/2014), contesting the primary Judge's finding that fees other than late payment fees were not penalties, and the primary Judge's failure to find that all types of exception fees (including late payment fees) contravened the various statutory regimes the subject of the statutory claims, and ANZ filed a notice of contention | (AB[xx]) |
| 6-Mar-14 | ANZ filed a notice of appeal in respect of part of the orders made by the primary Judge (VID149/2014), contesting the primary Judge's finding that late payment fees were penalties, and <i>Paciocco</i> filed a notice of contention to the effect that if these were not penalties, the judgment ought be sustained on the basis of the statutory claims | (AB[xx]) |
| 19-Mar-14 | The primary Judge made further orders (in relation to costs) consequent upon the reasons for judgment in the <i>Paciocco</i> proceeding | (AB[xx]) |


⁴ *Paciocco v Australia and New Zealand Banking Group Ltd* (2014) 309 ALR 249; [2014] FCA 35.

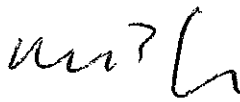
⁵ Order 4 reflected the respondent's admission that one type of fee charged to savings accounts was charged in breach of contract, and is not of present relevance, not having been the subject of any challenge in the Full Court of the Federal Court.

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| 8-Apr-15 | The Full Court of the Federal Court (Allsop CJ, Besanko and Middleton JJ) delivered reasons for judgment, ⁶ and made final orders: (a) dismissing the appellants' appeal (giving rise to proceeding M219 of 2015 in this Court, concerning the statutory claims – albeit limited to late payment fees); and (b) allowing ANZ's appeal in respect of late payment fees (giving rise to proceeding M220 of 2015 in this Court, concerning the penalty claims). | (AB[xx]) |
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Dated: 16 October 2015



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⁶ *Paciocco v Australia and New Zealand Banking Group Ltd* (2015) 321 ALR 584; [2015] FCAFC 50.