



MEDIA RELEASE: January 13 2009

BANKS TO PAY BACK LEGAL COSTS

Slater & Gordon is investigating a potential class action against St George and any other banks which have made customers pay legal costs greater than the amounts the banks actually paid to their lawyers.

A decision of the Victorian Court of Appeal in December 2008 may have far-reaching implications for banks across Australia.

Justice Hargrave expressed concern at St George's practice of demanding that borrowers and guarantors pay legal costs greater than what it paid to its lawyers and will refer the matter to the Australian Securities and Investments Commission.

During the course of *Boman Irani Pty Ltd & Ors v St George Bank Limited [2008] VSCA 246* it emerged that St George had an arrangement with its panel firm of solicitors to receive a rebate on the total legal fees paid in any financial year depending on the volume of fees charged by the law firm to it (i.e. the greater the volume of fees, the greater the rebate).

The Court found that St George's claim against the guarantor for "indemnity costs" of \$252,574.88 ought to be reduced by \$80,000 to account for the rebates St George had received from its lawyers.

The claim for indemnity costs arose because under the guarantee contract, like many loan and guarantee contracts, the bank had an entitlement to recover any legal costs it incurred in enforcing its rights on an indemnity basis.

While there is nothing improper about this provision itself, the failure of a bank to subsequently account for the volume rebate could mean that thousands of customers or guarantors may have paid sums of legal costs greater than the bank actually incurred.

Justice Hargrave found:

The conduct of the bank in seeking to retain the volume rebates for itself was wrongful and unjust. If the guarantors had paid all of the legal costs demanded of them, I can see no good reason why they could not have recovered the excessive costs from the bank as monies paid by mistake on principles of unjust enrichment [para 56].

...
It is incumbent upon the bank, and other banks and financiers which have similar arrangements in place...to ensure that they establish a system which ensures that customers, their guarantors and other third parties who are liable to indemnify them for their legal costs are given the appropriate credits forthwith upon the receipt of any volume rebate or like discount [para 59].

Companies or individuals who may have been forced into paying a bank's legal costs on an indemnity basis should contact Ben Hardwick at Slater & Gordon's Melbourne office.

For more information

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