

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Affidavit of Sue-Anne Thompson

File Number: ACT1 of 2019

File Title: Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code and the determination made by the ACCC on 5 December 2019

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

DEPUTY REGISTRAR

Dated: 5/05/2020 4:53 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

AFFIDAVIT OF SUE-ANNE THOMPSON
RE [REDACTED] CASE STUDY

Affidavit of: Sue-Anne Thompson
Address: Level 6, 179 Queen Street, Melbourne
Occupation: Senior Solicitor
Date: 1 May 2020

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Filed on behalf of (name & role of party) Consumer Action Law Centre
Prepared by (name of person/lawyer) Ursula Noye
Law firm (if applicable) Consumer Action Law Centre
Tel 03 9670 5088 Fax 03 9629 6898
Email ursula@consumeraction.org.au / rex@consumeraction.org.au
Address for service Level 6/179 Queen Street, Melbourne, VIC 3000
(include state and postcode)

I SUE-ANNE THOMPSON of Level 6, 179 Queen Street Melbourne, in the State of Victoria, solicitor, affirm:

1. I currently work as a Senior Solicitor at Consumer Action Law Centre ("**CALC**") on secondment from the Australian Government Solicitor. Whilst working at CALC, I am subject to the supervision of a Managing Lawyer and the Director of CALC's legal practice.
2. After commencing work at CALC on 8 October 2018, I assumed responsibility for the day to day conduct of the CALC file in respect of Ms [REDACTED] under the supervision of Mr David Maunsell, Managing Lawyer.
3. I make this affidavit on the basis of my own knowledge, except where indicated. Where I depose to matters on information and belief, I set out the basis of my belief and I believe such matters to be true.
4. I have obtained the consent of Ms [REDACTED] to disclose the matters set out in this affidavit. Except with respect to the matters set out in this affidavit, I am not authorised to and do not intend to waive any client legal privilege held by Ms [REDACTED] and nothing in this affidavit may be construed as involving any waiver of privilege.
5. I have been informed by Ursula Noye, Special Counsel at CALC with carriage of this matter for CALC, and believe that:
 - a. CALC has obtained the consent, of Flexigroup Pty Ltd, the parent company of Certegy Ezi-Pay Pty Ltd ("**Certegy**") at the relevant time, to a waiver of our client's obligation to keep the details of the resolution of her matter confidential for the purpose of determining this application; and
 - b. Flexigroup admits the documentation to which I refer and annex to this affidavit save for the correspondence between CALC and Green Power Gen and the letter from CALC to Consumer Affairs Victoria ("**CAV**") dated 27 June 2019.

September 2018: [REDACTED]

6. In September 2018, CALC received a referral by email from CAV in respect of Ms [REDACTED] who was seeking legal assistance in relation to a matter concerning the purchase of solar panels.

7. CALC agreed to represent Ms [REDACTED] in her dispute with Green Power Gen (the solar company) and Certegy (a provider of 'buy now pay later' finance). Green Power Gen is a registered business name of Ubaid Trading Pty Ltd.

Ms [REDACTED] circumstances and the events giving rise to the dispute with Green Power Gen and Certegy

8. Ms [REDACTED] provided instructions as to the following matters concerning her circumstances and the events giving rise to the dispute with Green Power Gen and Certegy:
- a. Ms [REDACTED] was born on 12 November 1947 and lives alone in country Victoria. She has serious health issues having suffered a number of strokes and is vision impaired. The Centrelink aged pension is her only source of income.
 - b. On 26 June 2018, a representative of "Green Power Gen" knocked on Ms [REDACTED] door. The representative promoted the benefits of a Green Power Gen solar panel package he offered to sell to Ms [REDACTED]
 - c. Ms [REDACTED] asked the representative a number of times for information about the solar panel package and the total cost. She recalled the representative as being evasive. He did not answer her questions directly and said to Ms [REDACTED] that she would not regret it (the decision to purchase the solar panel package).
 - d. Ms [REDACTED] felt pressured into signing the documents the representative asked her to sign so that he would leave her home. She signed a Green Power Gen document headed "Solar System Agreement", which stated that the cost to purchase a 3kW solar system with "11-12" panels would be \$7,150 including GST ("**the Solar Agreement**"). Annexed hereto and marked '**SAT-1**' is a copy of the Solar Agreement dated 26 June 2018.
 - e. At the time of signing the Solar Agreement, Ms [REDACTED] did not understand the terms and did not know the total amount to be paid pursuant to the Agreement. Ms [REDACTED] was unable to read the carbon copy of the Solar Agreement as it is in faint ink on pink paper and she is vision impaired. Ms [REDACTED] did not appreciate that the documents the representative asked her to sign also included a Certegy Credit Schedule ("**the Certegy Agreement**").

- f. The representative did not:
- i. provide his full name to Ms [REDACTED]
 - ii. inform Ms [REDACTED] that he was obliged to leave her home upon request; or
 - iii. inform Ms [REDACTED] of her cooling off-rights in respect of unsolicited consumer agreements under Division 2 of Part 3.2 of the *Australian Consumer Law* (“ACL”).
- g. Ms [REDACTED] subsequently received a “Welcome to Certegy” letter dated 28 July 2018, which referred to fortnightly payments of \$69.95 and to a monthly account fee. The letter did not set out the total amount to be paid by Ms [REDACTED]. It was only upon receipt of the Certegy Welcome Letter that Ms [REDACTED] became aware of Certegy.
- h. Ms [REDACTED] does not recall the date or the names of the tradesmen who installed the solar panels at her home.
- i. A Certificate of Electrical Safety was issued by Energy Safe Victoria on 4 August 2018. According to the Certificate the installation of the solar panels was completed at Ms [REDACTED] address on 28 July 2018. Annexed hereto and marked ‘SAT-2’ is a copy of the Certificate dated 4 August 2018.
- j. On 9 August 2018, the first payment of \$73.45 to Certegy was deducted from Ms [REDACTED] CBA bank account. This resulted in Ms [REDACTED] account going into default and an overdrawing fee being charged.
- k. On 24 August 2018, the second payment was deducted from Ms [REDACTED] bank account. The second payment left Ms [REDACTED] with insufficient funds to meet everyday living expenses. She was not able to afford the Certegy repayments.
- l. After the second payment to Certegy was deducted from Ms [REDACTED] account, the local bank manager assisted Ms [REDACTED] to cancel the direct debit payments to Certegy.
- m. Certegy subsequently contacted Ms [REDACTED] by telephone and by letter dated 12 September 2018 demanding payment of \$7,146.00. Ms [REDACTED] continued to receive calls from Certegy demanding payment. Ms [REDACTED] felt threatened and distressed.

Termination of the Solar Agreement

9. By email dated 26 September 2018, David Maunsell gave notice to Green Power Gen that Ms [REDACTED] wished to terminate the Solar Agreement as an unsolicited consumer agreement pursuant to section 82 of the ACL (“**the Notice of Termination**”). Annexed hereto and marked “**SAT-3**” is a printed copy of the email transmission dated 26 September 2018.

October 2018 – March 2019: Correspondence between CALC and Certegy

10. On 11 October 2018, I sent a letter to Mr [REDACTED] General Counsel at Certegy (“**the First Letter of Demand**”). Annexed hereto and marked ‘**SAT-4**’ is a copy of the letter. The letter notified Certegy that:
- a. Ms [REDACTED] had given notice to Green Power Gen terminating the Solar Agreement as an unsolicited consumer agreement pursuant to section 82 of the ACL and that, because the Solar Agreement was financed by Certegy, the Certegy Agreement was therefore also void, as a related contract or instrument under section 83(2) of the ACL;
 - b. alternatively, Ms [REDACTED] elected to terminate or rescind the Certegy Agreement on the basis that Certegy, as a linked credit provider, was jointly liable for breaches of the ACL engaged in by Green Power Gen; and
 - c. Ms [REDACTED] reserved her rights at a later date to raise other legal arguments, including that the Certegy Agreement is a credit contract within the meaning of the *National Credit Code*.
11. In the letter, I proposed, as a resolution to the matter, that Certegy refund all money paid by Ms [REDACTED] to Certegy, release Ms [REDACTED] from all liability to Certegy and close her revolving credit account.
12. After sending the First Letter of Demand, I contacted Mr [REDACTED] by email on 29 October 2018, by telephone on 5 November 2018, and by email on 7 November 2018 seeking a response to the letter of 11 October 2018.
13. On 7 November 2018, I received an email from Mr [REDACTED] stating that Certegy required “further information in order to assess the validity or otherwise of the section 82 notice previously provided to Green Power Gen”. Annexed hereto and marked ‘**SAT-5**’ is a printed copy of the email chain containing the emails of 29 October 2018 and 7 November 2018.

14. On 22 November 2018, I sent a further letter to Certegy (“**the Second Letter of Demand**”). Annexed hereto and marked ‘**SAT-6**’ is a copy of the letter dated 22 November 2018. In this letter, I reiterated that Ms [REDACTED] had validly terminated the Solar Agreement by giving the Notice of Termination to Green Power Gen on 26 September 2018, and stated that Ms [REDACTED] was prepared to settle the dispute on the basis that Certegy:
 - a. provide a refund of all the monies paid to Certegy;
 - b. fully and finally release Ms [REDACTED] from all liability and close her revolving account; and
 - c. would not place a default against Ms [REDACTED] name with any reporting agency or, if a report had been made, would take immediate steps to have the information removed.
15. On 7 December 2018, I received an email from Ms [REDACTED] Lawyer at Certegy, attaching a letter from Mr [REDACTED] (“**the Certegy Settlement Offer**”). Annexed hereto and marked ‘**SAT-7**’ is a copy of the letter dated 7 December 2018.
16. In that letter, Mr [REDACTED] stated that Certegy had considered the circumstances outlined in the Second Letter of Demand and wished to resolve the matter on the basis that:
 - a. Certegy would cancel Ms [REDACTED] payment plan and refund the amount of \$143.40 for all payments made in relation to Ms [REDACTED] account; and
 - b. Certegy would close Ms [REDACTED] revolving credit account;
 - c. Ms [REDACTED] would release Certegy from any further actions or costs associated with this matter; and
 - d. CALC and Ms [REDACTED] be required to keep the details of this matter and its resolution confidential.
17. Mr [REDACTED] also stated that Certegy does not record adverse listings on any of its consumers’ credit files.
18. By email dated 13 December 2018, I sent a letter to Mr [REDACTED] containing a counteroffer (“**the Counteroffer**”). Annexed hereto and marked ‘**SAT-8**’ is a copy of the letter dated 13 December 2018.

19. The Counteroffer proposed terms of settlement which were the same in substance as Certegy's Settlement Offer, except that it stipulated that:
- a. the refund amount would be paid by electronic transfer to Ms [REDACTED] bank account on or before 21 December 2018; and
 - b. Ms [REDACTED] would agree to keep the terms of the settlement, but not the fact of the settlement, confidential except for the purposes of:
 - i. obtaining legal or accounting advice regarding the settlement;
 - ii. complying with a legal obligation; or
 - iii. enforcing the terms of settlement;
20. I also stated in the Counteroffer that CALC was not a party to the dispute and therefore would not agree to be bound by a confidentiality obligation.
21. On 13 December 2018, I sent a letter by email to Green Power Gen stating that:
- a. the Solar Agreement was an unsolicited consumer agreement within the meaning of the ACL;
 - b. Green Power Gen had contravened provisions of the ACL governing unsolicited consumer agreements including section 74 (Disclosing purpose and identity), 76 (Informing person of termination period) and 79 (Requirements for all unsolicited consumer agreements) of the ACL;
 - c. Ms [REDACTED] exercised her rights to terminate the Solar Agreement within the extended cooling-off period provided for in sub-sections 82(3)(c)(i) and 82(3)(d)(i) of the ACL; and
 - d. Ms [REDACTED] gives notice pursuant to section 85(1)(b) of the ACL that the solar panels may be collected from her property by prior appointment
- ("the Detailed Letter to Green Power Gen").**
22. Annexed hereto and marked '**SAT-9**' is a copy of the **Detailed Letter to Green Power Gen**.
23. In the period from 18 December 2018 to 29 January 2019, I contacted Certegy on numerous occasions by email and by telephone seeking a response to my letter of 13 December 2018 including:

- a. a telephone call to Ms [REDACTED] on 18 December 2018;
 - b. a telephone call to Ms [REDACTED] on 19 December 2018;
 - c. an email to Ms [REDACTED] and Mr [REDACTED] on 19 December 2018;
 - d. a telephone call to Ms [REDACTED] on 20 December 2018;
 - e. a telephone call to Ms [REDACTED] on 3 January 2019;
 - f. a telephone call to Ms [REDACTED] on 4 January 2019;
 - g. an email to Ms [REDACTED] and Mr [REDACTED] on 4 January 2019;
 - h. a telephone call to Ms [REDACTED] on 14 January 2019;
 - i. a telephone call to Ms [REDACTED] on 17 January 2019;
 - j. an email to Ms [REDACTED] and Mr [REDACTED] on 24 January 2019; and
 - k. a telephone call to Ms [REDACTED] on 29 January 2019.
24. On 30 January 2019, I received an email from Ms [REDACTED] attaching a letter from Mr [REDACTED] in which Mr [REDACTED] confirmed Certegy's acceptance of the Counteroffer and advised that the refund would be paid to Ms [REDACTED] bank account within 7 days. Annexed hereto and marked 'SAT-10' is a copy of the letter dated 30 January 2019.
25. I replied by email on the same day, requesting that the refund be paid to Ms [REDACTED] bank account within 7 days, that is, on or before 6 February 2019.
26. Between 7 February 2019 and 27 March 2019, I contacted Certegy on numerous occasions by email and by telephone requesting payment of the refund amount including:
- a. an email to Ms [REDACTED] and Mr [REDACTED] on 7 February 2019;
 - b. an email to Ms [REDACTED] (cc Mr [REDACTED] on 20 February 2019;
 - c. a telephone call to Ms [REDACTED] on 27 February 2019;
 - d. a telephone call to Ms [REDACTED] on 7 March 2019;
 - e. an email to Ms [REDACTED] and Mr [REDACTED] on 18 March 2019;

- f. a telephone call to Ms [REDACTED] on 27 March 2019; and
 - g. a telephone call to Mr [REDACTED] on 27 March 2019.
27. During the telephone call with Mr [REDACTED] on 27 March 2019, he stated that there had been problems processing refunds and that he would expedite the processing of the refund for Ms [REDACTED]
28. Annexed hereto and marked '**SAT-11**' is a printed copy of the email correspondence with Certegy in the period between 7 February 2019 and 18 March 2019.
29. On 1 April 2019, Ms [REDACTED] telephoned me to confirm that she had received the refund from Certegy.

June 2019: Complaint to Consumer Affairs Victoria

30. By letter dated 27 June 2019, I submitted a complaint about Green Power Gen to CAV, a copy of which was also sent to Solar Victoria, setting out the systemic issues in CAV's field of regulation raised by Ms [REDACTED] experience ("**the CAV Complaint**"). The CAV Complaint referred to CALC's Sunny Side up Report and noted that Ms [REDACTED] case is illustrative of a number of public policy issues arising in relation to the sale and installation of solar panels – namely, consumers who have been the target of unsolicited sales of solar panels and who have entered - unknowingly in Ms [REDACTED] case - into finance agreements which are unaffordable. Annexed hereto and marked '**SAT-12**' is a copy of the letter dated 27 June 2019.
31. The CAV Complaint did not identify Certegy as the finance provider due to confidentiality of the settlement with Ms [REDACTED]

AFFIRMED by the deponent
at Melbourne in the state of Victoria on
1 May 2020

.....
Sue-Anne Thompson

.....
Before me:

**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-1**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:

Green Power Gen

Ubaid Trading Pty Ltd

No: 9163

Solar System Agreement

ABN: 87 150 652 029

GreenPowerGen

3 - 49 Lara Way, Campbellfield VIC 3061

12 Millennium Ct, Silverwater NSW 2128

Ph: (03) 9357 5957

Tel: 1300 878 225

www.greenpowergen.com.au

*

First Name: Last Name:

Address:

NMI#:

Phone: Mobile: *04004293625*

Email:

Roof Type: TIN TILED FLATE

Dewlling Type: SINGLE DOUBLE

SYSTEM DETAILS

System Size: KW Panels Inverter

System Price \$ INC GST REC Discount \$ INC GST

PAYMENT DETAILS

Deposit \$ INC GST Balance \$ INC GST

Certegy: YES NO

Please Accept my deposit of AUS \$

BY Credit Card MASTER CARD VISA AMERICAN EXPRESS DINERS

Credit Card no

CCV Expiry

Name on Card:

By Electronic Transfer

Account Name: Ubaid Trading Pty Ltd BSB: 063-135 ACC: 10616515

BY CHEQUE BY CASH

IMPORTANT NOTICE TO CUSTOMER: You have a right to cancel the agreement within 10 business days from and including the day after you signed or received this agreement. details about your additional rights to cancel the agreement are set out in terms and conditions attached to this agreement

Executed As An Agreement

Client Name: Client Signature: Date: *26-06-15*

Signed for and on behalf of GreenPowerGen: Date: *26-06-15*

Sales Person:

Agreement Terms

The client who signed this agreement hereby agree to the following terms and conditions

1. The customer engages Ubaid Trading Pty Ltd to install a solar system and the customer hereby agrees to pay Ubaid Trading Pty Ltd for this installation of solar system according to payment policy section of this agreement.
2. The customer agrees upon signing the agreement to pay Ubaid Trading Pty Ltd a deposit of a sum as agreed after 10 business day of signing of this agreement failure to pay the deposit will render this agreement to be void unless authorized person in Ubaid Trading Pty Ltd consider otherwise. The amount of deposit and outstanding balance are clearly stated in payment detail section.
3. Ubaid Trading Pty Ltd agrees upon signing this agreement to commence installation process after cooling off periods mentions in agreement. Customer will have advised is only an estimate time frame of the installation process. However, the time frame is advised is only an estimate and does not mean to the customer.
4. The customer agrees to pay Ubaid Trading Pty Ltd the balance set out in payment details section on the date of completion of solar system. The solar system will remain property of Ubaid Trading Pty Ltd unless it is paid in full. Customer has allowed Ubaid Trading Pty Ltd to remove solar panel, inverter and other parts installed if the payment is not made within prescribed time frame.
5. The customer by signing agrees that Ubaid Trading Pty Ltd may vary the use of solar system component if Ubaid Trading Pty Ltd find it fit and reasonable, including but not limited to be, in situation which the prescribed components are discontinued or out of stock without an estimated and/or reasonable date of arrival from suppliers.
6. The customer acknowledges that after the completion of solar system Ubaid Trading Pty Ltd will not permit any subsequent changes, modification or reinstallation of the installed system.
7. Prices and saving only available if the solar system purchased is eligible for the Government Solar Credit Scheme and you agree to give the rights to Ubaid Trading Pty Ltd price subject to change without notice if value of STC changes.
8. Customer agrees to pay 1% surcharge of total amount if pay by Master Card, Visa Card
9. The overall sale price depends on the renewable energy certificate (REC's) value. If REC's value decreased by 15-20% in the period between the time of sale and installation, Ubaid Trading Pty Ltd reserves the right to adjust the price accordingly.
10. If there is a change to RET program, Ubaid Trading Pty Ltd reserves the right to adjust the price accordingly with the fluctuation of the REC's multiplier.
11. The total cost of installation less the deposit paid is payable upon completion of the installation and all paper work for final safety inspection will be processed then

Therefore, in consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

The customer agrees to pay Ubaid Trading Pty Ltd the charges basis with respect to selected solar system installation.

Representation

The parties to this agreement acknowledge a complete and full understanding of terms and condition of this agreement and agree that this agreement constitute the enter contract between the parties and supersedes any prior understanding or agreements between them upon the subjects covered in the Agreement, and that there are no representative or Warranties other than set forth herein .

Right to terminate

Customer agrees to terms and conditions above. The customer may terminate this agreement by delivering written notice of termination here of the Ubaid Trading Pty Ltd so that it is received by Ubaid Trading Pty Ltd not later than 10 days after execution of this agreement.

The cooling off period begins on the first business day after customer sign and receives this agreement .

Ubaid Trading Pty Ltd will neither install nor provide any goods or services under the agreement during the cooling off period.

Ubaid Trading Pty Ltd will not demand or accept payment from customer for any goods or services provided under the agreement during the cooling-off period: and customer cannot forfeit their rights under the cooling off period.

The customer cooling off period will be extended from 10 days to 6-month commencing on the first business day after the agreement was made if Ubaid Trading Pty Ltd install, provide or accept payment for, any goods or services under the agreement during the 10 days cooling off period .

**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-2**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:

CERTIFICATE OF ELECTRICAL SAFETY for Prescribed Electrical Installation Work

ELECTRICITY SAFETY ACT 1998, ELECTRICITY SAFETY (INSTALLATIONS) REGULATIONS 2009

CERTIFICATE OF COMPLIANCE

1 Responsible Person (eg. electrical contractor, supervising electrician, electrician)

REC reg./licence no. 19326. Telephone no. 0418 208057.

Name Green Zone electrics PM LTD.

Business Address 55 Spring Hill drive, Craulbourne north

2 Licensed Electrical Installation Worker (eg. electrician)

Licence no. [REDACTED]

Name [REDACTED]

3 Details of Electrical Installation

Name of customer [REDACTED]

Address of installation (include lot no. if required) [REDACTED]

Suburb or town [REDACTED]

Telephone [REDACTED]

NMI (if available) [REDACTED]

4 Electrical Work Undertaken

No. light points No. single socket outlets No. double socket outlets Have you installed contestable metering equipment or metering equipment associated with an embedded network? Yes No

Maximum demand in amps per phase on completion Consumers mains capacity in amps

Description of work undertaken (if insufficient space, please attach list)

Install 3kw solar pump system.
install 11 x 270 watts solar panels
install 4kw Bosch inverter
install 2 x D/L isolator.

5 Has this prescribed electrical installation work failed a previous inspection? Yes No

If yes, quote previous certificate number

6 Type of prescribed electrical installation work (refer back of certificate for types) 1 2 3 4 5 6 7 8 9 10

7 Does this installation work include non-prescribed electrical installation work? Yes No

8 Type of property where the electrical installation work is carried out: (refer back of certificate for types)
 1 Domestic 2 Non Domestic 3 Construction

I, the licensed electrical installation worker named above, who carried out the electrical installation work described above, certify that the electrical work has passed all the required tests and complies in all respects with the Electricity Safety Act 1998 and the Electricity Safety (Installations) Regulations 2009.

Signature [REDACTED]
 (Licensed Electrical Installation Worker)

9 Date of completion of work 28/12/18 10 Date Certified 28/12/18

Certificate no. **4047 5236 9**



CERTIFICATE OF INSPECTION

Details of Licensed Electrical Inspector (LEI)

Name [REDACTED]

Licence no. [REDACTED]

Inspector's Employer

Name (if Applicable) TJS INSPECTIONS

Details of Defects

Please supply defect code(s)

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I, the Licensed Electrical Inspector named above, have inspected the prescribed electrical installation work as described in the certificate of compliance and certify that the work

complies does not comply

with the Electricity Safety Act 1998 and the Electricity Safety (Installations) Regulations 2009

Signature [REDACTED]

Date inspected 01/08/18
 Date certified 01/08/18

Electricity supplier code (refer back of certificate for codes) 2

Safety Statement
 In accordance with Regulation 242 (d) this electrical installation appears to be electrically unsafe
 unsafe



**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-3**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:

Sue-Anne Thompson

From: David Maunsell <david.m@consumeraction.org.au>
Sent: Wednesday, 26 September 2018 3:57 PM
To: info@greenpowergen.com.au
Subject: Agreement with [REDACTED] dated 26/06/2018

Dear Sir/Madam

We act on behalf of [REDACTED] an elderly and disabled pensioner who lives alone, in relation to the above agreement.

This agreement was an unsolicited agreement under the Australian Consumer Law (ACL).

This entitles our client to terminate the agreement under Section 82 (c) of the ACL and on this basis our client hereby terminates the agreement.

We expect to be in contact with you again in due course once we have further instructions from our client.

Please address any communication concerning this matter to our office and not to our client.

Your faithfully

David Maunsell

Managing Lawyer



our vision: a just marketplace where people have power and business plays fair

our purpose: to make life easier for people experiencing vulnerability and disadvantage in Australia



Consumer Action is located on the land of the Traditional Owners. We acknowledge their history, culture and Elders both past and present.

ConsumerAction.org.au – Help.ConsumerAction.org.au – Workers.ConsumerAction.org.au – Policy.ConsumerAction.org.au – NDH.org.au

M: Level 6, 179 Queen Street
MELBOURNE VIC 3000
P: +61 3 8554 6958 (direct)
P: +61 3 9670 5088 (reception)
F: +61 3 9629 6898

E: david.m@consumeraction.org.au

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**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-4**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:



Level 6, 179 Queen Street
Melbourne, VIC 3000

info@consumeraction.org.au
consumeraction.org.au
T 03 9670 5088
F 03 9629 6898

Our Ref: 252928
Contact: Sue-Anne Thompson

11 October 2018

Attention: Mr [REDACTED]
Director – Legal & Compliance
Certegy Ezi-Pay Pty Ltd
GPO Box 1878
ADELAIDE SA 5001
Email: [REDACTED]@certegy.com.au

Dear Sir

Mrs [REDACTED] – Termination of unsolicited consumer agreement with Green Power Gen; Certegy Ezi-Pay Pty Ltd – Purchase No. 22951860; your reference 1777071/EPACI

We act for Mrs [REDACTED] and enclose a copy of her privacy authority.

Please direct all future correspondence regarding this matter to our office and please do not communicate directly with our client. In particular please cease making further oral or written requests to our client for payment of alleged monies owing.

The demand for payment in relation to Purchase No. 22951860

We refer to the letter dated 12 September 2018 from Certegy Collection Services to our client requesting payment of \$7,146.00 in relation to a Certegy Ezi-Pay Payment Plan contract with Green Power Gen.

Our client, who is an elderly and disabled pensioner, instructs us that she has also recently received telephone calls from Certegy Collection Services demanding payment which have caused distress to her.

Termination of unsolicited consumer agreement with Green Power Gen (the Solar Agreement)

Our client has given notice to Green Power Gen terminating the Solar Agreement with Green Power Gen pursuant to s82 of the *Australian Consumer Law (ACL)*.



The Solar Agreement was financed by Certegy Ezi-Pay Pty Ltd (the Certegy Agreement). As a result, the Certegy Agreement, as a related contract or instrument under s83(2) of the ACL, is void.

Resolution of this matter

In the alternative our client elects to terminate or rescind the Certegy Agreement on the basis that Certegy, as a linked credit provider, is jointly liable for breaches of the ACL engaged in by Green Power Gen and reserves her rights to raise other legal arguments including that the Certegy Agreement is a credit contract within the meaning of the *National Credit Code*, at a later date.

Please confirm within 14 days of the date of this letter that Certegy Ezi-Pay Pty Ltd will:

- 1) Provide a refund of the monies paid by our client in connection with Purchase No. 22951860;
- 2) Release our client from all liability to Certegy Ezi-Pay Pty Ltd in relation to Purchase No. 22951860 and close her revolving credit account.

Please direct any queries to Sue-Anne Thompson of our office on telephone 03 9670 5088 or by email addressed to sue-anne@consumeraction.org.au.

Yours faithfully,

CONSUMER ACTION LAW CENTRE



**David Maunsell
Managing Lawyer**



**Sue-Anne Thompson
Senior Solicitor**



**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-5**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:

Sue-Anne Thompson

From: [REDACTED] <[REDACTED]@flexigroup.com.au>
Sent: Wednesday, 7 November 2018 12:49 PM
To: Sue-Anne Thompson
Subject: RE: Mrs [REDACTED] - Green Power Gen; Certegy Ezi-Pay Pty Ltd - Purchase No. 22951860
Attachments: Certificate of Electrical Safety [REDACTED].pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sue-Anne,

As discussed on Monday, I have reviewed the matter involving your client Mrs [REDACTED]. While we had not previously provided a response (and apologies for the delay in providing our substantive response below), I have reviewed the issues raised in your letter together with Green Power Gen’s response to the same.

Further information needed

We require further information in order to assess the validity or otherwise of the section 82 notice previously provided to Green Power Gen.

We need further information because the chronology of events does not appear to support a valid exercise of cooling-off rights by Mrs [REDACTED]. Below I have set out our understanding of the timing of relevant events.

Chronology

| Date | Event |
|----------|---|
| 26/06/18 | Green Power Gen agreement signed. |
| 26/06/18 | Certegy Ezi-Pay agreement signed. |
| 28/07/18 | Date of completion of work (according to Certificate of Electrical Safety) |
| 28/07/18 | Date of STC Assignment Form |
| 04/08/18 | Date of completion of Certificate of Electrical Safety (attached) |
| 10/08/18 | Certegy Ezi-Pay contacted Mrs [REDACTED] to ascertain certain compliance details. No relevant compliance issues were disclosed or identified. |
| 12/09/18 | Consumer notified Certegy Ezi-Pay that complaint was made to Ombudsman |

There is approximately one month between the signing of the relevant agreements and the installation of the system. Therefore the 10 Business Day cooling-off period under the Australian Consumer Law elapsed prior to the purported exercise of cooling-off rights by Mrs [REDACTED]. I have reviewed the Green Power Gen sale agreement and note the inclusion of the requisite disclosure text around unsolicited sales.

In view of the above, we wish to understand whether CALC considers that there has been some other breach of the Australian Consumer Law to support the validity of the section 82 notice.

Could you please respond with details of any relevant facts that may help us resolve the matter.

Kind regards,

[REDACTED]
 General Counsel

08 8464 1856
0419122917

@ [REDACTED]@flexigroup.com.au



FLEXIGROUP

Level 6/97 Pirie Street, Adelaide SA 5000
GPO Box 1878, Adelaide SA 5001
certegyezipay.com.au

From: Sue-Anne Thompson [mailto:sue-anne@consumeraction.org.au]

Sent: Wednesday, 7 November 2018 11:30 AM

To: [REDACTED] <[REDACTED]@flexigroup.com.au>

Subject: Mrs [REDACTED] - Green Power Gen; Certegy Ezi-Pay Pty Ltd - Purchase No. 22951860

Dear [REDACTED]

1. I refer to our telephone conversation on 5 November 2018 regarding this matter.
2. Would you please advise when we can expect to receive a response to our letter of 11 October 2018.
3. Should you wish to discuss this matter please contact me on 03 9670 5088.

Yours sincerely

Sue-Anne Thompson

Senior Solicitor



our vision: a just marketplace where people have power and business plays fair

our purpose: to make life easier for people experiencing vulnerability and disadvantage in Australia



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ConsumerAction.org.au – Help.ConsumerAction.org.au – Workers.ConsumerAction.org.au –
Policy.ConsumerAction.org.au – NDH.org.au

M: Level 6, 179 Queen Street
MELBOURNE VIC 3000

P: +61 3 9670 5088 (reception)
F: +61 3 9629 6898
E: sue-anne@consumeraction.org.au

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Please consider the environment before printing this email

From: Sue-Anne Thompson
Sent: Monday, 29 October 2018 4:00 PM
To: [REDACTED]@certegy.com.au [REDACTED]@certegy.com.au>
Subject: Mrs [REDACTED] - Green Power Gen; Certegy Ezi-Pay Pty Ltd - Purchase No. 22951860

Dear Mr [REDACTED]

1. We refer to our letter dated 11 October 2018.
2. Would you please advise when we can expect to receive a response.
3. Should you wish to discuss this matter please contact me on 03 9670 5088.

Yours sincerely

Sue-Anne Thompson

Senior Solicitor



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Please consider the environment before printing this email

From: Sue-Anne Thompson
Sent: Thursday, 11 October 2018 1:02 PM
To: [REDACTED]@certegy.com.au' [REDACTED]@certegy.com.au>
Subject: Mrs [REDACTED] - Green Power Gen; Certegy Ezi-Pay Pty Ltd - Purchase No. 22951860

Attention: Director Legal & Compliance

Dear Sir

Please see attached letter of today's date.

Yours faithfully

Sue-Anne Thompson

Senior Solicitor



our vision: a just marketplace where people have power and business plays fair

our purpose: to make life easier for people experiencing vulnerability and disadvantage in Australia



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**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-6**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:



Level 6, 179 Queen Street
Melbourne, VIC 3000

info@consumeraction.org.au
consumeraction.org.au
T 03 9670 5088
F 03 9629 6898

Our Ref: 252928
Contact: Sue-Anne Thompson

22 November 2018

Attention: Mr [REDACTED]
Director – Legal & Compliance
Certegy Ezi-Pay Pty Ltd
GPO Box 1878
ADELAIDE SA 5001

Email: [REDACTED]@certegy.com.au

Dear Mr [REDACTED]

Mrs [REDACTED] Termination of unsolicited consumer agreement with Green Power Gen (the Solar Agreement); Certegy Ezi-Pay Pty Ltd – Purchase No. 22951860 (your reference 1777071/EPACI)

1. We refer to your email correspondence of 7 November 2018.
2. We maintain that our client validly terminated the Solar Agreement by the giving of a notice to Green Power Gen on 26 September 2018 pursuant to s82 of the *Australian Consumer Law* (ACL).
3. We have not received any communication from Green Power Gen since giving notice of termination of the Solar Agreement. Please provide us with a copy of the correspondence you received from Green Power Gen in respect of this matter.

Background

4. Our client is an elderly pensioner living alone in country Victoria. She has serious health issues having suffered a number of strokes and is vision impaired.
5. On 26 June 2018 a salesperson from Green Power Gen identified only as [REDACTED] arrived unannounced at our client's home. The salesperson had not been invited to our client's home and did not inform our client that he was obliged to leave immediately on request. At no time did he provide his full name.



6. Our client asked the salesperson a number of times for information regarding the solar panel package and the total cost but the salesperson was evasive simply telling her she would not regret it.
7. Our client felt pressured into signing the documents the salesperson asked her to sign so that he would leave her home. She signed the Solar Agreement not knowing what the total cost would be. Our client is unable to read the carbon copy of the agreement the salesperson gave to her as it is in faint ink on pink paper and her eyesight is poor.
8. The salesperson did not advise our client of her cooling off rights under the ACL.
9. Our client does not recall the date but does not dispute that it was a couple of weeks after the salesperson attended at her home when tradesmen arrived at her home to install the solar panels.
10. Our client did not appreciate that the documents the salesperson asked her to sign also included a Credit Schedule with Certegy Ezi-Pay Pty Ltd (the Certegy Agreement).
11. Our client only became aware of Certegy when she received the 'Welcome to Certegy' letter dated 28 July 2018.
12. The letter from Certegy refers to fortnightly payments of \$69.95 and to a monthly account fee but does not set out the total amount to be paid by the client.
13. On 9 August 2018 the first payment of \$73.45 to Certegy was deducted from our client's bank account. This resulted in the account going into default and an overdrawing fee being charged.
14. It was not until sometime after 13 August 2018 that Certegy provided the client with a statement setting out details of the payment plan and the total amount to be paid.
15. On 24 August 2018 the second payment to Certegy was deducted from our client's account which left her with insufficient funds to meet everyday living expenses. Our client was not able to afford the payments and cancelled the direct debit.
16. Certegy Collection Services then contacted our client by telephone and by letter dated 12 September 2018 demanding payment. Our client continued to receive calls from Certegy Collections which left her feeling threatened and distressed.

Termination of the Solar Agreement

17. On 26 September 2018 our client terminated the Solar Agreement by giving notice to Green Power Gen pursuant to s82 of the ACL.
18. Our client relies on the extended cooling off periods provided for in s82(3)(c)(i) and s82(3)(d)(i) of the ACL due to contraventions of the unsolicited consumer agreement provisions of the ACL by Green Power Gen. Notice of termination was given to Green Power Gen within the extended periods.



19. Green Power Gen's failure to comply with its obligations also makes the Solar Agreement unenforceable pursuant to s93 of the ACL

Breaches of the unsolicited consumer agreement provisions of the ACL

20. Green Power Gen breached the ACL provisions in relation to unsolicited consumer agreements by, amongst other things, failing to comply with the requirements in s74 with respect to disclosure of purpose and identity and the requirements in s76 with respect to the disclosure of information. Further, the Solar Agreement does not comply with the requirements in s79 regarding an unsolicited consumer agreement.

Breach of s74 of the ACL

21. The salesperson who attended at our client's home was very insistent and contrary to s74 he:

- a) Did not advise our client that he was obliged to leave the premises immediately on request.
- b) Failed to disclose his full identity. The salesperson identified himself only as [REDACTED]; the business card he provided to our client refers only to [REDACTED]; and his name is not stated on the Solar Agreement.

Breach of s76 of the ACL

22. Contrary to s76 of the ACL, prior to making the agreement, our client was not informed of her rights to terminate the agreement and was not provided with information regarding the way in which she could exercise those rights.

Breach of s79 of the ACL

23. The Solar Agreement does not comply with the requirements in s79 for an unsolicited consumer agreement:

- a) It does not set out the terms in full contrary to s79(a). Further, the terms and conditions are unclear and uncertain.
- b) It does not conspicuously and prominently inform the client of her rights to terminate the agreement in contravention of s79(b) of the ACL. Whilst the front page includes information advising of a cooling-off period, the text is in very small print which not only is difficult to read but also is much smaller in font size than any other text on the page. Further, the information advising the client of a right to cancel the agreement directs the customer to the terms and conditions which are unclear and incomplete.
- c) Contrary to s79(c) of the ACL it was not accompanied by a notice that the client could use to terminate the agreement.
- d) It does not set out in full the supplier's details and fails to include an email address as required by s79(d).
- e) Contrary to s79(f) it is not transparent - it is not expressed in reasonably plain language and is not presented clearly (s2 ACL).



Summary

24. In summary:

- a) The Solar Agreement is an unsolicited consumer agreement.
- b) Green Power Gen has contravened provisions of the ACL governing unsolicited consumer agreements including sections 74, 76 and 79 of the ACL.
- c) Our client exercised her rights to terminate the Solar Agreement within the extended period provided for in s82(3) of the ACL.
- d) The Certegy Agreement, as a related contract or instrument under s83(2) of the ACL, is void.

25. If the matter proceeds to litigation our client reserves her rights to rely on other breaches of the ACL by Green Power Gen including, but not limited to, breaches of the provisions prohibiting misleading or deceptive conduct, the making of false or misleading representations and unconscionable conduct.

26. Our client also reserves her rights to raise other legal arguments at a later date including that the Certegy Agreement is a credit contract within the meaning of the *National Credit Code*.

Resolution of this matter

27. Our client wishes to resolve this matter without proceeding to litigation.

28. Our client offers to settle this matter on the following terms:

- a) Certegy will provide a refund of the monies paid by our client in connection with Purchase No. 22951860;
- b) Certegy will fully and finally release our client from all liability to Certegy Ezi-Pay Pty Ltd in relation to Purchase No. 22951860 and close her revolving credit account;
- c) Certegy will not place a default against our client's name with any reporting agency or if a report has been made, take immediate steps to have the information removed.
- d) This offer is otherwise made in full and final satisfaction of all rights and obligations of our client under the Certegy agreement.
- e) This offer remains open for 14 days.


29. If you have any queries regarding this matter please contact Sue-Anne Thompson on telephone 03 9670 5088 or by email addressed to sue-anne@consumeraction.org.au.

Yours sincerely

CONSUMER ACTION LAW CENTRE



David Maunsell
Managing Lawyer



Sue-Anne Thompson
Senior Solicitor



**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-7**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:

7 December 2018

Your Ref: 252928

Consumer Action Law Centre
Attention: Sue-Anne Thompson
Level 6, 179 Queen Street
MELBOURNE VIC 3000

By email: sue-anne@consumeraction.org.au

Dear Ms. Thompson,

RE: [REDACTED] (Purchase Number: 22951860)

We refer to our prior correspondence dated 7 November 2018 and your letter dated 22 November 2018.

Please find below our summary of the issues raised by Consumer Action Law Centre ('CALC') and our response to those issues.

1 Summary of the issues raised by CALC:

1.1 CALC have stated:

- (a) [REDACTED] is an elderly consumer and disabled pensioner [REDACTED] has serious health issues having suffered a number of strokes and is vision impaired.
- (b) On 26 June 2018, a salespersons from Green Power Gen identified only as [REDACTED] arrived unannounced at Ms. Stephen's home.
- (c) [REDACTED] did not inform Ms. Stephen's that he was obliged to leave immediately on request.

- (d) [REDACTED] felt pressured into signing the documents the salesperson asked her to sign so that he would leave her home.
- (e) [REDACTED] did not advise [REDACTED] of her cooling of rights.
- (f) On 26 September 2018, [REDACTED] terminated the solar agreement by giving notice to Green Power Gen pursuant to section 82 of the Australian Consumer Law.

2 Our response to the issues raised by you:

- 2.1 Taking into consideration the circumstances outlined in your letter, we wish to cancel [REDACTED] Certegy Ezi-Pay payment plan (Purchase no. 22951860) and refund [REDACTED] the amount of \$143.40 for all payments made in relation to the account.
- 2.2 If [REDACTED] accepts Certegy Ezi-Pay's offer, [REDACTED] Certegy Ezi-Pay Revolving Credit Account will be closed releasing [REDACTED] of any further payment obligations relating to the account.
- 2.3 We confirm that we do not record adverse listings on any of our consumers' credit files.
- 2.4 If the proposed resolution is accepted, [REDACTED] will release Certegy Ezi-Pay from any further actions or costs associated with this matter. Additionally, CALC and [REDACTED] will be required to keep the details of this matter and its resolution confidential.

If [REDACTED] wishes to accept this offer, please let us know.

If you require any further information, please contact me on 08 8464 1856.

Yours faithfully,

[REDACTED]

General Counsel

**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-8**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:



Level 6, 179 Queen Street
Melbourne, VIC 3000

info@consumeraction.org.au
consumeraction.org.au
T 03 9670 5088
F 03 9629 6898

Our Ref: 252928

Contact: Sue-Anne Thompson

13 December 2018

Attention: [REDACTED]
General Counsel
Certegy Ezi-Pay Pty Ltd
GPO Box 1878
ADELAIDE SA 5001

Email: [REDACTED]@certegy.com.au

Dear Mr [REDACTED]

Ms [REDACTED] – Termination of unsolicited consumer agreement with Green Power Gen (the Solar Agreement); Certegy Ezi-Pay Pty Ltd – Purchase No. 22951860 (your reference 1777071/EPACI)

1. We refer to your letter dated 7 December 2018 and to the offer of settlement set out in paragraphs 2.1 to 2.4 of your letter. Our client wishes to resolve this matter on the terms set out below which for the main part incorporate the matters in your offer.
2. Our client wishes to have the refund of \$143.40 (referred to in paragraph 2.1 of your letter) paid to her by transfer to her bank account on or before 21 December 2018.
3. In relation to the request in paragraph 2.4 of your letter regarding confidentiality of the settlement, we are instructed that our client agrees to keep the details of the settlement confidential. We note, however, that confidentiality of the terms will not restrict our client from referring to the fact of the dispute or that she has resolved her dispute with Certegy Ezi-Pay Pty Ltd. [It may be necessary, for example, for our client to refer to the fact of the settlement in correspondence with Green Power Gen].
4. The Consumer Action Law Centre (CALC) is not a party to the dispute and does not agree to be bound by a confidentiality obligation in the terms of settlement.
5. Would you please confirm Certegy Ezi-Pay Pty Ltd's agreement to the terms of settlement by return email.



Terms of Settlement

6. Certegy Ezi-Pay Pty Ltd and [REDACTED] (the parties) are in dispute in relation to Purchase No. 22951860 and agree to settle the dispute on the following terms:
- a) Certegy Ezi-Pay Pty Ltd will cancel Certegy Ezi-Pay Payment Plan in connection with Purchase No. 22951860 and will refund [REDACTED] the amount of \$143.40 (the refund amount).
 - b) Certegy Ezi-Pay Pty Ltd will pay the refund amount by Electronic Funds Transfer to [REDACTED] on or before 21 December 2018.
 - c) Certegy Ezi-Pay Pty Ltd will close the Certegy Ezi-Pay Revolving Credit Account of [REDACTED]
 - d) Certegy Ezi-Pay Pty Ltd will not place any default against [REDACTED] with any reporting agency.
 - e) Upon payment of the refund amount and closure of the Revolving Credit Account, the parties release each other from all debts, actions, claims and proceedings which each of them has or may have against the other in respect of all matters in connection with Purchase No 22951860.
 - f) The parties agree to keep the terms of the settlement, but not the fact of the settlement, confidential except for the purposes of:
 - i) Obtaining legal or accounting advice regarding the settlement;
 - ii) Complying with a legal obligation; or
 - iii) Enforcing the terms of settlement.

Other

7. If you have any queries regarding this matter please contact Sue-Anne Thompson on telephone 03 9670 5088 or by email addressed to sue-anne@consumeraction.org.au.

Yours sincerely

CONSUMER ACTION LAW CENTRE



**David Maunsell
Managing Lawyer**



**Sue-Anne Thompson
Senior Solicitor**

**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-9**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:



Level 6, 179 Queen Street
Melbourne, VIC 3000

info@consumeraction.org.au
consumeraction.org.au
T 03 9670 5088
F 03 9629 6898

Our Ref: 252928

Contact: Sue-Anne Thompson

13 December 2018

Ubaid Trading Pty Ltd trading as Green Power Gen
3/49 Lara Way
Campbellfield VIC 3061

By email: info@greenpowergen.com.au

Dear Sir/Madam

Ms [REDACTED] – Termination of unsolicited consumer agreement with Ubaid Trading Pty Ltd trading as Green Power Gen dated 26 June 2018 (the Solar Agreement)

1. We refer to our email correspondence dated 26 September 2018 giving notice of termination of the unsolicited consumer agreement dated 26 June 2018 between Green Power Gen and our client [REDACTED]
2. We confirm that our client relies on the extended cooling off periods provided for in s82(3)(c)(i) and s82(3)(d)(i) of the *Australian Consumer Law (ACL)* due to contraventions of the unsolicited consumer agreement provisions of the ACL by Green Power Gen.
3. Green Power Gen breached the ACL provisions in relation to unsolicited consumer agreements by, amongst other things, failing to comply with the requirements in s74 with respect to disclosure of purpose and identity and the requirements in s76 with respect to the disclosure of information. Further, the Solar Agreement does not comply with the requirements in s79 regarding an unsolicited consumer agreement.

Background

4. Our client is an elderly pensioner living alone in country Victoria. She has serious health issues having suffered a number of strokes and is vision impaired.
5. On 26 June 2018 a salesperson from Green Power Gen identified only as [REDACTED] arrived unannounced at our client's home. The salesperson had not been invited to our client's home and did not inform our client that he was obliged to leave immediately on request. At no time did he provide his full name.



6. Our client asked the salesperson a number of times for information regarding the solar panel package and the total cost but the salesperson was evasive simply telling her she would not regret it.
7. Our client felt pressured into signing the documents the salesperson asked her to sign so that he would leave her home. She signed the Solar Agreement not knowing what the total cost would be. Our client is unable to read the carbon copy of the agreement the salesperson gave to her as it is in faint ink on pink paper and her eyesight is poor.
8. The salesperson did not advise our client of her cooling off rights under the ACL.
9. Our client did not appreciate that the documents the salesperson asked her to sign also included a Credit Schedule with Certegy Ezi-Pay Pty Ltd.

Breach of s74 of the ACL

10. The salesperson who attended at our client's home was very insistent and contrary to s74 he:
 - a) Did not advise our client that he was obliged to leave the premises immediately on request.
 - b) Failed to disclose his full identity. The salesperson identified himself only as [REDACTED]; the business card he provided to our client refers only to [REDACTED] and his name is not stated on the Solar Agreement.

Breach of s76 of the ACL

11. Contrary to s76 of the ACL, prior to making the agreement, our client was not informed of her rights to terminate the agreement and was not provided with information regarding the way in which she could exercise those rights.

Breach of s79 of the ACL

12. The Solar Agreement does not comply with the requirements in s79 for an unsolicited consumer agreement:
 - a) It does not set out the terms in full contrary to s79(a). Further, the terms and conditions are unclear and uncertain.
 - b) It does not conspicuously and prominently inform the client of her rights to terminate the agreement in contravention of s79(b) of the ACL. Whilst the front page includes information advising of a cooling-off period, the text is in very small print which not only is difficult to read but also is much smaller in font size than any other text on the page. Further, the information advising the client of a right to cancel the agreement directs the customer to the terms and conditions which are unclear and incomplete.
 - c) Contrary to s79(c) of the ACL it was not accompanied by a notice that the client could use to terminate the agreement.
 - d) It does not set out in full the supplier's details and fails to include an email address as required by s79(d).

- e) Contrary to s79(f) it is not transparent - it is not expressed in reasonably plain language and is not presented clearly (s2 ACL).

Summary

13. In summary:

- a) The Solar Agreement is an unsolicited consumer agreement.
- b) Green Power Gen has contravened provisions of the ACL governing unsolicited consumer agreements including sections 74, 76 and 79 of the ACL.
- c) Our client exercised her rights to terminate the Solar Agreement within the extended period provided for in s82(3) of the ACL.

Effect of termination

- 14. The termination of the Solar Agreement pursuant to s82(3) of the ACL has the effect of rescinding the Agreement as though by mutual consent.
- 15. Green Power Gen's failure to comply with its obligations under the ACL also makes the Solar Agreement unenforceable pursuant to s93 of the ACL
- 16. Our client gives notice pursuant to s85(1)(b) of the ACL that the solar panels may be collected from our client's property at [REDACTED] Victoria by prior appointment.
- 17. We note that pursuant to s85(2) of the ACL, Green Power Gen has a period of 30 days from the termination of the contract to collect the solar panels, failing which the solar panels become the unencumbered property of our client.
- 18. If you have any queries regarding this matter please contact Sue-Anne Thompson on telephone 03 9670 5088 or by email addressed to sue-anne@consumeraction.org.au.

Yours sincerely

CONSUMER ACTION LAW CENTRE



David Maunsell
Managing Lawyer



Sue-Anne Thompson
Senior Solicitor

**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-10**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:

30 January 2019

Your Ref: 252928

Consumer Action Law Centre
Attention: Sue-Anne Thompson
Level 6, 179 Queen Street
MELBOURNE VIC 3000

By email: sue-anne@consumeraction.org.au

Dear Ms. Thompson,

RE: [REDACTED] (Purchase Number: 22951860)

We refer to your letter dated 13 December 2018 and our prior correspondence regarding [REDACTED] purchase through Green Power Gen.

We wish to confirm our agreement to the Terms of Settlement outlined in your letter dated 13 December 2018.

Please note that we will issue the refund the amount by Electronic Funds Transfer to the following account within 7 days of the date of this letter:

[REDACTED]

If you require any further information, please contact me on 08 8464 1856.

Yours faithfully,

[REDACTED]

General Counsel

**IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019**

Certificate identifying annexure

This is the annexure marked '**SAT-11**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:

Sue-Anne Thompson

From: Sue-Anne Thompson
Sent: Monday, 18 March 2019 9:29 AM
To: [REDACTED]
Subject: [REDACTED] Purchase no. 22951860 - refund to Ms [REDACTED]
Importance: High

Dear Mr [REDACTED] and Ms [REDACTED]

1. I refer to my email correspondence dated 30 January 2019, 7 February 2019 and 20 February 2019 and to telephone messages left for Ms [REDACTED] on 27 February 2019 and 7 March 2019.
2. Our client is a vulnerable elderly pensioner who has now been waiting for the refund of \$143.40 to be paid to her for more than 6 weeks.
3. Would you please arrange for the refund of \$143.40 to be paid by Electronic Funds Transfer to our client's CBA account without delay and confirm when payment has been made.

Yours sincerely

Sue-Anne Thompson | Senior Solicitor



Level 6, 179 Queen Street | Melbourne VIC 3000 | www.consumeraction.org.au
+61 3 8554 6959 (direct) | +61 3 9670 5088 (reception) | sue-anne@consumeraction.org.au | Work Hours: Mon-Thur, 9 am - 5:30 pm

Get back on track with free financial counselling – contact the [National Debt Helpline](http://www.ndh.org.au) on 1800 007 007.



Consumer Action is located on the land of the Kulin Nations. We acknowledge all Traditional Owners of Country throughout Australia and recognise the continuing connection to lands, waters and communities. We pay our respect to cultures; and to Elders past, present and emerging.

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From: Sue-Anne Thompson
Sent: Wednesday, 20 February 2019 1:37 PM
To: [REDACTED]@flexigroup.com.au>
Cc: [REDACTED]@flexigroup.com.au>
Subject: [REDACTED] Purchase no. 22951860 -refund to Ms [REDACTED]
Importance: High

Dear Ms [REDACTED]

1. I refer to my email correspondence of 30 January 2019 and 7 February 2019. Ms [REDACTED] instructs us that she has still not received the refund from Certegy.
2. Would you please arrange for the refund of \$143.40 to be paid by Electronic Funds Transfer to our client's CBA account without delay and confirm when payment has been made.

Yours sincerely

Sue-Anne Thompson | Senior Solicitor



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From: Sue-Anne Thompson

Sent: Thursday, 7 February 2019 6:19 PM

To: [REDACTED]@flexigroup.com.au>; [REDACTED]@flexigroup.com.au>

Subject: [REDACTED] Purchase no. 22951860 -refund to Ms [REDACTED]

Dear Ms [REDACTED]

Our client advises that she has not yet received a refund.

Would you please arrange for payment of the refund to our client's account.

Yours sincerely

Sue-Anne Thompson | Senior Solicitor

IN THE AUSTRALIAN COMPETITION TRIBUNAL
APPLICATION BY FLEXIGROUP LIMITED
ACT 1 OF 2019

Certificate identifying annexure

This is the annexure marked '**SAT-12**' referred to in the affidavit of Sue-Anne Thompson made on 1 May 2020.

Before me:



Level 6, 179 Queen Street
Melbourne, VIC 3000

info@consumeraction.org.au
consumeraction.org.au
T 03 9670 5088
F 03 9629 6898

Our Ref: 252928
Contact: Sue-Anne Thompson

Thursday, 27 June 2019

Director
Consumer Affairs Victoria
GPO Box 4567
Melbourne Vic 3001

By email: consumer@justice.vic.gov.au

Dear Director

Complaint against Ubaid Trading Pty Ltd trading as Green Power Gen (Green Power Gen)

1. We make this complaint about a transaction involving the sale of solar panels to our client who wishes to keep her identity confidential.
2. At Consumer Action Law Centre, we are frequently contacted by consumers in relation to similar disputes concerning the sale and installation of solar panels. We believe that our client's complaint is indicative of a broader systemic problem that warrants your urgent investigation particularly as the complaints frequently concern unsolicited sales of solar panels to elderly clients living in regional Victoria.
3. To date, Consumer Affairs Victoria does not appear to have taken any steps to investigate and prosecute Green Power Gen for breaches of consumer protection laws.
4. The problems with the current regulatory regime in respect of the sale and installation of solar panels are highlighted in our April 2019 Sunny Side Up report a link to which is here: https://consumeraction.org.au/wp-content/uploads/2019/04/1904_Sunny-Side-Up-Report_FINAL_WEB.pdf and a link to a summary of the issues raised in the report is here: https://consumeraction.org.au/wp-content/uploads/2019/03/1904_Sunny-Side-Up-4pager_updated-final-27th.pdf.

Details of complaint

5. Our client's complaint relates to the trader Green Power Gen. Our client's circumstances are outlined in Case Study 1 of the Sunny Side Up Report regarding 'Susan' (at p29).
6. Green Power Gen introduced our client to a finance provider. We are not able to disclose the name of the finance provider due to the confidentiality of a settlement with the finance provider.



7. Our client is an elderly pensioner living alone in country Victoria. She has serious health issues having suffered a number of strokes and is vision impaired.
8. In June 2018 a salesperson from Green Power Gen arrived unannounced at our client's home. The salesperson had not been invited to our client's home and did not provide his full name. Our client asked the salesperson a number of times for information regarding the solar panel package and the total cost but the salesperson was evasive simply telling her she would not regret it.
9. Our client felt pressured into signing the documents the salesperson asked her to sign so that he would leave her home. She signed a contract not knowing what the total cost would be. Our client was unable to read the carbon copy of the contract the salesperson gave to her as it was in faint ink on pink paper and her eyesight is poor.
10. The salesperson did not advise our client of her cooling off rights. Whilst the cooling off rights were stated in writing on the contract, they were not in a prominent position and were in small print.
11. Our client did not understand that in order to obtain the benefits of the solar panels, she needed to complete a 'Solar feed in tariff application form' and send it to the energy retailer, which was a different company to Green Power Gen. The salesperson did not explain what was required to be done to enable the panels to be connected.
12. Our client did not appreciate that the documents the salesperson asked her to sign also included an agreement with a finance provider.
13. The client later received a letter from the finance provider advising her that she was required to make fortnightly payments of \$69.95 and to pay a monthly account fee but the letter did not state the total cost of the panels. It was not until after the client made the first payment that she received a statement setting out the total amount to be paid.
14. The client could not afford the payments and her account went into default when the first direct debit was made. After the second payment was deducted from our client's account, she was left with insufficient funds to meet everyday living expenses and she then cancelled future direct debits to the finance provider.
15. The client contacted us in a distressed state after receiving demands from the finance provider.
16. We were able to assist the client to reach a satisfactory settlement with the credit provider but without our representation it is likely that our vulnerable client would have been burdened with a loan that she was not able to afford and potentially faced enforcement action in event of default causing our client ongoing financial and emotional stress.

Broader systemic or public policy issues raised by this complaint:

17. As noted in section 5 of the Sunny Side Up Report, our client's case is illustrative of a number of public policy issues arising in relation to the sale and installation of solar panels which we consider require investigation.
18. We receive many enquiries from clients who, like 'Susan', have been the target of unsolicited sales of solar panels and who have entered into finance agreements which are unaffordable.



19. Please direct any queries to Sue-Anne Thompson of our office, on (03) 9670 5088.

Yours faithfully,

CONSUMER ACTION LAW CENTRE



Sue-Anne Thompson

Senior Solicitor



David Maunsell

Managing Lawyer

cc

Jonathan Leake

Chief Operating Officer | Solar Victoria

Jonathan.Leake@sustainability.vic.gov.au

