CITATION:	*Australia and New Zealand Banking Group Limited v Oldroyd & Anor* [2025] NTSC 20
PARTIES:	AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED v OLDROYD, Craig Richard and OLDROYD, Juliet Marie
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	2024-03024-SC
DELIVERED:	14 April 2025
HEARING DATE:	20 March 2025
JUDGMENT OF:	Brownhill J

CATCHWORDS:

JURISDICTION OF THE COURT – Defendants argued Court lacked jurisdiction because they had diplomatic immunity as heads of a diplomatic mission for a sovereign nation of Aboriginal people – Defendants argued real property the subject of the mortgage was the premises of a diplomatic mission – Defendants argued they are only bound by tribal laws or religious laws – Defendants arguments rejected – Defendants are bound by the laws of

the Northern Territory and are subject to the jurisdiction of the Court – Jurisdictional challenge dismissed

MORTGAGES - Default under a mortgage of a real property- Application for order for possession Defence that loan agreement and mortgage unenforceable due to 'securitisation', breaches of *National Credit Code*, fraud and breaches of privacy –Defence that arrears under loan agreement not proved – Defence that defendants withdrew from the loan agreement and mortgage – Defence that defendants had claims against plaintiff– All defences rejected – Defendants in breach of loan agreement and mortgage – Plaintiff demonstrated entitlement to order for possession

MORTGAGES - Default under a mortgage of a real property- Application for order for possession Court's discretion to make an order for possession – Contract of sale entered into by defendants over property - Order for possession made with condition no warrant of execution until after completion date under contract of sale

Bendigo and Adelaide Bank Ltd v Prichard [2021] QSC 179; *Hamwood v Murdoch* [2010] NTSC 62; *Coe v Commonwealth* (1979) 53 ALJR 403; *Indigenous Business Australia v Kani* (2012) 31 NTLR 121; *Jones v Public Trustee (Qld)* (2004) 209 ALR; *Mabo v Queensland (No 2)* (1992); *McDonald v Director of Public Prosecutions (Vic)* (2010) 26 VR 242; *McLean v Westpac Banking Corporation* [2012] WASCA 152; *National Australia Bank Ltd v Norman* [2012] VSC 14; *Northern Territory Land Corporation v Rigby* [2016] NTSC 18; *New South Wales v Commonwealth* (1975) 135 CLR 337; *Oswal v Commonwealth Bank of Australia* [2013] WASCA 58; *R v Buzzacott* (2004) 154 ACTR 37; *RHG Mortgage Corporation Ltd v Astolfi* [2011] NSWSC 1526; *Walker v South Australia (No 2)* (2013) 215 FCR 254; *Westpac Banking Corporation v Mason* [2011] NSWSC 1241

Land Title Act 2000 (NT), ss 74, 76, 80.
Law of Property Act 2000 (NT), s 182(1)(c).
Supreme Court Rules, r 45.05(2).

REPRESENTATION:

Counsel:

Plaintiff:	R Sanders
First Defendant:	Self-represented
Second Defendant:	No appearance

Solicitors:

Plaintiff:	Ward Keller
First Defendant:	Self-represented
Second Defendant:	No appearance

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Australia and New Zealand Banking Group Limited v Oldroyd & Anor
[2025] NTSC 20
No. 2024-03024-SC

BETWEEN:

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

AND:

CRAIG RICHARD OLDROYD
First Defendant

AND:

JULIET MARIE OLDROYD
Second Defendant

CORAM: BROWNHILL J

REASONS FOR JUDGMENT

(Delivered 14 April 2025)

[1] The plaintiff ('ANZ') holds a registered mortgage over the defendants' property ('Property'), securing a loan advanced to them in 2009. The defendants are in arrears on the loan and ANZ seeks to enforce the mortgage by an order for possession of the Property.

[2] The first defendant ('Oldroyd'[1]) and the second defendant ('Mrs Oldroyd') are a married couple (together 'Oldroyds'). They are the registered proprietors of the Property. Mrs Oldroyd did not enter an appearance to these proceedings and took no part in them.

[3] Oldroyd raised numerous arguments challenging the existence or enforceability of the loan documents and the mortgage, alleging fraud and breaches of the *National Consumer Credit Protection Act 2009* (Cth) ('NCCPA') on the part of ANZ, alleging various breaches of the defendants' rights in ANZ's dealings with the Oldroyds, and denying the service of the proceedings upon the Oldroyds and ANZ's position that the Oldroyds are in arrears under the loan agreement.

[4] At the hearing, I permitted Oldroyd to file in Court documents headed 'originating motion' and 'notice of contention' challenging the jurisdiction of this Court to hear and determine the proceedings. The challenge was put essentially on the bases that Oldroyd holds diplomatic immunity as an appointed ambassador of a nation comprised of tribal people, the Property is the premises of a diplomatic mission, the Oldroyds are bound only by tribal law and are not bound by the common and statute law of Australia, and the ANZ had broken 'the Oaths of life the Customary tribal Lore/law of this land and the laws of Elohim God' by committing fraud and making false

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1 During the hearing, as a courtesy and expressly without acceptance of Oldroyd's argument that he has some diplomatic status at law, I referred to Oldroyd as 'Ambassador Oldroyd' because that was how he asked to be addressed. That courtesy was in no way intended to accord or recognise that Oldroyd holds any relevant status as a diplomatic agent. His argument about this is addressed below.

allegations. I dismissed that jurisdictional challenge at the hearing and delivered *ex tempore* reasons for doing so. Those reasons are repeated below (with some minor non-substantive changes and the addition of footnotes).

[5] Ultimately, for the further reasons set out below, I have concluded that the ANZ is entitled to an order for possession of the Property.

Reasons for rejecting the challenge to the Court's jurisdiction

[6] On 18 March 2025 at 5.19pm, Oldroyd attempted to file an 'originating motion' and a 'notice of contention' containing a challenge to the jurisdiction of this Court to hear and determine these proceedings.

[7] Those documents were not accepted for filing by the Registrar because they were not in the appropriate form and were emailed to the Court after business hours the day before the hearing. Despite those procedural problems, I permitted Oldroyd to put his jurisdictional argument before me.

[8] Essentially, as I understood it, Oldroyd argued that he is an Aboriginal person[2] and therefore of an independent nation state and bound only by tribal laws and/or the laws of God. In addition, he argued that he has diplomatic status because he has been appointed by various signatories to various documents as an ambassador for an independent Aboriginal state or states, and has been 'internationally recognised' as such. In this regard, he

2 By adoption into various Aboriginal tribes. Oldroyd rejected the term 'Aboriginal' because to him it means 'away from ('ab') original'. Nevertheless, I have used it because it is a well understood term commonly used to refer to people descended from the inhabitants of this country at the time of, and prior to, European settlement.

relied on various correspondence and other documents from officers of embassies of certain countries, referring to meetings or correspondence and referring to Oldroyd under the title 'Ambassador Oldroyd'. For both reasons, Oldroyd argued that he is not subject to the laws of the Northern Territory or the jurisdiction of this Court.

[9] Oldroyd wished to call evidence from various witnesses[3] to establish the factual assertions he made in support of his arguments. I did not receive that evidence because, even if the factual assertions were established by the proposed evidence, I rejected the arguments based upon them.

[10] The short answers to the arguments are, firstly, that all Aboriginal people are subject to the laws of the Commonwealth and the laws of the States and Territories in which they live. There is a wealth of authority confirming that proposition from both this Court[4] and the High Court,[5] as well as superior

3 Those witnesses included King Charles, Patrick Green (a Pintupi Aboriginal man), a woman called 'ramona-andrea' (who Oldroyd said has 'studied the law of the birth certificates and also admiralty law and the law of the land and the law of the air'), and Professor Richard Werner (an economist who 'can prove that there is no mortgage and that the whole process of mortgage is a fraud').

4 For example, *Northern Territory Land Corporation v Rigby* [2016] NTSC 18 at [15] per Barr J.

5 For example, *New South Wales v Commonwealth* (1975) 135 CLR 337 at 388 per Gibbs J; *Coe v Commonwealth* (1979) 53 ALJR 403 at 408 per Gibbs J (Aickin J agreeing), at 410 per Jacobs J (Murphy J agreeing); *Coe v Commonwealth* (1993) 68 ALJR 110 at 114-116 per Mason CJ, referring to *Mabo v Queensland (No 2)* (1992) 175 CLR 1. In *Mabo v Queensland (No 2)*, the High Court accepted that, upon European settlement of the Australian colonies, the English settlers brought with them the law of England and the common law thus became the common law of all subjects within the colony, including Aboriginal people (see 38 per Brennan J).

courts in other States.[6] None of the cases referred to by Oldroyd have decided any differently.[7]

[11] The Supreme Court of the Northern Territory was established by statute and has the powers and jurisdiction conferred now by the *Supreme Court Act 1979* (NT), which was passed by the Legislative Assembly of the Northern Territory pursuant to the power conferred on it by s 6 of the *Northern Territory (Self-Government) Act 1978* (Cth). The Court's jurisdiction in respect of Aboriginal people who are residents of the Northern Territory is no different to the Court's jurisdiction in respect of non-Aboriginal people who are residents of the Northern Territory.

[12] Secondly, I do not accept that Oldroyd or Mrs Oldroyd or the associations or groups who he or they purport to represent or stand with are states within the meaning of the Vienna Convention on Diplomatic Relations,[8] which has the force of law in Australia under and subject to the *Diplomatic Privileges and Immunities Act 1967* (Cth).[9]

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6 See, for example, *McDonald v Director of Public Prosecutions (Vic)* (2010) 26 VR 242 at [6], [16] per Ashley JA, at [191] per Neave JA (Redlich JA agreeing); *Jones v Public Trustee (Qld)* (2004) 209 ALR 106 at [14]-[15] per McPherson JA (Williams and Jerrard JJA agreeing); *R v Buzzacott* (2004) 154 ACTR 37 at [3]-[17] per Connolly J; *Walker v South Australia (No 2)* (2013) 215 FCR 254 at [43]-[47] per Mansfield J.

7 Those cases included *Mabo v Queensland (No 2*) and *Love v Commonwealth* (2020) 270 CLR 152.

8 Oldroyd also relied on the Montevideo Convention on the Rights and Duties of States of 1933. Essentially, that Convention provides that all states are equal sovereign units consisting of a permanent population, defined territorial boundaries, a government and an ability to enter into agreements with other states. While Australia is a signatory to that Convention, it does not have the force of domestic law. Nor does it have the effect of creating any independent sovereign state comprised of a group of citizens of Australia.

9 See s 7, *Diplomatic Privileges and Immunities Act*, giving the force of law in Australia to Articles 1, 22 to 24 and 27 to 40 of the Vienna Convention.

[13] Oldroyd does not have the recognition of the Australian Government as required by Article 4 of that Convention.[10] Consequently, he and Mrs Oldroyd are not diplomatic agents within the meaning of that Convention and do not have any diplomatic status which would render them or the Property immune from the operation and effect of the laws of the Northern Territory, whether under statute or the common law. Consequently, I do not accept that the Property is the premises of a mission within the meaning of that Convention.[11]

[14] It follows from that conclusion that the immunity under Article 31 of the Convention of a diplomatic agent from the civil and administrative jurisdiction of the receiving state, here Australia, does not apply. By Article 31.1(a), that immunity does not apply in a real action relating to private immovable property situated in the receiving state, unless it is held on behalf of a sending state for the purposes of the diplomatic mission. As I have said, I do not accept that the Property is the premises of a mission.

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10 Article 4.1 provides that a sending state of a diplomatic mission must make certain that the receiving state has agreed to the person the sending state proposes to accredit as head of the mission to that state. Further, Article 2 provides that the establishment of diplomatic relations between states, and of permanent diplomatic missions, takes place by mutual consent. There was no evidence that the Australian Government had mutually consented with the group/s Oldroyd purported to represent as 'ambassador' to establish diplomatic relations or a permanent diplomatic mission in Australia. Correspondence from individual Members of the Senate or the House of Representatives, addressed to 'Ambassador Oldroyd' is not evidence of the relevant consent of the Australian Government. Nor is a statutory declaration by Oldroyd to the effect that he has informed all Australian federal and local governments of his group's standing as an independent and self-governing nation. Nor is registration with the World Intellectual Property Association of various trade marks or flags as symbols or geographical indications said to represent this independent and self-governing nation. Nor is correspondence from or declarations of other individuals to the effect that the Property is the premises of a diplomatic mission.

11 Affidavits, declarations or correspondence from Oldroyd or other members of the group he purports to represent to the effect that the Property is the premises of a diplomatic mission cannot and do not make it so.

[15] Oldroyd also asserted that the Property is a sacred site or a heritage site. He also asserted that all mortgage is a fraud. Even if any of those matters are so, they or any of them do not deny to the Supreme Court the power and jurisdiction to hear these proceedings and, if necessary, make determinations about those things.

[16] I therefore rejected the submissions made by Oldroyd and concluded that this Court does have jurisdiction to decide these proceedings.

[17] I add to the above reasons that, for similar reasons to those set out in paragraphs 10 to 11 above, all individuals, regardless of their faith or religious beliefs, are subject to the laws which operate in the place where they live[12] and the jurisdiction of the Supreme Court of the Northern Territory applies equally to all residents of the Northern Territory, regardless of their faith or religious beliefs.

[18] Oldroyd's request by email sent on 26 March 2025 for these proceedings to be 'referred' to the High Court as a matter within its original jurisdiction pursuant to s 75 of the *Constitution* is refused. It is trite that this Court has, at first instance, jurisdiction to determine the extent of its own jurisdiction and whether or not a particular proceeding falls within it. On 26 March 2025 and on a number of subsequent dates, Oldroyd sought to file by email a 'motion' for 'strike out of the application and summary judgment', which also purports to claim 'the full amount of the Defendants Statement of Claim

12 See, for example, *Stefan v McLachlan* (2023) 105 MVR 214 at [25] per J Dixon J.

including cost on a full indemnity basis' (referring the 'registered commercial lien' addressed below). The application to file that document is refused. The 'motion' was not in the proper form, the relief sought is misplaced and is grounded on matters put by Oldroyd in the hearing.

Service on the Oldroyds

[19] Oldroyd argued that neither he nor Mrs Oldroyd were served with notice of these proceedings.

[20] Maria Davis ('Davis'), licensed process server, deposed that on 30 September 2024 she went to the Property and passed to Oldroyd a sealed copy of ANZ's originating motion, summons on originating motion and the affidavit of Enrique Ventura ('Ventura') referred to below, with a letter addressed to him.[13] She deposed that she identified Oldroyd because he was previously known to her and that the documents she passed to him landed at Oldroyd's feet. She further deposed that on 8 October 2024, she served the same documents on Mrs Oldroyd by attending the Property and placing into the letterbox recessed into the front fence the same documents and a letter addressed to her.

[21] Oldroyd cross-examined Davis about her service on him. Davis said she personally served him. She did not hand the documents to him as he refused to take them. Oldroyd argued that, consequently, he had not been served with the documents that commenced these proceedings.

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13 Affidavit of Maria Davis made on 9 October 2024.

[22] I reject those submissions for the following reasons. First, r 6.02(1) of the *Supreme Court Rules 1987* (NT) ('SCR') provides that, except where otherwise provided by Ch 1 of the SCR, an originating process must be served personally on each defendant. Rule 6.03(1) of the SCR provides that personal service of a document is effected by leaving a copy of the document with the person to be served or, if he does not accept the copy, by putting the copy down in his presence and telling him the nature of the document. I accept Davis's evidence that the document landed at Oldroyd's feet when he refused to take it from her, and she personally served him with it. I note that Oldroyd has since filed many documents in response to the proceedings, has appeared at numerous directions hearings, and appeared on the day of the hearing. Consequently, I am satisfied that Davis effected personal service of these documents on Oldroyd.

[23] Second, r 6.13 of the SCR provides that, where the parties to a proceeding have (relevantly) before the commencement of the proceeding, agreed that originating process may be served on a party in a manner or at a place specified in the agreement, service in accordance with the agreement is sufficient service. The mortgage (referred to below) provides that court documents may be served on the defendants by leaving them at the Property (cl 10.9(b)). I am satisfied that Davis served these documents on Oldroyd by leaving them at the Property, which is sufficient service within r 6.13.

[24] Oldroyd cross-examined Davis in relation to her service of the originating process on Mrs Oldroyd. Davis said she served Mrs Oldroyd by putting the

documents on top of the mailbox at the Property. She had initially said she put them into the mailbox, but then corrected herself and said they were too big to put into the mailbox, so she put them on top of it. I reject Oldroyd's submissions that Davis's evidence was false, she had perjured herself and that someone not involved in the case took the documents (about which there is no evidence), so they were not served. As already mentioned, r 6.13 of the SCR permits documents to be served as agreed between the parties prior to commencement of the proceedings and the mortgage permits documents to be served by leaving them at the Property. Consequently, I am satisfied that Mrs Oldroyd was served with the originating process in accordance with r 6.13 of the SCR.

The loan agreement and the mortgage

[25] Ventura, case manager with ANZ, deposed[14] that he had undertaken a review of the records pertaining to the financial transactions with the Oldroyds and that review had revealed the following:

(a) The Oldroyds are the registered proprietors of the property at 35 Howley Crescent, Anula (i.e. the Property).

(b) On 1 October 2009, ANZ agreed to advance money to the Oldroyds by way of a residential investment loan on the terms and conditions contained in two documents titled: (i) Your ANZ Residential

14 Affidavit of Enrique Reyes Ventura made on 19 September 2024.

Investment Loan; and (ii) ‘Consumer Lending Terms and Conditions (Version Number 9)’ (‘loan agreement’).

(c) On 1 October 2009, the Oldroyds executed a memorandum of mortgage in favour of ANZ over the Property. The mortgage was registered. It incorporates the memorandum of common provisions recorded as ‘CP No 371962’ (‘MCP’).

(d) By the MCP, the mortgage secures payment of the ‘Secured Money’, which is defined to include all amounts the Oldroyds are required to pay under a ‘regulated arrangement’ and ‘enforcement expenses’ (cl 2.2). A regulated arrangement is defined to mean (relevantly) a credit contract between ANZ and the Oldroyds where credit is provided wholly or predominantly for personal, domestic or household purposes which is regulated by consumer credit law (cl 11.1). Enforcement expenses are defined to mean any reasonable amount ANZ reasonably spends or incurs in relation to the actual or contemplated enforcement or exercise of its powers under the mortgage or the actual or contemplated preservation or maintenance of any property, after a breach of the mortgage or any regulated arrangement occurs (cl 11.1).

(e) On 15 October 2009, ANZ advanced $472,000 to the Oldroyds pursuant to the loan agreement.

(f) On 19 May 2021, ANZ agreed to vary the loan agreement on the terms and conditions contained in the documents titled: (i) ‘Confirmation of

Variation'; and (ii) 'Consumer Lending Terms and Conditions (Version Number 30)' ('variation document'). On its face, the variation document states the variation was made at the request of the Oldroyds. (Unless otherwise stated, in the reasons that follow, the term 'loan agreement' is used to refer to the loan agreement as varied by the variation document.)

(g) By the variation document, the Oldroyds agreed to make 24 monthly repayments of $1,769.58 from 15 June 2021; 203 monthly repayments of $1,884.68; and one repayment of $1,884.14.

(h) The variation document provided that its terms and conditions would take effect 37 days from 9 July 2021.

(i) The mortgage provides that:

(i) The Oldroyds will be in default if they do not pay any part of the Secured Money payable under a regulated arrangement on time (cl 7.1(a)(i), MCP).

(ii) If the Oldroyds are in default, ANZ will give them a notice of default under the *National Credit Code* and allow them at least 30 days to remedy it (cl 7.2(a), MCP).

(iii) If a notice of default is given to the Oldroyds and the default continues for at least 30 days, ANZ may take possession of the Property or sell it (cl 7.2(a)(iii)(B), 7.3(a) and (c), MCP).

(iv) If the Oldroyds do not remedy the default within the period stated in the notice then, without further notice, all money owing by the Oldroyds under the loan agreement and the mortgage becomes immediately due and payable (cl 7.2(a)(iii)(A), MCP).

(j) The Oldroyds failed to make repayments on the loan such that, on 25 October 2023, there was $17,906.66 due and owing to ANZ.

(k) ANZ gave the Oldroyds a notice of default dated 26 October 2023 and demanded payment of arrears and enforcement expenses of $18,505.94 within 31 days of service of the notice. A notice was also given of ANZ's intention to exercise its power of sale over the Property if the Oldroyds did not pay that sum within that period.

(l) The Oldroyds did not pay ANZ the sum specified in the notice of default.

(m) By 1 August 2024, the arrears and enforcement expenses owed by the Oldroyds to ANZ were $41,183.73 and the total amount owed by the Oldroyds to ANZ under the loan agreement and mortgage was $340,114.78.

[26] The notices of default referred to in paragraph 25(k) above were served on the Oldroyds on 28 October 2023 by leaving the notices in the letterbox at the Property.[15] That service was in accordance with the terms of the

15 Affidavit of Daniel Gordon Carroll made on 30 September 2024.

mortgage (cl 10.9(b)). It was also in accordance with the requirements of the *Law of Property Act 2000* (NT) (s 219(1)(b)), noting that the variation document was addressed to the defendants at the Property, indicating that it was their usual or last known place of residence.

Breach of privacy

[27] Oldroyd cross-examined Ventura. Ventura agreed that he had never met Oldroyd. This question appeared to be directed to Oldroyd's submission that, by compiling the documents annexed to his affidavit, Ventura had breached the Oldroyds' rights to privacy, as had ANZ, its solicitors and counsel, by relying on those documents in this proceeding. No particular provision of the *Privacy Act 1988* (Cth) or any other statute or authority was identified to sustain this submission.

[28] The short response to this submission is that Ventura was an officer of ANZ, the body corporate to whom the Oldroyds disclosed their personal information, and ANZ is entitled to present the Oldroyds' personal information to the Court in pursuit of their legal entitlements under the loan agreement, the variation document and the mortgage. The proposition that privacy laws prohibit a lender from producing to and tendering in a court information held by them about the borrower's indebtedness in pursuit of their legal remedies is clearly wrong.

‘Securitisation’ of loan agreement and mortgage

[29] Oldroyd sought to ask Ventura questions going to whether Oldroyd is a ‘secured party creditor’ of ANZ or whether there has been a ‘securitisation’ of the loan agreement or the mortgage. ANZ objected to the relevance of this questioning, arguing that securitisation of the loan or the mortgage does not deny or affect ANZ’s legal entitlements under the registered mortgage.

[30] As I understood it, Oldroyd sought to allege that the money advanced to him by ANZ had been provided to ANZ by a third party or third parties, with ANZ having sold, assigned or otherwise disposed to that third party or third parties its interests under the loan agreement and the mortgage, with the consequences that the loan agreement was a ‘fraud’, it was a ‘fraud’ to pursue the Oldroyds under the loan agreement and the mortgage, and ANZ could not exercise its rights to possession and power of sale of the Property.

[31] By a notice to produce filed on 10 January 2025 (‘notice to produce’), Oldroyd sought production of two ANZ mortgage securities trust documents, presumably for the purpose of establishing the ‘securitisation’. ANZ did not produce any documents answering that description. Again, ANZ’s position was that ‘securitisation’ is no defence to ANZ’s claims to enforce the loan agreement and the mortgage, making any documents about ‘securitisation’ irrelevant.

[32] Even if Oldroyd were able to establish as a fact that the loan was ‘securitised’, the mortgage was registered and registration conferred on

ANZ an indefeasible charge over the Property for the amount due under the loan agreement.[16] There is no evidence before me that ANZ gave the Oldroyds notice of any assignment of the loan agreement or the mortgage, which is a prerequisite to an effective assignment.[17] Consequently, whatever the position between ANZ and any third party so far as any equitable or other interests in the Property is concerned, the legal interests of the parties to these proceedings are governed by the loan agreement and the registered mortgage under which the Property is charged with the debt arising under the loan agreement.[18]

[33] Any 'securitisation' of the loan or the mortgage is therefore irrelevant in these proceedings. Consequently, Oldroyd's allegations of 'fraud' arising from 'securitisation' are rejected.

[34] For these reasons, I did not allow Oldroyd to ask further questions of Ventura about securitisation. In addition, the demand for production of the mortgage securities trust documents in the notice to produce was misplaced and ANZ's failure to comply is irrelevant.

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16 *Land Title Act 2000* (NT), ss 74, 76, 80.

17 *Law of Property Act 2000* (NT), s 182(1)(c).

18 See *Westpac Banking Corporation v Mason* [2011] NSWSC 1241 at [29] per McCallum J, where a defence based on 'securitisation' of the loan and registered mortgage was rejected and summary judgment granted to the bank. Similarly, it was held in *RHG Mortgage Corporation Ltd v Astolfi* [2011] NSWSC 1526 at [15] per Davies J that any defence to a bank's claim to enforce its mortgage based on securitisation must inevitably fail. See also *McLean v Westpac Banking Corporation* [2012] WASCA 152; *National Australia Bank Ltd v Norman* [2012] VSC 14; *Bendigo and Adelaide Bank Ltd v Prichard* [2021] QSC 179.

Requirements of the *National Credit Code*

[35] Oldroyd sought to ask Ventura questions as to the requirements of the *National Credit Code* (‘*Code*’) for certain information to be contained on loan documentation. Ventura said he did not know about those requirements.

[36] Oldroyd argued that the loan agreement was void because it did not contain a loan number or the name or position title of the person who signed the loan agreement on behalf of ANZ, as required by the *Code*. At the hearing, Oldroyd was unable to identify the particular provisions of the *Code* that he was relying on. I gave him leave to do so in writing within seven days of the hearing date.

[37] By email dated 26 March 2025, Oldroyd identified ss 17 and 111 of the *Code* as the provisions requiring the particulars he referred to.

[38] The *Code* is found in Schedule 1 to the NCCPA. The *Code* is given effect as a law of the Commonwealth by s 3 of that Act.

[39] Section 17 provides (relevantly) that a ‘contract document’ must contain the ‘credit provider’s name’ (s 17(2)) and any information required by the regulations (s 17(16)). The additional information prescribed by r 74 (including the content of Forms 6 and 7) of the *National Consumer Credit Protection Regulations 2010* (Cth) does not include the name or position title of an employee signing on behalf of a credit provider or a loan number.

[40] The term ‘credit provider’ in the *Code* is defined to mean a person that provides credit (s 204). The word ‘person’ includes a body corporate as well as an individual.[19]

[41] It follows that the requirement in s 17(2) of the *Code* that a contract document must contain the credit provider’s name is a requirement that the loan agreement must contain ANZ’s name, being the body corporate that provided the credit. On its face, the loan agreement contained ANZ’s name. There is no requirement in s 17 of the *Code* for the loan agreement to contain the name or title of the person who executed the loan agreement on behalf of the ANZ.

[42] Further, Oldroyd’s reference to s 111 of the *Code* is misplaced. That section identifies what are ‘key requirements’ in connection with a credit contract, a consumer lease or a disclosure or statement of account. The key requirements in connection with a credit contract do not include the requirement in s 17(2) of the *Code*, which has been complied with in any event.

[43] These matters make it unnecessary to address in detail the consequences of a contract document not containing the required particulars. In short, the *Code* does not provide that a contract document without the required particulars is void or voidable.

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19 *Acts Interpretation Act 1901* (Cth), s 2C(1).

[44] It follows that ANZ's failure to provide the name, contact details and position title of the person who executed the loan agreement on behalf of ANZ, as sought by the notice to produce, is irrelevant.

[45] For the above reasons, I reject Oldroyd's submission that the loan agreement is void for non-compliance with the *Code*.

[46] By his email dated 26 March 2025, Oldroyd alleged other failures on the part of ANZ to comply with the provisions of the *Code*, which were additional to those referred to in the documents he filed before or at the hearing, and were outside the scope of the leave I granted to him referred to in paragraph [36] above. They comprised: (i) an alleged breach of s 55 of the 'NCC Act' said to require the disclosure by ANZ to the Oldroyds prior to entering the loan agreement of various regulatory actions, class actions, royal commission findings or other proceedings against ANZ; (ii) an alleged breach of s 100 of the 'NCC Act' said to prohibit a credit provider from 'charging or imposing monetary liability upon the consumer'; (iii) an alleged breach of s 125 of the 'NCC Act' said to permit a consumer to settle the credit agreement at any time and an assertion that it was settled by the Oldroyds providing ANZ with a 'bill of exchange'; (iv) an alleged breach of s 154 of the 'NCC' said to prohibit a person making a false or misleading representation in relation to credit and assertions that ANZ failed to give the Oldroyds a promised rate reduction and the Oldroyds are part of a class action against ANZ.

[47] Given that these allegations were additional to those referred to in his materials filed before or at the hearing, and were outside the scope of the leave I granted to Oldroyd referred to in paragraph [36] above, I do not intend to consider them, save to record that none of s 55, s 100 or s 125 of the NCCPA or the *Code* say anything like what Oldroyd asserted.

[48] I address below Oldroyd's arguments about ANZ being the subject of various regulatory actions, class actions, etc and claims that he has against ANZ.

Amount payable by the Oldroyds to ANZ under the loan agreement

[49] In his evidence-in-chief, Ventura said that as at the date of the hearing, the arrears balance on the Oldroyds' loan was $62,021.25 with an additional $3,408.65 in enforcement costs. The payout balance on the Oldroyds' loan was $359,653.04. The last repayment made by the Oldroyds on the loan was made on 17 February 2023.

[50] In cross-examination, Oldroyd asked Ventura how he was qualified to undertake a 'review of the records pertaining to' ANZ's financial transactions with the Oldroyds as stated in his affidavit. Ventura said the review he undertook was to find the documents and provide them to ANZ's solicitors. He said he did not undertake a financial review. Ventura agreed that he provided a copy of the bank statement showing the transactions on the Oldroyds' loan account between certain dates, but said he did not examine or investigate each transaction. Oldroyd asked Ventura if he was

aware of negotiations between himself and ANZ in August 2024 in which ANZ offered to 'reduce the loan'. Ventura was not aware of that. Oldroyd asked Ventura if he was aware of emails between the Oldroyds and ANZ in relation to a 'hardship application'. Ventura was not aware of that. Oldroyd asked Ventura if he was aware of offers made by Oldroyd to ANZ to 'settle the dispute'. Ventura said he did see that there was an offer, but he was not involved in dealing with that. Oldroyd asked Ventura if he was aware of an interest rate reduction provided to him on all of his loans in 2017. Ventura was not aware of that.

Oldroyd Affidavits of 10 December 2024 and 2 April 2025

[51] At the hearing, Oldroyd relied on an affidavit made by him on 10 December 2024 ('Oldroyd Affidavit') which comprised 20 paragraphs and annexed around 65 pages of various documents. Upon ANZ's objection to much of the content of the affidavit and annexures on the ground of relevance, I provisionally received the Oldroyd Affidavit *de bene esse*, so that I could properly assess relevance once the matter was fully argued.

[52] On 4 April 2025, I granted Oldroyd leave to file and rely, *de bene esse*, on a further affidavit made by him on 2 April 2025.

[53] Any material in the Oldroyd Affidavit or the Oldroyd affidavit made on 2 April 2025 which is not referred to in these reasons is irrelevant to the issues to be decided in this proceeding. Unless otherwise stated, I accept the

relevance of any material in the Oldroyd Affidavit or the Oldroyd affidavit of 2 April 2025 which is referred to in these reasons.

No relevant variation of the interest rate

[54] Oldroyd deposed that, in 2015, ANZ agreed to provide the Oldroyds with a 1.3% interest rate reduction across all the Oldroyds' loans, which was not honoured by ANZ.[20] He made complaints to ANZ representatives between 2016 and 2020, 'but all fell on deaf ears'. Oldroyd annexed a chain of email exchanges between himself and officers of ANZ between 15 October and 2 December 2019.[21] In those emails, Oldroyd sought a reduction to the interest rates applying on seven loans with ANZ. One of those loans is identified by loan number which appears to coincide with the account number applicable to the loan agreement the subject of these proceedings.[22] From the coincidence of the numbers referred to in the emails, I infer that it is a reference to the loan the subject of the loan agreement. In those emails, ANZ offered a new interest rate of 3.67% per annum in relation to the loan agreement, Oldroyd responded by a counter-offer that the interest rate be reduced to 3.20% per annum as had been offered to him by two other financial institutions, and ANZ responded to that counter-offer saying that ANZ could not match those rates.

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20 Oldroyd Affidavit, [11].

21 Oldroyd Affidavit, Annexure C.

22 The first loan number in the emails appears to coincide with the account number on the loan statement and the variation document annexed to the Ventura Affidavit.

[55] I find that the effect of that evidence is that ANZ did not agree, in 2019, to reduce the interest rate applicable to the loan agreement.

[56] In any event, by the variation document, the interest rate applicable under the loan agreement was varied in May 2021. A fixed interest rate of 1.89% per annum applied for the first two years, followed by an interest rate of 2.68% per annum, which comprised the (variable) ANZ home loan index less a 'Breakfree Package' discount of 1.71%. That was the basis upon which the loan repayments referred to in paragraph [26(g)] above were calculated.

Loan account was 'in credit'

[57] Oldroyd pointed to the loan account statement annexed to the Ventura Affidavit and argued that the Oldroyds were not in arrears on the loan as Ventura had deposed and testified. The loan account statement was for the period 15 October 2009 to 15 April 2010. On the first page, headed 'Your statement overview' are the words: 'Amount paid in advance $46,406.00'. This was the evidence relied on by Oldroyd to establish that the loan account was not in arrears as Ventura had said.

[58] Also on that page of the loan account statement is the following:

Opening balance	**$0.00**
Total payments	+$63,461.59
Total withdrawals	-$472,000.00
Total interest	-$13,680.30
Total bank/services charges	-$95.00
Closing balance	**-$422,313.71**

Minimum required payment	$2,999.65
Payment frequency	Monthly

[59] It is clear from this information that, during the six months from 15 October 2009, the defendants' were obliged to pay six monthly payments of almost $3,000 per month, being a total of around $18,000. They paid a total of around $63,500 and had, consequently, paid $46,406 in advance of the required repayment amounts.

[60] That the Oldroyds were ahead in their loan repayments in 2010 says nothing about whether they were in arrears in October 2023, August 2024 or March 2025. Those are the relevant times because October 2023 is when ANZ served its notices of default and intention to exercise its power of sale, August 2024 is when Ventura made his affidavit and March 2025 is when this matter was heard.

[61] Oldroyd asserted that he has 'always been in front on [his] loans', and that he had done an audit which indicated he was around $700,000 'in front' on the loans he had 'at one stage' with ANZ. Again, that the Oldroyds were, at some unidentified stage, ahead in their loan repayments says nothing about whether they were in arrears at the relevant times. Aside from this vague and unsubstantiated assertion, Oldroyd did not dispute that he has made no repayments on the loan since February 2023.

[62] On the evidence before me, there is no basis to reject Ventura's evidence that the Oldroyds have not made any repayments on the loan since February 2023 or the amounts in which they were in arrears at the relevant times.

[63] Consequently, I accept Ventura's evidence as set out in paragraphs [26(j)], [26(m)] and [48] above, and find accordingly.

[64] Furthermore, the general rule is that a mortgagee will not be restrained from exercising a power of sale under the mortgage merely because the amount due is in dispute, and the mortgagee will only be restrained if the mortgagor pays the amount claimed into court.[23] The Oldroyds have not paid any money into court.

Hardship application

[65] Oldroyd deposed that a 'hardship application' was made by the Oldroyds to ANZ in 2020.[24] He annexed an email to ANZ from Mrs Oldroyd of 16 November 2022.[25] In that email, Mrs Oldroyd asked ANZ for 'assistance with our credit card debts'. There is no reference to any relief sought in relation to repayments under the loan agreement.

[66] In any event, the making of an application to a bank for some relief in relation to repayments under a secured loan does not, of itself and without the bank's agreement to vary or suspend the terms of the loan agreement,

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23 *Hamwood v Murdoch* [2010] NTSC 62. This case involved an application for an injunction restraining a mortgagee from exercising its power of sale. Nevertheless, that situation is analogous to the present situation.

24 Oldroyd Affidavit, [13].

25 Oldroyd Affidavit, Annexure D.

provide a necessary basis for a court to refuse to grant the bank an order for possession of the secured property.

Unilateral withdrawal from obligations under the loan agreement and the mortgage

[67] Oldroyd argued that on 15 March 2023 or in May 2023, the loan agreement was 'suspended and then discharged' by the Oldroyds' due to ANZ's failure to 'reply to legal notices in the time frame provided'.

[68] Oldroyd annexed a document said to have been emailed or posted to various officers of ANZ on 15 February 2023 in which the Oldroyds asserted that ANZ had not 'been honest in their dealings with' the Oldroyds, raised 'points that require clarification' and stated that: 'Until this [clarification] is received, all contracts, guarantorships, loans, "mortgages", and any payments of such, are hereby suspended'.[26] Demand was also made for 'the original negotiable instrument documents' for 10 loans including the loan agreement. The correspondence stated:

> TAKE NOTICE THAT failure by you provide the required FURTHER & BETTER PARTICULARS and any evidence giving full grounds, and provide your insurance certificates of currency, within twenty-eight (28) days of the date of this Notice, it shall be taken that you have no claim in this matter and shall entitle me to lawful remedy at your cost and no further notice to you.

[69] Oldroyd also annexed a document said to have been emailed or posted to officers of ANZ on 15 March 2023 in which the Oldroyds asserted that

26 Oldroyd Affidavit, Annexure E.

ANZ's failure to reply to the above document had the consequence that the Oldroyds had 'lost all trust and confidence' in ANZ, asserted that ANZ and the Oldroyds 'have now come into a tacit agreement by your acquiesce [sic]', and giving ANZ a further 14 days from the date of the document to provide the 'further & better particulars' and insurance certificates, or 'it shall be taken that you have no claim in this matter and shall entitle us to lawful remedy at your cost and no further notice to you'.[27]

[70] Oldroyd also annexed a document said to have been emailed or posted to officers of ANZ on 31 March 2023 in which the Oldroyds asserted that ANZ's failure to reply to the above documents was 'a tacit agreement by your acquiesce [sic]' and gave ANZ a further seven days from the date of the document to 'remedy'.[28] The document stated that it was the final notice before the Oldroyds 'proceed to default summary judgement', or 'it shall be taken that ANZ consented to the terms of the document and previous documents', the Oldroyds 'shall be entitled to full restitution and damages' from ANZ and the officers personally and they have 'accepted full personal, vicarious, financial and absolute liability'.

[71] Oldroyd also annexed a document headed 'statement of claim' dated 31 March 2023 in which the Oldroyds asserted that ANZ had 'acquiesced'

27 Ibid.

28 Ibid.

the Oldroyds' notices and had 'therefore come into tacit agreement for the restitution of monies due to fraud'.[29]

[72] Oldroyd also annexed a document headed 'affidavit of truth – commercial lien' in which various bizarre assertions were made, including references to 'the battlefield', 'sacrifice', 'slavery and peonage', and that 'commercial processes are non-judicial' and an assertion of individual sovereignty.[30] The document further asserted that Mrs Oldroyd had sent a 'deed of discharge' to ANZ on 1 August 2023 which 'settled' the loan. The document made various allegations of fraud and crimes on the part of ANZ and asserted that there was a 'commercial lien' for the sum of $25 million compensation against ANZ for the asserted wrongs.

[73] Oldroyd also annexed a document said to have been emailed or posted to various ANZ officers on 28 November 2023, referring to his 'affidavit of truth – commercial lien' and demanding that ANZ 'cease and desist' from sending documents and 'threatening letters'.[31]

[74] Lastly, Oldroyd annexed a verification statement of his lodgement on 8 March 2024 on the Personal Property Securities Register of a security interest held by him, namely a negotiable instrument described as a commercial lien on ANZ. This is presumably a reference to his 'affidavit of truth – commercial lien'.

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29 Ibid.

30 Ibid.

31 Ibid.

[75] It is trite that a party to a contract cannot suspend, withdraw from or discharge (i.e. fail to perform) their contractual obligations without the agreement of the other party, unless the contract so provides. There is nothing in the loan agreement, the variation document or the mortgage giving the Oldroyds any such entitlements.

[76] The documents relied on by Oldroyd as referred to above have no such legal effect and are complete nonsense. Registration of the asserted security interest comprising a 'negotiable instrument' under the *Personal Property Securities Act 2009* (Cth) does not create, preserve or secure an interest that does not exist. Oldroyd's references to himself in submissions as 'the secure party creditor' in reliance on these documents are therefore misplaced and ignored.

Oldroyds' obligation to repay the loan cannot be set off

[77] In any event, the mortgage provides that payments required to be made by the Oldroyds to ANZ are to be 'in cleared funds and free of any set-off or deduction' and the Oldroyds 'will not deduct amounts [they] claim are owing to [them] by ANZ or any other person' (cl 2.4, MCP). Any claim or entitlement which the Oldroyds have or may have against ANZ do not affect their obligations to repay the loan and ANZ's rights under the mortgage.[32]

32 *Oswal v Commonwealth Bank of Australia* [2013] WASCA 58 at [45], [48], [50]-[54] per Pullin JA (Newnes JA agreeing).

[78] This means Oldroyd's reliance on *Ashby v White* (1703) 92 ER 126 to found some entitlement to damages (presumably as referred to in the 'statement of claim' document and the $25 million referred to in the 'affidavit of truth – commercial lien' document) is misplaced.

Allegations of fraud by ANZ

[79] Oldroyd made various allegations against ANZ of 'fraud' which was said to 'vitiate everything' (relying on *United States v Throckmorton* 98 US 61 (1878)). As I understood his submissions, in addition to the 'fraud' by 'securitisation' allegations which I have rejected above, there were two significant aspects to his argument that the loan agreement, the variation document and mortgage were vitiated by fraud.

ANZ's failure to disclose regulatory and other proceedings against it

[80] Oldroyd sought to rely on numerous media articles which indicated that, between about 2017 and 2019, ANZ had been fined for 'breaching consumer protection laws' or anti-money laundering laws. He also sought to rely on numerous media articles which indicated that ANZ had agreed to settle various class actions brought against it by customers.

[81] Oldroyd argued that ANZ failed to disclose either these proceedings or the conduct which underlies them to the Oldroyds either before or after they entered into the loan agreement, the mortgage and the variation document, and that its failure to do so constituted fraud.

[82] ANZ's obligation to disclose these matters was said by Oldroyd to arise under s 55 of the 'NCC Act'. I take that to be a reference to the NCCPA or the *Code*. I have dealt with the reference to that section in paragraph [46] above. Reference was also made to the Australian Banking Code of Practice. That document does not have the force of law and, consequently, does not impose any legal obligation on ANZ to disclose anything. Reference was also made to the 'fair-trade practices Act' and the Australian Consumer Law. No particular provision of that Law was identified as conferring on ANZ an obligation to disclose these matters to the Oldroyds.

[83] In any event, I do not accept that Oldroyd's vague and unsubstantiated allegations of misleading and deceptive conduct sustain any finding to that effect, let alone a finding that ANZ engaged in fraudulent conduct when lending the Oldroyds $472,000 on the condition that they would make the monthly payments as initially agreed in the loan agreement, as varied by the variation document, and as secured by the mortgage over the Property.

[84] As regards Oldroyd's acceptance into class actions involving ANZ, for the reasons set out in paragraph [73] above, any claim or entitlement which the Oldroyds have against ANZ in those proceedings (including proceedings related to the 'Breakfree package') do not affect their obligations to repay the loan and ANZ's rights under the loan agreement or the mortgage.

ANZ's involvement in 'fraud' committed by others

[85] Oldroyd deposed that, in about 1996, ANZ permitted a business partner of his to withdraw all the funds from their joint bank account.[33] He deposed that the Oldroyds were reintroduced to ANZ by a certain business facilitator in 2002, and ANZ officers 'guaranteed' to the Oldroyds that their interactions would be 'above industry standards', honest and ethical.[34] He deposed that that business facilitator was present during meetings at ANZ, was not who he claimed to be, was a 'known fraudster' and was acting in partnership with ANZ, so they were 'in company with' his 'fraud and crimes' against Oldroyd and many others.[35]

[86] Again, these vague and unsubstantiated allegations cannot sustain any finding that ANZ engaged in fraudulent conduct when lending the Oldroyds $472,000 on the condition that they would make the monthly payments as initially agreed in the loan agreement, as varied by the variation document, and as secured by the mortgage over the Property.

Professor Werner – All mortgages are frauds

[87] Oldroyd deposed that he had contacted Professor Richard Werner, 'the inventor of Quantum easing and one of the world's top economists', who was 'willing to testify on the Mortgage fraud'.[36] At the hearing, Oldroyd

33 Oldroyd Affidavit, [5].

34 Ibid, [7].

35 Ibid, [8]-[9].

36 Oldroyd Affidavit, [12].

said he would be submitting detailed information from Professor Werner about that. I pointed out to him that he could not rely on expert evidence without providing a written report setting out the expert opinion evidence and filing and serving that report six weeks prior to the day fixed for trial.[37] He submitted that he had effectively done that, by referring in an affidavit, filed for the purposes of an interlocutory application, to an internet link to a video published online by Professor Werner. I pointed out to him that such a video was not an expert report as required by the Court's processes, not least because it was not specifically addressed to the issues in the proceeding and did not contain the expert's agreement to be bound by the Code of Conduct for Experts. Oldroyd said he would try to obtain an expert report from Professor Werner. I told him I would rule on the admissibility of any such expert report if and when he had one and made an application to rely upon it.

[88] Oldroyd did not seek to file or otherwise provide any such expert report.

[89] Consequently, I disregard any submission made by Oldroyd relying on opinions by Professor Werner.

The Court's discretion to make an order for possession

[90] Oldroyd deposed that, on 2 December 2024, he had appointed a real estate agent to sell the Property.[38] A copy of the agency agreement was annexed.[39]

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37 See Order 44, SCR and Practice Direction No 6 of 2015.

38 Oldroyd Affidavit, [18].

Oldroyd tendered a contract of sale dated 17 March 2025 under which the Oldroyds had agreed to sell the Property to a buyer from New South Wales for $710,000.[40]

[91] Oldroyd argued that an order granting ANZ possession of the Property should not be made given the contract of sale, or at least pending completion of the contract of sale.

[92] The contract of sale provides for completion on or before 90 days after exchange of the contract of sale (cl 3.1).

[93] ANZ conceded that an order for possession is discretionary[41] and that, generally speaking, a contract of sale of a mortgaged property may be relevant to the exercise of the discretion to grant an order for possession to the mortgagee.

[94] In *Kani*, this Court held that an order for possession is not as of right, and it remains a matter for the discretion of the Court. It was held that relevant to the exercise of that discretion is the purpose for which possession is sought and, if possession is sought for the purposes of facilitating the power of sale, any impediment to the exercise of the power of sale will necessarily impact on the exercise of the discretion. It was held that the exercise of a judicial discretion commonly involves a balancing of competing interests. In

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39 Oldroyd Affidavit, Annexure H.

40 Exhibit D1.

41 Citing *Indigenous Business Australia v Kani* (2012) 31 NTLR 121 (‘*Kani*’) at [28] per Luppino M.

that case, the Court found that an order for possession would see the defendant being evicted from her home, which was said to be a drastic consequence resulting in significant hardship for the defendant. Further, the Court found the order would serve no useful purpose for the plaintiff where its ability to exercise the power of sale had not yet crystalised. These circumstances were said to favour rejection of the application for an order for possession on discretionary grounds.

[95] There was no dispute about these principles. Consequently, I am prepared to adopt them here.

[96] ANZ argued that, in the present case, the contract of sale does not impact materially on the exercise of the discretion for a number of reasons.

[97] Firstly, the contract of sale was entered into six months after these proceedings were commenced and two days before the hearing.

[98] Secondly, the sale, if it proceeds, will not occur until 16 June 2025. The Oldroyd affidavit of 2 April 2025 annexes copies of two emails apparently[42] sent to him from his own conveyancer and from his real estate agent, which confirm that the contract of sale counterparts were exchanged on 17 March 2025 and that the completion or settlement date is 16 June 2025.

42 Annexures A and B. These documents do not include the sender, recipient and date header which copies of emails usually have. I presume they have been redacted by Oldroyd for some reason. Nevertheless, I am prepared to accept his evidence that they were sent to him by his conveyancer and real estate agent, as it appears on their face that they were.

[99] Thirdly, the contract of sale is conditional upon the buyer obtaining finance of $600,000 by around 7 June 2025, and is conditional upon the buyer obtaining reports satisfactory to the buyer regarding termites or wood boring insects, the condition of structural improvements, compliance of the structural improvements with all relevant laws and building codes, the condition of the plumbing fixtures, the condition of the electrical wiring, a certificate of compliance in respect of any fuel gas system and a certificate issued by the Aboriginal Areas Protection Authority confirming there are no Aboriginal sacred sites on the property. I pause here to note Oldroyd's submissions that the Property is a sacred site and/or a heritage site due to the presence of Aboriginal artifacts, and his evidence that the Property can 'never be removed from our family's possession' because his father's ashes were placed there.[43] Those submissions and evidence are entirely inconsistent with the Oldroyds' execution of the contract of sale. I therefore place no weight on them. In any event, I accept Oldroyd's submission that these conditions are fairly standard in a contract of sale for a residential property.

[100] Fourthly, the contract of sale has been executed in the corporation section of the execution clause by Oldroyd and by Oldroyd purportedly under 'POA', i.e. power of attorney, for Mrs Oldroyd. The power of attorney annexed by

43 Oldroyd Affidavit, [15]. Oldroyd's 'notice of dispute' sought to invoke 'the castle doctrine' on this basis. That doctrine refers to a landlowner's right of self-defence against a trespasser. Any person entering into possession of the Property under an order for possession would not be a trespasser.

Oldroyd[44] registered on 9 September 2024 is in the names of 'Juliet-Marie *Odroyd* [sic] NEE Beard' as donor and 'Craig-Richard: Wulimani' as donee. The contract of sale is in the names of 'Craig Richard Oldroyd, Juliet Marie Oldroyd' as seller. That kind of technical difference between the names of the parties to the contract of sale and the names of the parties to the power of attorney under which it was executed may potentially present a barrier to the completion of the sale on the completion date by registration of the transfer to the buyer at the Land Title Office.

[101] Fifthly, the contract of sale provides for the payment of a deposit by the buyer to the seller of $1. The printed version of the contract of sale provided for a deposit of $1,000 but the zeros after the '1', the word 'thousand' and the 's' at the end of the word 'dollars' have been scribbled out. Those three alterations have been initialled (it appears) by the buyer but not the Oldroyds, although I note that (it appears) Oldroyd's signature is at the bottom of that page. In the affidavit made by Oldroyd on 2 April 2025 referred to in paragraph [96] above, Oldroyd deposed that the deposit of $1,000 has now been paid by the buyer. This appears to be confirmed by the email from Oldroyd's conveyancer annexed to that affidavit.[45]

[102] On the basis of the terms of the contract of sale and the other evidence referred to above, I find that there is a contract of sale for the Property on foot and that the sale may or may not proceed on or by 16 June 2025. I do

44 Oldroyd Affidavit, Annexure A.

45 Annexure A. For the reasons set out in footnote 42 above, I am prepared to accept Oldroyd's evidence about this.

not accept that these matters render the contract of sale largely irrelevant to the exercise of the Court's discretion. I will return to that discretion shortly.

[103] Oldroyd deposed that he had made three offers to settle this dispute with ANZ, none of which were accepted.[46] He deposed that ANZ's failure to accept those offers established that the proceeding is 'a targeted attack on' the Oldroyds and their family.[47]

[104] There is no evidence before the Court regarding the nature, content or timing of those offers. Oldroyd submitted that they were effectively offering ANZ one or another of his other properties in exchange for the Property, which were each valued in excess of the money owing under the loan agreement. However, there is no evidence before me about those matters.

[105] Oldroyd submitted that he had offered to mediate this matter with ANZ. Again, there is no evidence about this before me.

[106] In any event, the making of offers to settle or mediate this dispute are commercial matters for ANZ, and do not detract from or deny ANZ's legal entitlements under the loan agreement, the variation document and the mortgage.

[107] Oldroyd submitted that he was entitled to 'equity' and that the above matters show he had acted 'honourably'. As I understood it, Oldroyd was not invoking any specific equitable right or interest which would preclude ANZ

46 Oldroyd Affidavit, [18].

47 Ibid, [20].

enforcing its legal entitlements under the loan agreement and the mortgage. No particular equitable right or interest was referred to. I do not see how ANZ's failure to accept settlement offers or accede to a request for mediation has created an equitable right of the Oldroyds which would defeat ANZ's claim to an order for possession. In particular, a failure to accede to a request for mediation is hardly surprising given the attitude of the Oldroyds to their legal obligations as demonstrated by the documents referred to in paragraphs [65] to [71] above.

[108] Rather, as I understood it, these matters were pressed by Oldroyd effectively in relation to the exercise of the Court's discretion. So too were the following matters.

[109] Oldroyd submitted that ANZ had taken out mortgage insurance when the variation document was executed, meaning it is insured for the Oldroyds' failure to repay the loan, so it would not suffer any loss if the loan were not repaid. I do not see how the existence of insurance that may indemnify ANZ from loss is relevant to the exercise of the discretion to grant an order for possession. Possession of the Property is a contractual and statutory consequence of the Oldroyds' breach of their obligations under the loan agreement and the mortgage. A payment under an insurance policy is not a necessary substitute, not least because payments under such insurance policies generally occur after a sale of mortgaged property which has not recouped all funds owed, such that the mortgagee has sustained a loss. Furthermore, it was made clear in the loan agreement that mortgage

insurance obtained by ANZ does not affect the Oldroyds' obligations to pay what is owed under the loan agreement (cl 12).

[110] It follows that ANZ's failure to produce a copy of ANZ's mortgage insurance in relation to the Oldroyds' loan, as sought by the notice to produce, is irrelevant.

[111] Oldroyd did not submit, or put any evidence specifically establishing, that the Property is the residence of the Oldroyds and that they will suffer hardship by an order for possession because they would be required to vacate their home. The fact that the Oldroyds have entered the contract of sale indicates otherwise. Furthermore, there is evidence before me which shows that the Oldroyds own or have owned numerous properties, and Oldroyd submitted that he has 'offered' ANZ such properties 'in exchange' for the Property, so I cannot infer that the Property is their residence or their only residence.

[112] Oldroyd submitted, expressly without acknowledging that the Oldroyds owe any money to ANZ, that if the sale of the Property the subject of the contract of sale proceeds, ANZ will get what they say they are owed because the mortgage must be discharged before the transfer can be registered, but if ANZ is granted an order for possession and exercise their power of sale, ANZ will most likely re-market and re-contract it for sale and pass the costs of doing so onto the Oldroyds.

[113] ANZ submitted in response that an order for possession does not necessarily mean that a warrant for possession will be immediately issued.

[114] In all the circumstances of this case, I consider that an order for possession of the Property should be granted to ANZ, with a condition that no warrant for possession is to issue until after 17 June 2025. By this, ANZ will have the order it is entitled to, but may not act upon it to take possession until after the completion date under the contract of sale. If the contract of sale is completed by that date, ANZ will have been paid what is owed to it by the Oldroyds as at the completion date and discharged the mortgage. In that case, there will be no need to take possession. If the contract of sale is not completed by that date, ANZ can obtain a warrant for possession, take possession of the Property and exercise its power of sale. There is no suggestion that delay in doing so of a further two months will unduly prejudice ANZ.

Disposition

[115] For the above reasons, I make the following orders.

(1) Pursuant to r 45.05(2) of the *Supreme Court Rules*, the requirements of rr 5.03(1) and 8.02 are dispensed with and the plaintiff is authorised to commence this proceeding by originating motion in Form 5C.

(2) Subject to Order (3), the plaintiff is to have possession of the whole of the land comprised in Certificate as to Title Register Book Volume 741,

Folio 313 more particularly described as Lot 475, Town of Sanderson from plan S76/105, known as 35 Howley Crescent, Anula, Northern Territory.

(3) No warrant of possession to enforce the order for possession in Order (2) may issue until after 17 June 2025.
