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Both Angas and Julia may be able to argue that the Bank engaged in misleading or deceptive conduct in trade or commerce. The Bank, it is inferred, is a financial corporation, and hence the Commonwealth ACL would apply to it (CCA s 131). They are also clearly acting 'in trade or commerce'.

The question is whether the Bank's omission of the fact that they knew the venture to be risky could constitute misleading or deceptive conduct for the purposes of s 18(1) of the ACL. Demagogue v Ramensky is authority for the proposition that an omission can constitute misleading or deceptive conduct if there would be a 'reasonable expectation' that the information would be disclosed. There seems to be a good chance, then, that s 18(1) was breached by the Bank. If it was, there might be an award of damages under s 236 or under ss 237-245, the contract might be set aside. Damages for Angus seems more likely as there is a bar to rescission: the loan funds are gone.

Julia might be able to argue that her guarantee should be set aside on the grounds of undue influence (Barclays v O'Brien). She would likely show either actual undue influence on the facts, or alternatively point to her relationship as one in which undue influence ought to be presumed, and force the Bank to rebut the presumption (Barclays). She would have to show that the Bank has actual or constructive knowledge of the undue influence, the success of doing so is clear on the facts (Barclays). If she succeeded in doing this, and the Bank failed in rebutting the presumption, then the contract would be set aside.

Note: if Julia has been married she would have had access to the special wives' equity (Garcia).

The Bank's best counterargument to the undue influence claim would be that Julia had been warned by her friend that the venture could be risky, and hence was informed enough to make a decision in her own best interests.

Neither Angus nor Julia would likely succeed in an argument based on common law misrepresentation, as there is no misrepresentation at common law for omissions (W Scott Fell v Lloyd).

b. Actions against Green could be framed in several ways. On one hand, he was clearly acting as an agent of Sparkadia, and hence the company may be vulnerable to actions arising out of his conduct (Pola v Commonwealth Bank).

Sparkadia, is insolvent, however, so it is best to pursue Green using the accessorial liability provisions in ACL s 2(1). Hence Green can be considered an agent of the company, the company falls within the Cth ACL (CCA s 131) and Green is liable as an accessory. Per s 2(1), it would have to be shown that Green was aware of any breaches of the ACL.

The most likely action would be to allege that Green's conduct contravened s 18(1) of the ACL. Importantly, Green's representations were as to future matters. Hence they would be deemed misleading if Green had no reasonable grounds on which to make the representations (ACL s 4). Also by s 4, Green's representations as to the future profitability of the apartments would be deemed to have been made without reasonable grounds unless he could adduce evidence to the contrary.

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The likely argument by Green would be that his remarks at the seminar were mere marketing puffs, not meant to be taken seriously or relied upon. There is authority that an action under s 18 can be defeated on the grounds that the relevant statement was a mere puff (General Newspapers v Telstra) but the statements here were clear, and named figures. There is little chance of them being considered a puff.

Green's other arguments would be that he had reasonable grounds for his representations and that he was hence unaware of any wrongdoing. On the facts, this seems unlikely, but by s 4 he would not have breached the act if he had reasonable grounds for his representations, and if he had reasonable grounds for his representations he could not have been aware of wrongdoing, a requirement of s 2(1).

If Angus and Julia succeeded in their argument based on s 18(1), they would have access to a range of ACL remedies, most relevantly, damages (s 236, ss 237-245).

Angus and Julia might argue that their ignorance of finance was a special disability which Green and Sparkadia took advantage of unconscionably (Amadio). Fullagar J's elucidation of the 'special disability' category in Blomley v Ryan might be taken to encompass ignorance, but any argument based on unconscionable dealing is likely to be defeated on the grounds that the couple, though not educated in finance, were not sufficiently at a disadvantage to satisfy the requirements of 'special disability'. The cases in this area are all indicative of a higher threshold for 'special disability' (Amadio, Blomley). If an argument based on unconscionability did succeed, the ACL remedies would be available by virtue of the operation of ACL s 20 (Berbatis).

If Julia had been assured by an officer of the bank that the guarantee would not be enforced, Julia would have several arguments.

The first would be that the representation acted to vary the terms of the contract. The parol evidence rule can be overcome in some cases (Nicolazzo v Harb) and the representations made by parties can vary contractual terms. In other cases (NSW State Rail v Heath Outdoor) courts refused to vary written terms on the basis of oral promises. In this case, it would be very difficult to persuade a court to vary the written guarantee on the basis of the oral promise. This is because the instant case does not involve a promise not to enforce some peripheral contractual right, or a right to terminate (as in Heath Outdoor) but instead a promise not to enforce the contract at all. It would be an incredibly drastic alteration of the written contract, and would render it nugatory. Moreover, in Heath Outdoor, a variation which altered the express written terms to a much lesser degree than the proposed alteration here was refused.

An argument based on a collateral contract would also likely fail. By the rule in Hoyts v Spencer, a collateral contract must not vary the express terms of the contract.

Julia's best argument would be based on estoppel. Julia could argue that she was induced by the Bank to adopt the assumption that the guarantee would never be used, and relied on that assumption to her detriment by entering into the guarantee (Saleh v Romanous is the analogous case). If she could show it would be unconscionable for the Bank to resile from its proposed course of action, an equity would be raised in favour of Julia, and it would likely be given effect by forcing the Bank to make good its representation (Saleh).