IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 159

Originating Summons (Bankruptcy) No 91 of 2016
(Registrar's Appeal No 94 of 2017)

Between

ANG AI TEE

… Plaintiff

And

RESOURCE CREDIT PTE LTD

… Defendant

ORAL JUDGMENT

[Insolvency law] — [Bankruptcy] — [Statutory demand]

[Credit and security] — [Money and moneylenders] — [Loan refinancing]

[Credit and security] — [Money and moneylenders] — [Moneylenders Rules 2015]

TABLE OF CONTENTS

Ang Ai Tee
v
Resource Credit Pte Ltd

[2017] SGHC 159

High Court — Originating Summons (Bankruptcy) No 91 of 2016 (Registrar's Appeal No 94 of 2017)
Tan Siong Thye J
25-26 May 2017

7 July 2017 Judgment reserved.

Tan Siong Thye J:

Introduction

1 Resource Credit Pte Ltd, the defendant, is a licensed moneylender and Ang Ai Tee, the plaintiff, was a borrower who took several loans from the defendant in 2015 and 2016. When the plaintiff was unable to redeem the loan the defendant took out bankruptcy proceedings after having served the Statutory Demand ("SD") for the sum of $135,879.96 on the plaintiff.[1]

2 On 23 February 2017, the plaintiff appeared before the learned Assistant Registrar ("the AR") to set aside the SD. The AR dismissed her application. She now appeals against that decision.

---

[1] Affidavit of Ng Say Khink, 19 Jan 2017, pp 31-33.

Background

3 The plaintiff is an employee of Elsie's Kitchen Catering Services Pte Ltd and Continental Delight Catering Services Pte Ltd.[2] She is about 50 years old and is a director of several companies. The defendant alleged that she was earning about $345,000 per year at the time of the last loan.[3]

4 The defendant is a licensed moneylender with its registered address at 35 Selegie Road, #02-14, Parklane Shopping Mall, Singapore.[4] The plaintiff took out many short term loans from the defendant. The first loan dated 24 January 2015 was for the sum of $40,000 and the last loan was on 30 September 2016 for the sum of $128,000. There were a total of 24 loan transactions.[5]

Moneylenders Rules 2015

5 Upon the recommendations of the Advisory Committee on Moneylending in its Final Report in 2015 ("the Advisory Committee Report"), the Moneylenders Rules (GN No S 72/2009) ("MLR") were amended by the Moneylenders (Amendment) Rules 2015 (GN No S 567/2015) on 1 October 2015 ("MLR 2015").[6] The MLR 2015 made significant changes to the interests and charges that the licensed moneylenders could impose. Basically, the MLR 2015 is a piece of subsidiary legislation that primarily protects the interests of the borrowers as well as allows the licensed moneylenders to operate

---

[2] Affidavit of Ang Ai Tee, 15 December 2016, para 6.

[3] Defendant's Further Submissions, p 24.

[4] Affidavit of Ng Say Khink, 19 Jan 2017, para 6.

[5] Affidavit of Ng Say Khink, 19 Jan 2017, para 7.

[6] ABOA Tab 17.

a viable business enterprise within some prescribed boundaries. It was not meant to incentivise moneylenders to skirt the boundaries and find creative ways around them.

Summary of the 24 loans

6 As the MLR 2015 changed the moneylending landscape significantly, the parties, out of convenience, classified the 24 loans into pre-amendment loans and post-amendment loans. The pre-amendment loans comprised the following six loans:[7]

(a) $40,000 on 24 January 2015 with interest at 260% per annum;

(b) $40,000 on 7 March 2015 with interest at 208% per annum;

(c) $50,000 on 6 April 2015 with interest at 208% per annum;

(d) $55,000 on 2 May 2015 with interest at 208% per annum;

(collectively, the "First Loan Series")

(e) $60,000 on 22 May 2015 with interest at 208% per annum ("Loan 1"); and

(f) $30,000 on 12 September 2015 with interest at 240% per annum ("Loan 2").

7 After the MLR 2015 was introduced, the parties entered into another 18 loan transactions which they have referred to as Loans 3 through 20. These are the post-amendment loans. The loan period for all 24 loan agreements ranged from one day to about a month.[8] The relevant details of the 18 loan transactions

[7] Appellant's Written Submissions, para 15 (not contested by the defendant).

[8] Affidavit of Ng Say Khink, 19 Jan 2017, Annex A, pp 21-30.

are shown in the table below.

Table of Loans with administrative fee, interest, late interest and late fee

Loan Number	Date of Loan	Date Loan repaid and discharged	Loan Principal Amount ($)	Administrative Fee charged on grant of Loan ($)	Interest actually paid ($) / Interest rate (per month)	Late Interest actually paid ($) / Interest rate (per month)	Late Fee actually paid ($)
Loan 3	5/10/2015	17/10/2015	50,000	5,000 (10%)	-	-	-
Loan 4	17/10/2015	31/10/2015	60,000	6,000 (10%)	-	-	-
Loan 5	31/10/2015	21/11/2015	60,000	6,000 (10%)	-	-	-
Loan 6	21/11/2015	28/11/2015	60,000	6,000 (10%)	540	-	-
Loan 7	28/11/2015	12/12/2015	60,000	5,460 (9.1%)	600	-	-
Loan 8	12/12/2015	26/12/2015	60,000	5,400 (9%)	540	-	-
Loan 9	26/12/2015	09/1/2016	60,000	5,460 (9.1%)	540	-	-
Loan 10	09/1/2016	23/1/2016	60,000	5,460 (9.1%)	540	-	-
Loan 11	23/1/2016	06/2/2016	60,000	5,460 (9.1%)	1,088.60	547.40	120
Loan 12	06/2/2016	27/2/2016	60,000	6,000 (10%)	2,350	-	-
Loan 13	27/2/2016	28/3/2016	120,000	12,000 (10%)	4,700	-	-
Loan 14	28/3/2016	28/4/2016	120,000	12,000 (10%)	4,700	-	-
Loan 15	28/4/2016	28/5/2016	120,000	12,000 (10%)	4,700	-	-
Loan 16	28/5/2016	29/6/2016	120,000	12,000 (10%)	4,700	-	-
Loan 17	29/6/2016	30/7/2016	120,000	12,000 (10%)	4,700	-	-
Loan 18	30/7/2016	27/8/2016	120,000	12,000 (10%)	4,700	-	-
Loan 19	27/8/2016	30/9/2016	120,000	12,000 (10%)	5,140	-	-
Loan 20	30/9/2016	Not repaid	128,000	12,800 (10%)			
			Total: $195,844.60	$149,440.00	$45,732.20	$547.40	$120.00

Parties' submissions

Plaintiff's submissions

8 The plaintiff seeks to set aside the SD by relying on r 98(2)(*b*) of the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) ("BR"). She submits that all that

is required to set aside the SD and proceed to trial is one genuine triable issue.[9] She says that there are five such issues:

(a) Whether the 10% administrative fee for each of Loans 4 to 20 constitutes a permitted fee under ss 2 and 22 of the Moneylenders Act (Cap 188, 2010 Rev Ed) ("MLA") and r 12 of the MLR 2015;

(b) Whether Loan 20 should be set aside under s 23 of the MLA as its interest rates are excessive and the transactions unconscionable or substantially unfair to the plaintiff;

(c) Whether the principal loan and accrued interest computed under the MLR 2015 have been repaid by the plaintiff;

(d) Whether the plaintiff has a valid counterclaim, set-off, or cross demand in the form of the excess paid on the pre-amendment loans under s 23 of the MLA; and

(e) Whether the plaintiff has a valid counterclaim, set-off, or cross demand for mistaken payments made to the defendant on the pre-amendment loans.

9 On issue (a), the plaintiff submits that the 10% administrative fee is not a permitted fee. As it is not a permitted fee, the administrative fee is unenforceable under s 22(2) of the MLA, which provides:

[9] Affidavit of Ang Ai Tee, 6 Feb 2017, para 5; Affidavit of Ng Say Khink, 19 Jan 2017, pp 45, and 56.

> (2) Where, under any contract for a loan between a licensee and a borrower, the borrower is required to pay to the licensee any sum (not being a sum for or on account of stamp duties or fees payable by or under this Act or any other written law) on account of costs, charges or expenses other than or in excess of the permitted fees, such sum –
>
> > (a) shall not be recoverable from the borrower or any surety;
> >
> > (b) if so paid, shall be recoverable as a debt due to the borrower or surety, as the case may be; and
> >
> > (c) if not recovered, shall be set-off against the outstanding amount of the loan, and all sums of interest, late interest and permitted fees payable under the contract for the loan.

Hence, the plaintiff is entitled to set-off the amount that the defendant claims against the principal amount under s 22(2)(*c*) of the MLA.[10]

10 The plaintiff further submits that the 10% administrative fee is not a permitted fee based on r 12(1)(*b*) of the MLR 2015, which provides that a permitted fee includes "a fee, not exceeding 10% of the principal of the loan, that is payable when a loan is granted". The plaintiff argues that a refinancing loan did not amount to granting a loan but was a variation of the same earlier loan.[11] She relies on the following arguments:

> (a) A purposive reading of r 12(1)(*b*), in accordance with the relevant Parliamentary Debates and the Advisory Committee's Report prior to the changes in the MLR 2015, showed that Parliament's principal concern was to "protect borrowers from being overcharged".[12]

---

[10] Appellant's Written Submissions, paras 46-48.

[11] Appellant's Written Submissions, para 78.

[12] Appellant's Written Submissions, para 57.

(b) The refinancing loans do not protect borrowers but require them to pay an additional administrative fee on the same principal sum. There are no fresh funds involved in refinancing loans, hence there is no fresh risk of default. Thus, there is no justifiable basis to charge a fresh administrative fee.[13]

(c) This concern applies specifically to the refinancing loans in the present case. Registrar's Directions No 1 of 2017 dated 30 December 2016 ("RD 2017") called such refinancing loans "tantamount to deliberately circumventing" the MLR 2015.[14] The defendant did not bear any fresh risk and accordingly should not have charged a fresh administrative fee.[15] It should not be allowed to escape the prohibition catching "short-term loans of less than one month in duration" (see Registrar's Directions No 1 of 2016 dated 26 January 2016 ("RD 2016") at para 1.2).[16]

(d) To interpret the MLR 2015 to mean that the moneylenders could charge an additional administrative fee in refinancing loans would mean that the moneylenders could enter into refinancing loans payable in one day. The borrowers would then have to pay a total of 300% of the principal loan every month as administrative fees.[17]

(e) On a policy level, the court should not allow moneylenders like the defendant to take advantage of the "ignorance and vulnerability" of

---

[13] Appellant's Written Submissions, para 64.

[14] Appellant's Written Submissions, paras 69-70.

[15] Appellant's Written Submissions, paras 65-68.

[16] Appellant's Written Submissions, para 80(c).

[17] Appellant's Written Submissions, para 51.

borrowers like the plaintiff[18] and disguise their interest rates as administrative fees.

11 On issue (b), the plaintiff urges the court to re-open Loan 20 under s 23(1) of the MLA and to set it aside under s 23(3)(*b*) of the MLA.[19] She relies on s 23(6) of the MLA which states that where the interest charged on any loan exceeds the prescribed maximum, it is presumed that the interest charged is excessive and the transaction unconscionable or substantially unfair. The 10% administrative fee exceeds the maximum late interest rate of 4% per month under r 11(3) of the MLR 2015.[20] This argument is premised on the court's finding that the administrative fee is in substance the interest rate charged by the defendant.[21]

12 The plaintiff further argues that even if the 10% administrative fee was a permitted fee, the cumulative effects of the administrative fees and the interests for all the loans is $347,735.96, which far exceeds the total principal sum of $128,000. This is excessive and in contravention of r 12A of the MLR.[22]

13 On issue (c), the plaintiff submits that if she had not been pressured to enter into the refinancing loans, the amounts she paid in total would have repaid the principal sum.[23] Accordingly, she should be taken to have (in substance) repaid the principal sum.

---

[18] Appellant's Written Submissions, para 81.

[19] Appellant's Written Submissions, para 93.

[20] Appellant's Written Submissions, para 92.

[21] Appellant's Written Submissions, paras 82-83.

[22] Appellant's Written Submissions, paras 87-91.

[23] Appellant's Written Submissions, paras 96-97.

14 On issues (d) and (e), the plaintiff relies on r 98(2)(*a*) of the BR to contend that there is a genuine triable issue in respect of her counterclaims. She argues that under issue (d) the pre-amendment loans' interest rates are in excess of 200% and constitute exorbitant interest rates even though there was no cap on interest rates under the pre-amendment MLR.[24] The court can re-open Loan 1 and the settlement agreement cannot oust the jurisdiction of the court.[25] Alternatively, she submits that under issue (e), she has a claim for unjust enrichment: if she had known that the interest rates were so much higher than what she was legally required to pay, she would not have entered into the loans.[26] She entered into the loan on a mistake which constituted the unjust enrichment claim.

Defendant's submissions

15 The defendant broadly agrees that a triable issue is needed to set aside the SD, however it submits that there are a few qualifications:

(a) Under r 98(2)(*b*) of the BR, the plaintiff is required to show not just a mere triable issue but a *substantial* ground which goes beyond the standard in a summary judgment application under O 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC").[27]

(b) Even if there is a triable issue, the court still retains the discretion to uphold the SD.[28]

---

[24] Appellant's Written Submissions, para 106.

[25] Appellant's Written Submissions, para 112.

[26] Appellant's Written Submissions, para 117.

[27] Defendant's Written Submissions, paras 12-13.

[28] Defendant's Written Submissions, para 14.

(c) To the extent that the plaintiff relies on r 98(2)(*a*) of the BR for her counterclaim, the counterclaimed amount has to equal or exceed the amount claimed in the SD.[29]

16 In response to the argument that administrative fees are not permitted fees but disguised as interest, the defendant retorts that this would undermine legitimate refinancing arrangements routinely used in daily life. The court should respect the parties' structured loans – as a refinancing rather than a variation of the initial loan. Protecting borrowers must also be balanced against the licensed moneylenders' interests to operate a viable and profitable business so as to provide their services to the public.[30]

17 The defendant also rejects the argument that the administrative fees are either interest rates which exceeded the 4% per month limit or should be considered cumulatively and therefore exceeded the 10% administrative fee limit. It relies on s 23(8) of the MLA, which expressly provides that such permitted fees cannot be considered in determining whether the interest rate exceeded the legislatively-prescribed limit.[31] The administrative fees for the 18 loans from Loans 3 to 20 should be considered as separate individual loan agreements and should not be considered together as a single loan since the parties deliberately structured them separately. The refinancing loan is not in substance the same loan since the defendant did not merely refinance an old loan. It provided new credit such that the principal sum by Loan 20 was double that of the initial principal sum in Loan 3.[32] It also took on a fresh risk for each

---

[29] Defendant's Written Submissions, para 12.

[30] Defendant's Further Submissions, para 16.

[31] Defendant's Further Submissions, para 8.

[32] Defendant's Written Submissions, paras 41-42.

refinanced loan as there was a fresh repayment period.[33] Thus, the defendant is not in breach of r 12A of the MLR 2015 as the administrative fees, interest, late interest and late payment fee are not excessive, nor are the transactions unconscionable or substantially unfair.[34]

18 Regarding RD 2016 and RD 2017, the defendant submits that these are only directions and not subsidiary legislation, and so should be accorded little weight. But in any event, they only prohibit "short-term loans of less than one month in duration which are repeatedly re-financed". The defendant contends that after RD 2016 and RD 2017 were issued the defendant complied with them and the loan periods for the refinanced loans were not less than a month.[35]

19 In response to the plaintiff's claim that she was not afforded a real choice to make an independent decision and was thus misled or pressured into entering the loans, the defendant argues that the plaintiff clearly signed off on each and every loan contract. She is also no simpleton having done business for over 30 years by being a director of eight different companies.[36] She used the 18 loans not merely to service her preceding loans but on a few occasions increased the principal sums borrowed. This shows that she knew what she was doing.

20 The defendant submits that the plaintiff's counterclaims are unmeritorious as even if they were made out, they do not equal or exceed the amount claimed by the SD as required by r 98(2)(*a*) of the BR.[37]

---

[33] Defendant's Further Submissions, para 5.

[34] Defendant's Further Submissions, paras 25-26.

[35] Defendant's Further Submissions, para 12.

[36] Defendant's Written Submissions, para 38.

[37] Defendant's Written Submissions, para 12.

21 Finally, the defendant contends that the plaintiff could not challenge Loan 1 as this had been settled through mediation by Adullam Life Counselling ("Adullam"). The parties signed a settlement agreement that was validly formed and is thus conclusive.[38]

Summary of the AR's Decision

22 The AR dismissed the plaintiff's setting aside application as he found that the plaintiff did not raise a triable issue. He first held that the threshold for setting aside the SD closely mirrors that of granting leave to defend in summary judgment applications, although he noted that the court still retains the discretion to refuse to set aside the SD even if a triable issue exists.[39]

23 The AR rejected the plaintiff's argument that the administrative fees were either in excess of what was permitted under s 22(2) of the MLA or excessive (and that the transaction was therefore unconscionable or substantially unfair) under s 23(1) of the MLA. He found that the administrative fees were not excessive as each refinanced loan has to be considered individually. The AR disagreed with the plaintiff's contention that Loans 3 to 20 should be considered as a single loan with a single principal amount of $128,000. The AR was unwilling to do so as Loans 3 to 20 were recorded and documented as 18 different loans. Consideration was provided for each loan. Each loan after Loan 3 went towards extinguishing the liability for the previous loan. Construed separately, the administrative fee charged for each of the 18 loans did not exceed the legislative-imposed cap.[40]

---

[38] Defendant's Written Submissions, paras 20-26 and 34.

[39] GD of Christopher Tan SAR, [56].

[40] GD of Christopher Tan SAR, [60]-[62].

24 As for the argument on excessive charges under s 23(1) of the MLA, the AR found that the plaintiff could not rely on the presumption under s 23(6) of the MLA since this required the *interest rates* to be in excess of what was legislatively-prescribed. The AR declined to accept the plaintiff's contention that the 10% administrative fee was disguised as interest and thus would have exceeded the 4% per month interest cap. He opined that the administrative fees of 10% were *not* interest rates. If the administrative fees were to be interest rates, this would rewrite the parties' contract: they specifically designated the 10% as administrative fees and there were separate clauses dealing with interest. Further, Parliament meant for administrative fees and interest rates to be separate since there were separate caps for each. By mixing the two, the court would not only rewrite the parties' contract but also rewrite legislation.[41] As the administrative fees were permitted fees, s 23(8)(*a*) of the MLA prevented the AR from taking these fees into account when assessing whether the interest rates were excessive.[42]

25 The AR also rejected the plaintiff's argument that the administrative fees were not permitted fees due to the policy of protecting borrowers. Although it was true that RD 2017 and indeed RD 2016 showed that Parliament was concerned with repeated refinancing of short-term loans, this did not immediately mean that the plaintiff was entitled to unwind the entire transaction. It only meant that the defendant would potentially face regulatory consequences.[43]

---

[41] GD of Christopher Tan SAR, [75]-[76].

[42] GD of Christopher Tan SAR, [63]-[66].

[43] GD of Christopher Tan SAR, [67].

26 The AR dismissed the plaintiff's argument that she was misled or pressured into entering the loans. He found that the plaintiff had full sight of the documents, knew that she was signing legal documents that created binding legal obligations over significant amounts of money, and indeed signed these documents repeatedly. Although the defendant did not say that the plaintiff had the option of defaulting on the loan if she did not wish to pay the 10% administrative fee repeatedly, this was so obvious that the defendant did not have to say so.[44]

27 Finally, the AR rejected the plaintiff's counterclaims. She claimed a sum of $50,874.35 for the pre-amendment loans which fell short of the amount claimed in the SD. The plaintiff further added that this should be added to the 3.92% per month of excess interest paid for Loans 3 to 11 as these loans were less than a month. The AR opined that even adding this purported 3.92% per month of excess interest to the initial sum of $50,874.35, it would still fall far short of the amount claimed in the SD.[45]

Court's decision

Burden of proof is on the plaintiff

28 As this is an action to set aside the SD, the burden is on the plaintiff to satisfy the court that there is a genuine triable issue. Rule 98(2) of the BR lists out five instances in which the court must set aside the SD:

> (a) the debtor appears to have a valid counterclaim, set-off or cross demand which is equivalent to or exceeds the amount of the debt or debts specified in the statutory demand;

---

[44] GD of Christopher Tan SAR, [78]-[79].

[45] GD of Christopher Tan SAR, [81]-[84].

> (b) **the debt is disputed on grounds which appear to the court to be substantial**;
>
> (c) it appears that the creditor holds assets of the debtor or security in respect of the debt claimed by the demand, and either rule 94(5) has not been complied with, or the court is satisfied that the value of the assets or security is equivalent to or exceeds the full amount of the debt;
>
> (d) rule 94 has not been complied with; or
>
> (e) the court is satisfied, on other grounds, that the demand ought to be set aside.
>
> [emphasis added in bold]

29 If the plaintiff satisfies any of the above conditions, the court has to set aside the SD. Under r 98(2)(*b*), the plaintiff must evince a genuine triable issue that places a real doubt in my mind as to whether the SD should be set aside. In *Chimbusco International Petroleum (Singapore) Pte Ltd v Jalalludin bin Abdullah and other matters* [2013] 2 SLR 801[46] the court held, at [58], that the requirement of "substantial" grounds goes beyond the standard of a mere triable issue under O 14 of the ROC. Thus, setting aside a SD has a higher threshold than a summary judgment application under O 14.

30 There were two sets of loans: the pre-amendment loans and the post-amendment loans. I shall deal with the pre-amendment loans first as the issues are quite straightforward.

Pre-amendment loans

31 These involve the First Loan Series and Loans 1 and 2. The total amount of these six loans was $275,000. Most of these loans were repaid, and when the plaintiff found difficulty in repayment she approached Adullam for assistance. Eventually there was a loan repayment plan with the defendant on the

[46] DBOA Tab 8.

outstanding amount owing under Loan 1. Pursuant to the terms of the settlement agreement the plaintiff paid the defendant $59,500 on 2 July 2015.[47]

32 The plaintiff submits that the interests charged for these six loans were excessive as the interests ranged from 208% per annum to 240% per annum. In *Unilink Credit Pte Ltd v Chong Kuek Leong* [2013] SGMC 3,[48] the Magistrate's Court had to decide whether the interest charged by the moneylender for unsecured loan was reasonable. The moneylender in that case charged the borrower interest at 72% per annum and for late interest at 240% per annum. The court found that in comparison, banks charged interest for similar unsecured loans at a rate of 12% to 22% per annum. The interests charged by the moneylender were accordingly excessive and the court reopened the loan transaction. The interest rate and the late interest payment were revised to 24% per annum.

33 The plaintiff argues that 24% per annum should also be applicable for the six pre-amendment loans. Hence, the plaintiff submits that the defendant's interest rates were excessive and that $50,874.35 was overpaid to the defendant.[49]

34 I am not convinced by this argument. The pre-amendment loans were either paid in full or were settled by the parties through a valid settlement agreement. In particular, the plaintiff entered into this valid and enforceable settlement agreement voluntarily with the assistance of Adullam. The defendant did not infringe any provision of the MLR 2015 when it imposed the interest

---

[47] Affidavit of Ng Say Khink, 19 Jan 2017, pp 7-8, 52.

[48] ABOA Tab 13.

[49] Appellant's Written Submissions, para 18.

charges on the six pre-amendment loans. This is acknowledged by the plaintiff. Hence she cannot now renege on that agreement.

35 In any event, s 23(1) of the MLA only allows the court to re-open the transaction "[w]hen proceedings are brought in any court by a licensee for the recovery of a loan or the enforcement of a contract for a loan". The SD does not seek payment of the pre-amendment loans (which the settlement agreement pertains to), but is only for non-payment of the post-amendment Loan 20. Hence, the plaintiff is misconceived that this court can re-open the pre-amendment loans. Accordingly, the pre-amendment loans are not germane to the application to set aside the SD.

Post-amendment loans

36 The main issues regarding the post-amendment loans revolve around the refinancing scheme introduced by the defendant in which it imposed a 10% administrative fee for every loan refinancing arrangement. Do these refinancing loans contain excessive interests and are the transactions unconscionable or substantially unfair?

37 It is not disputed that under the law the defendant could impose a 10% administrative fee, 4% per month interest, 4% per month late interest and a $60 late payment fee per month for each loan agreement. It is also not disputed that the defendant had complied with the requirements of the MLA and the MLR 2015.

The court can only re-open the post-amendment loans where the interest is excessive and the transactions are unconscionable or substantially unfair

38 For the court to re-open the post-amendment loans, the plaintiff has to show that the conditions in s 23 of the MLA are fulfilled. This provision reads:

> **Re-opening of certain transactions**
>
> 23.– (1) When proceedings are brought in any court by a licensee for the recovery of a loan or the enforcement of a contract for a loan or any guarantee or security given for a loan, and the court is satisfied that the interest or late interest charged in respect of the loan is excessive and that **the transaction is unconscionable or substantially unfair**, the court shall re-open the transaction and take an account between the licensee and the person sued.
>
> [emphasis added in bold]

39 Under s 23 of the MLA the court can re-open and examine the merits of a loan transaction when the interest charged in respect of the loan is excessive and the transaction is unconscionable or substantially unfair. There are two issues to consider:

(a) Whether the interest charged is excessive; and

(b) Whether the transaction is unconscionable or substantially unfair.

40 These terms, *ie*, excessive, unconscionable and substantially unfair, are not defined under the MLA or the Interpretation Act (Cap 1, 2002 Rev Ed). Therefore we have to rely on the plain and simple dictionary meaning of these terms. *The Longman Dictionary of the English Language* 6th Ed ("the *Longman Dictionary*") defines "excessive" as "exceeding the usual, proper, or normal". Hence, the interest charged has to be above the normal rate of interest. In addition, the transaction must also be "unconscionable or substantially unfair". Again, the *Longman Dictionary* defines "unconscionable" as "not guided or controlled by conscience; unscrupulous; excessive, unreasonable; shockingly unfair or unjust". "Substantial" is further defined as "considerable" or "significant". Hence, not only must the interest charged be above the norm, but

the transaction taken as a whole must *also* cause an average person to view the loan transaction by the moneylender as unscrupulous or dishonest.

41 Having considered s 23 of the MLA, I shall venture to examine the various post-amendment loan transactions to ascertain whether the court is entitled to re-open the loan transactions in this case. I shall first deal with the issue relating to the 10% administrative fee which the MLR 2015 allows the defendant to charge the borrower on a one-time basis for a loan transaction. This is the largest amount of fee that the defendant could impose. It is even larger than all the other charges combined: the interest of 4% per month, the late interest of 4% per month and the late payment charge of $60 per month.

The purpose of the administrative fee

42 What is the purpose of allowing a moneylender to impose a huge 10% administrative fee on the amount of the loan? The Advisory Committee Report[50] explained that the administrative fee would serve to defray some of the costs associated with operating the moneylending business. This included the costs of loan defaults. The Advisory Committee Report at para 30 reads:

> 30. In respect of the upfront administrative fee, this will serve to defray some of the costs associated with operating the moneylending business. This includes the cost of loan defaults, which are estimated to be around 10% of the total loan principal granted by moneylenders currently. In this regard, the Committee is inclined to set the cap on the administrative fee at 10% of the loan principal. This will create a strong incentive for moneylenders to review their cost structures and to improve the efficiency of their operations.

[50] ABOA Tab 17.

43 Unlike the interest for the loan, the late interest and the late payment charge which are computed on a per month basis, the administrative fee is a one-time charge for each loan.

The defendant's administrative fee for loan refinancing under the circumstances is considered an excessive interest

44 MLR 2015 does not prohibit the defendant from charging a 10% administrative fee for a refinancing loan. Does it mean that the defendant can do so? The answer will depend on whether the effects of loan refinancing generate excessive interest for the loans and made the transactions unconscionable or substantially unfair. This means that I have to analyse the 18 loan transactions. Each of these loans, except the first loan (*ie*, Loan 3), was the result of loan refinancing. Out of the 17 refinancing loans, three involved an increase in the loan amounts. These were Loan 4, which had a fresh loan of $10,000; Loan 13, which had a fresh loan of $60,000; and Loan 20, where the loan amount was increased by $8,000.[51]

(1) Loan 3, the first post-amendment loan, has significant ill effects

45 The ill effects of loan refinancing are most stark for Loan 3. In Loan 3, which was for the sum of $50,000, the defendant imposed all the usual charges and this loan was only for one day. This was the start of the 17 refinancing loans. In normal situations, refinancing is done to benefit the party that seeks it. But in this case, it benefitted the defendant much more than the plaintiff. The defendant imposed a further 10% administrative fee the very next day after it disbursed Loan 3 through the administrative fee for Loan 4. This administrative fee was for the same principal sum (the $50,000 in Loan 3) even though the plaintiff

[51] Affidavit of Ng Say Khink, 19 Jan 2017, p 16.

borrowed a further $10,000 in Loan 4. In other words, within the span of just one day, the plaintiff had to pay the defendant a total of 20% in administrative fees. Although the defendant waived the interest (3.92% per month), the late interest (3.92% per month) and the late payment charge ($60 per month), these were relatively small amounts as the aggregate sum was under $1,500.

46 As explained above, the administrative fee was intended to defray some of the costs associated to the business of moneylending including loan defaults. In Loan 3 the defendant was not put to any additional risk as this loan was only for a day.

(2) Loan 4, like the other post-amendment loans, also has significant ill effects

47 Loan 4 was also for loan refinancing with an increase of the principal sum by $10,000. This loan was also subjected to subsequent loan refinancing as the plaintiff was unable to redeem the loan on maturity two weeks later.[52]

48 Instead of calling on the loans at maturity, as the plaintiff was unable to redeem them, the defendant refinanced those same loans and charged a further 10% administrative fee. The interest, late interest and late payment fee were only payable once per month and the administrative fee was meant to be once-off. But the defendant circumvented this and imposed administrative fees not just once, but *more than once per month* through the multiple refinancing loans. In other words, the defendant has creatively worked around the provisions governing moneylenders by using the loan refinancing scheme to significantly and unfairly disadvantage the plaintiff who was in financial difficulty and was thus in the defendant's clutches. The refinancing had snowballed the plaintiff's

[52] Table A, entry for Loan 4.

loans rapidly to a humongous proportion as a result of the enormous administrative fees imposed to the defendant's advantage.

(3) Such ill effects were not intended by Parliament in allowing loan refinancing

49 I do not think that such loan refinancing was envisaged by Parliament when it allowed moneylenders to impose a 10% administrative fee. Such practice was in fact frowned upon in RD 2016:[53]

> It has come to the attention of the Registrar that licensees have been doing the following:
>
> 1.1 Informing borrowers/potential borrowers that they can be granted only weekly loans because this is a "new law" by the Government.
>
> 1.2 **Offering short-term loans of less than one month in duration, which are repeatedly "re-financed" or "renewed" such that borrowers do not repay any part of the principal or interest, but simply a 10% "administrative fee" repeatedly.**
>
> …
>
> 2.2 Concerning the act referred to in paragraph 1.2:
>
> 2.2.1 Licensees should not offer short-term loans to borrowers in the knowledge that the borrowers will not be able to repay any part of the principal or interest at the end of the term of the loan, and in the knowledge that the consequence is that the borrower will need to pay an "administrative fee" repeatedly to roll-over the loan, without making any payments which go towards reducing the principal or interest owed. In determining if a borrower will be able to meet the proposed repayment plan, licensees should take into account the borrower's income and assess if he is able to repay. For instance, a one-week loan which is higher than the borrower's weekly income is clearly not repayable.
>
> 2.2.2 Such conduct is undesirable and may be regarded as:

[53] ABOA Tab 20.

> 2.2.2.1 carrying on the business of moneylending in such a manner as to render the licensee unfit to hold a licence, which is a ground for the Registrar to refuse to renew a licence under section 7(1)(d)(v) of the Moneylenders Act; or
>
> 2.2.2.2 conducting the business of moneylending in an improper manner, which is a ground for the Registrar to revoke or suspend a licence under section 9(1)(a)(iv) of the Moneylenders Act.

[emphasis added in bold]

50 The Registrar of Moneylenders ("the Registrar") had cautioned moneylenders about the effects of loan refinancing on borrowers, in particular the concerns that borrowers might not be able to repay the loans and that repeated charging of administrative fees would penalise the borrowers significantly. Para 1.2 in bold print of RD 2016 reproduced above highlights that moneylenders were offering short-term loans of less than one month in duration which were repeatedly refinanced rather than paying back the principal sum. The refinanced loans are then repeatedly charged the 10% administrative fee. To this, RD 2016 cautioned that licensees should not do so where they know that the borrowers would not be able to pay back the principal or interest at the end of the term of the loan and would need to pay the administrative fee instead.

51 In other words, the Registrar was discouraging loan refinancing – such as those conducted by the defendant. But the defendant did not stop despite RD 2016. It merely lengthened the term of the loan to not less than a month – the precise period specified in RD 2016. To illustrate, Loans 3 to 12 all had terms of less than a month. Loan 12 was dated 6 February 2016, mere days after RD 2016 was published on 26 January 2016. Starting from Loan 13, the loan terms were all extended to a month or longer save for Loan 18, which was slightly shorter than a month. In fact, the defendant continued the loan

refinancing scheme even when the plaintiff faced difficulties in redeeming her loan. Consequently, the loan burgeoned to a hefty amount.

52 But RD 2016 did not say that such loan refinancing could take place as long as it was a month or longer. In fact, RD 2017 further repeats the warning against loan refinancing. RD 2017 is worded even more strongly than RD 2016 and states at para 2.2.2 that the conduct of moneylenders who practise loan refinancing in order to "reset" the total borrowing cost charged is "tantamount to deliberately circumventing rules 11, 12 and 12A of the [MLR 2015]".[54] RD 2017 also clearly disapproves of such practices and states such acts are undesirable. The relevant provisions of RD 2017 read:

> 2.2.2 Licensees should not grant loans or "re-loans" to borrowers to reduce or extinguish an existing debt owed to the same licensee in the knowledge that this serves to "reset" the total borrowing cost charged, as this is tantamount to deliberately circumventing rules 11, 12 and 12A of the Moneylenders Rules. For example, a borrower may end up paying a second administrative fee of 10% on what could be regarded as the same loan principal. Over time, he may also pay an amount in excess of 100% of the principal of the original loan. However, licensees who genuinely wish to assist a borrower through a loan restructuring may do so as long as there is no circumvention of the Moneylenders Rules.
>
> 2.2.3 Such acts are undesirable and may be regarded as:
>
> 2.2.3.1 carrying on the business of moneylending in such a manner as to render the licensee unfit to hold a licence, which is a ground for the Registrar to refuse to renew a licence under section 7(1)(d)(v) of the Moneylenders Act; or
>
> 2.2.3.2 conducting the business of moneylending in an improper manner, which is a ground for the Registrar to revoke or suspend a licence under section 9(1)(a)(iv) of the Moneylenders Act.

---

[54] ABOA Tab 21, para 2.2.2.

Loan refinancing with administrative fees was not foreseen by Parliament

53 This 10% administrative fee constituted the largest payment towards the repayment of the loans. It is clear that Parliament did not intend to allow the defendant to unjustly enrich itself through the imposition of such fee on the same principal sum, as in the case of the refinancing loan scheme. The main purpose for the introduction of the MLR 2015, which took on board many of the recommendations of the Advisory Committee, was expressed in a press release dated 18 June 2014 by the Ministry of Law when it formed the Advisory Committee. The press release stated that the Advisory Committee was formed to review and recommend measures on:[55]

> i Capping of interest rates for moneylending loans;
>
> ii Restricting the charging of fees by moneylenders;
>
> iii Capping the aggregate amount of moneylending loans taken out by each borrower; and
>
> iv Other policy parameters which could strengthen the moneylending regulatory regime.

In light of these purposes, it is clear that Parliament intended to cap and restrict moneylenders' fees through the Advisory Committee's recommendations which were ultimately adopted in the MLR 2015. But the MLR 2015 did not directly address loan refinancing schemes. This is why RD 2016 and RD 2017 had to clarify what the MLR 2015 means for such schemes.

54 In this case, the loan refinancing scheme here is egregious and substantially unfair to the plaintiff. The obvious example is Loan 1 which was only for a day. Of course, there may be instances where moneylenders genuinely wish to assist a borrower by using loan restructuring. This is acknowledged in

---

[55] ABOA Tab 18.

RD 2017 (at para 2.2.2) and also by the plaintiff, as she takes no issue with the imposition of administrative fees for fresh loans. The question is whether the loans in this case are fresh loans, and I find that they are not.

(1) Administrative fee in loan refinancing is not a "permitted fee" under s 2 of the MLA

55 Hence, in situations of loan refinancing where the moneylender does not provide fresh funds but still charges the same 10% administrative fee, I am of the view that this administrative fee cannot be considered a "permitted fee" under s 2 of the MLA as there is nothing afresh for the moneylender to administer. The purpose of the fee was to entice the plaintiff to continue paying a relatively smaller amount than what she would have had to pay, *ie*, the principal, if the defendant called on the entire owed sum outright. In substance, the 10% administrative fee is a form of additional interest that comes within the definition of "interest" under s 2 of the MLA, which reads:

> "interest", in relation to a loan, means **any amount by whatsoever name called in excess of the principal paid** or payable to a moneylender in consideration of or otherwise **in respect of the loan**, but does not include any permitted fee, stamp duty or other fee payable under this Act or any other written law; …
>
> [emphasis added in bold]

(2) The defendant's administrative fee also infringes r 12A of the MLR 2015

56 Rule 12A of the MLR 2015 reads:

> … the licensee must not recover from a borrower, on account of interest, late interest or any fee permitted under rule 12(1)(*a*) or (*b*), an aggregate amount exceeding the principal of the loan.

57 The overall aggregate of the actual funds, less loan refinancing, provided to the plaintiff from the 18 loans was $128,000. But the plaintiff had paid a total

of $195,844.60 in administrative fees, interest and a late fee, which is more than the principal sum. This is in breach of r 12A of the MLR 2015.

58 Even though the plaintiff has paid more than the amount disbursed, the defendant is still not satisfied with the amount of $195,884.60 paid by the plaintiff thus far. The defendant is further claiming an amount of $135,879.96, which is the sum claimed in the SD. The total combined sum is $195,884.60 + $135,879.96 = $331,764.56. If the defendant's claim succeeds, then the plaintiff will be paying more than double the amount of the principal sum of $128,000. This far exceeds the amount the defendant is allowed to claim under r 12A of the MLR 2015.

59 From this analysis, the loan refinancing is indeed very excessive to the plaintiff. It is true that the plaintiff might not have been forced to enter into the loan refinancing for 17 times after Loan 3, as she would have realised the substantial disadvantages or the adverse consequences of the loan refinancing arrangements to her. It is also true that the plaintiff is a director of several companies and is not a naïve babe in the woods. But she was in a financial quagmire once she was caught by the temptation of easy money and took out the loans from the defendant. She could not easily free herself from the unretractable clutches of the defendant. She had to give in to the demands of the defendant for loan refinancing whenever the loan matured as she did not have the financial means to redeem her loan. If she did not give in to the defendant and pay the 10% administrative fee each time the loan matured, she would have to face the possible consequences of the defendant calling upon the entire loan and possible bankruptcy was real. She could ill afford such consequences as her directorship would have been in jeopardy.

The post-amendment loan transactions are also unconscionable and substantially unfair

60 The 18 loans are documented as separate contracts. Examining them separately, one might well conclude that they had complied with the MLA and the MLR 2015. While these loans aggregate $1,558,000 on paper, the amount that the defendant actually advanced to the plaintiff was only $128,000. But the defendant imposed charges on the plaintiff based on $1,558,000 rather than $128,000!

61 To ascertain whether these transactions taken as a whole are unconscionable or substantially unfair, I directed the parties to address the issue of whether the court could go behind the purported veil of legality of these loan agreements. This issue was not raised in their submissions.

62 In *EC Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Limited and another, Interveners)* [2011] 2 SLR 232, the court looked past the legality of the documents to ascertain the true nature and purport of the parties. Although the documents painted a picture of the sale of a piece of property, the court found that what the parties truly intended was a loan agreement with security. In so doing, the court said (at [77]):

> **It is clear law that the court is entitled to go behind whatever labels that parties chose to put on their transactions, to ascertain their true nature and purport.** It is a matter of substance over form and labels: see Kim Lewinson, *The Interpretation of Contracts* (Sweet & Maxwell, 3rd Ed, 2007) at para 9.07, cited with approval in *MCST Plan No 1933 v Liang Huat Aluminium Ltd* [2001] 2 SLR(R) 91 ("*Liang Huat*") at [46] and *Welsh Development Agency v Export Finance Co Ltd* [1992] BCLC 148. The true nature and purport of these two documents show a clear loan amount of $1.5m (negotiated down from $2m after AA, not the 1st Defendant, was said to be a credit risk due to the many actions against him) and called an "option fee", the loan period was 60 days and there was a hefty interest of $180,000 labelled as "compensation", which

> amounted to 6% per month or 72% per annum and it was secured on the Property. …
>
> [emphasis added in bold]

63 In other words, we should not miss the woods for the trees. Rather than myopically focusing on the individual refinanced loans, the court must cast its eyes on the broader implication of the 18 loans to ascertain whether there was excessive interest, by whatever label it might have been named, and whether these transactions were unconscionable or substantially unfair. And here, there seems to be an absence of substantial fair play. I shall now elaborate.

(1) There is a stark difference in the plaintiff's liability between loan refinancing and no loan refinancing

64 At my request, the parties tendered two agreed tables to the court, to show two scenarios in relation to Loans 3 to 20. The first table, Table A, shows the plaintiff's liability with the refinanced loans. The second table, Table B, shows the situation the plaintiff would have been in without the refinanced loans. The differences on the payment of charges and fees are very stark. The plaintiff paid a total amount of $195,844.60 with the loan refinancing, but would only pay $92,182.16 – less than half – without such a scheme.

65 This loan refinancing scheme clearly triggers the presumption under s 23(6) of the MLA because what is in substance an interest payment of about 10% was levied on every refinanced loan, albeit under the guise of an administrative charge. Section 23(6) of the MLA reads:

> Where in any proceedings in court referred to in subsection (1) or where proof of debt has been filed as referred to in subsection (5), it is found that the interest or late interest charged on any loan exceeds such maximum rate of interest or late interest as may be prescribed for the loan, the court or the Official Assignee, as the case may be, shall presume for the purposes of this section, unless the contrary is proved, that the interest

> or late interest charged in respect of the loan is excessive and that the transaction is unconscionable or substantially unfair.

66 Unlike genuine instances of loan restructuring, it is not entirely accurate to describe such activities as loan refinancing because essentially, the loan sums remain largely the same and the plaintiff paid the 10% administrative fee periodically. The charges were also basically the same, although in certain loan transactions the defendant waived some of these charges, like the interests and the late payment fee.

(2) There was no loan refinancing for the six pre-amendment loans

67 It is also pertinent to note that the defendant did not refinance the plaintiff's loans for the six pre-amendment loans even when she encountered difficulty in the repayment of Loan 1. She had to seek the assistance of Adullam to resolve the loan repayment with the defendant. Eventually, the repayment plan resulted in a settlement agreement with the defendant.

68 It was obvious why there was no loan refinancing for the pre-amendment loans. The MLR at that time did not allow the defendant to charge the 10% administrative fee which was only permissible under the post-amendment MLR 2015 which came into force on 1 October 2015. The defendant submits that it is operating a business and it should be able to conduct a viable business for profit within the legal framework. I agree that moneylenders should be allowed to strive to profit within the boundaries of the law. There should be a right balance between the interests of the borrower and the lender. Indeed, this was stated by Ms Indranee Rajah in the relevant Parliamentary Debates (*Singapore Parliamentary Debates, Official Report* (5 March 2014) vol 91 (Indranee Rajah, Senior Minister of State for Education and Law)):[56]

> In regulating the moneylending industry, we have to maintain a balance between allowing borrowers reasonable access to credit, and providing them, especially those with lower income, with adequate protection…
>
> …
>
> When we set interest rate caps, there are competing considerations involved. If the cap is set too low, it would be commercially unviable for licensed moneylenders to service borrowers with high credit risk.

69 But in this case, the defendant is not merely seeking to rescue its arrangement from business unviability. The defendant was less than scrupulous in the loan refinancing scheme and had crossed the unconscionability threshold by imposing excessive interest rates through routinely imposing a 10% administrative charge on the refinanced loans.

Not necessary to address the plaintiff's counterclaim

70 In view of the findings that I have made thus far, it is not necessary for me to make a finding on the plaintiff's counterclaims (see above at [8(d)], [8(e)] and [14]).

Conclusion

71 The 17 refinanced loans subsequent to Loan 3 ballooned the actual aggregate principal sum of $128,000 to $1,558,000! The defendant imposed the 10% administrative fees on the aggregate loan agreement amount of $1,558,000 which resulted in the plaintiff having paid $195,844.60. This contravenes r 12A of the MLR 2015. The defendant also infringes s 23 of the MLA by imposing excessive interest in the guise of administrative fees for loan refinancing. The

---

[56] ABOA Tab 22.

loan transactions as a whole are unconscionable and substantially unfair to the plaintiff.

72 Accordingly, the plaintiff has satisfied the court that "the debt is disputed on grounds which appear to the court to be substantial". Clearly, there is more than a genuine triable issue. I allow the appeal. Whether the plaintiff will succeed eventually is not for this court to determine but she should be given an opportunity to be heard.

73 I shall now hear parties on costs.

Tan Siong Thye
Judge

Lee Ee Yang and Amos Wee Choong Wei (Covenant Chambers LLC) for the plaintiff;
Ting Chi Yen (Oon & Bazul LLP) for the defendant.