IN THE DISTRICT COURT
AT AUCKLAND

CRI-2015-004-000415
[2018] NZDC 11202

COMMERCE COMMISSION
Prosecutor

v

BUDGET LOANS LIMITED
First Defendant

EVOLUTION FINANCE LIMITED
Second Defendant

Hearing:	30 May 2018
Appearances:	A McClintock for the Prosecutor J Lethbridge for the Defendants
Judgment:	30 May 2018

NOTES OF JUDGE D J SHARP ON SENTENCING

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[1] In this sentencing the Commerce Commission is prosecutor, Budget Loans Limited is first defendant and Evolution Finance Limited is second defendant.

[2] The two defendant companies are referred to as Budget Loans and Evolution Finance. They have together been convicted of 125 charges under s 13 Fair Trading Act 1986. These convictions related to misrepresentations made in enforcing credit contracts, the maximum penalty for each charge is $200,000.

[3] Over the course of four and a half years the defendants misrepresented their rights as lenders, seeking to recover money from debtors, from loans. They had purchased these loans and in some cases refinanced them. The conduct of the defendant companies led to debtors having property unlawfully repossessed, paying

or allegedly owing more interest and/or costs than they should have. Also loans were refinanced on an incorrect loan balance basis.

[4] As regards to the charges, of the 125 charges, 122 are under s 13(i) Fair Trading Act. The remaining three charges are under s 13(e). The Commerce Commission submits and I agree, that the offending can be grouped into four categories as follows:

(a) The first category is repossession charges, 83 charges under s 13(i) relating to misrepresentations made by the defendants regarding the right to repossess debtors' property.

(b) The second category is interest and cost charges, 29 charges under s 13(i) relating to misrepresentations made by the defendants regarding the right to add interest and/or cost to the debtors' loans, after the repossession and sale of goods.

(c) The third category is attachment order charges, 10 charges under s 13(i) relating to misrepresentations made by the defendants regarding the amount debtors were required to pay after attachment orders had been put in place by the Court.

(d) The fourth category is refinancing charges under s 13(e) relating to misrepresentations made by Budget Loans, regarding the benefits of refinancing.

[5] The representations in all cases were made in documents and sometimes made in documents and by conduct.

[6] The facts of the case are known to me because I heard the defended Judge alone trial.

The defendants' business

[7] Budget Loans and Evolution Finance were incorporated in 2004 and 2006 respectively. The directors of both companies during the relevant period were Allan

Hawkins and his son Wayne Hawkins. The defendants were initially providers of credit. Budget Loans was a lender in its own right, but that business wound down from about 2006 onwards.

[8] Following this, the defendants focused on the enforcement of loans which they purchased from smaller finance companies. These loans were predominantly sub-prime loans with a high rate of default and their purchase price had been discounted accordingly. The National Finance loan book was purchased at 33 percent of its face value, while the Western Bay Finance loan book was purchased at 5 percent of its face value.

[9] The defendant companies operated together, notwithstanding their separate corporate identities. Accordingly, for the most part the sentencing notes are relevant to each of the defendants. Where this is not the case the appropriate defendant is identified. Also for this reason I cannot give effective credit to Budget Loans for an absence of prior convictions.

[10] Having purchased the bad debts, the defendants' business model was to create cashflow by getting debtors paying as much as possible for as long as possible. The case, as established at trial was that a number of unlawful tactics were employed by the defendants to achieve that end. These included:

(a) Repossessing and/or threatening to repossess in circumstances where there was no right to repossess, including by falsely stating that debtors' property was "at-risk" in order to give the authority to repossess without notice.

(b) Requiring the debtors to pay sums, interest and costs that were prohibited from being added to loans.

(c) Requiring debtors to increase payments over and above those ordered by the Courts under attachment orders.

(d) Offering to refinance loans with a discount, when the stated balance owing did not reflect the correct amount of money owed by the debtors.

[11] The prosecution proceeded on the basis of a sample 21 debtors. Mr MacIvor's affidavit makes it clear that the issues that he found within the files for the 21 debtors were issues that repeated themselves in almost all of the loans he assessed.

[12] The defendants take issue with the wider dissemination of criminal behaviour. While it may be said that these proceedings report on the basis of only 21 debtors, the fact that investigation of the defendant showed that the conduct which was reflected in the charges was not limited to those charges and was a factor that could be found in the business method that was applied by the defendants affects the defendants' overall culpability.

[13] Obviously, the defendants could not be sentenced for things that were not subject to proof, but the evidence of the prosecution was accepted in relation to matters of credibility and where Mr MacIvor is suggesting criminal behaviour was something that could be seen to reflect the method that was applied, I accept that evidence.

[14] The submission is that the defendants routinely engaged in each category of representation across its loan book. Further, the prosecution received some 78 further complaints about loans held by the defendant following the investigation.

Budget Loans Previous Offending

[15] In 2007 Budget Loans were investigated by the prosecution, this culminated in pleading guilty in 2010 to 34 charges. These related to charging interest following repossession and sale of secured goods. That being offending almost identical in nature to that described in category 2 of the charges set out above.

[16] In the previous charges, Budget Loans had the benefit of having its actions not being characterised as grossly reckless, given the fact that the company had taken legal

advice. That may be seen in the *Commerce Commission v Budget Loans Limited.*[1] at paragraph 28 Auckland District Court 26 September 2010:

> The company following conviction entered into a deed of settlement with the prosecution and undertook to refund or repay or reduce debtors' accounts to the amount of any unauthorised interest paid. There was said to be immediate steps taken to ensure charging practices complied with the relevant Consumer Finance legislation. In addition, there was to be a review.

[17] The evidence provided by Mr MacIvor makes it clear the review, which was proposed, was not conducted across all loans where repossession and sale had taken place. The review was done with no real urgency and Mr Wayne Hawkins estimated that only 32 percent of it was completed by the time of his interview in relation to these matters in 2014.

[18] As regards to the repossession charges, 83 of them, the defendants represented a right to repossess goods and did repossess goods regularly from the 21 debtors. In doing so they misrepresented the repossession rights in three different ways:

(a) Firstly by representing they had a right to repossess where there was no valid security to repossess or no outstanding loan balance to be repaid.

(b) Secondly, by categorising property at risk and therefore not needing to serve a pre-repossession notice on the debtor. There was no basis in evidence to categorise the debtors' property as being at risk.

(c) Thirdly, by issuing invalid pre-repossession notices.

[19] An example of this is that repossession was made six times to [redacted] her property was repossessed on three different occasions, after she had already paid off her judgment debt in full. The defendants went as far as instructing a locksmith on two separate occasions to force entry into her home when she was not there, to take items of her property.

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[1] *Commerce Commission v Budget Loans Limited* CRI 2009 2004028349

[20] In relation to the at-risk watermark used on repossession documents, in his second interview Wayne Hawkins said, "This designation had no real meaning to be honest."

[21] As regards repossession there was no valid repossession notice issued in [redacted]'s case, property was repossessed not only where there was no legal right to repossess at all, but the time period provided for remedying alleged defaults was insufficient.

[22] The defendants continued to add interest to loans of 12 of the 21 debtors after goods had been repossessed and sold, despite the fact that s 35 Credit Repossession Act 1997 precluded them from doing so. These representations led to some debtors making sizeable overpayments and for them being wrongly subjected to repossessions, after they had paid off their s 35 balance as above.

Category 3 Attachment Order Charges

[23] There are 10 of these. With three of the 21 debtors the defendants misrepresented a right to add interest to the debtors' loan balance beyond the amount included in the attachment order issued by the District Court. No such interest had been ordered by the Court in the enforcement process.

Category 4 The Refinancing Charges

[24] Of which there are three. Budget Loans made representations to three of the 21 debtors regarding the benefit of refinancing their existing loans. They did so by overstating the existing loan balance and the benefit the defendant would receive by refinancing.

Principles and Purpose of Sentencing

[25] It is important for me to consider the principles and purposes of sentencing. The defendants need to be held accountable, there should be deterrence for the kind of behaviour which is prevalent here. There should be denouncement of the offending.

The offending here demonstrated an aggressive stance and a repossession technique that was used against vulnerable debtors, which is reprehensible. Real harm was done.

[26] The victims of the offending should have their interests taken into account by the Sentencing Court. I am also required to sentence as far as I can, in a way that is consistent with other comparable cases. I must impose the least restrictive outcome, consistent with the principles and purposes of sentencing.

[27] In a case such as this, deterrence and denunciation are important principles. The fact that these methods were used against people who had no means of combatting them, is something that is seriously wrong and needs to be deterred. Not only in relation to the defendant companies but also so that others know that if they breach the rules, as has been done here, there will be significant penalties.

[28] As far as aggravating aspects of the offending goes, this offending is serious in that consumers who are vulnerable were taken advantage of. The tactics which were employed were clearly unlawful and the imbalance of power between the defendant companies and the persons whom they disadvantaged by illegal repossessions is manifest. The culpability is increased by the defendant company's having knowledge from a previous proceeding that care was needed to be taken. Here the conduct, if not deliberate, indicated a high degree of recklessness. The company enforced any legal rights the company possessed vigorously, but ignored the rights of those on the other side of their transactions.

[29] As regards the repossession charges, the repossessions were embarrassing for the people involved. They involved the taking of the most basic property, this was for the collateral purpose of punishing the debtors and creating an atmosphere in which the debtors would pay far more than they were required or risk having their most basic property taken away from them. Items repossessed were cars, refrigerators, washing machines and even beds.

[30] The submission of the prosecution is that the conduct involved in this category was deliberate. The defendant companies are perhaps fortunate not to have been

facing criminal prosecution for the types of acts that occurred in this case. And I mean criminal prosecutions that require knowledge and intent.

[31] In relation to [redacted], the defendants' loan notes, discussing a loan note of 24 February 2012, record, "Someone's great idea to undertake an illegal repo of a vehicle on a loan that is paying."

[32] In relation to [redacted], a loan note dated 20 October 2011 is another example of the defendants' engaging in deliberately unlawful repossession. "Tell her I'll send the boys to repo when I get back, debtor not to know we can't repo."

[33] [redacted] was the subject to two forced entries to her home and when she was not present. The instructions to the agency involved included statements such as, "Take as much as you can."

[34] Loan notes dated 19 April 2013, in respect of [redacted] records to the agent to, "Continue with the repo as debtor needs incentive to make sure the AP will start for another $20 per week, once we see this increase the client can collect his stuff." Told to take the washing machine, his bed and his TV, this was despite the fact that [redacted] had outlined to the company he could not afford to increase his payments. In response, the defendants specifically targeted his essential items. At the time this occurred [redacted] was paying the $20 a week the Court had ordered him to pay under an attachment order.

[35] [redacted] had goods repossessed from her twice in four months, when on each occasion she had overpaid what she owed. Following the repossession, the loan notes records that, "The client is now living in quite poor conditions." Despite that, the defendants returned a few months later for another repossession.

[36] [redacted] loan notes provide, "Have told agents to send a message to the client advising they are going to do a repo at the house and give it 10 minutes to see if she responds. And if not, they can do a break-in. Idea would be to have the client come home and see if she has a car, also to find out if she's working. No response from the client so we have advised the agents they can proceed with a break-in."

[37] [redacted] were subject to repossession as a punishment. On 5 September 2013, an agent was ordered by the defendants to fully clear his house out. In fact at the time [redacted] had overpaid their loan by almost $2500. In addition, two vehicles were repossessed from [redacted] after they had paid off their loan.

[38] The representations were major departures from the truth. They were widely disseminated among the people that were subject to the powers that were held by the defendants. The representations were harmful, they are aggravated by the vulnerability of the victims, who have modest means. Also they very much needed the items the defendants took or threatened to take.

[39] In relation to [redacted], the defendants' loan notes record that it advised agents, "Proceed and make sure the trailer is full and van loaded full, so they must take as much as they can. With the washing machine, microwave, fridge, bed as a first priority."

[40] [redacted] had goods repossessed without notice on seven occasions between September 2011 and September 2013. The defendants' loan notes from repossessions on 23 September record, "Confirmed to issue a repo for the essentials. Advise we want a full repo and to take the fridge." As regards [redacted], the loan notes from his repossession two months later on, 11 December 2012 recorded, "We have been to this address so many times and emptied it, taking tools, mower, water blaster from the shed. He said there's next to nothing in the house, basically just a mattress he is sitting on. Told him to clear everything out including beds, needs to be a complete repo, as too many repos in the past." [redacted] had five children, the impact of this form of repossession must have been very difficult for his family to have endured.

[41] The victim impact statements speak of the strain of repossession, the shame of the agents calling repeatedly at their address and the aggressive manner of the defendants and their agents in dealing with them. The impact and distress caused by these criminal acts should not be understated. Property repossessed often had little or no value, it was just disposed of. The indication is, that repossession was used as a direct means of coercion.

Interest and Charges

[42] The representations were important as the continued addition of costs and interest kept the debtors within a debt cycle. The conduct was deliberate, because the defendant had been convicted of similar misrepresentations in 2010 for charging additional interest and costs.

[43] The defendants' position vacillated during the proceedings. Mr Wayne Hawkins said that they did not do this. At the hearing legal points were taken as regards to uncertainty. The company, by its director at interview was saying that it was not carrying out such conduct. That conduct can be clearly seen within its own loan records.

[44] The dissemination was significant as seen in the types of representation to 12 of the debtors with regard to interest and 14 of the debtors with regards to cost. The effect of the representations were financial and emotional. In the case of [redacted], she had overpaid her loan by the sum of $3500. [redacted] was told she owed more than $10,000 above her correct balance. There was no effort made to correct these misrepresentations despite the assurances given in 2010.

Category 3 Attachment Order Charges

[45] The prosecution submit this offending was deliberate. Mr Wayne Hawkins at interview said that he knew the debtors would not pay what they had been required, but these were used as a means to get the debtors in contact. At hearing the defendants claim interest could be charged lawfully under s 65A District Courts Act 2016. I found that this interpretation was not legally tenable. As a matter of law, the representations were completely untrue. The conduct was harmful, [redacted] ended up filing for bankruptcy, due to misrepresentations about how much she had owed.

Category 4 Refinancing Charges

[46] The offending in this category is more confined, only Budget Loans engaged in refinancing. The Prosecution submission is that these were nonetheless highly

misleading and deliberately made misrepresentations. The suggestion that discounts were going to be provided was untrue and the debtors were put in a more encompassing form of security and asked to pay more than their true loan bill.

Starting Point for Sentence

[47] As regards starting point, the prosecution suggests across the 83 charges in relation to repossession, a range of $700,000 to $800,000 is appropriate. In relation to category 2, $140,000 to $200,000. In relation to category 3, $40,000 to $60,000 and category 4, $20,000 to $40,000.

[48] On the other hand, the defendants' submissions are, there should be one global basis for sentencing and a starting point of no more than $200,000 should be approached.

[49] To me, the defence submission appears to be untenable. The aggravating aspects, which I have endeavoured to set out are significant. And when one considers the other authorities, I must try to be as consistent as can be achieved. The authorities prosecution rely on are not directly on point. The defence emphasises the absence of any directly applicable authority. It is also noted that there is no tariff case.

[50] What the prosecution do rely upon are the following aspects of the cases it cites. In cases where the $200,000 is the maximum penalty, in relation to the *Commerce Commission v Love Springs.*[2] The Court noted, "Deliberate and cynical commercially driven offending." It was found that the extent of the harm caused brought a global starting point of $600,000.

[51] In the *Commerce Commission v Westpac Banking Corporation.*[3] Charges involve incidents, some of which had $100,000 maximum penalty and some of which had a $200,000 maximum penalty. The case was one where a large number of customers received inadequate disclosure. That was a case where an agreed starting point proposed was that of $850,000.

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[2] *Commerce Commission v Love Springs* CRI-2012-004-011695 ADC 11 December 2013

[3] *Commerce Commission v Westpac Banking Corporation* CRI-2005-004-004062 District Court Auckland 2006

[52] The distinguishing feature is the extent of the dissemination of the inadequate material that the company had provided. It still faced a significant penalty, notwithstanding this being an incident of carelessness, rather than being deliberate conduct. In cases of deliberate or reckless breach of the Fair Trading Act 1986, there has been emphasis on the need for deterrence. In *Commerce Commission v Auckland Academy of Learning*[4] the sentencing Judge was concerned about the sales process being strictly scripted:

> It was not a case of rogue or over enthusiastic sales representatives making representations that they should not have done. The basis of the representation was inherent in the systems the company had setup.

[53] It was this that brought a starting point assessed at $520,000. In *Commerce Commission v Reckitt Benckiser (New Zealand Limited)*[5] the Nurofen case, in this case half of the conduct preceded the increase in penalties from $200,000 to $600,000. Mostly misleading marketing was addressed. The conduct was found highly careless, starting point of $1.65 million was adopted.

[54] In *Commerce Commission v Bike Retail Group Limited*[6] another case involving a mixture of $200,000 and $600,00 maximum charges. At the sentencing the company pleaded guilty to 14 s 10 Fair Trading Act charges, relating to falsely indicating discounts. The starting point which was agreed by counsel was $1.2 million.

[55] It may be said that there are distinguishing features, given the extent of marketing and dissemination. But a principal factor in the sentencing was the deliberate policy of engaging a strategy which involved untrue representation.

[56] As it has been said, in this case there was a policy which can be seen in all of the charges that represented company policy to make untrue representations.

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[4] *Commerce Commission v Auckland Academy of Learning* 2017 DC 27148

[5] *Commerce Commission v Reckitt Benckiser (New Zealand) Ltd* 2017 20170203 District Court Auckland

[6] *Commerce Commission v Bike Retail Group Limited* [2017] NZDC 2670 [10 February 2017]

[57] In *Commerce Commission v Youi Insurance Group Ltd*[7] the conduct in that case ranged from deliberate to reckless. Dissemination was significant, starting point in that case $650,000 to $750,000.

[58] The prosecution have referred to some further cases involving credit financing. These cases indicate the Court's concern where there is a misuse of power type situation. The Courts have been active to identify and to endeavour to control actions against vulnerable groups. Two year prison terms have been upheld by the Court of Appeal in relation to relatively low value offending, because of the impact upon those that are potentially vulnerable.

[59] The submission of the prosecution is that these defendants may be categorised as having firstly taking deliberate conduct and in such cases, heavy penalties have been imposed, relying on *Love Springs* and the *Auckland Academy of Learning* cases. That secondly, deterrents are required to protect vulnerable debtors and again, *Love Springs* and *Auckland Academy of Learning* cases have been relied upon.

[60] Thirdly, the commercial strategies involving misleading customers have attracted significant commercial type penalties relying upon *Bike Barn, Love Springs* and the Nurofen case, also the *Auckland Academy of Learning.*

[61] This is a situation in which it was hard for consumers to tell themselves as to the accuracy of misrepresentations. In situations where people cannot judge as to whether or not information that they are given from a seemingly responsible body is true is always is going to make forms of misrepresentation serious.

Defence Submissions

[62] The defence submit that the 2010 guilty plea is separate and distinct. This offending and sentence for it should be seen on its own, I should not doubly penalise the defendants for previous matters for which the defendants have already been published. This is a fair submission as far as that goes, but the warnings which were given and the assurances which were given by the defendant companies are factors

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[7] *Commerce Commission v Youi Insurance Group Ltd* [2016] NZDC 2585

that I do consider impact upon culpability. I cannot completely put the 2010 offending to one side. The similarity to it, and indeed in the absence of the safeguards which were promised, is a factor that I consider increases culpability.

[63] The submission, which must be an alternative submission is that this was continuing conduct and so to sentence it in a significant way would be to punish the defendants for actions that effectively have been ongoing. The differing nature of the categories of the charge and the types of conduct and the impacts which can be seen of the victims, makes this an unconvincing submission.

[64] It is submitted representations could not be characterised as a complete departure from the truth. The submission is also made that the prosecution have overstated the case. Reliance has been placed on the fact that there were 19 charges which were originally dismissed by myself but which were established on appeal.

[65] Even if it were accepted that there was a degree of confusion in terms of the law in relation to those charges, they are by far in the minority and the particularly worrying representations appear to me to have been deliberately made.

[66] The prosecution makes the point that when interviewed, Mr Wayne Hawkins said that this type of conduct was not occurring and so it does not seem that in practice the defendant company had confusion. In practice, something was happening which was said by Mr Hawkins not to have been happening.

Dissemination of the Misrepresentations:

[67] The defence says that this needs to be restricted to the charges that are present and that the dissemination is significantly less than other cases which are relied on by the prosecution. I do accept that sentencing must relate only to the charges upon which the defendant has been convicted. However, the type of conduct and the nature of the approach of the defendant, can I believe be taken into account. The defence cannot point to these being isolated incidents or incidents that have been aberrational. They appear to be part of a corporate approach undertaken by the defendant companies.

[68] The defence suggests the starting point taken in July 2010 is an adequate framework for sentencing. Defence says this is historical offending and to take the approach suggested by the prosecution is an overreaction and manifestly excessive.

[69] I can only in small measure, accept that the prosecution overstate the case. Firstly, the post-sentencing 2010 sentencing offending, where the offending has been identified, is a situation where there could be no question about the illegitimacy of the approach that was continuing.

[70] Secondly, the extent of the offending here is greater, the range of the type of offences that were carried out by the defendant for the same purpose, and with the same disregard for the victims of offending, is more significant. The harm identified is significantly greater. The offending was cynical and deliberate, the assurances which had been given were either ignored or given lip service.

[71] Defence have made efforts to distinguish *Love Springs* case. It does have greater dissemination and involves representative charges, greater revenue was generated. Those factors are correctly noted. However, the prosecution identify that the Court's response was aimed at the deliberate type of conduct in that case and in that sense it has relevance to this sentencing.

[72] The *Westpac Banking* case again was a greater scale of dissemination, but on the other hand, a far less level of deception and what was present is the notation that the corporate penalties must be imposed for corporate offenders and such penalties would need to be significant.

[73] The Nurofen case, once again the extent of the dissemination was very significant, the health aspects of the offending make it one that was always likely to attract to significant penalties. The prosecution point is that where commercial motive is involved, commercial penalties must follow.

[74] Again, with the *Bike Retail Group* the dissemination was significant, media exposure was great and the effective increase in turnover there significant. The

prosecution point once again is that the commercial aspect of the offending was clearly a part, and a significant part of the starting point adopted.

[75] As regards aggravating and mitigating factors, the defence submit there are no aggravating factors. This is a hard submission to accept given the type of representations, the effect on vulnerable people and the recorded instances of acts which can only be categorised as cruel.

[76] The impact on the victims of the type of approach that was taken here is a seriously aggravating factor.

[77] The defence suggests credit should be allowed for co-operation and the negative publicity which has been attracted as a result of the proceedings. Further, it is submitted that the absence of prior convictions on the part of Evolution Finance is a mitigating factor.

[78] The level of co-operation in this case does not appear to justify a significant reduction in penalty. The co-operation involved voluntary provision of interviews and compliance with stop now notice. But as observed by the prosecution, the stop now notices merely meant that the defendant did not continue with illegal acts.

[79] When viewed as a whole, the interviews provided show attempts to justify the position of the defendant companies. The interviews provide different explanations from those which ultimately found their way into the defence case. Evolution Finance has no previous convictions, this is correct. The two companies were effectively run together with the same managing minds and with the same knowledge. To offend in the way that has occurred here, given the previous convictions for similar acts, removes any credit that should be given for a lack of previous history on the basis of Evolution Finance.

[80] Some credit will be provided for co-operation with the prosecuting authorities. And because I consider that reparation and emotional harm are important factors in this sentencing, they too need to be taken into account.

[81] Starting with a starting point taking into the aggravating and such mitigation as can be applied in the offending itself:

(a) Offending in category 1, I see a starting point of $500.000.

(b) Offending category 2, $170,000.

(c) Offending in category 3, $100,000.

(d) Offending in category 4 of $30,000.

[82] That brings a total starting point of $800,000. Distinction must be made between Budget Loans and Evolution Finance. I make these distinctions as follows:

(a) Category 1, Budget Finance be fined in relation to a spread between the charging documents in each category, which should not offend against the maximum penalty of $200,000 in each case. $350,000 in total in category 1.

(b) $110,000 in category 2.

(c) $45,000 in category 3.

(d) $30,000 for category 4.

[83] That is a total of $535,000.

[84] As regards Evolution Finance:

(a) Category 1, $200,000.

(b) Category 2, $40,000.

(c) Category 3, $25,000.

[85] Which is a total of $265,000.

Mitigation

[86] As to Budget Loans, there will be a $50,000 reduction for co-operation with the prosecution. And with regards to reparation required in relation to debtors, to Evolution Finance a reduction of $30,000. In relation to co-operation with authorities and in recognition of reparation.

Reparation

[87] The victim impact reports make sad reading. There was suggestions in Wayne Hawkins' interview that the views which were made were old school. They were lacking in compassion, humanity and they were illegal. The position as regards reparation is as follows, and I add that these involve calculations that I have made in respect of some aspects that are not agreed between the parties. I reserve leave to the parties to provide material for me to correct any errors that are apparent. But if I take a view as to what is preferred then I do not expect to see submissions in respect of that:

(a) [redacted] refund $6191.40.

(b) [redacted] credit of $3479.58.

(c) [redacted] refund of $2388.59.

(d) [redacted] a refund of $6796.38.

(e) [redacted] refund $2961.57.

(f) [redacted] refund of $7818.23.

(g) [redacted] credit $1324.12.

(h) [redacted] refund $1021.52.

(i) [redacted] loan balance now $339.82.

(j) [redacted], loan balance $630.33.

(k) [redacted], refund of $108.04.

(l) [redacted] refund $655.37.

(m) [redacted] loan balance $4213.14.

(n) [redacted] refund $4796.49.

(o) [redacted] loan balance $2009.39.

(p) [redacted] refund $373.31.

(q) [redacted], loan balance $5011.47.

(r) [redacted], loan balance $2453.13.

(s) [redacted] refund $455.71.

(t) In relation to [redacted] a credit of $3479.58 to his loan balance.

Emotional Harm Reparation Payments:

[88] The emotional harm which has been visited on these debtors was significant. I have not ordered emotional harm in all cases but in instances where on review of the evidence, there were wrongs to these individuals and the wrongs exceeded the reasonable bounds, I have ordered emotional harm reparation:

(a) [redacted] was made bankrupt, she suffered considerable emotional harm, I order $10,000 emotional harm reparation.

(b) [redacted] suffered relentless repossessions with a young family, $10,000 emotional harm reparation is ordered.

(c) [redacted] was greatly affected by the repossession process. Her home was broken into, I order $5000 emotional harm reparation.

(d) [redacted] suffered multiple repossessions, significant and harmful emotional effects, $10,000 emotional harm reparation.

(e) [redacted] $3000 emotional harm reparation.

(f) [redacted] $3000 emotional harm reparation.

(g) [redacted] $3000 emotional harm reparation.

(h) [redacted] $5000 emotional harm reparation.

(i) [redacted] $4000 emotional harm reparation.

[89] That is a total of $53,000 in emotional harm reparation payments.

[90] This has been a relatively lengthy sentencing decision. I will provide a schedule with regard to the fines and reparations. But as I have said, if counsel from their notes find that I have either miscalculated, misstated or omitted a matter of significance in relation to emotional harm or reparation, then counsel is free to file submissions within 14 days, to deal with any such issues.

D J Sharp
District Court Judge

ADDENDUM:

Prior to sentencing I ordered that if counsel for the defendant companies was intending to argue that the companies were not in a financial position to meet monetary penalties affidavit evidence would need to be filed prior to the sentencing to establish a basis on which the companies could say they did not have sufficient money to meet financial

penalties. I did not refer to this during the sentencing notes but in discussion with counsel the prosecutor made the point that nothing had been filed to indicate the financial circumstances of the companies did not allow for them to meet monetary penalties. In the submissions made by Ms Lethbridge, she has made the point that the companies have no assets and more than likely will need to be wound up owing to the financial pressure which would come from fines. Given that a direction was made to file details to support such a submission I have not taken the position that the companies are unable to meet financial penalties. Had that been the case I would have expected evidence to have been provided. I directed that such evidence be provided and none has been forthcoming. The submission alone is not sufficient for me to conclude that the companies are unable to meet financial penalties. I am conscious that the Sentencing Act requires me to consider the ability of persons to be fined to meet financial penalties but given the directions and notwithstanding the submission made, I come to the conclusion that the companies are unable to resort to a plea that they cannot meet the penalties which have been imposed.

Schedule of Sentences and Reparation

		Budget Finance	Evolution Finance
83 charges Category 1	13(i)	$350,000 In total	$200,000 In total
29 charges Category 2	13(i)	$110,000 In total	$ 40,000 In total
10 charges Category 3	13(i)	$ 45,000 In total	$ 25,000 In total
3 charges Category 4	13(e)	$ 30,000 In total	
		$535,000	$265,000
Less mitigation		50,000	30,000
		$485,000	$235,000

Reparation

[redacted]	Refund	6,191.40
	Refund	2,388.59
	Refund	6,796.38
	Refund	2,961.57
	Refund	7,818.23
	Refund	1,021.52
	Refund	108.04
	Refund	655.37
	Refund	4,796.49
	Refund	373.31
	Refund	455.71

Loan Credits

[redacted]	Credit	3,479.58
	Credit	1,324.12
	Credit	3,479.58

Current Loan Balance

[redacted]	Balance	339.82
	Balance	630.33
	Balance	4,213.14
	Balance	2,009.39
	Balance	5,011.47
	Balance	2,453.13

Emotional Harm Reparation

[redacted]	$10,000
	$10,000
	$ 5,000
	$10,000
	$ 3,000
	$ 3,000
	$ 3,000
	$ 5,000
	$ 4,000
Total	$53,000