

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2015-004-003183  
[2015] NZDC 25950**

**COMMERCE COMMISSION**  
Prosecutor

v

**SUNWAY FINANCE LIMITED**  
Defendant

Hearing: 11 December 2015  
Appearances: J Barry for the Crown  
No appearance by or for the Defendant  
Judgment: 11 December 2015

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**NOTES OF JUDGE C J FIELD ON SENTENCING**

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[1] Sunway Finance Limited faces three charges of breaching s 17 Credit Contracts and Consumer Finance Act 2003 by failing to ensure that disclosure of the key information applicable to a particular contract was made to the debtor either before the contract was made or within five working days of which the contract was made. One of these charges, that is CRN ending 029, is a representative charge, but the others relate to particular debtors, in one case a Mr [REDACTED] and in other another Mr or Mrs [REDACTED]

[2] This matter was set down for formal proof today and I have had the company called. There is no appearance on behalf of the company and I now proceed on the basis of the information provided in the affidavit of Mr Morgan. Mr Morgan is here but I do not require him to give evidence or to elaborate on matters contained in the affidavit.

[3] Essentially the company was operated by a Mr Yang who was prosecuted personally by the Commerce Commission and pleaded guilty to this type of offence before Judge Sharp. The facts as outlined in Judge Sharp's sentencing notes are applicable of course to the facts alleged against the company in this case. In any event, the company was investigated following a complaint received by a debtor in May 2013. It would appear as though the company and the defendant personally had been engaged in lending activities of this kind for a good number of years.

[4] Mr Yang's lending business involved targeting potential borrowers to lend money to at Sky Casino, Auckland. The company was incorporated in February 2013. He was the sole shareholder and director until 2014, at which time someone else took over. The periods with which I am concerned were all in 2013 at a time when Mr Yang was a director of the company. Neither the company nor Mr Yang had ever been registered on the Financial Services Providers Register as a creditor as required by the relevant legislation.

[5] A search warrant was obtained by the Commission and was executed, and relevant to these charges it was found that documents revealed a [REDACTED] borrowed \$2000 from the defendant on 10 March 2013, and I have noted the loan document provided. Similarly, in respect of [REDACTED], again another complainant, the borrower borrowed \$5000 from the defendant on 28 March. Both of those charges are encapsulated in charging documents 027 and 028. A representative charge under 029 covers four debtors that Mr Yang admitted were debtors of the defendant company and who made regular payments into the company's account. These persons are named in the charging document.

[6] It is clear on the evidence before me that the loans were made without the provision of the advice required under the Credit Contracts and Consumer Finance Act. The information required, referred to as the key information, is attached as schedule 1 to the Act and to counsel's submissions. It is quite clear from the evidence before me that the advice required to be given was not in fact given.

[7] On the face of the documents before me and the other information provided in Mr Morgan's affidavit, I am satisfied beyond reasonable doubt that the company

has completely failed in its obligation in each case to provide the necessary key information to the borrowers concerned in each case. I therefore find the necessary ingredients of each charge proved beyond reasonable doubt and the company is accordingly convicted.

[8] Having found the charges proved against the company, I turn now to the issue of penalty. I have no evidence of the financial solvency or otherwise of the company and proceed on that basis. I have had the advantage of reading Judge Sharp's sentencing notes in respect of Mr Yang personally and I propose approaching the matter in a way similar to that of Judge Sharp.

[9] The informant submits that in all the circumstances, and having regard to the sentence imposed by Judge Sharp, the appropriate starting point would be a global figure of \$30,000, which would amount to a fine of \$10,000 in respect of each charge. I agree that that is entirely appropriate having regard to the matters conveyed to me about the interest rate charged particularly, and the general and blatant failure to provide the necessary information to borrowers who may well have been desperate and prepared to enter into almost any agreement sight unseen. I can discern no mitigating features in the offending or indeed on behalf of the company which would justify the Court in imposing a lesser sentence than that. So, in respect of each charge the company is fined \$10,000.

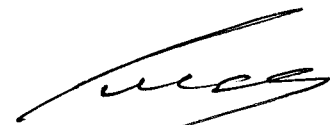
[10] The informant seeks ancillary orders reopening and extinguishing of the contracts entered into by all who have dealt with Sunway Limited. The basis for this submission is to be found in s 120 onwards, and the power of the Court to reopen a credit contract is found in s 120 which provides that the Court may reopen a contract if it considers that the contract is oppressive. Having heard the potential interest rates charged, which could amount, as I understand it, to anything up to 200 percent, and the failure to adequately advise (or advise at all) the potential borrowers that the contract could be properly regarded as oppressive, indeed it could be inferred that the lender intends to exercise powers conferred by the contract in an oppressive manner.

[11] In deciding whether s 120 applies the Court is referred to s 124 of the Act. The Court must have regard – and I do have regard – to all of the circumstances

relating to the making of the contract, lease, or transaction and the exercise of any power conferred by it. In this case the circumstances relating to the making of the contracts include lack of disclosure and the high interest rates that I have referred to. Further, in a general sense the Court has the power to consider any other matters that it thinks fit.

[12] In these circumstances, as I have made plain, I consider that the facts of this case fit within the guidelines of s 124. The Court will then reopen the credit contracts in each case in every such contract entered into by Sunway Limited. I do this on the basis of the admission by Mr Yang that this was his practice in respect of all contracts entered into and the Court is entitled to rely on that and make an order affecting all contracts entered into by Sunway.

[13] In these circumstances then I order that, having reopened the credit contract, each credit contract is extinguished pursuant to s 127 on the basis already referred to. The end result then is that the company is fined \$30,000 in total and the contracts are reopened and extinguished as requested by the informant.



C J Field  
District Court Judge