

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2015-004-003184  
[2015] NZDC 20403**

**COMMERCE COMMISSION**  
Prosecutor

v

**YUAN RONG YANG**  
Defendant

Hearing: 2 October 2015

Appearances: A McClintock for the Prosecutor  
H Leabourn for the Defendant

Judgment: 2 October 2015

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**NOTES OF JUDGE M-E SHARP ON SENTENCING**

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[1] Yuan Rong Yang is here to be sentenced on two charges brought under s 103 Credit Contracts and Consumer Finance Act 2003 each of failing to provide disclosure under s 17 of that Act. Those offences carry a maximum penalty of a fine of \$30,000.

**THE FACTS**

[2] Mr Yang operated a lending business on a personal basis. He also operated, it would appear, Sunwei Finance Limited which is said to have lent money to members of Auckland's Chinese community. There are charges against Sunwei which have not yet been disposed of. The Commerce Commission is sitting on its hands to an extent awaiting the outcome of prosecution against Mr Yang before it decides whether to proceed against Sunwei Finance Limited which I understand to be a

limited liability company owned largely, if not exclusively, by Mr Yang, certainly operated by him.

[3] In any event he operated a lending business personally and in his capacity as director of Sunwei Finance Limited. He personally lent money to members of Auckland's Chinese community. Mr Yang is Chinese himself. The Commerce Commission's sentencing submissions state, and I agree, that Mr Yang acted as a lender of last resort at high interest rates and with complete disregard to his legal obligations in the strictly regulated lending business. He did not provide debtors with the legally required disclosure about their loans.

[4] The Commerce Commission submits that Mr Yang was a, what is known as "a loan shark". Mr Leabourn who acts for Mr Yang takes exception to that terminology and criticises it as being unnecessarily emotive. Unsurprisingly, perhaps, I agree entirely with Ms McClintock. That is exactly, on the facts as I know them, what Mr Yang was: a loan shark who was lending small amounts of money to people who could ill afford to borrow let alone to repay the principal and the oppressive and extraordinarily high interest rate charged.

[5] Between 12 March 2012 and 30 June 2013 Mr Yang was the creditor under seven consumer credit contracts where he failed to disclose the key information applicable to those contracts. The first charge relates to Mr Yang's lending to a single debtor, [REDACTED] who is also a member of the Chinese community and who, as the documentation that I have including her own victim impact statement reveals, is an addicted gambler. The other charge relates to Mr Yang's lending to six other individual debtors.

[6] The summary of facts upon which Mr Yang pleaded guilty states that he lent money to a number of borrowers within the Chinese community of Auckland for 17 years at least and operated this business from, amongst other places, his home address at 8A Pixie Place, Pakuranga Heights, Auckland.

[7] His lending business involved targeting potential borrowers to lend money to at Sky City Casino. Ultimately this led to his being trespassed from the casino, in November 2012. On 28 February 2013 Mr Yang incorporated Sunwei to continue

his lending business. As I have said he was the sole shareholder and director although vacated those roles on 18 June 2004. The loans made by Mr Yang are considered consumer credit contracts under the Credit Contracts and Consumer Finance Act 2003. Mr Yang is not registered and never was registered on the Financial Service Providers Register as a creditor under a credit contract which is required by the Financial Service Providers at 2008.

[8] Mr Yang failed to document any of the loans that he made to customers. Typically they were oral agreements with customers who were often contacts or associates within the Chinese community. Typically, Mr Yang offered loan amounts of sums of between \$1000 and \$5000. The terms of the loans varied but all involved high rates of interest between 1 percent and 5 percent per week payable until each loan was paid off. Mr Yang did not provide any documentation to borrowers setting out the terms of the loans nor a statement of account. Payments made by debtors were generally required on a weekly basis into Mr Yang's bank account.

#### **THE COMMERCE COMMISSION'S INVESTIGATION**

[9] The Commerce Commission's investigation commenced following a complaint received in 2013. As a result the Commission obtained a search warrant to search Mr Yang's address and his two vehicles. A small amount of documentary evidence was obtained and on 1 July 2014 the Commission issued notices under s 98 Commerce Act 1986 seeking bank records from the ASB and BNZ banks for both Mr Yang and Sunwei. Both Mr Yang and Sunwei complied with those notices.

[10] On 27 February 2014 Mr Yang was interviewed and admitted lending money without providing compliant documentation. He said that he had no knowledge of the Credit Contracts and Consumer Finance Act or his obligations under it nor the need to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

**THE FIRST BORROWER, [REDACTED], CHARGE 1**

[11] I have already said that she was a member of the Chinese community who is and was an addicted gambler. She was introduced to Mr Yang during [REDACTED] because she was told that he was a money lender. Initially he lent her \$1000 but after that first loan he regularly lent her amounts of between \$1000 and \$3000. For each \$1000 she borrowed, Mr Yang charged [REDACTED] around \$50 interest per week, that is 5 percent per week. She never received any documentation from him setting out the terms of the loans or ongoing statements of account. Subsequently he lent further monies to her, two separate amounts in [REDACTED], the first \$3000 and the second \$2000, [REDACTED] the sum of \$5000.

[12] Later in [REDACTED] she borrowed \$25,000 from [REDACTED] to purchase a car and repay Mr Yang for her earlier borrowing. She spent \$13,000 on a new car and repaid Mr Yang \$5000. The remainder she spent at the casino. That led her to borrow another \$5000 from Mr Yang. During [REDACTED], as well, she borrowed \$1000 to \$2000 in her own name as well as \$6000 in \$2000 amounts in her friend [REDACTED]'s name. In [REDACTED] she considered that she owed Mr Yang \$870 per week in interest and in total that she was indebted to Mr Yang for \$15,000. He told her that to clear her outstanding debt to Mr Yang it would cost \$21,000. She stopped making payments to Mr Yang in [REDACTED] because she could not meet the repayments. The summary of facts that I have says that Mr Yang attended [REDACTED]'s address to collect the debt.

[13] The other debtors are a collection of people from the Chinese community. Mr Yang admitted that he had lent each of them various monies from between \$50 and \$5000. Again no loan documentation was ever provided to any of them.

**CHARGE 2 BORROWERS**

[14] The borrowers in respect to charge 2 are respectively named [REDACTED],  
[REDACTED]

## STATUTORY CONTEXT

[15] In its very helpful submissions at sentencing the Commerce Commission has provided the statutory context against which these charges were laid. It says that the Credit Contracts and Consumer Finance Act 2003 is not new legislation, came fully into force on 1 April 2005 but did effect major changes to the information that creditors must disclose. There have been recent amendments by the Credit Contracts Consumer Finance Amendment Act 2014 which extend the disclosure requirements again in order to protect consumers and to increase the maximum penalties to \$200,000 for an individual and \$600,000 for a company for breaching the disclosure obligations.

[16] The importance of the disclosure provisions is highlighted by the purposes of that Act which include: providing for the disclosure of adequate information to consumers under consumer credit contracts and consumer leases:

- (a) To enable consumers to distinguish between competing credit arrangements or competing lease arrangements.
- (b) To enable consumers to become informed of the terms of consumer credit contracts or consumer leases before they become irrevocably committed to them, and
- (c) To enable consumers to monitor the performance of consumer credit contracts or consumer leases.

[17] Whilst, in general, the public would probably have liked Parliament to cap interest rates in enacting the Credit Contracts and Consumer Finance Act, it did not do so but it is very clear from an overall reading and comprehension of the Act that it intended to tightly control lending activities. As Ms McClintock says in her submissions, one of the specified purposes of the Amendment Act was to implement greater protection for vulnerable consumers from unscrupulous lenders.

[18] That is exactly what you, Mr Yang, were: an unscrupulous lender, a loan shark. For you to prey on your own community in this way is completely

deplorable. Perhaps that is acceptable practice in China but this is not China; you are a New Zealand resident and you are required to know, apply and respect our laws when you come to live in this country, let alone when you gain residency.

[19] The key information required to be provided under s 17 Credit Contracts and Consumer Finance Act is set out in schedule 1 and includes the following:

- full name and address of creditors
- initial unpaid balance
- any subsequent advances under the contract
- the total number of advances
- the credit limit
- annual interest rate
- method of charging interest and total interest charges
- interest free periods if applicable
- applicable credit fees and charges
- the payments required under the contract
- full pre-payment
- any applicable security interest
- default interest charges and default fees
- the debtor's right to cancel and continuing disclosure requirements.

You failed to provide any of this information to your debtors.

[20] It is hard to imagine how your debtors could have understood what their obligations actually were. You were charging such exorbitant appalling interest that people like ██████████ were completely and utterly ignorant of what she owed and how it was calculated. She seemed to rely on your word as to how much she owed and the methodology by which you were calculating it. That appears not to have been disclosed to her in any way.

## **PURPOSES AND PRINCIPLES OF SENTENCING**

[21] The Commission seeks that I sentence you in such a way as to bring into play the principles and purposes of the Sentencing Act 2002 and particularly to hold you accountable for the harm done to your victims and the community, to denounce your conduct and deter you and other people from committing these types of offences. The Commission says that your dealings with debtors represents a particularly cynical approach by you. I am inclined to agree. It is sought by the Commission that I impose a penalty or penalties that act as a real deterrent to you and to other lenders.

## **AGGRAVATING FEATURES OF OFFENDING**

[22] The Commission also submits, and I agree, that these are the aggravating features of your offending:

- (a) The duration. It covered 15 months.
- (b) The extent, and as Ms McClintock says, this case is unique because of your complete failure on every level to disclose any information about the loans.
- (c) The significant harm caused by the offending which is set out in the victim impact statement from [REDACTED]
- (d) The loan contracts are and were impossible to monitor and assess because of the lack of documentation.
- (e) Your failure to provide disclosure must have masked to [REDACTED] the true extent of her obligations. It led her to repeatedly borrow money from you. She may or may not have realised that she was borrowing with an accumulating effect. She was paying interest on interest.

(The Commission says and Mr Leabourn, who appears for you, does not appear to demur from the statement, that [REDACTED] was paying

about 260 percent per annum interest. That is oppressive by anybody's measure).

- (f) The lack of documentation made it very difficult for the debtors to challenge or seek to vary the contracts. However, I take this with a grain of salt inasmuch as, had you attempted to enforce these oral contracts lending money in a Court of law I do not doubt that you would have been unsuccessful.
- (g) The vulnerability of your debtors and most particularly [REDACTED]
- (h) The fact that lending in this manner was really a preying on of the vulnerable within your community.

#### **MITIGATING FEATUERS OF OFFENDING**

[23] I agree with the Commission that there are no mitigating features of the offending.

#### **STARTING POINT**

[24] So I come to the starting point for your offending. I have had placed before me and discussed a number of relevant decisions. Of course it is always very difficult to know exactly where to start in cases of this kind. All of the decisions which have been proffered to me and discussed give some insight into how different and successive Courts have considered offending under this Act, albeit none on all fours precisely.

[25] It seems to me however that the most helpful authority is *Commerce Commission v Hunt* (Christchurch DC, CRI 2012-009-005300, 28 June 2012). Mr Hunt's offending spanned 12 months, involved 11 debtors, 15 contracts, amounts transacted ranging from \$60 to \$532.50. *Commerce Commission v Lelei Finance Limited* (Manukau DC, CRI 2007-09213465, 19 March 2008) involved 18 charges under s 18 Act and two representative charges under another Act and the defendant's customers were almost exclusively people from the South Auckland Tongan community unable to borrow from conventional sources. There the defendant failed



to disclose some of the key information under schedule 1 but not all of it. The parties submitted in that case a starting point of \$45,000 was appropriate for the 18 breaches with a discount of 33 percent to the total fine, taking account of the defendant's guilty plea and offer to pay refunds, an approach which the Court approved of.

[26] In this case, given all of the circumstances and based on the various decisions which have been discussed by counsel the Commission submits that a starting point of approximately \$45,000 to \$50,000 for the two charges combined is appropriate. That would set the starting point close to the maximum penalty available to the Court and the Commission considers this appropriate because of the aggravating features of this offending.

#### **PERSONAL FEATURES**

[27] There are no personal aggravating features which would warrant an uplift. There are some mitigating features however. The first is your guilty plea. There has been argument between the Court and Mr Leabourn over whether it should amount to the full discount of 25 percent or only 20 percent. I have already told him in no uncertain terms that notwithstanding the fact that Mr Leabourn did not become involved at the beginning and did need time to assess the situation, take instructions as well as advise you, that it could not possibly be said that you pleaded guilty at the earliest opportunity which would have justified a full 25 percent discount. I will give you 20 percent.

[28] The Commission invites the Court, as does Mr Leabourn, to give you an additional 5 percent discount for your co-operation with the authorities and I am prepared to do so.

#### **MR LEABOURN'S SUBMISSIONS**

[29] Mr Leabourn suggests that the starting point adopted by the Crown is very much too great. He suggests that an appropriate starting point here, based on the aggravating features and the other decisions which are on facts that are broadly

similar, is of between \$45,000 and \$50,000 for each charge. These matters are almost always fairly arbitrary and there is a great amount of discretion involved.

## **DISCUSSION**

[30] I am told that you, Mr Yang, are 49 years of age, married with four children, residing here as a permanent resident and you own your own home in Botany Downs. Three children are school age. I am also told that you are working setting up a mahjong club renting tables. I am a little confused as to exactly whose business this is because the written submissions are a little different from what Mr Leabourn said in his oral submissions but it sounds as if this is a business between you and a friend, but the friend has put up the money. In any event I am told that you are paid a salary of around \$1000 per week. Your wife does not work, you receive \$200 per week board from a daughter and you have a brother in China who gives you around \$20,000 to \$30,000 per annum. You own your own home in which you have \$300,000 equity. Apparently you borrowed \$40,000 from friends in order to begin your lending business and you currently repay that at \$700 per week. You do not any longer operate a lending or finance business.

[31] I should also say that Mr Leabourn submitted that there were some mitigating features of the offending, namely the relatively low amounts lent on each occasion and the fact that you were not fully conversant with the Act or its requirements. I reject that either of those amounts to a mitigating feature of the offending.

[32] In the end Mr Leabourn submits that the final sentence in this case, when it comes to the financial penalty, should be something in the vicinity of \$20,000. I am unsure whether he means \$20,000 per charge or overall. I do note that at paragraph 6.24 of their submissions the Commission is suggesting a starting point of approximately \$45,000 to \$50,000 for the two charges combined.

[33] That is not the end of the matter though because the Commission is seeking ancillary orders plus statutory damages. Both the ancillary orders and the statutory damages applications by the Commission meet with the Court's approval. That being so and taking into account the necessity for a totality approach to sentencing as well as taking an overall just approach to this offending leads me to

think that perhaps close to the level that Mr Leabourn suggests would be fair. He suggests \$20,000. I am of the view that a fine of \$30,000 spread between the two charges, that is \$15,000 each, is an appropriate penalty taking into account that I intend to grant the applications of the Commission in respect to the ancillary orders and statutory damages.

### **STATUTORY DAMAGES**

[34] Section 88 Credit Contracts and Consumer Finance Act provides for statutory damages. Under a consumer credit contact the debtor is entitled to recover from the creditor the amount of the statutory damages set out in s 89 if the creditor breaches in connection with the contract any of the provisions of ss 17 -24, ss 32-40 and s 70. Pursuant to s 89(1)(d) the amount of statutory damages recoverable is the lesser of \$3000 or 5 percent of the total of all advances made under the consumer credit contract.

[35] As Ms McClintock says there is a dearth of information available on the extent of the loans made to [REDACTED] so it is therefore difficult to assess with any precision what the total amounts advanced were. The summary of facts talks of a figure of \$21,000 as the sum borrowed over the charge period. If that were the total, it would result in statutory damages of \$1050 for the breaches. The Commission submits that the sum advanced was clearly much higher than that and therefore the Court should impose statutory damages of somewhere between the \$1050 mentioned and the \$3000 which is the maximum for the breaches relating to [REDACTED]

[36] I agree with that analysis and I am prepared to impose the maximum in [REDACTED]'s case, of statutory damages of \$3000. There is no reason to depart from the general rule that she should be granted that full award and many of the Commerce Commission cases that have been brought before the Courts since this Act was passed have awarded statutory damages.

## **RE-OPENING AND EXTINGUISHING REMAINING CONSUMER CREDIT CONTRACTS AS WELL AS ANY EXISTING LOANS FOR THE OTHER DEBTORS**

[37] The Commission submits that Mr Yang should be prevented from further enforcing loans made to [REDACTED] and the other debtors and as I understand it Mr Leabourn, on behalf of his client, does not oppose orders of the type sought, nor the statutory damages.

[38] At s 120 of the Act, a Court is given the ability to re-open a credit contract when it is oppressive, a party has exercised or intends to exercise a right or power conferred by it in an oppressive manner, or the creditor has induced the debtor to enter the contract by oppressive means. Suffice to say that by anybody's standards Mr Yang's conduct in terms of the charges that he faces was oppressive. Section 118 actually defines oppressive as harsh, unjustly burdensome, unconscionable or in breach of reasonable standards of commercial practice and various decision have elaborated on that term but I consider it very readily and easily understood and to apply to the present circumstances.

[39] I agree with the Commission that any existing debt owed to Mr Yang by [REDACTED] or any of the other debtors should be re-opened and extinguished and I so order.

## **PROHIBITION ORDER**

[40] Under s 108(1) Credit Contracts and Consumer Finance Act the Court has the power to order certain persons not to act as creditors, lessors, transferees or buy-back promoters. The necessary threshold is that the person concerned has been convicted of an offence against this Act inter alia or has failed more than once to comply with any of the provisions of the Act and in the opinion of the District Court is not a fit and proper person to enter into consumer credit contracts as a creditor, et cetera.

[41] The Commission submits that the defendant meets that threshold and is not a fit and proper person to enter into a consumer credit contract as a creditor. The

Commission submits that his complete disregard for his statutory responsibilities makes this a particularly clear-cut case for a s 108 order to be made.

[42] I agree, notwithstanding that Mr Leabourn has sought to persuade me that this would be an unduly harsh penalty for you, Mr Yang. Apparently you are no longer in the business of lending and you have no intention of lending in the future as far as you can see into the future but you do not want that to be ruled out.

[43] I say now that you are not a fit and proper person to be a creditor in a consumer credit contract and I doubt that you will ever be. You have preyed on less able and more possibly ignorant, but certainly more vulnerable citizens, and members of your own community. Your conduct was the sort of conduct which is exactly the type of conduct that this Act was passed in order to prevent or at least regulate. It fills me with concern that a great amount of your lending to [REDACTED] was either at or through her gambling addiction at the casino and that on occasions you were at the casino lending to her. In fact to have been prohibited from entering the casino is the very indication of why you are not a fit and proper person to be a creditor under a consumer credit contract. Clearly the casino, which frankly probably encourages most people to gamble, sees you as a scourge and that is why you have been prohibited.

[44] This is a clear-cut case, notwithstanding what Mr Leabourn says and I thank him for his submissions. The only question in my mind is whether I should ban you for life or for a finite period. I have reached the conclusion that because it is too hard to otherwise police, it is more appropriate if I ban you for an indefinite period. As I understand it, that would enable you at some stage in the future to attempt to convince a Court that you were rehabilitated and a fit and proper person to become a lender or creditor in credit contracts under the Act; then the onus would be on you. If I were to prohibit you for a finite period there is always the risk, and I consider it to be a high risk, that you may start up again in business whether personally or through another company and begin lending without complying with the obligations that you have under this Act in which case the Commission would be required to re-investigate on complaint if complaint was received. I consider that there is a real threat that this could happen in the future.

[45] Accordingly, it will be up to you, should you wish to, to prove that you are in the future a fit and proper person. For the moment, I make an order that prohibits you from acting as a creditor in credit contracts for an indefinite period.

### **SUMMARY**

[46] In summary therefore, on the two charges to which you have pleaded guilty you are convicted and fined the sum of \$15,000 each.

[47] I make the ancillary orders sought by the Commerce Commission which include the re-opening of the credit contracts and extinguishing the remainder of them and the debtors obligations to you and I order statutory damages of \$3000 to [REDACTED]

[48] In addition I make the prohibition order against you, indefinitely, from involving yourself in any capacity and providing consumer credit.

[49] I consider that the sentences that I have imposed meet the purposes and principles of the Sentencing Act most particularly to denounce your conduct, to deter you and others from this type of offending, but in addition I consider that they are the least restrictive outcome that is appropriate under all of the circumstances.

### **ADDENDUM**

[50] I have to go back and correct something that I said in the sentencing notes. I said that I had come to the conclusion that an appropriate starting point was \$30,000 for the two offences which is \$15,000 each. Given that you are entitled to a 25 percent discount the actual fine should be less. The end fine should be, on each charge, one of \$11,250, starting with \$30,000 or \$15,000 each charge and applying the 25 percent discount.

[51] In addition with [REDACTED] that is charging numbers 01031, I suppress her name and any details which may lead to her identification.

  
M-E Sharp  
District Court Judge