

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

CRI-2012-009-005300

**COMMERCE COMMISSION
Informant**

v

**BARRY HUNT
Defendant**

Hearing: 28 June 2012

Appearances: B Tantrum for the Informant
S Shamy for the Defendant

Judgment: 28 June 2012

NOTES OF JUDGE D J L SAUNDERS ON SENTENCING

[1] Mr Hunt, you pleaded guilty on 14 May this year to a number of charges, 26 in total, which had been laid back in August 2009 and this involved various breaches of the Credit Contracts and Consumer Finance Act. The summary of facts presented at the hearing correctly identified the background to this piece of legislation. One of the key aims of the Act was to ensure consumers had the ability to compare competing credit products and to understand the cost to them of the credit that they were seeking. To enable this information to be understood one of the disclosure requirements was that the lenders disclose an annual interest rate, given that the headline interest rate is one of the main factors that was seen to be used by consumers in determining whether or not they were going to sign up to a particular product.

[2] In this case the first category of charges brought against you related to failure to comply with disclosure provisions in two areas. Firstly, was the failure to state the full name and address of the creditor on the contract and, secondly, the failure to disclose the annual interest rate applicable to the contract. The second category of offending relates to a mis-statement of the applicable interest rate.

[3] The offences before the Court are alleged to have occurred between September 2006 and August of 2007. According to the summary of facts you have been active in the lending market since 1994. You have traded under a number of names and, at the time, were involved with your late brother, Darren Hunt, operating in partnership. Part of your business involved what is termed pay day loans. These were loans that were designed to be relatively short term loans and which allowed for people to get an amount advanced to them in the expectation that they would be able to, hopefully, repay it on their next pay day or very shortly thereafter. Longer term loans were for larger amounts. Some pay day loans were refinanced to this type of contract.

[4] The contract signed up by you and in the course of business did not satisfy s 17 of the Credit Contracts Consumer Finance Act in that they did not state the full name of the creditor. Three contracts failed to even state the address. The trading name used was not a legal entity in the sense that it was an incorporated company or limited liability. It has been suggested to me in submissions that this was part of a, perhaps, disguise of the fact because, at that time, you were adjudicated a bankrupt. You were, however, trading, it seems, with your brother, Darren, who appeared to be – and there is reference made by Mr Shamy's submissions – in charge or the 'boss' according to one of the interviews that took place.

[5] The failure to provide the annual interest is a clear requirement of the loan contract and while it is understood that you had this area of business which involved the pay day loans, which were short term loans and perhaps the annual interest rate was not so significant to the borrowers, particularly as they anticipated early repayment, it was a clear requirement of the legislation that that be shown and it is because, as I said earlier, that that headline interest rate is the way in which they can make judgements about what the real cost of credit to them is.

[6] The finance rate, which is, of course, a different term to the interest rate, because it obviously incurs the administration fees and other costs that are added in, must also be set. According to the summary the interest rate was on the longer term agreement and the interest rate was, in fact, expressed as the finance rate.

[7] At the time, as I have indicated, of these offences you had been adjudicated a bankrupt and there are some relevant convictions which, of course, you are not required to disclose to borrowers but, in May of 2005, you were before the Court and subject to a custodial sentence with leave to apply for home detention in relation to the misuse of personal information. We have clarified that that offending arose at a time when somebody in a government department was providing to your business the names and addresses of (often) beneficiaries who had, perhaps, fallen into arrears with their agreements and that you were endeavouring to seek out their whereabouts to recover the loan.

[8] At the present time I am told that you owe \$5128.67 or thereabouts but that that is under a repayment arrangement with Collections and that \$80 per week is the level of agreed repayment. You have completed a statutory financial declaration and it is fair to say that you are on a modest income, living in rented accommodation, there are no vehicles or other trappings of wealth which could be seized to meet fines. Indeed we are not talking anything like the Barclays Bank which has been the subject of some publicity in the last 24 hours.

[9] Mr Shamy, on your behalf, accepts that fines must be imposed and has directed his submissions largely at the issue of the quantum of those fines. Counsel have acknowledged that the other cases that have been put before the Court in terms of this piece of legislation are of guidance to the Court and it meets some of the principles and purposes of the Sentencing Act in providing consistency of approach in imposing penalties. But, at the end of the day, one has to keep in mind s 40 of the Sentencing Act which requires the Court to have regard to the financial capacity of the defendant before the Court at this time.

[10] So while I do have regard to those cases that have been thoughtfully put before me and summarised, at the end of the day the end result, which is what

matters to you, has to take into account your particular personal circumstances. In this case I do give consideration to the following factors.

[11] Firstly, your age. You are 50 years of age but given your state of health, as commented upon in the medical documents and the obvious impression you make upon me appearing before me today, I can tell you are not a man in robust health and that you are going to have difficulty maintaining full-time employment.

[12] I need to take into account that your financial situation is not strong. It is not a case of dealing with a financial tycoon who has valuable assets, motor vehicles, boats and other trappings of wealth which can be seized to meet fines.

[13] If that were the case clearly the \$5000 in fines that I have referred to already would have been recovered in full by now and there has been a lengthy period of time payment arrangement which you have maintained at the rates that have been agreed from time to time.

[14] I have regard also to the fact your brother, who was in the partnership, is now deceased and there is little to be gained by holding him to account in respect of these matters.

[15] Further, there are no claims for compensation being advanced by the Commission for the persons who had signed up to these loans and, as Mr Shamy has indicated to the Court today, it would largely appear that many of these were not recovered ultimately and have, therefore, been a loss to the business.

[16] Mr Shamy did accept that the borrowers themselves could be seen as vulnerable people, particularly by virtue of the fact that they have had to resort to getting these pay day loans and that, of itself, suggests that they are not in good financial circumstances. It might be that this culture of 'I have to have it and have it now' contributed much to this and that you have been a recipient of that culture that exists within the community where people have this sense of needing to have it immediately rather than being able to save and pay for it as people did in previous times.

[17] There has to be, however, some deterrence for people who flagrantly disregard the piece of legislation that gives the consumers that protection. I take the view that any fines imposed today should not exceed a five year period in terms of recovery. That is longer than the three years Mr Shamy suggested but I believe that, on reflection, when one has regard to the legislation, fines have to be reasonably able to be paid within a particular period. I do note that some of the fines that have already been incurred, you say through your ex-wife, are still being met by you, some eight years after the time that they were first levied.

[18] I have raised with counsel the question of whether or not of these 26 charges there should be some particular apportionment as between the charges laid under s 17 as opposed to those under s 32 or s 37. I think it is generally acknowledged that, perhaps, the s 17 charges should be sanctioned a little more heavily on the basis that that is the key information around the details of the creditors.

[19] I have taken, as a starting point for those charges - 11 in total, a starting point of \$2500 for each of those offences. That brings a figure of \$27,500. I stress to you at the moment, Mr Hunt, that this is a starting point as opposed to the end point.

[20] On the remaining 15 charges I consider a \$1500 per charge would be an appropriate deterrent and starting point and that would translate to something in the order of \$22,500. Combined together that brings a point of \$50,000 which is largely in keeping with some of those other cases which have been mentioned in the course of submissions and which are before the Court for consideration as to consistency.

[21] From that starting point I need to be realistic in so far as this five year period and your current situation and for that reason there then needs to be some reduction to take that into account, together with the guilty pleas that came effectively on the day of the hearing. The guilty pleas, I noted, came about after negotiations. It did save some Court time because three days had been allocated for the hearing itself and, of course, there were a number of charges that were withdrawn from the original 100 that were before the Court.

[22] The end result is that I have taken the view that when all of that is taken into account that there is some allowance for Court costs because if each of the informations had Court costs of \$132.89 imposed there would be something in the order of \$3455 in Court costs. What I intend to do is to impose Court costs only on the 11 charges under s 17. That, in effect, shows to the Ministry that there has been some recouping of the costs involved in the processing of this. So there is a sum of \$1461.79 which is imposed by way of the Court costs or the summons fee in respect of this matter.


[23] The end point should be that, in my view, you can afford to meet the current commitment at \$80 per week which does not rob you of your right to some independence and, at the very least, it needs to be acknowledged that you are at least working and paying your way as a taxpayer and I made the comment that it could have been said that somebody in your circumstances could easily have taken the least line of resistance and endeavoured to sit back on a Sickness Benefit or some form of state assistance and effectively say well there is very little that you can do to now penalise me. So, to that extent, I accept that because you are in legitimate employment and paying your taxes that the figure of \$80 per week is a reasonable sum to be expected to be continued to be met for fines.

[24] I have already, in the course of submissions, averted to the fact that those earlier fines could, under the s 88 report, have been the subject of a consideration for community work with, perhaps, even light duties being considered. In light of your current health situation I do not intend to go down that track but it is an option in respect of those earlier fines that could be considered and still could be considered at some point in the relatively near future when your medical situation has been further investigated.

[25] Returning then to the fines that need to be imposed I have indicated where my starting point is for each of those matters. I now indicate that the end point should not exceed the sum of \$20,000. That is five years of fines repayments at the current arrangement that is in place. It really then becomes a mathematical exercise in trying to apportion matters between the s 17 charges and the remaining matters.

[26] The best I can do then is indicate that my finishing point was a financial impost on you of some \$20,000 at \$80 per week. I deduct from that \$1461.79 for the Court costs that must be imposed and be attributed to the Ministry for Court costs. That is on the 11 charges under s 17 that I have imposed the appropriate statutory rate of Court costs. I have deducted that sum of \$1461.79 from the \$20,000 leaving \$18,538 as the figure available for fines. I impose \$1200 on each of the s 17 charges which comes to \$30,200. It leaves \$5332 to be apportioned amongst the 15 charges that remain and the balance, therefore, will be a fine at the sum of \$355 on each of those. You will be required to adhere to the arrangement that is in place for the \$80 per week.

[27] Can I conclude by thanking counsel for their helpful and thoughtful submissions in relation to this matter. It is to be hoped, Mr Hunt, that your health will improve from this point on and that you will be able to, as I say, maintain paid employment and to be able to pay your way in respect of the fines that have been imposed.


D J L Saunders
District Court Judge