Supreme Court of New Zealand
Te Kōti Mana Nui

12 May 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Sportzone Motorcycles Ltd (in liquidation) and Motor Trade Finances Ltd v Commerce Commission

(SC 40/2015) [2016] NZSC 53

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

This appeal addresses the provisions of the Credit Contracts and Consumer Finance Act 2003 (the 2003 Act) regulating fees charged by financiers to consumers under consumer credit contracts.

The appellants, Sportzone Motorcycles Limited (Sportzone) and Motor Trade Finances Limited (MTF) provided finance to consumers in connection with the purchase of motorcycles from Sportzone. Sportzone assigned each consumer credit contract to MTF, whereupon MTF became the creditor under the relevant credit contracts. The present case relates to 39 transactions under which Sportzone provided funding to debtors in an arrangement with MTF.

A number of fees were payable under the credit contracts. These included establishment fees, monthly account maintenance fees, prepayment administration fees and default fees. MTF's approach to the fees it charged apparently developed as a result of a review it undertook after the 2003 Act was passed. In light of this review MTF opted to recover a wide range of its lending costs through fees rather than through the interest rate on the loans.

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The respondent (the Commission) alleged that the fees provided for in these credit contracts were unreasonable for the purposes of the 2003 Act. In the High Court, Toogood J held that the fees were, in some respects, unreasonable. In a second judgment he quantified the extent to which the fees were unreasonable. Sportzone appealed to the Court of Appeal which dismissed the appeal against both High Court judgments.

The Supreme Court granted leave to Sportzone and MTF on the question of whether the Court of Appeal erred in finding that the fees they had charged were unreasonable for the purposes of s 41 of the 2003 Act. Leave to appeal on a second question was declined.

For the appellants, it was argued that the Court should treat the test for reasonable fees as a broad one, taking into account a variety of factors including what fees are charged in the relevant financing market. It was argued that this accorded with the policy of the 2003 Act, which included allowing lenders flexibility. For the respondents, it was argued that there should be a close connection between the fees charged and the costs covered by the fees, and that this better accorded with the 2003 Act's purposes of consumer protection. The fees charged by the appellants did not meet this test as they covered a wide range of costs including ones which covered general costs of lending rather than the costs of the specific activities for which the fees were charged.

In a unanimous decision, the Supreme Court has dismissed the appeal. The Court found that the wording of the 2003 Act indicated a transaction-specific approach to fees, such that it was not permissible to take virtually all operating costs and allocate them to one fee or another. The Court agreed with Toogood J that a helpful formulation in determining the reasonableness of a fee is to ask whether the cost is sufficiently close and relevant to the steps in the lending process to which the fee relates that it can reasonably be said it was incurred in relation to those steps. A similar approach should be taken to default fees. Therefore the Court found no error in the approach of the Court of Appeal.

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