

ON APPEAL
FROM THE FULL COURT OF THE SUPREME COURT OF
SOUTH AUSTRALIA

B E T W E E N :

MERCANTILE CREDITS LIMITED

Appellant

- and -

JOHN NICHOLAS COMBLAS and
ARSINOI COMBLAS

Respondents

S U P P L E M E N T A R Y C A S E
FOR THE APPELLANT

Record

15A. The Appellant further submits that there is no requirement, either under the general law or under Sec 40(1) (b) of the Consumer Credit Act for the credit contract to contain an express term entitling the lender to recover from the borrower any deficiency which remains outstanding and unpaid following realisation of the lender's security.

10 15B. Clause 9 in the credit contract held by the Full Court to be void for uncertainty did no more than state, or attempt to state, in a composite form, what was in any event the legal effect of other terms in the contract, namely the borrower's covenants to repay principal and interest, the term entitling the borrower to a rebate of interest on early payment, and the terms authorising the lender to realise the securities and receive the net proceeds of such
20 realisation in satisfaction, in whole or in part of its debt.

p. 127
ll. 42-46

p. 126
ll. 45-46
p. 126
ll. 33-34

p. 127
ll. 7-9
p. 127
ll. 22-24

15C Section 40(1) (a) and (b) of the Consumer Credit Act provides that:

'A credit contract ...

(a) must be in writing and signed by or on behalf of the consumer,

(b) must set out the terms and conditions upon which the credit is provided'

30 15D In our submission the decisions on the Moneylenders Act 1927 (U.K.) are in pari materia and support the view that Sec 40 (1) (b) does not import a statutory requirement that the credit contract contain

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a deficiency clause. See generally:

Holiday Credit Ltd v Erol (1977) 1 WLR 704
(H.L.)

Hanyet Securities Ltd v Mallett (1968)
1 WLR 1265 (C.A.)

15E. Accordingly, even if, contrary to our earlier
p. 127 submissions, Clause 9 of the Truck Agreement
is void, such a conclusion should not, in our
11. 42-46 submission, have resulted in the whole
agreement being declared void. For these
reasons, we submit that this Appeal should,
in any event, be allowed.

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K.R. HANDLEY