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ALAN GLOVER

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

In Re The Joint Petition of
STATE OF NEVADA DEPARTMENT OF
BUSINESS AND INDUSTRY, FINANCIAL
INSTITUTIONS DIVISION,
and
ADVANCED CHECK CASHING &
PAYDAY LOAN, and CARL HULL,
Petitioners,

CASE NO.: 11 OC 00323 1B

DEPT. I

DECLARATORY ORDER
REGARDING THE INCLUSION OF
INTEREST AND OTHER CHARGES
IN THE LIMITATION OF THE
AMOUNT OF DEFERRED DEPOSIT
LOANS UNDER NRS 604A.425

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On March 5, 2012, the hearing took place on the Joint Petition for Declaratory Judgment at 3:00 p.m. Petitioner State of Nevada, Department of Business of Industry, Financial Institutions Division (hereafter "the Division") was represented by Catherine Cortez Masto, Attorney General, and Deputy Attorney General, Daniel Ebihara; Petitioners Advanced Check Cashing & Payday Loan and Carl Hull were represented by Mark J. Krueger, Esq.; the Court having reviewed the briefs, and arguments of counsel, and good cause appearing.

Now, therefore, the Court issues the following Finding of Fact and Conclusions of Law and Declaratory Judgment:

JURISDICTION

1. On October 13, 2011, the Co-Petitioners, the Financial Institutions Division (hereafter the "Division") and Advanced Check Cashing & Payday Loan and Carl Hull (hereafter "ACC") submitted a joint a petition requesting this Court issue a declaratory judgment.

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1 of the expected gross monthly income of the customer.

2 2. A licensee is not in violation of the provisions of this section
3 if the customer presents evidence of his or her gross monthly
4 income to the licensee and represents to the licensee in writing
5 that:

6 (a) For a deferred deposit loan, the loan does not exceed 25
7 percent of the customer's expected gross monthly income when
8 the loan is made; or

9 (b) For a high-interest loan, the monthly payment required
10 under the terms of the loan agreement does not exceed 25 percent
11 of the customer's expected gross monthly income.

12 8. The Division is the State agency charged with the responsibility for the licensing
13 and regulation of lenders of deferred deposit loans pursuant to NRS Chapter 604A. The
14 Division's position is that the limitation on deferred deposit loans to 25 percent of the
15 customer's expected gross monthly income (hereafter the "25% Rule") includes all fees,
16 charges and interest which the lender may charge when determining if the amount of the loan
17 exceeds the 25% Rule.

18 9. ACC is a licensed deferred deposit lender in the State of Nevada. ACC's position
19 is that only the principal amount of the loan, or the amount of money the customer actually
20 receives from the transaction, is subject to the 25% Rule.

21 10. The definition of a "deferred deposit loan" is found in NRS 604A.050 and reads as
22 follows:

23 NRS 604A.050 "Deferred deposit loan" defined. "Deferred deposit
24 loan" means a transaction in which, pursuant to a loan agreement:

25 1. A customer tenders to another person:

26 (a) A personal check drawn upon the account of the customer;
27 or

28 (b) Written authorization for an electronic transfer of money for
a specified amount from the account of the customer; and

2. The other person:

(a) Provides to the customer an amount of money that is equal
to the face value of the check or the amount specified in the written
authorization for an electronic transfer of money, less any fee
charged for the transaction; and

(b) Agrees, for a specified period, not to cash the check or
execute an electronic transfer of money for the amount specified in
the written authorization.

1 11. The Division makes two arguments in support of its position. First, the Division
2 asserts that the plain reading of the statutes requires that the term "deferred deposit loan" be
3 defined as the entire transaction where a customer provides the lender a check and in
4 exchange, the lender provides the customer money. The amount of money the customer
5 receives is less than the value on the check because the lender subtracts the fees, interest
6 and other charges. Because the definition of deferred deposit loan encompasses the entire
7 "transaction" and does not draw a distinction between principal and interest and other
8 charges, such a distinction should not be created when the term is used in NRS 604A.425.

9 12. Second, the Division stated, and ACC agreed, that the purpose of the 25% Rule
10 was to prevent borrowers from falling victim to a "debt treadmill." This problem occurs when a
11 customer who is unable to repay the original loan either continues to just make interest
12 payments to keep the loan current or takes out another larger loan to pay the principal and
13 interest incurred from the first loan. Consequently, a cycle of debt occurs from which the
14 customer will never be able to satisfy.

15 13. Since there is no limitation on the amount of interest a lender can charge in
16 Nevada, the Division asserts that any limitation on principal without including interest and
17 other charges would never accomplish the intended purpose of the law which is: to require
18 that the lender only loan money which the customer can repay.

19 14. Contrary to the Division's position, ACC argues that since the definition of
20 "deferred deposit loans" under NRS 604A.050 does not mention interest, this indicates a
21 legislative intent that interest is not part of the definition. ACC states that the annual
22 percentage rate of interest was specifically made a part of the definition of "high interest loan"
23 in NRS 604A.0703. Since the legislature excluded the annual percentage rate in the deferred
24 deposit loan definition, the legislative intent must be to not have the interest included.

25 15. Finally, ACC claims that the Division had previously expressed a position contrary
26 to the one argued in the present case and, therefore, the Division should be bound to that
27 interpretation regardless of the plain meaning of the statute. ACC supports this argument by
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1 stating that the Division had previously adopted regulations related to NRS 604A.425, and
2 should have confirmed this interpretation at the time those regulations were passed if it
3 wanted this interpretation to be imposed upon its licensees.

4 16. However, the Petition and this Court's Order is focused on the interpretation and
5 meaning of NRS 604A.425. Neither the conduct of the Division nor its previous interpretation
6 is relevant in determining the meaning of the statute for the purposes of this proceeding. This
7 Court's review of this question is done *de novo* and no deference or weight is given to either
8 party's position.

9 17. As will be more fully stated below, this Court finds ACC's position unpersuasive
10 and that all fees, interest, and charges, in short everything a lender may charge to the
11 borrower for the cost of extending credit are part of the deferred deposit loan and subject to
12 the limitation of the 25% Rule.

13 18. If any finding of fact is more properly characterized as a conclusion of law, it shall
14 be construed as such.

15 CONCLUSIONS OF LAW

16 19. To determine the meaning of a statute, this Court starts "with the assumption that
17 the legislative purpose is expressed by the ordinary meaning of the words used." *Richards v.*
18 *United States*, 369 U.S. 1, 9 (1962). This means that the Court looks to see if the statute is
19 unambiguous regarding whether the Legislature "has spoken directly to the question at hand"
20 in the plain meaning of the language of the statute. *Arizona State Bd. For Charter Schools v.*
21 *U.S. Dep. Of Educ.*, 464 F.3d 1003, 1006 (9th Cir. 2008).

22 20. "[W]hen a statute is clear and unambiguous on its face, a court may not go beyond
23 the language of the statute in determining the legislative intent." *Roberts v. State of Nevada*,
24 104 Nev. 33, 37, 752 P.2d 221, 223 (1988);

25 21. Here, the statutory scheme is both clear and unambiguous.

26 22. NRS 604A.425(1)(a) requires that deferred deposit lenders cannot make "a
27 deferred deposit loan that exceeds 25 percent of the expected gross monthly income of the
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1 customer when the loan is made." Further, NRS 604A.425(2)(a) states that if a customer
2 presents evidence that "the loan does not exceed 25 percent of the customer's expected
3 gross monthly income when the loan is made" then no violation has occurred.

4 23. Whether the limitation states "loan" or "deferred deposit loan," the statute, in this
5 context, defines them both in the same way.

6 24. NRS 604A.080 states, "[l]oan' means any deferred deposit loan..." Deferred
7 deposit loan is defined as "a transaction" where a customer provides the lender a check or
8 electronic transfer authorization, and the lender in turn "[p]rovides to the customer an amount
9 of money that is equal to the face value of the check or the amount specified in the written
10 authorization for an electronic transfer of money, less any fee charged for the transaction"
11 NRS 604A.050 (emphasis added).

12 25. The definition of the term "deferred deposit loan" in NRS 604A.050 is controlling.
13 *In re Estate of Melton*, 2012 WL 512656, 4 (Nev. 2012) ("We also have explained that a
14 statute's express definitions are controlling because '[t]o read [them] otherwise would lead to
15 the absurd result of rendering [such provisions] ... mere surplusage.'), *citing*, *Boulder Oaks*
16 *Cmty. Ass'n v. B & J Andrews*, 125 Nev. 397, 406, 215 P.3d 27, 32-33 (2009)").

17 26. The process of obtaining a deferred deposit loan is the entire transaction between
18 the customer and the lender. The customer provides the check or electronic authorization for
19 an amount to be deposited on a date in the future. In exchange, the lender provides money to
20 the customer for the amount of the check or authorization minus any fees, interest or other
21 charges for the service. The statutory definition does not differentiate between principal, fees
22 or interest and neither does the limitation expressed in the 25% Rule. Therefore, this Court
23 will not create such a distinction where none exists in law.

24 27. "[A]ny fee charged for the transaction", as set forth in NRS 604A.050, includes any
25 interest.

26 28. Even if this Court were to determine that the statute was *ambiguous in a way*
27 which would leave open the question of whether interest and other fees were included in the
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1 25% Rule, the legislative history is clear. Both parties agree that the purpose of the Rule was
2 to avoid the "debt treadmill." That is, where a customer obtains a loan that the customer is
3 unable to repay and is forced to continue making interest payments in order to keep the loan
4 current or obtain another larger loan to satisfy the first loan, creating a continuous cycle of
5 debt. *Hearing on A.B. 384 Before the Assembly Committee on Commerce and Labor, 2005*
6 *Leg., 73rd Sess. 46 (April 6, 2005).* Thus, the legislative intent in enacting the 25% Rule was
7 to require lenders to make loans that the customer could repay.

8 29. The purpose of limiting deferred deposit loans to an amount the customer could
9 repay becomes irrelevant if interest and any other charges associated with the cost of credit
10 are not included in the calculation. In Nevada, there is no limit on the amount of interest which
11 can be charged in a contract. NRS 99.050 (2007) ("parties may agree for the payment of any
12 rate of interest on money due or to become due on any contract...".) Therefore, without
13 placing a limitation on the total amount of the obligation, the amount of interest and fees could
14 dwarf the principal, creating the very problem the statute was meant to cure. This would be
15 an absurd result. *V and S Ry, LLC v. White Pine County*, 211 P.3d 879, 882 (Nev. 2009).

16 30. While ACC makes several arguments to support its position that interest and other
17 charges are not included in the 25% Rule, none of its points address the legislative intent
18 which is clearly expressed in the statutory scheme.

19 31. As stated above, ACC claims that since the annual percentage rate of interest is
20 part of the definition of "high interest loan" in NRS 604A.0703, and is not in the definition of
21 "deferred deposit loan" in NRS 604A.050, the exclusion was intentional and the legislative
22 intent was not to have interest included as part of deferred deposit loans. The Court
23 disagrees.

24 32. As the Division correctly stated, NRS 604A.0703 does not limit the maximum
25 amount of interest that can be charged as a "high interest loan." Rather, it sets the minimum
26 level of interest. NRS 604A.0703(1) defines a high interest loan as "a loan made to a
27 customer pursuant to a loan agreement which, under its original terms, charges an annual
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1 percentage rate of *more than 40 percent.*" *Id.* (emphasis added).

2 33. The annual percentage rate of interest in "high interest loans" is important in order
3 to distinguish those from installment loans under NRS Chapter 675, which has no interest rate
4 limit. The definition and the terms of this statute serve no other purpose. NRS 604A.407(1).

5 34. Consequently, the only restriction on the interest in a "high interest loan" is,
6 coincidentally, contained in NRS 604A.425. Pursuant to NRS 604A.425(1)(b), the high
7 interest lender is prohibited from making a loan where any monthly payment "exceeds 25% of
8 the expected gross monthly income of the customer."

9 35. Thus, similar to the restriction on deferred deposit loans, the limitation on high
10 interest loans is meant to prevent the customer from receiving a loan beyond the customer's
11 presumed ability to repay the obligation.

12 36. Finally, ACC argues that the Division's previous interpretation of this statute has
13 been inconsistently enforced and even contrary to its current position in this case. As stated
14 above, the issue to be decided is the meaning of the statute not the conduct of the Division. It
15 is important to remember that both parties believed that there was sufficient controversy
16 regarding the meaning of the statute in question that they both agreed to have this Court
17 determine the issue.

18 37. As stated above, this Court makes its determination based on the statutory
19 construction and the meaning of NRS 604A.425. This is solely a legal determination, and the
20 prior position of the parties is immaterial to deciding this purely legal question.

21 38. Moreover, the Division is not required to continue to enforce an incorrect
22 interpretation of a statute simply because that was the position it had taken last year or even
23 for the last ten years. The Division should not be penalized for correcting a position which
24 was contrary to the law after discovering the error of its ways. Such corrective action should
25 be encouraged rather than discouraged.

26 39. Consequently, this Court concludes that a "deferred deposit loan" under NRS
27 604A.425 and 604A.050, which constitutes not only the principal but all charges and interest
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1 referred to as fees, is in short everything which is associated with the cost of extending the
2 loan that the customer is obligated to pay. Therefore, pursuant to NRS 604A.425, a deferred
3 deposit loan including the principal as well as any and all fees, charges and interest, cannot
4 exceed 25 percent of the expected monthly gross income of the customer.

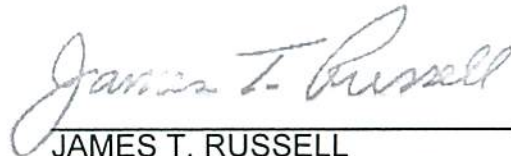
5 40. Any conclusion of law which is more properly characterized as a finding of fact
6 shall be construed as such.

7 **ORDER**

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to NRS
9 604A.425(1)(a) the total amount of the deferred deposit loan, including the principal and all
10 interest, fees and everything that the lender may charge for extending the loan, cannot exceed
11 25 percent of the expected gross monthly income of the customer when the loan is made.

12 IT IS SO ORDERED.

13 DATED this 29th day of March, 2012.

14 

15 JAMES T. RUSSELL
16 DISTRICT COURT JUDGE

17 Submitted by:

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19 Attorney General

20 By: 

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on March 23, 2012, I re-submitted via U.S. mail, postage prepaid, First Class Mail, a true and correct copy of the foregoing STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION'S DECLARATORY ORDER REGARDING THE INCLUSION OF INTEREST AND OTHER CHARGES IN THE LIMITATION OF THE AMOUNT OF DEFERRED DEPOSIT LOANS UNDER NRS 604A.425, addressed as follows:

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