Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

IN THE MATTER OF CASHWOW

SEC CDO Case No 09-19-055

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
x--x

RESOLUTION

This resolves the *Motion to Lift Cease and Desist Order (Motion to Lift)* filed on 25 September 2019 by Cashwow/Hupan Lending Technology, Inc. (CASHWOW) through counsel, Atty. Clarence D. Alcordo praying that the *Cease and Desist Order* dated 20 September 2019 *(Assailed CDO)* be lifted, the dispositive portion reads:

> "WHEREFORE, premises considered, the operators and owners of the following online lending applications: CASH WHALE; CASH 100; CASHAFIN; CASHFLYER; CASHMAYA; CASHOPE; CASHWARM; CASHWOW; CREDITPESO; ET EASY LOAN; and PESO2GO, their agents, representatives and promoters, as well as the owners of the hosting sites of these Online Lending Operators and all persons acting for and on their behalf are hereby ordered to IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT from engaging in, promoting and facilitating such unauthorized lending activities/transactions.

THE FACTS

Hupan Lending Technology, Inc. (Hupan) is a lending company with Company Registration No. CS201901197. Its principal office address is located at Room 303, Executive Building, 369 Jupiter Corner Makati Avenue, Bel-Air, Makati City. It is engaged in the business of online lending through its mobile applications, CASHME and CASHWOW.

On 20 September 2019, the Commission issued the *Assailed CDO* against CASHWOW among others directing it to immediately cease and desist from engaging in, promoting and facilitating such unauthorized lending activities/transactions. Aggrieved, CASHWOW filed on 25 September 2019, a *Motion to Lift* praying that the Commission lifts the *Assailed CDO* based on the following substantial grounds:

I. Cashwow was not operating without the required Certificate of Incorporation and Certificate of Authority to operate as a Lending Company;
II. Cashwow cannot confirm nor deny the Commission of unreasonable and abusive lending and collection practices;
III. Cashwow did not violate the right to privacy of debtors.

During the scheduled hearing on the *Motion to Lift,* Hupan reiterated the grounds alleged in its motion. After the parties' oral arguments, Hupan was given ten (10) days from the date of hearing to file its Comment. Then the Enforcement and Investor Protection Department (EIPD) was also given the same period to file its Reply Comment.

Hupan filed its *Position Paper* on 14 October 2019. The EIPD did not file any *Reply Comment.*

With no remaining issues to be clarified, the hearing on the *Motion to Lift* was terminated and submitted for resolution on 28 October 2019.

ISSUE

The issue to be resolved is whether or not Hupan/Cashwow presented sufficient grounds or evidence to overcome the findings in the Commission's Cease and Desist Order.

RULING

We find the instant *Motion to Lift* bereft of merit.

The *Assailed CDO* was based on EIPD's findings that CASHWOW do not have the requisite Certificate of Authority to Operate as a Lending Company from the Commission.

In support of the said findings, EIPD presented the following evidence: (1) A Memorandum dated 16 September 2019 from the Corporate

Governance and Finance Department (CGFD), showing a list of Online Lending Applications which have not been issued Certificates of Authority to Operate as Lending Companies or Financing Companies; (2) screenshot of websites/facebook accounts/online applications most of which do not state the name of the corporations or entities operating them; (3) Copies of the complaints received by the CGFD alleging that the online lending operators impose and charge high interest rates, unilaterally implement onerous and unreasonable terms and conditions, make misrepresentations as to non-collection of charges and fees, and violate the right to privacy of debtors.

In Hupan's *Motion to Lift*, it stated that CASHWOW is a mobile application owned and operated by Hupan and which was launched in Google Play Store last 01 July 2019 pursuant to and on the basis of the Certificate of Authority No. 2879 issued on 23 January 2019 by the Commission in favor of Hupan.

CASHWOW was developed to address the increasing cost in advertising CASHME, the first mobile application of Hupan. However, during its first few weeks of operations, Hupan could not register CASHWOW mobile application under its name for unknown reason. As a remedy, Hupan disclosed its ownership of CASHWOW mobile application in its Credit Agreement.

We note the Certificate of Authority to Operate as a Lending Company issued to Hupan. We also note that Hupan already complied with SEC Memorandum Circular (MC) No. 19 series of 2019 (Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms) which requires full disclosure of the online lending platforms owned/operated/utilized by the Company. The Affidavit of Compliance (SEC Form 1- Existing Online Lending Platforms) submitted on 10 October 2019 states that Hupan have registered CASHWOW as a business name of the Company as provided in its Amended Articles of Incorporation.

However, the fact that Hupan has a CA to Operate as a Lending Company does not mean that it was automatically granted the authority to establish, operate and maintain an online lending application. A prior approval by the Commission is necessary for this purpose.

Pursuant to the Implementing Rules and Regulations of the Lending Company Regulation Act of 2007[1], "No lending company shall establish or operate a branch, extension office or unit or satellite office without prior approval by the SEC."

[1] REPUBLIC ACT NO. 9474

An online lending application such as CASHWOW should be treated as separate from Hupan's in-store/physical lending office. The AOI of Hupan did not mention any lending activity via internet.

Thus, when Hupan established and operated CASHWOW online application without prior approval of the Commission, it committed "serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public.[2]" Such misrepresentation is so grave that it warrants the suspension or revocation of the Certificate of Registration of a corporation.

As for Hupan's argument in its *Motion to Lift* that it has not engaged in abusive collection practices, misrepresentations, nor has it issued unreasonable terms and conditions in the conduct of its lending activities, we find the same unmeritorious.

During the hearing, Atty. Alcordo stated that Hupan is using third party collectors. These collectors get paid on commission basis only when they have successfully collected payment from the borrowers. This resulted to abuses and employment of unfair means of collection. Nevertheless, Hupan is working on its policies to improve the manner of collecting borrower's debts.

Section 3 of SEC MC No. 18 series of 2019 (Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies) provides that Financing Companies (FCs) and Lending Companies (LCs) may outsource the conduct of collection to third party service providers (TPSPs) which shall be regarded as agent of the FCs and LCs. The ultimate responsibility in ensuring that collection practices are fully compliant with this Circular remain with the FCs and LCs.

The foregoing is based on the concept and nature of agency under Article 1868 of the Civil Code of the Philippines which provides that: "By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent and authority of the latter."

In *Eurotech Industrial Technologies, Inc. v. Cuizon*[3], the Supreme Court held that when an agency relationship is established, the agent acts for the principal insofar as the world is concerned. Consequently, the acts of the agent on behalf of the principal within the scope of the delegated authority have the same legal effect and consequence as though the principal had been the one so acting in the given situation.

---

[2] Section 6 (l) (2) of Presidential Decree No. 902-A
[3] 550 Phil. 165 (2007). See also Rallos v. Felix Go Chan & Sons Realty Corporation, 171 Phil. 222 (1978)

For an agency to arise, it is not necessary that the principal personally encounters the third person with whom the agent interacts. The law in fact contemplates impersonal dealings where the principal need not personally know or meet the third person with whom the agent transacts: precisely, the purpose of agency is to extend the personality of the principal through the facility of the agent.[4]

Thus, the abusive collection practices of third party collectors engaged by Hupan, or who are acting for and on its behalf and which Hupan is aware of shall be deemed the acts of Hupan. The ultimate responsibility for such collection practices falls on Hupan as the principal/lending company. The admitted abusive collection constitutes unfair debt collection practice which is a violation of SEC MC No. 18, series of 2019 and warrants the issuance of a cease and desist order (CDO).

Hupan/CASHWOW also stated during the hearing that they have stopped the syncing of the phonebook of the borrowers with the online application to avoid privacy violations. Relative thereto, Hupan admitted in its Position Paper that there are two formal complaints for privacy violation already filed against it with the National Privacy Commission.

Section 1 of SEC MC No. 18 series of 2019 (Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies) provides that notwithstanding the borrower's consent, contacting the persons in the borrower's contact list other than those who were named as guarantors or co-makers shall also constitute unfair debt collection practice.

The admission during the hearing that Hupan/CASHWOW has previously been syncing the phonebook of the borrowers with the online application and the confirmed privacy violation complaints binds said company under the principle of estoppel.

Article 1431 of the Civil Code provides that, "Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."[5]

Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. A party may not go back on his own acts and representations to the prejudice of the other party who relied upon them. In the law of evidence, whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to

---

[4] Id. at 349, citing Orient Air Services & Hotel Representatives v. Court of Appeals, 274 Phil. 926 (1991)
[5] *Philippine National Bank v. Intermediate Appellate Court, G.R. No. 66715, [September 18, 1990], 267 PHIL 720-730*

believe a particular thing true, to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."[6]

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result. It has been applied by this Court wherever and whenever special circumstances of a case so demand.[7]

Similarly, Rule 130, Section 26 of the Revised Rules on Evidence provides that "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him." For well-settled is the rule that "a man's acts, conduct and declaration, wherever made, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not. If a man's extrajudicial admissions are admissible against him, there seems to be no reason why his admissions made in open court, under oath, should not be accepted against him." [8] This is the reason why Rule 129, section 4 of the Revised Rules on Evidence dispenses with the requirement of proof for admissions made by a party in the course of the proceedings in the same case.

Following the foregoing principles, Hupan/CASHWOW is estopped from claiming that it has not violated the privacy of its clients. This constitutes as unfair debt collection practice which is a violation of SEC MC No. 18, series of 2019 and warrants the issuance of a cease and desist order (CDO).

The authority of the SEC and the manner by which it can issue CDOs are provided in Section 156 of the Revised Corporation Code (RCC), to wit:

> SEC. 156. Cease and Desist Orders. – Whenever the Commission has reasonable basis to believe that a person has violated, or is about to violate, this Code, a rule, regulation, or order of the Commission, it may direct such person to desist from committing the act constituting the violation. The Commission may issue a cease and desist order ex parte to enjoin an act or practice which is fraudulent or can be reasonably expected to cause significant, imminent, and irreparable danger or injury to public safety or welfare. The ex parte order shall be valid for a maximum period of twenty

---

[6] *Equitable PCI Banking Corp. v. RCBC Capital Corp., G.R. No. 182248, [December 18, 2008], 595 PHIL 537-589*
[7] *Philippine National Bank v. Court of Appeals*, 183 Phil. 54, 63-64 (1979).
[8] U.S. vs. Ching Po, 23 Phil. 578, 583 [1912] cited in *Cuison v. Court of Appeals, G.R. No. 88539, [October 26, 1993], 298 PHIL 162-172*

> (20) days, without prejudice to the order being made permanent after due notice and hearing. Thereafter, the Commission may proceed administratively against such person in accordance with Section 158 of this Code, and/or transmit evidence to the Department of Justice for preliminary investigation or criminal prosecution and/or initiate criminal prosecution for any violation of this Code, rule, or regulation.

Based on the foregoing, a prior hearing is not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or irreparable danger or injury to public safety or welfare. Any delay in the restraint of acts that yield such results can only generate further injury to the public that the SEC is obliged to protect.[9]

Further, in relation to the CDO under Section 156 of the RCC, Section 158 provides that a permanent CDO may be issued as an administrative sanction for any violation of the RCC, rules and orders of the Commission, to wit:

> SEC. 158. Administrative Sanctions. – If, after due notice and hearing, the Commission finds that any provision of this Code, rules or regulations, or any of the Commission's orders has been violated, the Commission may impose any or all of the following sanctions, taking into consideration the extent of participation, nature, effects, frequency and seriousness of the violation: (a) Imposition of a fine ranging from Five thousand pesos (P5,000.00) to Two million pesos (P2,000,000.00), and not more than One thousand pesos (P1,000.00) for each day of continuing violation but in no case to exceed Two million pesos (P2,000,000.00); **(b) Issuance of a permanent cease and desist order**; (c) Suspension or revocation of the certificate of incorporation; and (d) Dissolution of the corporation and forfeiture of its assets under the conditions in Title XIV of this Code. (Emphasis supplied)

Accordingly, the unfair debt collection practice which constitutes as a violation of SEC MC No. 18, series of 2019 is sufficient ground for the issuance of the *Assailed CDO*.

[9] Primanila Plans, Inc. vs. SEC, G.R. No. 193791, August 6, 2014

WHEREFORE, premises considered, ***The Motion to Lift Cease and Desist Order*** filed by Hupan is hereby DENIED for lack of merit. The CEASE AND DESIST ORDER issued against the operation of CASHWOW online application is hereby MADE PERMANENT.

Let a copy of this Resolution be posted in the Commission's website; and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

Further, the CGFD is hereby DIRECTED to investigate the unfair debt collection practice relative to the operation of Hupan Lending Technology, Inc. and if necessary impose additional penalties, as applicable.

SO ORDERED.
Pasay City, Philippines; 05 November 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

***KARLO S. BELLO**
Commissioner

* On official business