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

IN THE MATTER OF:
WITHU.

SEC CDO CASE NO.02-22-080
Promulgated: 26 July 2022

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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RESOLUTION

Before this Commission is the *Verified Motion to Lift Cease and Desist Order dated 22 April 2022* (the "Motion to Lift") filed[1] by Respondent WITHU, through counsel, praying for the lifting of the *Cease and Desist Order* dated 10 February 2022 (the "Assailed CDO"), the dispositive portion of which, in part, reads:

> "WHEREFORE, premises considered, PESOBEE, PESO T-SAFE ONLINE CASH, RUSHLOAN, SKYMART, SPENDCASH, TAPA and **WITHU**, its owners, operators, promoters, representatives, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF, are hereby ORDERED to immediately CEASE AND DESIST from engaging in, carrying out, promoting and facilitating any lending activity /transaction until they have incorporated and have secured from this Commission the requisite Certificate of Incorporation and Certificate of Authority to Operate as Lending Companies or Financing Companies.
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> PESOBEE, PESO T-SAFE ONLINE CASH, RUSHLOAN, SKYMART, SPENDCASH, TAPA and **WITHU**, its owners, operators, promoters, representatives, agents and any and all persons acting for and on their behalf, are also directed to immediately CEASE and DESIST from offering and advertising their lending business through the internet or any other media, and to delete /remove any and all materials involving or covering the same." (Emphasis supplied)

[1] Received by the Commission on 13 April 2022

On 07 February 2022, the Enforcement and Investor Protection Department (EIPD) filed with the Commission *En Banc*, through the Office of the General Counsel, a *Motion for Issuance of a Cease and Desist Order* (the "Motion") against online lending operators/applications which were found to be in violation of Republic Act. No. 9474 (the "Lending Company Regulation Act of 2007") and the relevant regulations issued by the Commission. WITHU was included in the *Motion* as one of the online lending operators/applications that was found to have violated the said law and/or regulations.

On 11 February 2022, the Commission *En Banc* issued the Assailed CDO after finding, based on substantial evidence submitted by the EIPD, that the online lending operators/applications, including WITHU, were either engaged in lending and/or financing business without being a corporation and/or operating as such without the required Certificate of Authority (CA), and/or have violated the relevant regulations issued by the Commission. In relation to WITHU, the Commission specifically found that it violated Memorandum Circular Nos. 18 and 19, series of 2019.

On 22 April 2022, WITHU filed the instant Motion to lift where it categorically and vehemently denied having engaged in, or carried out a lending business, in violation of the Lending Company Regulation Act of 2007. In support thereof, it argued that SWEET PIE LENDING CORPORATION (Sweet Pie Lending) which owns and operates the online lending platform known as WITHU (which is merely a business name) is a corporation duly registered with the Commission, having been issued a Certificate of Incorporation and CA on 5 January 2022.[2]

WITHU also alleged that Sweet Pie Lending submitted an *Affidavit of Compliance*[3] dated 18 February 2022 which attested that WITHU is an online lending platform owned by it, and is merely a business name of the online lending platform.[4] Thus, Sweet Pie Lending maintained that it may lawfully engage in any lending activity and the enforcement of the CDO against it not warranted.

In its *Comment/Opposition*[5], the EIPD prayed for the denial of the Motion to Lift, on the ground that WITHU allegedly failed to raise any valid argument that will warrant the lifting of the Assailed CDO. The EIPD argued that while Sweet Pie Lending is a duly registered corporation with a CA, it failed to submit an Affidavit of Compliance within the period prescribed in Memorandum Circular No. 19, series of 2019 (MC 19). In support thereof, the EIPD pointed out that Sweet Pie Lending belatedly filed its SEC Form 1 on 18 February 2022, which was after MC 10

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[2] Pars. 4 and 11 of the Motion to Lift (Annex "B")
[3] Annex "A" in the Motion to Lift
[4] Par. 8 of the Motion to Lift
[5] Dated 25 April 2022.

(Moratorium) and the Assailed CDO were implemented and issued by the Commission.

On the basis of the foregoing factual backdrop, and upon examination of the evidence on record, the Commission hereby resolves to deny the Motion to Lift for want of merit.

While it may be true that Sweet Pie Lending, the owner and operator of WITHU, is a registered corporation with a CA, it should be pointed out that the Assailed CDO was issued on the basis of a finding of violation not only of the Lending Company Regulation Act of 2007, but also the of relevant circulars/regulations that were issued relating to the operation of lending or financing business.

In our jurisdiction, the existing legislations[6] which regulate the lending and financing business all embody provisions where the State expressly recognized the essential and critical role of financing and lending companies in the development of the national economy, because they provide medium and long term credits for investments needed in starting a business, or in growing and developing an existing one. It is in this context that the State deemed it necessary to regulate their operations, to ensure that just like other financial institutions, the same are sound, competitive, stable, and efficient. Moreover, it should be emphasized that these legislations were intended, among others, to curtail or prevent acts or practices that are prejudicial to the public interest.

As the agency mandated to implement the provisions of the Lending Company Regulation Act of 2007, the Commission issued, among others, Memorandum Circular No. 18 s. 2019 (MC 18) which prohibits unfair debt collection practices, and Memorandum Circular No. 19 s. 2019 (MC 19) which required lending and financing companies to fully disclose in their advertisements and online lending platforms the information prescribed therein, and to report all their existing online lending platforms. The Commission also issued Memorandum Circular No. 10, s. 2021 (MC 10) which imposed a moratorium on the registration of new online lending platforms including existing lending companies that will engage in the same, and only allowed the operation of online lending platforms that are recorded as of 2 November 2021. These circulars, having been issued by the Commission in the exercise of a delegated rule-making power, has the force and effect of law.[7]

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[6] Republic Act. No. 9474, Republic Act No. 5980 (the "Financing Company Act of 1998"), Republic Act. No. 3765 (the "Truth in Lending Act")

[7] "**Administrative agencies are clothed with rule-making powers because the lawmaking body finds it impracticable, if not impossible, to anticipate and provide for the multifarious and complex situations that may be encountered in enforcing the law**. All that is required is that the regulation should be germane to the objects and purposes of the law and that it should conform to the

Relative thereto, the Commission would like to emphasize to Sweet Pie Lending, which owns and operates the online lending platform known as WITHU, that the grant of a certificate of incorporation and certificate of authority to operate as a lending company is merely a privilege granted by the State to those who show, to the satisfaction of the Commission, that they are deserving of the same.[8] It thus behooves Sweet Pie Lending not only to know the laws and regulations applicable to it, but also to fully and faithfully comply with the same.

Moreover, the CA which the Commission granted to Sweet Pie Lending is in the nature of a license which equally requires the continued compliance by the grantee with all applicable laws, rules and regulations, and may be revoked or rescinded on the basis of a finding of violation of such laws, rules and regulations, among others. The reason for the foregoing was explained in *Oposa vs Factoran*[9], where the Supreme Court emphasize that licenses are not contracts or property right protected by the due process clause of the Constitution, to wit:

> "Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution. In *Tan vs. Director of Forestry*, this Court held:
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> . . . A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or privilege, which

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standards that the law prescribes.

The lawmaking body cannot possibly provide for all the details in the enforcement of a particular statute. The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the nondelegation of legislative powers. **Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law."** (*People vs Maceren*, G.R. No. L-32166, October 18, 1977)

[8] "Incorporation is a grant of privilege from the State, and the State is entitled to preserve the value of such privilege. Thus, **in order to enjoy such privilege, the requirements and procedure for the grant thereof must be strictly complied with**. To this end, the State prescribes and gives notice, through statutes and regulations of the necessary requirements and procedures for the grant of the privilege. In this jurisdiction, the Corporation Code prescribes the requirements for the grant of a corporate franchise, and the certificate of registration may be acquired only if the conditions required by the statutes are complied with; therefor, any material statement in the Articles of Incorporation which is a falsehood may be considered fraudulent, regardless of the intent of the incorporators." (*Care Best International, Inc. vs Securities and Exchange Commission*

[9] G.R. No. 101083 July 30, 1993

can be validly withdrawn whenever dictated by public interest or public welfare as in this case.

A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (People vs. Ong Tin, 54 O.G. 7576)."

The foregoing legal precepts and doctrinal pronouncements are among the important contexts which the Commission considers in performing its duty and mandate to fully implement the provisions of the Lending Company Regulation Act of 2007, and the other laws, rules and regulations administered by it in relation to its regulated entities, to ensure that the latter fully complies with all legal and regulatory requirements.

In the instant case, WITHU maintains that the CDO should not apply to it because it has shown that Sweet Pie Lending, which actually owns and operates the online lending platform, is a registered corporation with a subsisting CA. WITHU also argues that Sweet Pie Lending's submission of the *Affidavit of Compliance* further justifies the lifting of the CDO as it made the company compliant with applicable regulations.

The Commission is not persuaded.

While it is true that Sweet Pie Lending's Certificate of Incorporation and CA are essential in validly conducting and operating a lending business, the fact that these are licenses issued by the State requires Sweet Pie Lending to fully comply with all the applicable rules and regulations issued by the Commission to justify its continued enjoyment of the privilege granted by the State. In other words, the issuance of a CDO restraining the further conduct of a lending business, operated online or otherwise, should be sustained notwithstanding a subsisting Certificate of Incorporation and CA, if the corporation, in this case Sweet Pie Lending, is shown to violate applicable regulations.

The complaints which were submitted in evidence by the EIPD show that WITHU and/or Sweet Pie Lending have employed abusive collection practices which are expressly prohibited under MC 18, made misrepresentations, and imposed unreasonable terms and conditions upon its borrowers. These complaints specifically show that WITHU harassed and threatened borrowers, and used offensive/foul language to exact payment of the loan amount. No evidence was presented in the Motion to Lift to counter the foregoing.

It bears emphasis that MC No. 18 was issued to effectively address the abusive, unethical, and unfair collection practices of lending and/or financing companies, specifically those who purposely engage the services of third party service providers to avoid liability for client harassment.[10] The issuance and implementation of MC No. 18 was made pursuant to a valid exercise of the regulatory and supervisory power of the Commission over lending and financing companies, to carry out its mandate, among others, of placing their operations on a sound, competitive, stable, and efficient basis, and in preventing acts or practices prejudicial to the public interest.[11]

MC No. 18 was not issued to prevent lending or financing companies from enforcing a contractual obligation against its borrowers for debts lawfully made. After all, it is established both in law and jurisprudence[12] that a loan obligation should be paid. The state in fact fully recognizes the critical role of lending and financing companies in providing medium and long-term credit for investments, and as an additional source of credit.[13] MC No. 18 was issued to ensure that the collection of loans by lending and/or financing companies is made within the bounds of law, and to protect or safeguard the privacy, dignity, and wellbeing of borrowers.

As for the *Affidavit of Compliance* which Sweet Pie Lending submitted, the Commission holds that the same failed to comply with MC 19 because the records disclose that the same was filed only on 18 February 2022, which is eight (8) days after the CDO was issued on 10 February 2022, and months after the deadline prescribed for the registration of new OLPs has lapsed. Consequently, this Commission finds and so holds that Sweet Pie Lending's operation of the WITHU online lending platform was made in violation of MC 19.

On the basis of the foregoing, the Commission does not find any cogent reason to lift the *Assailed CDO* insofar as WITHU is concerned.

WHEREFORE, premises considered, the *Verified Motion to Lift Cease and Desist Order Dated 10 February 2022* filed by WITHU is hereby **DENIED** for lack of merit. The *Cease and Desist Order* dated 10 FEBRUARY 2022 is hereby made **PERMANENT**.

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[10] See First and Second WHEREAS Clauses of the MC No. 18

[11] See Section 2 of Republic Act No. 8556, otherwise known as the "Financing Company Act of 1998" and Section 2 of Republic Act No. 9474, otherwise known as the "Lending Company Regulation Act of 2007"

[12] "Jurisprudence tells us that one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. **Indeed, once the existence of an indebtedness is duly established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests on the debtor.**" (*Bognot vs RRI Lending Corporation*. G.R. No. 180144, September 24, 2014)

[13] Ibid

Let a copy of this **RESOLUTION** be posted in the Commission's website and furnished to all operating departments and offices of the Commission for their information and appropriate action.

SO ORDERED.

Makati City, Philippines; 26 July 2022.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO*
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

*On Leave