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

IN THE MATTER OF:

TACOLOAN;
VCASH;
365 CASH;
SWIPECASH; and
BOOTCASH

SEC CDO Case No. 01-22-078

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 (*the *"Motion to Lift"*) filed[1] by Respondent TACOLOAN, through counsel, praying for the lifting of the Cease and Desist Order dated 03 February 2022 (the "Assailed CDO"), the dispositive portion of which, in part, reads:

> "**WHEREFORE**, premises considered, TACOLOAN, VCASH, 365 CASH; SWIPECASH; and BOOTCASH, its owners, operators, promoters, representatives, agents, AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby **DIRECTED** 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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> TACOLOAN, VCASH, 365 CASH; SWIPECASH; and BOOTCASH, its owners, operators, promoters, representatives, agents, and any and all persons acting for and, in their behalf, are directed to **CEASE** and **DESIST** from offering and advertising their lending business through the internet or any other media, and to delete or remove any and all materials involving or covering the same."

RELEVANT FACTS

On 25 January 2022, the Enforcement and Investor Protection Department (EIPD) filed with the Commission *En Banc*, through the Office of the General Counsel, a *Motion for the 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 Registration Act of 2007"), and the relevant regulations issued by the Commission. TACOLOAN was included in the Motion, as one of the online lending operators/applications, that was found to have violated the relevant regulations.

On 3 February 2022, the Commission *En Banc* issued the *Assailed CDO* after finding, based on substantial evidence, that the online lending operators/applications, including TACOLOAN, were either engaged in the lending and/or financing business without being a corporation, and/or operating as such without the required Certificate of Authority, and/or have violated the relevant regulations issued by the Commission. In relation to Movant TACOLOAN, the Commission specifically found that it violated Memorandum Circular Nos. 18 and 19, series of 2019.

On 11 April 2022, TACOLOAN filed the instant *Motion to Lift* where it categorically and vehemently denied having violated the Lending Company Registration Act of 2007, arguing that Magician of Money Lending Corporation (MMLC), which owns and operates the online lending platform known as TACOLOAN, (a business name of MMLC) is a corporation duly registered with the Commission, having been issued a Certificate of Incorporation and Certificate Authority to Operate as a Lending Companies or Financing Companies.[2] TACOLOAN also alleged that MMLC submitted an *Affidavit of Compliance*[3] dated 11 March 2022 where it declared that TACOLOAN is an online lending platform owned by it, and has been registered as a business name.[4] Thus, MMLC may lawfully engage in any lending activity, and the enforcement of the CDO against it is not warranted.

In its *Comment/Opposition*, the EIPD prayed that the Commission denies the Motion to Lift of TACOLOAN on the ground that while MMLC is a duly registered corporation with a Certificate Authority to Operate as a Lending Company, it nonetheless operated TACOLOAN in violation of SEC Memorandum Circular No. 19, series of 2019 (Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms). The EIPD also pointed out that the Certificate of Incorporation of MMLC on record with the Commission belies the claim of TACOLOAN that, it is already a part of the corporate name of MMLC, considering that the latter has not amended its Articles (AOI).

RULING

The Commission resolves to deny the *Motion* for want of merit.

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2 Para. 4 to 7, and 11 to 12 of the Motion to Lift (see Annex "B").

At the outset, it should be pointed out that in the Assailed CDO, which TACOLOAN seeks to be lifted in so far as it is concerned, the Commission used as basis not only the Lending Company Regulation Act of 2007, but also the relevant circulars that were issued relating to the operation of lending or financing business.

In our jurisdiction, the existing legislations[5] 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 were recorded as of 2 November 2021. These circulars, having been issued by the Commission in the exercise of a delegated rule-making power, have the force and effect of law.[6]

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

[6] "**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 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**

Relative thereto, and lest it should be overlooked by MMLC which owns and operates the online lending platform known as TACOLOAN, 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.[7] It thus behooves MMLC not only to know the laws and regulations applicable to it but also to fully and faithfully comply with the same.

Moreover, the Certificate of Authority to Operate as a Lending Company (CA), which the Commission granted to MMLC, 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 a violation of such laws, rules and regulations, among others. The reason for the foregoing was explained in *Oposa vs Factoran*[8], 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*, [25] 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 can be validly withdrawn whenever dictated by public interest or public welfare as in this case.
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> 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 that the Commission considers in performing its

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[7] "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, <u>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.</u>"

mandate to fully implement the provisions of the Lending Company Regulation Act of 2007, and the other laws, rules, and regulations administered by it, to ensure that regulated entities fully comply with all statutory and/or regulatory requirements.

In the instant case, TACOLOAN maintains that the CDO should not apply to it because it has shown that MMLC, which actually owns and operates the online lending platform, is a registered corporation with a subsisting CA. TACOLOAN also argues that MMLC'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 MMLC'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 MMLC to fully comply with all the applicable rules and regulations issued by the Commission, to justify its continued enjoyment of this 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 MMLC, or any person for that matter, is shown to violate applicable regulations.

The records show that TACOLOAN and/or MMLC have employed unfair and abusive debt collection practices that are expressly prohibited and penalized under MC 18, made misrepresentations, and imposed unreasonable terms and conditions upon its borrowers. The evidence presented by the EIPD shows that TACOLOAN harassed and threatened borrowers and used offensive/foul language to exact payment of the loan amount. No contrary evidence was presented by TACOLOAN in the Motion to Lift. There is thus no cogent reason to reconsider and/or abandon the finding and conclusion of this Commission that TACOLOAN and/or MMLC violated MC 18.

The Commission again emphasizes 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.[9] The issuance and implementation of MC No. 18 were 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.[10]

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9 See First and Second WHEREAS Clauses of the MC No. 18

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[11] that a loan obligation should be fully satisfied or paid, especially in the context of the State's full recognition of the critical role of lending and financing companies, in providing medium and long-term credit for investments, and as an additional source of credit.[12] **MC No. 18 was essentially 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**. Thus, violation of the provisions of MC 18, as what TACOLOAN in the instant case, merits the imposition of appropriate sanctions, including the issuance of CDO, for the protection of public interest, among others.

In relation to the *Affidavit of Compliance* which MMLC submitted, the Commission holds that the same did not validly comply with MC 19 because the records disclose that the same was filed only on 11 March 2022, which is one (1) month after the CDO was issued on 3 February 2022, and which is four (4) months after the deadline prescribed for the registration of new OLPs has lapsed. Consequently, MMLC's operation of the TACOLOAN online lending platform was made in violation of MC 19.

Furthermore, this Commission also notes that the *Affidavit of Compliance* states that TACOLOAN is an OLP owned/operated/utilized by the MMLC[13] and that it was registered as a business name of MMLC based on its "*AOI/Amended AOI/Receipt for the application for the amendment of AOI*".[14] However, no such document was attached to the *Affidavit of Compliance* nor in the *Motion to Lift.* In *Philippine Long Distance Telephone Company, Inc. v. Tiamson*[15], the Supreme Court held that self-serving affidavits must be received with caution, to wit:

> "Although admissible in evidence, **affidavits being self-serving must be received with caution**. This is because the adverse party is not afforded any opportunity to test their veracity. By themselves, generalized and pro forma affidavits cannot constitute relevant evidence which a reasonable mind may accept as adequate. **There must be some other relevant evidence to corroborate such affidavits**." (Emphasis supplied)

There is nothing in the evidence on record that shows that MMLC amended its Articles of Incorporation reflecting a change of corporate name

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[11] "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)

[12] Ibid

[13] Par. 2, Annex "A" of the Motion to Lift

to include TACOLOAN as its business name. The current records of the Commission, which the *En Banc* takes administrative notice of, confirm that the business name TACOLOAN is not included as part of the business name of MMLC appearing in its corporate documents, including the General Information Sheet (GIS) for the year 2021.[16]

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

WHEREFORE, premises considered, the *Verified Motion to Lift Cease and Desist Order* filed by TACOLOAN is hereby **DENIED** for lack of merit. The Cease and Desist Order dated 3 February 2022 is hereby made **PERMANENT**.

Let a copy of this **RESOLUTION** be posted on the Commission's website, 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 TACOLOAN's online application and impose the appropriate penalties, if warranted.

SO ORDERED.

Pasay City, Philippines; 24 May 2022.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner