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c 402 Unconscionable Transactions Relief Act

Ontario

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CHAPTER 402

The Unconscionable Transactions Relief Act

1. In this Act,

Interpre-
tation.

- (a) "cost of the loan" means the whole cost to the debtor of money lent and includes interest, discount, subscription, premium, dues, bonus, commission, brokerage fees and charges, but not actual lawful and necessary disbursements made to a registrar of deeds, a master or local master of titles, a clerk of a county or district court, a sheriff or a treasurer of a municipality;
- (b) "court" means a court having jurisdiction in an action for the recovery of a debt or money demand to the amount claimed by a creditor in respect of money lent;
- (c) "creditor" includes the person advancing money lent and the assignee of any claim arising or security given in respect of money lent;
- (d) "debtor" means a person to whom or on whose account money lent is advanced, and includes every surety and endorser or other person liable for the repayment of money lent or upon any agreement or collateral or other security given in respect thereof;
- (e) "money lent" includes money advanced on account of any person in any transaction which, whatever its form may be, is substantially one of money-lending or securing the repayment of money so advanced. R.S.O. 1937, c. 243, s. 1, cls. (a-d, f).

2. Where, in respect of money lent, the court finds that having regard to the risk and to all the circumstances the cost of the loan is excessive and that the transaction is harsh and unconscionable the court may,

The court
may.
Imp. Act,
63-64 V.,
c. 51, s. 1.

- (a) re-open the transaction and take an account between the creditor and the debtor;
- (b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation,

re-open
transaction
and take
account;
re-open
former settle-
ments;

re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;

order re-
payment o
excess;

(c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor;

set aside or
revise
contract.

(d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor. R.S.O. 1937, c. 243, s. 3.

Exercise o
powers of
court,
in action by
creditor;

3. The powers conferred by section 2 may be exercised,

(a) in an action or proceeding by a creditor for the recovery of money lent;

in action by
debtor;

(b) in an action by the debtor notwithstanding any provision or agreement to the contrary, and notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived;

in other pro-
ceedings.

(c) in an action or proceeding in which the amount due or to become due in respect of money lent is in question. R.S.O. 1937, c. 243, s. 4.

Saving
bona fide
holder for
value, and
existing
jurisdiction.

4. Nothing in this Act shall affect the rights of a *bona fide* assignee or holder for value without notice, or derogate from the existing powers or jurisdiction of any court. R.S.O. 1937, c. 243, s. 5.