[2026] JMCC COMM. 16

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU 2024 CD 00352

BETWEEN	**ALYDAR INVESTMENTS LIMITED**	**CLAIMANT**
AND	**NIKA MANAGEMENT COMPANY LIMITED**	**1ST DEFENDANT**
AND	**NIGEL W. JONES**	**2ND DEFENDANT**
AND	**KAROLIN CAMPBELL JONES**	**3RD DEFENDANT**

Mr. Christopher Dunkley and Ms. Tiffany Sinclair instructed by Phillipson Partners, Attorneys-at-law for the Claimant.

Ms. Kashina Moore instructed by Nigel Jones & Co, Attorneys-at-law for the Defendants.

Civil Procedure – Microcredit Act- Money Lending Act- Rule 15.6 Civil Procedure Rules, 2002 – Summary Judgment application- application for the claim be struck out or a declaration that the Claimant has no standing to bring the claim

VIA ZOOM

Heard on: 28th April and 6th and 20th May 2026

STEPHANE JACKSON-HAISLEY J.

THE CLAIM

[1] By Claim Form filed September 17, 2024, the Claimant Alydar Investment Limited (Alydar) sought against the 1st Defendant Nika Management Company Limited (Nika Management), the 2nd Defendant, Nigel W. Jones and the 3rd Defendant, Karolin Campbell-Jones, damages for breach of contract for that in or around April of 2021, the Defendants entered into a loan agreement with the Claimant to borrow the sum of Seventy Million, Two Hundred and Fifty Thousand Dollars ($70,250,000.00) with interest at an initial rate of interest of twenty percent (20%) per annum which was disbursed to the Defendants over three (3) tranches between April and September, 2021. The 2nd and 3rd Defendants are Directors of the 1st Defendant and also executed Promissory Notes in their personal capacities for the loan.

[2] The Claimant received only two (2) payments from the Defendants towards the debt, being One Million, Five Hundred Thousand Dollars ($1,500,000.00) paid on July 18, 2022 and Three Million, Five Hundred and Eighty-Six Thousand, Three Hundred and Two Dollars and Fifty-Eight Cents ($3,586,302.50) paid on July 17, 2023

[3] Despite repeated demands, the Defendants have failed to pay the outstanding sums. The Claimant now claims the sum One Hundred and Twenty-Six Million, Sixteen Thousand, Three Hundred and Forty-Five Dollars and Eighty-Seven Cents ($126,016,345.87) as of September 11, 2024, and continuing.

THE DEFENCE

[4] The Defendants deny that there was a meeting of the minds as the Claimant did not execute and return the agreement and as such, the proposed terms were not accepted. The Defendants argue that as there was no agreement on the terms, any payments made should have been applied to the principal, not to interest which was compounded and increased beyond contemplation. It is also being argued that the Claimant unlawfully charged interest on interest, is not a registered entity contrary to the Microcredit Act (the Act), had not applied for a licence under the Act and having failed to complete an application for a Microcredit licence under the Act, the Claimant failed to cease operating. Further, by attempting to charge interest, arrange a new loan, carry on an existing loan and recover payments by virtue of the proceedings, the Claimant is operating contrary to the Act.

[5] On December 4, 2024, the Defendants filed an Ancillary claim seeking a return of titles pledged to the Ancillary Defendant, an order authorizing the Registrar of Titles to cancel and issue new titles should the Ancillary Defendant refuse to return the titles, an account in relation to all monies received and an order directing the Ancillary Defendant to treat the sums as having been applied to principal.

CLAIMANT'S APPLICATIONS FOR SUMMARY JUDGMENT

[6] By Notice of Application for Summary Judgment filed January 6, 2026, the Claimant sought that summary judgment be granted to the Claimant for the sum of Seventy Million, Two Hundred and Fifty Thousand Dollars ($70,250,000.000) or alternatively for the sum of Fifty-Four Million, Six Hundred and Fifty-Eight Thousand, Three Hundred and Sixty-Seven Dollars and Twenty-Two Cents ($54,658,367.22). The application is supported by the affidavit of Krystle Ann Flemming also filed on January 6, 2026.

[7] In her affidavit in support of the application for summary judgment, Ms. Flemming averred that the loan of Seventy Million, Two Hundred and Fifty Thousand Dollars ($70,250,000.00) was disbursed to the 1st Defendant as follows:

- Loan 1 - Twenty-Five Million Dollars ($25,000,000.00) disbursed on April 15, 2021;
- Loan 2 - Twenty Million Dollars ($20,000,000.00) disbursed on June 15, 2021; and
- Loan 3 - Twenty-Five Million, Two Hundred and Fifty Thousand Dollars ($25,250,000.00) disbursed on September 3, 2021.

[8] She asserted that the 2nd and 3rd Defendants pledged their personal guarantees as security for the 1st Defendant's loan and they have also signed Promissory Notes for the April and June 2025 loans. Ms. Flemming also asserted that there is no dispute that the Defendants received the loan proceeds between April and September 2021 and that they are obliged to repay the loan on a fixed schedule at twenty percent (20%) interest within twelve (12) months of the disbursement of each loan. She asserted that the 1st Defendant made only five (5) payments towards the debt totalling Fifteen Million, Five Hundred and Ninety-One Thousand, Eight Hundred and Thirty Dollars and Twenty Cents ($15,591,830.20) arrived at as follows:

(i) One Million, Five Hundred Thousand Dollars ($1,500,000.00) paid on July 18, 2022;

(ii) Three Million, Five Hundred and Eighty-Six Thousand, Three Hundred and Three Dollars and Fifty-Eight Cents ($3,586,303.58) paid on July 17, 2023;

(iii) Three Million, Five Hundred and Eighty-Six Thousand, Three Hundred and Two Dollars and Fifty-Eight ($3,586,302.58) paid on September 11, 2024;

(iv) Three Million, Four Hundred and Sixty-Five Thousand Five Hundred Dollars ($3,465,500.00) paid on October 28, 2024; and

(v) Three Million, Four Hundred and Fifty-Three Thousand, Five Hundred and Twenty-Seven Dollars and Sixty-Two Cents ($3,453,527.62) paid on January 28, 2025.

[9] Ms. Flemming stated that the 1st Defendant has always been provided with complete and current accounts inclusive of sums received which have been applied to the Loan Agreement inclusive of interest. She stated further that the Defendants have no real prospect of successfully defending the application for the return of the principal sum and absolutely no prospect of defending the return of the principal sum less the five (5) payments received by the Claimant.

[10] In a subsequent affidavit Ms. Flemming reiterated the Claimant's position that there is no dispute that the Defendants received the loan proceeds and are obligated to repay the loans on a fixed schedule at twenty percent (20%) interest within twelve (12) months of the disbursement of each loan. She further stated that the Claimant is not the subject of any regulatory complaint and is unaware of breaching any legislation. Ms. Flemming asserted that at the time the loans were disbursed, the Act was not in force, as such there is no credible assertion of non-compliance.

DEFENDANTS' APPLICATION FOR SUMMARY JUDGMENT

[11] By Notice of Application filed February 16, 2026, the Defendants sought summary judgment against the Claimant, alternatively that the claim be struck out or a declaration that the Claimant has no standing to bring the claim. The Defendants averred that the Claimant purported to be arranging a new loan and continuing an existing loan facility contrary to the Act.

[12] Mr. Nigel Jones swore the affidavit in support of the application. In this affidavit, he asserts that the legal issues surrounding the Act will resolve the claim. Mr. Nigel Jones also swore the affidavit in response to the application for summary judgment filed January 29, 2026. Mr. Jones asserted that the statements provided by the Claimant were not complete, did not accurately present the principal and then later statements included compound interest. He stated that the statements reflected a different principal from the actual loan amount based on the compound interest and rolled it with the principal as one. He asserted that this constant compounding of interest where there is no provision for same made the repayment impossible.

[13] Mr. Jones asserted that the Claimant purported to arrange new loans and continue existing loan facilities contrary to the Act, is not a registered entity, has not applied for a licence under the Act or completed an application to secure a licence under the Act. He averred that by compounding interest and charging interest on interest, the Claimant is in breach of the Money Lending Act. He attached copies of the

Claimant's Annual Returns filed between 2014 and 2019 and has filed a Notice to Produce any licences under the Act.

DISCUSSION AND REASONS

[14] I heard both applications simultaneously on May 20, 2026 and I delivered an oral judgment in respect of the applications. Below, I have sought to capture the content of the oral judgment delivered. I did not then and have not now set out the full submissions advanced on behalf of the parties, however, I took all submissions into account in arriving at my decision.

[15] In respect of the Claimant's application for Summary Judgment, essentially the Claimant stated that it is entitled to Summary Judgment pursuant to CPR 15.6(1) which gives the court the power to grant summary judgment on the basis that the Defendants have no real prospect of defending the claim. They rely on the well-known cases of **Swain v Hillman** [2001] 1 All E.R. 91 and **Sagicor Bank Jamaica Limited v Taylor-Wright** JCPC 2017/0011 which set out the test for the grant of Summary Judgment.

[16] Reliance was placed on affidavits in support from attorney-at-law Ms. Flemming. It was submitted that the Defendants have breached their contractual obligations by failing to repay their loan in full within the contractual time frame. The Defendants have responded with the affidavit evidence of Mr. Nigel Jones, who is one of the Defendants herein, who took issue with some of what was indicated by Ms. Flemming.

[17] The undisputed facts are that the Defendants received the loan proceeds totalling Seventy Million, Two Hundred and Fifty Thousand Dollars ($70,250,000.00), the 2nd and 3rd Defendant provided their personal guarantees for the first two (2) tranches and the Defendants made only five (5) payments towards their indebtedness amounting to Fifteen Million, Five Hundred and Ninety-One

Thousand, Eight Hundred and Thirty Dollars and Twenty Cents ($15,591,830.20). There is also no dispute that the agreed interest rate was twenty percent (20%).

[18] The Defendants' response is that the statements do not accurately represent the principal and includes compound interest and that there was no such provision in the agreement. Further that the Claimant's case is based on principal unilaterally arrived at after compound interest and the increased interest rate is applied and that they are inseparable. The Defendants contended that the Claimant has continued to arrange new loans and continue to operate contrary to the Act. Further that the Claimant by compounding interest and charging interest on interest is operating in breach of the Money Lending Act.

[19] This Court is empowered to grant summary judgment based on CPR 15.6. The Court can grant summary judgment on any issue or fact or law. There is no shortage of cases expounding on the provisions of CPR 15.6 which include cases like **Swain v Hillman** and **Sagicor Bank Jamaica Limited v Taylor-Wright**. The well-known principle enunciated by Lord Briggs is instructive. Summary Judgment enables the court to confine or focus on a necessary trial of the issues raised.

[20] The Defendants contend that the Claimant has gone on to offer new loans in contravention of Act. They rely on the provisions of the Act which came into effect in July 2021, which is before the Claimant had disbursed all three (3) tranches of the loan. Specifically, one (1) of the tranches of the loan was disbursed after enactment of the Act and so is in breach of the Act. Also that the Claimant has not applied for a licence, hence the contract between the parties is not enforceable and that the Act provided for the Claimant to apply for a licence within twelve (12) months of its enactment, but they have failed to do so.

[21] The question for the court is whether the Defendants have a real prospect of defending the claim? It is not denied that the parties entered into a contract. It is not denied that the Defendants have defaulted on their payments. The question is whether the Claimant is caught by the provisions of the Act which, if accepted, would render the contract unenforceable. The contract itself was only signed by one (1) party, however, the conduct of the parties evidenced a clear intention to be bound by its terms.

[22] The Act speaks to enforceability of such contracts. I have taken a look at the Act, in particular Sections 5, 9, 10, 64 and 65. Section 9 prohibits the operation of a microcredit institution without a licence and makes it an offence to do so. There is no denying that the Claimant would fit into the definition of a microcredit institution. Section 10 of the Act relates to how a person can obtain a licence.

[23] Section 64 is also important. If you are a microcredit institution and the Act comes into effect, you have up to twelve (12) months to apply for a licence. There is no indication that up to this point the Claimant has obtained the relevant licence and it is alleged they have still carried on the business of a microcredit institution. The question as to whether they have committed an offence under the Act is not an issue before me for determination. The issue before me is whether in the absence of a licence being obtained by the Claimant, the contract between the parties is enforceable.

[24] Section 65, the Saving Clause, provides that '*This Act shall not affect the enforceability of money lending transactions between a borrower and a lender entered into before the commencement date.*' The Act came into effect in July 2021.

[25] Several cases have been relied on which I have considered. I agree with the principles enunciated in them, but I believe them to be distinguishable as it relates to illegality of a contract. I have considered the contract and when I examine the words used under section 65 of the Act, in particular 'entered into before', it is clear that the transaction in this case was entered into prior to the enactment of the Act.

[26] Ms. Moore submitted on behalf of the Defendants that a distinction should be drawn between the contract and the transaction and that the Claimant is caught by the Act as it continued with the disbursement. I have considered her submissions on this point, but I don't agree with that interpretation. The sections speak specifically to transaction and that is the meaning to be accorded to it.

[27] If this was a case of the borrower seeking to enforce a contract, the borrower would be able to enforce the agreement for the loan if the lender refused to disburse, saying they have no licence, because of the coming into effect of the Act. The important point is that the transaction was entered into before the Act came into effect. If they did not disburse, they would be in breach of the contract.

[28] It is clear on both the case for the Claimant and for the Defendants that the parties entered into the transaction before the Act came into effect and so it is not a question of whether the contract was completed before Act came into effect. It is not relevant when the contract was completed or whether the contract was an ongoing one if the transaction was entered into before the commencement date.

[29] Based on section 65, it is clear that the enforceability of money lending transactions entered into before the commencement date are not caught by its provisions. I am of the view that it does not matter that there was one disbursement after the enactment as all three (3) disbursements fall within the same category and the transaction itself was entered into before the commencement date.

[30] The Defendants cannot deny their indebtedness and are therefore bound by the terms of the contract. Having paid only Fifteen Million, Five Hundred and Ninety-One Thousand, Eight Hundred and Thirty Dollars and Twenty Cents ($15,591,830.20) of the debt, a balance of Fifty-Four Million, Six Hundred and Fifty-Eight Thousand, Three Hundred and Sixty-Seven Dollars and Twenty-Two Cents ($54,658,367.22) remains outstanding.

[31] The Defendants have, however, denied interest and asserted that compounding interest is contrary to the provisions of the Money Lending Act. The Defendants have also denied the Claimant's entitlement to charge interest of twenty-four percent (24%) contrary to what the parties agreed,

[32] The Money Lending Act prohibits certain institutions like the Claimant from charging compound interest. The contract did not speak to the payment of compound interest, however the documents reflecting the accounts make reference to compound interest. It was argued by the Defendants that this illegality relates to the entire contract and makes the entire contract unenforceable. I do not agree that it relates to the entire contract, but I accept that it would make any term that seeks to impose compound interest unenforceable.

[33] In addition, I also find that as the contract spoke to a rate of twenty percent (20%), if there was in fact a charging of an interest rate of twenty-four percent (24%), that was not agreed by the parties, this could amount to a breach. The Defendants contended that this is a triable issue and relied on the case of **Stewart Finance Jamaica Limited v Gregory Duncan & Fiona Griffiths** [2025] JMCC Comm 17. In that case the court refused an application for summary judgment on a similar question and found that it was an issue for trial. The Defendants may very well have a real prospect of succeeding on this issue if what they have pleaded proves to be true. I agree with the Defendants that the issue regarding the correct rate of interest is one for trial.

[34] It was also submitted on behalf of the Defendants that the Claimant did not seek an order in relation to interest in their Notice of Application, however, I do not find this to be fatal as they did in fact seek interest in their Claim.

[35] As it relates to the Act, this does not affect enforceability. The Defendants are liable to repay the sums borrowed. This case bears similarity to the **Sagicor Bank Jamaica Limited v Taylor-Wright** case. It is clear that the Defendants have no real prospect of succeeding having not denied borrowing the money. The Defendants have submitted that there is no distinguishing between the sum claimed for principal from the sum claimed for interest. I don't agree with this as in the Particulars of Claim, it is quite clear what is being sought. In the Claim Form, the sums stated are loan 1 of Twenty-Five Million Dollars ($25,000,000.00), loan 2 of Twenty Million Dollars ($20,000,000.00) and loan 3 of Twenty-Five Million, Two Hundred and Fifty Thousand Dollars ($25,250,000.00).

[36] However, this sum of twenty-four percent (24%) being claimed is not reflected in the contract as the agreed interest rate was in fact twenty percent (20%). This presents a dispute in relation to the interest rate and so the question of interest is a triable one and ought to proceed to a trial.

[37] In respect of the principal sum outstanding, I agree with the Claimant that this sum can be arrived at by deducting the sum paid from the total sum borrowed. This results in the sum of Fifty-Four Million, Six Hundred and Fifty-Eight Thousand, Three Hundred and Sixty-Seven Dollars and Twenty-Two Cents ($54,658,367.22). I am prepared to grant Summary Judgment in respect of this sum.

[38] This brings me now to the question of the Ancillary Claim and the Defendants'/Ancillary Claimants Notice of Application for Summary Judgment. I considered all of the pleadings and evidence before me and the submissions advanced.

[39] The Defendants/Ancillary Claimants are claiming a declaration for a return of titles from the Registrar of Titles and a return of the money received and applied to the principal. They seek Judgment based on similar assertions as those raised in response to the Claimant's application. There is one significant difference in their application which is that in this application, Mr. Jones' affidavit attached the Annual Returns of the Company and stated that sales never exceeded Fourteen Million, Nine Hundred and Ninety Thousand Dollars ($14,990,000.00) and the Claimant produced no licence although they applied to the court for them to do so.

[40] Ms. Moore on behalf of the Defendants submitted that the Claimant does not have a licence and so cannot enforce the contract. They referred to the sums loaned as new loans, however, neither the pleadings nor the evidence disclose any new loan as was suggested. She contended that the contract is illegal and so the Claimant cannot enforce the contract and therefore the Claimant has no real prospect of defending the Ancillary Claim. Ms. Moore submitted that even if the disbursement made before the Act came into effect could be saved by the Act, the subsequent one made in September could not be saved. She asked the court to grant orders for the release all the titles.

[41] The later disbursements did not reflect a new loan but rather a continuation of the existing facility. I do not agree with the Defendants' argument that continuing an existing facility is excluded from the provisions of section 65 of the Act. I reiterated that despite the Claimant not being registered and having no licence the contract is still enforceable as the transaction was entered into before the Act came into effect.

[42] The Defendants/Ancillary Claimants have failed to establish that the Claimant/Ancillary Defendant have no real prospect of succeeding in their claim. The Orders sought by the Ancillary Claimants/Defendants are refused.

[43] The Defendants have not shown that the Claimant had no reasonable grounds for bringing the Claim or that there is any abuse of process. They have not met the test for striking out. The Defendants' application for striking out is also refused.

[44] Summary Judgment is granted in respect of the balance outstanding on the principal sum borrowed but the question of the interest is to proceed to trial.

[45] Ms. Moore sought leave to appeal the decision to grant Summary Judgment to the Claimant and refuse summary judgment in relation to the Defendants and also sought a stay of execution of the judgment and for a stay of the upcoming trial proceedings.

[46] Mr. Christopher Dunkley opposed the application for leave to appeal and objected to the application for a stay of execution.

[47] I considered the submissions advanced for leave to appeal and for a stay and have considered whether the Defendants have a real prospect of success. Section 65 is unassailable. I did not think the Defendants have a real prospect of succeeding on appeal. The Applications were refused.

[48] My Orders as follows:

1. Order made in terms of the Claimant/Ancillary Defendant's Notice of Application for Summary Judgment filed January 5, 2026, in terms of paragraph 2 that Summary Judgment be granted against the Defendants/Ancillary Claimants for $54,658,367.22 as being the outstanding balance on the principal sum borrowed.
2. The issue of calculation of accrued interest to proceed to trial on May 26-28, 2026.
3. Orders sought on the Defendants/Ancillary Claimants Notice of Application for Court Orders filed February 19, 2026, are refused.
4. The Defendants/Ancillary Claimants' application for leave to appeal and for a stay are refused.
5. Costs to the Claimant/Ancillary Defendant to be taxed if not agreed.
6. Claimant/Ancillary Defendant's attorneys-at-law to prepare file and serve the order herein.

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Stephane Jackson-Haisley
Puisne Judge