



FLINN, J.A.:

The appellant, Edmund R. Saunders, a retired lawyer, required a loan of \$25,000 to pay off an indebtedness. Mr. Rahr, a mortgage broker retained by Mr. Saunders, arranged the loan through the respondent. Eventually, Mr. Saunders and his wife signed a mortgage to the respondent in the face amount of \$33,072.01, payable in six months.

The face amount of the mortgage was made up of the following items:

1.	advance to pay Mr. Saunders' debt	\$25,000.00
2.	finder's fee to Mr. Saunders' mortgage broker	\$1,000.00
3.	legal fees of the respondent's lawyer to complete the mortgage transaction	\$900.00
4.	"Facility" fee retained by the respondent	\$3,600.00
5.	Six (6) months' interest @ 17%	<u>\$2,572.01</u>
	<b>Total:</b>	<u><u>\$33,072.01</u></u>

At the trial of this action, before Justice Haliburton of the Supreme Court of Nova Scotia, Mr. Saunders alleged that the interest which he was paying, on the credit that was advanced to him, exceeded 60% and was, therefore, a "criminal rate" of interest within the meaning of s. 347(2) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46. Because of this, he argued, the mortgage was void.

Justice Haliburton decided that the cost of the \$25,000 loan from the respondent to Mr. Saunders is "something in the range of 65%", and, in any event, comes within the definition of "criminal rate" in s. 347(2) of the **Criminal Code**. That finding is not challenged by either party on this appeal.

However, Justice Haliburton decided that if the mortgage was declared

void, Mr. Saunders would be unjustly enriched to the extent of the funds advanced to him; namely, the \$25,000 to pay off his indebtedness, and the \$1,000 to pay his mortgage broker. Justice Haliburton further decided that in the circumstances it was appropriate to penalize the respondent, to some extent, for attempting to obtain an excessive rate of interest; but not to the extent that the respondent would lose all of the interest on its money.

Justice Haliburton, therefore, fixed the principal amount outstanding on the mortgage at \$26,000 with interest payable at 7%, simple interest, calculated on an annual basis.

On the issue of costs, it was disclosed that the respondent had made an offer to settle its claim for the principal amount advanced to Mr. Saunders, namely, \$26,000. Mr. Saunders had refused that offer. Justice Haliburton, therefore, ordered Mr. Saunders to pay to the respondent double costs in the amount of \$6750 plus disbursements.

Mr. Saunders appeals to this Court claiming that Justice Haliburton erred in refusing to declare the mortgage loan as void.

We are of the unanimous opinion that this appeal should not succeed.

Section 3 of the **Unconscionable Transactions Relief Act**, S.N.S. c. 481 provides as follows:

"3 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

(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 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;

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

(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."

Clearly the cost of the loan to Mr. Saunders was excessive. In resolving this dispute between these parties, Justice Haliburton, while not specifically mentioning the **Unconscionable Transactions Relief Act**, did precisely what he was empowered to do pursuant to s. 3(b) of that **Act**. Having reviewed the evidence, and having considered the "sophistication" of the parties, Justice Haliburton exercised his discretion and adjudged a sum (\$26,000 together with simple interest of 7%) to be fairly due in respect of the principal and cost of the loan.

Justice Haliburton made no error in law in the manner in which he exercised his discretion to resolve this dispute. Therefore, there is no basis for interference by this Court.

The appeal is dismissed. The appellants will pay to the respondent its costs of this appeal which are hereby fixed at \$1,000.00 inclusive of disbursements.

Flinn, J.A.

Concurred in:

Clarke, C.J.N.S.

Hart, J.A.

NOVA SCOTIA COURT OF APPEAL

**BETWEEN:**

EDMUND R. SAUNDERS and  
RETA W. SAUNDERS

Appellants

- and -

OCEANUS MARINE INCORPORATED

Respondent

REASONS FOR  
JUDGMENT BY:

FLINN, J.A.  
(Orally)