



HIGH COURT OF AUSTRALIA

Public Information Officer

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PALGO HOLDINGS PTY LTD (trading as CASH COUNTERS BYRON) v KELVIN GOWANS,
A PUBLIC OFFICER ON BEHALF OF DIRECTOR-GENERAL OF DEPARTMENT OF FAIR
TRADING

Lending money with goods provided as security was not necessarily pawnbroking, the High Court of Australia held today.

Palgo was charged in the New South Wales Local Court at Lismore with carrying on business as a pawnbroker in Byron Bay without a licence in 2001 and was fined \$6,000. It made short-term loans, usually for seven days, of small amounts. Loans were secured by the borrower transferring title in the goods to Palgo. The schedule of terms referred to in the bill of sale/goods mortgage document required the borrower to keep the mortgaged property in their possession and to have insurance. In eight cases in which evidence was given to the Lismore Local Court the goods were left with Palgo, except for one case where a car was provided as security. The documents recorded the location of the goods in seven cases as being in storage at the borrower's request. Sometimes borrowers were told this was necessary and sometimes they assumed they had to leave their goods. Palgo said keeping the goods on its premises meant they were covered by its insurance policy.

Its appeals to the Supreme Court and the Court of Appeal against the conviction and fine were dismissed. Both Courts held that mortgages of chattels could also be characterised as pawnbroking transactions. They held that if the meaning of pawned goods did not embrace all transactions in which a lender had possession of goods as security it would defeat the purposes of the *Pawnbrokers and Second-hand Dealers Act*. Palgo appealed to the High Court.

The Court held that pledges or pawns (the terms are interchangeable) could not include mortgages, and transactions cannot be a combined pledge and mortgage. Nothing in the Act allows scope for arguing that pawned goods include goods that are the subject of other forms of security transaction. Pawn and pledge refer to a bailment of personal property as security for a debt, distinct from a chattel mortgage, and one kind of transaction cannot be treated as being subsumed in the other. The Court held that because the transactions were mortgages of chattels they were bills of sale, regulated by the *Bills of Sale Act* rather than the *Pawnbrokers Act*.

The Court held that there was no basis for reading the definition of pawnbroker as extending to a business embracing all kinds of transaction in which a lender of money takes possession or custody of goods. Palgo's business fell outside the definition. The *Pawnbrokers Act* was one just one of several Acts regulating provision of credit. The presence of such other statutes reveals no reason to read the *Pawnbrokers Act* as designed to cover a field wider than its own words mark out. The Court, by a 4-1 majority, allowed the appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*