

MAINE STATE LEGISLATURE

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YWS ✓
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Direct Loans from a Finance Corporation to Home Owners for Home Improvements

FACTS:

With the exception of the reference to the charter provision of the corporation, the assumed facts are contained in the first three paragraphs of a letter dated July 6, 1966 from David A. Wagman, Counsel for Avco Delta Corporation of Massachusetts. The first three paragraphs read as follows:

"A Corporation, chartered under RS 1954, Chapter 59, Sec. 1;B 1,B, desires to make direct loans in a net amount of more than \$2500 to homeowners. The proceeds of these loans will be used primarily to pay sellers of home improvements the purchase price of improvements purchased by the borrower. In some instances, the loans will be sufficiently large to allow a borrower to pay, in addition to the cost of the home improvements, other outstanding installment indebtedness which he has incurred.

"A homeowner, at the time he purchases improvements from a home improvement dealer, will frequently express a desire to borrow a sum of money for the purpose of paying the seller the purchase price. Often, the homeowner desires to borrow a greater amount than is necessary to pay the home improvement seller, the excess to be used to liquidate the buyers other outstanding obligations. In each case, the seller of home improvements will give the homeowner a standard loan application of said corporate lender. The homeowner will complete the loan application and will send it to the Corporation. The Corporation will examine the credit information supplied by the customer on the application and conduct a credit investigation. If, after investigation, the credit of the individual proves satisfactory, the homeowner will be notified by the Corporation of the approval. The proceeds of the loan will be paid by the Corporation to those creditors to whom the homeowner has authorized payment. Invariably this will include the home improvement seller.

"Any loan will be arranged by the Corporation directly with the homeowner. The home improvement seller, with the exception of initially giving the homeowner the loan application, will not enter into the transaction. The lender will not purchase or acquire the home repair contract or acquire any interest therein. Frequently the loan will be secured by a mortgage on real property. The mortgage, however, will be executed by the homeowner directly to the Corporation."

The letter is in error in the first paragraph. The corporation was chartered by a Private and Special Act of our Legislature in 1963, Chapter 39.

QUESTION:

Does the Home Repair Financing Act, 9 M.R.S.A., Chapter 360, sections 3721 through 3753, regulate loans made by a corporation in the manner set forth in the above facts?

OPINION:

It is to be clearly understood that we have construed the facts in the July 6, 1966 letter by counsel for Avco Delta to indicate that no obligation or contract of any kind is entered into by a homeowner when he meets with the home improvement seller and the application is made to the corporate lender. If the homeowner should place himself under any obligation or contract with a home repair contractor, our conclusion would be contrary to that reached in this opinion. The Home Repair Financing Act defines a home repair contractor as follows:

" 'Home repair contractor' means any person who is engaged in or who transacts any business of selling goods and related services pursuant to a home repair contract including a salesman who is not an employee of a licensed home repair contractor;"

A home repair financing agency is defined as follows:

" 'Home repair financing agency' means and includes any person, other than a home repair contractor, engaged, directly or indirectly, in the business of purchasing, acquiring, soliciting or arranging for the acquisition of home repair contracts, or any obligation in connection therewith by purchase, discount, pledge or otherwise;"

Assuming the facts to be as summarized in the third paragraph of the July 6, 1966 letter, we would conclude that since the home repair contractor was not a party to a contract with the homeowner, no home repair contract was entered into. Since no home repair contract is involved, the loaning corporation would not be a home repair financing agency and the Home Repair Finance Act, 9 M.R.S.A., §§ 3721 through 3753, Chapter 360, would not be applicable to the loaning corporation.

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