

Will New Jersey Courts Enforce Rotating Credit Association Agreements?

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Rotating credit associations in immigrant communities go by a variety of names — “kye” in Korean, “hui” in Chinese, “cundina” in Mexican, “tanomoshi” in Japanese — but all involve a group of people who pool their savings on a regular basis (often monthly) and then rotate the pool around the group until all members have received a pool distribution. These credit associations provide an alternative to mainstream financial transactions, and often support the growth of many small to mid-size businesses in predominantly immigrant communities. Reports suggest that more than 50% of adults in certain communities participate in Kyes or similar credit associations.

A recent decision of the New Jersey Appellate Division raises the question of whether participants in these transactions may resort to the court system to enforce their rights. *Han v. Jang*, N.J. App. Div. No. 11-2-4238 (June 16, 2014).

In *Han v Jang*, each member of the Kye was required to deposit \$3,000 per month into the Kye, and each month one member of the Kye would receive a payout of \$72,000. Litigation arose after certain members of the Kye refused to make their monthly payments. The Kye dissolved and required all members who had received a payout to return any amounts they received above their total investment. Defendant claimed that the obligation to reimburse the Kye could not be enforced because the Kye was illegal, violating state and federal tax and securities laws.

The Appellate Division remanded the case back to the trial court to determine “whether, as a matter of law, the contract was unenforceable because the Kye violated the law or was against public policy, or whether it is inappropriate to apply Western law to this uniquely Asian economic model in which the parties voluntarily engaged.

The decision by the trial court on remand will be one of first impression in New Jersey as there are no reported decisions under New Jersey law discussing whether these credit pools are legal or if obligations may be enforced in courts. Across the country, there also is scant legal authority. The LA Times reported a 1993 decision in a Los Angeles superior court case finding that a Kye was illegal, and therefore a lawsuit to enforce rights and obligations under the Kye agreement could not be enforced in state court. Courts in Maryland, Hawaii and Guam have enforced obligations owed to Kye participants based on contract law, but it does not appear that the defense of illegality of contract was raised in those cases.

The trial court's decision on remand will be one to watch for, as a finding that rights and obligations undertaken in a Kye agreement are unenforceable could have significant repercussions for an unknown number of other persons involved in other rotating credit associations across New Jersey.