



TRADING LAW BULLETIN

ISSUE NO. 47 DECEMBER 2005

Gough Square Chambers
6-7 Gough Square
London EC4A 3DE
Telephone: 020-7353 0924
Fax: 020-7353 2221
DX: 476 London
Email: gsc@goughsq.co.uk

CONSUMER CREDIT

Litigation Funding. The Defendant Bank entered into regulated consumer credit agreements with individuals who wished to pursue a claim (usually for personal injury). The scheme was operated by The Accident Group who nominated solicitors to act under Conditional Fee Agreements. Individuals who wished to participate in the scheme using finance from the Bank could acquire a policy of insurance in order to meet the costs of the opposing party if the claim was unsuccessful and their solicitor's disbursements. The credit granted by the Bank was used to pay the premium for the insurance policy and to fund the disbursements. The agreement was documented as a running-account agreement. The individual claimants assigned the policies to the Defendant Bank by way of "security". When The Accident Group became insolvent there was a large number of unsuccessful claims and the Bank sought payment by the insurers under the assigned policies. The insurers declined payment alleging that the agreement was not truly one for running-account but was one which was partly fixed-sum (for the insurance policy) and partly running-account (for the disbursements). It was said that this therefore produced a multiple agreement under Section 18 and that each separate agreement did not comply with the Agreements Regulations. It was also alleged that the cancellation forms in the Sections 62 and 63 copies were not in the correct form because of the inclusion in the footnote of 12 words stating that the notice of cancellation would not affect the contract for insurance. The insurers brought a claim for a declaration that the agreements (and therefore the rights under the assigned policies) were irredeemably unenforceable under Section 127(3) and (4), having regard to Section 113. The Judge in the Chancery Division dismissed both arguments but gave permission to appeal on the issue of the form of cancellation notice (*Goshawk Dedicated (No.2) Limited v. Bank of Scotland*, 14th December 2005).

Title. Under a master trading agreement the Claimant Bank granted finance to a motor trader for the purpose of purchasing vehicles for its business. The dealer bought the vehicles as agent for the Bank and on purchase the Bank would provide 80% of the price. There was a retention of title clause until the

whole sum advanced had been repaid. Subsequently a different company made a loan to the dealer secured by a debenture. In order to repay this loan the dealer sold a number of vehicles to the person who controlled the lending company. The vehicles included seven cars which were subject to the agreement with the Bank. In the County Court it was held that the cars had been bought by a private purchaser in good faith without notice of the agreement with the Bank so that property passed under Section 27 of the Hire Purchase Act 1964. The Court of Appeal considered decisions on the issue of whether someone was carrying on business under the Moneylenders' Acts, the Sale of Goods Act and the Unfair Contract Terms Act. It was held that Section 27 directed attention not merely to the business of the purchaser before the disposition but also the purpose for which the vehicle was bought. The vehicles in question had been purchased as a business venture with a view to selling at a profit. It followed that the purchaser did not obtain good title (*GE Capital Bank Limited v. Rushton*, 14th December 2005).

Deposit Security. The Claimant company appealed against the amount of a judgment against the Defendant borrower. Part of the security was a cash deposit. The County Court Judge had held that the correct date for netting off the balance of the loan account against the amount in the security deposit account was at the end of the eight year contractual period for the repayment of the loan. The borrower's application for permission to appeal against this decision was refused. The lender's appeal on the same point and seeking the date of judgment as the netting off date was dismissed. The Judge had also held that after the netting off the balance should be subject to interest at a rate lower than the contractual rate. The Court of Appeal allowed the appeal on this issue (*Goldstar Finance Limited v. Singh*, 22nd November 2005).

FOOD

Geographical Indication. DEFRA decided to forward to the European Commission an application in respect of Melton Mowbray pork pies. In an application for Judicial Review a competitor asserted that the geographical area defined in the proposed protected geographical indication covered too wide an area. The application was dismissed because such

an area could be wider than the specific place indicated in the name (*R (Northern Foods Plc) v. DEFRA*, 21st December 2005).

Food Hygiene. The Food Hygiene (Wales) Regulations 2005 were made on 29th November 2005 and come into force on 1st January 2006.

PEDLARS

Certificate. Following the arrest of a person who held a pedlar's certificate, the police removed the certificate. The certificate holder applied for Judicial Review of the action by the police. The Court held that the only way a pedlar's certificate could lawfully be removed was by an Order of the Court and not by the police (*R (Jones) v. Chief Constable of Cheshire*, 31st October 2005).

ANIMALS

Disqualification. An Order made under the Protection of Animals Act 1911 disqualified the Defendant from "keeping" particular animals. The High Court held that he had properly been held to be in breach of the Disqualification Order notwithstanding that the power to disqualify was in respect of "having custody" of an animal (*R (Arthur) v. RSPCA* (2005) 169 JP 676).

Animal Welfare. The Appellant had employed a local farmer to care for some cattle. The High Court quashed his conviction of failing to care for one of the cows. It was held that the requirement was to take reasonable steps to ensure care and whether the employment of an independent contractor, without doing more, is sufficient, was a matter for the trial Court (*R (Keam) v. DEFRA* (2005) 169 JP 512).

SALE OF GOODS

Misrepresentation. The buyer of two cars alleged that the seller had misrepresented certain matters to him. In respect of one car its authenticity was said to have been misrepresented. The Court said that the seller had made it clear that if the buyer felt uneasy about the purchase, he should not continue with it and the buyer did not rely on what had been said. A personal opinion as to authenticity could not be interpreted as a collateral warranty and there was no promise being made about the authenticity. In respect of the second car the assurance was said to be that it was in near perfect condition. It was held that, whilst the buyer may have overpaid for the car, the seller did not misrepresent its condition (*Lucas Laureys v. Earl*, 3rd November 2005).

NOISE POLLUTION

Prejudicial to health. It was contended that the

failure to install adequate sound insulation could result in the premises being in such a state so as to be prejudicial to health and therefore a statutory nuisance. The High Court said that as the premises were not defective, unwholesome etc. they did not come within the statutory definition (*R (Vella) v. Lambeth BC*, The Times, 23rd November 2005).

ADVERTISING

Meaning of advertisement. In the context of planning legislation the issue arose as to whether a banner approximately two metres by one metre with writing, a logo and contact details on it constituted an advertisement when the aim was to notify people of opposition to a certain land development. The Defendant appealed against a conviction and the High Court held that the District Judge was entitled to conclude that the banner was an advertisement. The word was to be given a very broad meaning. Further, the criminal proceedings did not infringe the freedom of expression (*Butler v. Derby City Council*, 22nd November 2005).

TRADING SCHEMES

Winding Up Order. A company operated schemes centred upon products such as a Gem Cache which was a small brick enclosing loose emeralds. People were invited to join the scheme. The High Court ordered the winding up of the company because it was a trading scheme within Section 118 of the Fair Trading Act 1973 and Section 120 offences had been committed. It was also held that the scheme was a lottery (*In the matter of Treasure Traders Corporation Limited*, 1st December 2005).

TRADEMARKS

Sentence. The Defendant made, decorated and supplied counterfeit pottery to a Co-Defendant who sold it by retail. The Court of Appeal upheld a sentence of nine months' imprisonment (*R v. Woolridge*, 26th April 2005).

UNDER-AGE SALES

Legislation. Section 146 of the Licensing Act 2003 relating to under-age sales of alcohol came into force on 24th November 2005.

Costs. Some time after criminal proceedings had been commenced in respect of an under-age sale, cautions were offered and accepted. The District Judge refused a Defendant's Costs Order because it was said that the cautions equated to pleas of guilty. The High Court held that this was incorrect and remitted the matter for reconsideration (*R (Stoddard) v. Oxford Magistrates' Court* (2005) 169 JP 683).