



TRADING LAW BULLETIN

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CONSUMER CREDIT

Overseas Transactions. The House of Lords has held that Section 75 of the Consumer Credit Act 1974 applies to cases where cardholders use their credit cards overseas. The Section applied to UK creditors and Section 75(2) was not extraterritorial. (It had previously been held that there are pre-existing arrangements between a supplier and a card issuer even where the supplier has a contract with a merchant acquirer in a four-party situation) (*Office of Fair Trading v. Lloyds TSB*, 31st October 2007).

Extortionate Bargains. A complex set of arrangements between companies and an individual relating to business loans and hire-purchase agreements in respect of cars included a requirement that, if the loan terminated, not only the principal but also interest for the entire outstanding period of the loan would be payable. It was held that this constituted a penalty and an extortionate credit bargain (*County Leasing Limited v. East*, 21st December 2007).

Exempt Agreements. The Consumer Credit (Exempt Agreements) Order 2007 comes into force on 6th April 2008 and relates to high net worth debtors.

Consultation. The DBERR issued a consultation paper in December 2007 relating to a possible buy-to-let exemption, the legislation regarding annual statements and the definition of payments.

Money Laundering. On 1st November 2007 the OFT published its anti-money laundering guidance.

Mortgage Guarantee. In an appeal to the Court of Appeal against an order for possession, it was argued that the mortgagee had been obliged to account to the mortgagors in respect of the mortgage indemnity guarantee which it had taken out. The Court of Appeal dismissed the appeal on the principle that a person who had the benefit of a mortgage guarantee is not obliged to account (*Banfield v. Leeds Building Society*, 19th December 2007).

Bank Charges. The High Court dismissed an appeal in a claim which included relief for aggravated damages for the unlawful debiting from a bank account of charges and interest on those charges (*Brennan v. National Westminster Bank Plc*, 27th November 2007).

Consumer Credit Appeals. On 5th November 2007 the Ministry of Justice published the draft Consumer Credit Appeals Tribunal Rules 2008.

Conversion. A car which was subject to a hire-purchase agreement was borrowed and taken to Romania by a friend of the hirer where it was damaged in an accident. The agreement was terminated for a failure to maintain payments. The person who borrowed the car registered himself as the owner with the consent of the hirer. When the finance company found out they issued proceedings for conversion. The Court of Appeal held that the essence of conversion was unlawful appropriation. Whilst ignorance of the owner's rights was no defence there had to be a deliberate act inconsistent with true ownership and entrusting the car to a garage in Romania and supplying the key was insufficient (*BMW Financial Services (GB) Limited v. Bhagwanani*, 1st November 2007).

2006 Act. The Consumer Credit Act 2006 (Commencement No.3) Order 2007 brings into force a number of provisions of the 2006 Act on various dates. These include the removal of the monetary limit, exemptions for high net worth debtors and businesses, changes to the licensing system and consumer credit appeals.

Modifying Agreements. In November 2007 HM Treasury and DBERR issued a consultation paper concerning modifying agreements in the context of agreements which might become subject to dual regulation.

FOOD

Labelling. The Food Labelling (Declaration of Allergens) (England) Regulations 2007 came into force on 23rd December 2007.

Labelling. The European Court of Justice held that Directive 2000/13 (Articles 2, 3 and 12) do not preclude domestic legislation making it possible for an operator in the Member State in question which distributes a pre-packaged alcoholic beverage produced by an operator in another Member State, to be held liable for an infringement of labelling requirements resulting from the producer's inaccurate label (*Lidl Italia Srl v. Comune di Arcole (VR)*, 23rd November 2006).

REGULATORY REFORM

Regulatory Functions. The Legislative and Regulatory Reform (Regulatory Functions) Order 2007

comes into force on 6th April 2008. Regulatory functions specified in the Schedule to the Order are functions to which Sections 21 and 22 of the Legislative and Regulatory Reform Act 2006 apply.

SECURITY INDUSTRY

Licensing. A number of appeals and applications for judicial review came before the Divisional Court in respect of the licensing of door supervisors. The challenge to the application of criteria published by the Security Industry Authority was unsuccessful (*Security Industry Authority v. Stewart*, 17th October 2007).

NOISE

Service. On appeal to the Crown Court it was held that a noise abatement notice had not been served at the appropriate address. The local authority appealed. The property in issue was a shooting ground and the notice was served there. The High Court upheld the appeal because the Defendant had written asking for all correspondence to be sent to that address (*Butland v. Powsy City Council*, 15th November 2007).

PRODUCT APPROVAL

Compliance with Directive. The approval of a document under the Building and Approved Inspectors (Amendment) Regulations 2006 was successfully challenged by judicial review. The Commission had not been notified of the draft and the Secretary of State had acted in breach of the applicant's legitimate expectations with regard to consultation (*R (On the application of Actis SA) v. Secretary of State*, 2nd November 2007).

PRODUCT SAFETY

Official Statements. An Italian company imported vehicle lifts into Finland. An official stated in the media that the lifts could present an immediate danger. This was different from the official position. The Finnish Government said that he had acted deliberately contrary to that official position. The ECJ said that a decisive factor as to attribution to the state was whether people to whom the statements were addressed could reasonably suppose that they were the position taken by the authority in question (*AGM-COS MET Srl v. Suomen* [2007] All ER (EC) 1126).

HEALTH & SAFETY

Neglect. A young boy was thrown from a fork lift truck and died. The prosecution said that the managing director of the company had caused the company to act in breach of the 1974 Act through his consent, connivance or neglect. The Court of Appeal held that the Judge in his summing up had placed the burden too high in respect of "neglect" and had equated the test for connivance with neglect whereas there had clearly intended to be a distinction (*R v. P*, 11th July 2007).

Evidence. Following a fatal accident during building work a company and others were convicted at the Crown Court. On appeal to the Court of Appeal the question arose as to the issue of risk. The Court of Appeal dismissed the appeal saying there had been a real risk as opposed to a purely hypothetical one because there had been an accident. That was sufficient to justify the requirement that the appellants should have the burden of proving that they had done all that was reasonably practicable to protect against that risk (*R v. Chargot Limited* [2007] EWCA Crim 3032; 13th December 2007).

CONSUMER PROTECTION

Enforcement Principles. In November 2007 the Office of Fair Trading issued a statement of consumer protection enforcement principles.

PACKAGE HOLIDAYS

Liability. When a holiday maker took an obvious risk of which he was well aware there was no liability on the tour operator (*Evans v. Kosmar Villa Holidays Plc* [2007]EWCA Civ 1003; 23rd October 2007).

PROPERTY MISDESCRIPTION

Misleading Statements. An estate agent was prosecuted for failing to disclose documents relating to the sale of a property to a trading standards officer. He was acquitted and the High Court dismissed an appeal. A prospective purchaser learned of doubts about title but the proposed vendor obtained evidence relating to it. The High Court held that the Judge was correct that there were no reasonable grounds for suspicion that an offence had been committed. There was no representation about the nature or quality of the vendor's title in the particulars of sale; just as in advertisements there were no representations as to title. No reasonable person would regard the dispute as sufficient to form the basis of suspicion without making enquiries as to its substance (*Lancashire County Council v. Buchanan*, 7th November 2007).

TRADE MARKS

Confiscation. Following pleas of guilty under the 1994 Act in respect of clothing, an order for confiscation was made. The amount was that of the value of the goods seized. The Judge concluded that the business concerned was legitimate and not one which made profit from a criminal lifestyle. The local authority appealed. The High Court dismissed the appeal saying that the Judge was not clearly wrong and his conclusion was that the business was legitimate (*Birmingham City Council v. Ram* [2007] EWCA Crim 3084, 21st December 2007).