



TRADING LAW BULLETIN

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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

Premium Funding. A company involved in premium credit borrowed funds from the Claimant for the payment of the whole annual premium to insurers. The question arose as to a charge over the Defendant's property. The Claimant had entered into certain agreements with Barclays Bank including a debenture and the Court of Appeal held that the Claimant had given an absolute assignment and did not have the right to sue the Defendant under the charge (*Bexhill UK Limited v. Razzaq* [2012] EWCA Civ 1376).

Limitations. The Defendant entered into a hire-purchase agreement and failed to make payments. The Claimant obtained a default judgment which was set aside on the basis of limitations. It was held that time had run from the first failure to make a monthly instalment. The Court of Appeal overturned this. The Claimant had no right to make a claim until a termination notice had been given or it had communicated acceptance of the hirer's repudiation (*BMW Financial Services Limited v. Hart*, 10th October 2012).

Guarantees. A bank appealed against the refusal of summary judgment on two personal guarantees. Defences of misrepresentation and illegitimate pressure amounting to economic duress were put forward. This was upheld on appeal (*Bank of India v. Riat*, 5th October 2012).

Possession. A District Judge struck out a claim and set aside a warrant for possession and the finance company appealed. The Defendant raised allegations of misrepresentation and unlicensed credit trading. The High Court held that it was difficult to say that the Claimant had not engaged in activities for which a licence was required. The order was set aside save but the warrant was suspended subject to any application (*Barons Bridging Finance Plc v. Nnadikewe*, 29th October 2012).

Payment Protection. Permission to appeal has been given in the case of *Holdstock v. Endeavour Personal Finance Limited* and the Court of Appeal will hear the case in April 2013.

Green Deal. The Consumer Credit (Green Deal) Regulations 2012 come into force on 28th January 2013.

Mortgages. Mortgage payments were accepted from a tenant who the mortgagee knew was not the borrower but this was held not to raise an estoppel because no representation, encouragement or assurance have been given in relation to the tenancy (*Paratus AMC Limited v. Persons unknown*, 5th October 2012).

Debt Enforcement. The High Court held that words complained of in a television broadcast in respect of a debt

management company were capable of bearing a defamatory meaning (*Andrew James Enforcement Limited v. ITV Plc*, 30th November 2012).

Payment Protection. The High Court allowed an appeal by a lender from the County Court in respect of alleged PPI mis-selling (*Conlon v. Black Horse Limited*, 7th November 2012).

Payment Protection. The Court of appeal refused permission to appeal from a County Court decision that there was no fiduciary relationship and any claim was time-barred (*Ginn v. Central Capital Limited*, 3rd August 2012).

Mortgage Fraud. A firm of solicitors appealed against a finding that it was liable for breach of trust and breach of retainer in respect of a mortgage. Although there was a breach by handing over the advance before completion, the solicitors were relieved from liability under the Trustee Act 1925 (*Davisons Solicitors v. Nationwide Building Society* [2012] EWCA Civ 1626).

Financial Services Act 2012. The Act received Royal assent on 19th December 2012 and provides for regulation of consumer credit in Section 107 and the power to suspend consumer credit licences in Section 108.

Information Sheets. New Office of Fair Trading Information Sheets take effect from 11th April 2013.

Licensing. Requirements have been imposed on certain licensees in respect of the use of charging orders.

FOOD

Passing Off. An interim injunction was granted concerning the marketing of yoghurt (*Fage UK Limited v. Chobani* [2012] EWHC 3097 (Ch)).

Passing Off. An application was granted for survey evidence in respect of consumer attitudes to Greek yoghurt (*Fage UK Limited v. Chobani UK Ltd* [2012] EWHC 3755 (Ch)).

FINANCIAL SERVICES

Financial Ombudsman. A complainant unsuccessfully sought judicial review of a decision by the Ombudsman that the complaint was brought outside of the six month statutory time limit (*R (on the application of Bankole) v. Financial Ombudsman Service*, 21st November 2012).

Compensation. The High Court held that a claim for damages could be made to recover the amount in excess of the maximum which had been awarded by the Ombudsman (*Clark v. Infocus Asset Management* [2012] EWHC 3669 (QB)).

Prohibition Notice. The Upper Tribunal dismissed an application based on alleged impartiality of the Tribunal (*Jeffery v. Financial Services Authority*, 5th December 2012).

Rate Swap. A claim against a bank on the basis of alleged mis-selling of an interest rate swap was dismissed. It was held that the effect of entering into the swap was merely converting a variable rate loan to a fixed rate loan with all the potential advantages and disadvantages (*Green v. Royal Bank of Scotland* [2012] EWHC 3661 (QB)).

Compensation. The Claimant sought financial advice from her broker and she was advised to remortgage with an interest only mortgage and to invest the balance by purchasing a Spanish property. The High Court upheld the Claimant's application for judicial review of an award made by the Compensation Scheme Administrator (*Emptage v. Financial Services Compensation Scheme* [2012] EWHC 2708 (Admin)).

Prohibition Orders. The FSA alleged that a company specialising in arranging mortgages and insurance pressurised advisors to sell PPI without regard to its suitability. The Upper Tribunal upheld one prohibition notice and reduced the financial penalties (*Ollerenshaw v. FSA*, 10th December 2012).

SALE OF GOODS

Second-hand Equipment. The High Court had to determine whether there was a contract for second-hand equipment. It was held that the contract had been made and was not void for uncertainty. As regards damages, the 1979 Act could not be relied upon because the goods were second-hand and damages should be assessed with regard to the nearest equivalent goods (*Air Studios v. Lombard North Central* [2012] EWHC 3162 (QB)).

Fitness for Purpose. A luxury motor yacht caught fire and exploded fifteen minutes after delivery. It was held that the cause of the fire resulted from a deficiency in the yacht (*Ward v. MGM Marine Limited*, 14th November 2012).

Exclusion Clauses. The Court of Appeal dismissed an appeal from the striking out of a winding up petition. It was alleged that a defective yacht had been supplied. An issue arose as the Unfair Contract Terms Act 1977 and the Court of Appeal held that it was clear that a company as well as an individual could be a consumer (*Tallington Lakes Limited v. Anca International* [2012] EWCA Civ 1712).

MISLEADING MARKETING

Warrants. The Divisional Court held that the issue of warrants authorising entry and search by Trading Standards of business documentation under the Business Protection from Misleading Marketing Regulations 2008 was lawful (*R (on the application of Ahmed) v. York Magistrates' Court* [2012] EWHC 3636 (Admin)).

PAYMENT SERVICES

Regulations. The Consumer Rights (Payment Surcharges) Regulations 2012 come into force on 6th April 2013.

PLANNING

Site Licences. A local authority had issued a site licence

but it should not have been issued. The Defendant appealed to the Divisional Court which held that, whilst an ultra vires act was usually a nullity, that doctrine was relative and the act would be valid for some purposes. The local authority could not rely on the unlawfulness of its own act. There was no power to grant the licence but it was valid on its face (*White v. South Derbyshire District Council* [2012] EWHC 3495 (Admin)).

UNFAIR COMMERCIAL PRACTICES

Trial. Magistrates decided that a case should be committed to the Crown Court. The Defendant appealed by way of case stated. It appeared that the Justices had approached the matter on the basis of fraud guidelines and the case would be remitted for reconsideration (*Price v. Cheshire East Borough Council* [2012] EWHC 2927 (Admin)).

BROADCASTING

Warrants. Defendants were convicted in a private prosecution for the unlawful use of set top boxes. Grounds of appeal concerning the issue of the warrant and the fact that the prosecutor was a private company were dismissed (*R v. Zinga* [2012] EWCA Crim 2357).

ANIMALS

Disqualification. The Divisional Court held that there was no discretion to make a disqualification order under the 2006 Act. Subject to any human rights issue there was no discretion to relieve a person from a disqualification order (*R (on the application of RSPCA) v. Guildford Crown Court* [2012] EWHC 3392 (Admin)).

ESTATE AGENTS

Disclaimers. The Divisional Court heard a Trading Standards appeal against the dismissal of a case under the Property Misdescriptions Act 1991. The appeal was allowed. It was held that the word "approximately" was not apt to neutralise the meaning in particulars as to the size of the plot (*Norfolk Trading Standards v. Bycroft*, 25th October 2012).

MEDICINES

Licences. All holders of wholesaler dealer's licences were subject to the 2005 Regulations whatever purported capacity they operated in (*Blackbay Ventures v. Secretary of State* [2012] EWHC 2635 (Admin)).

VEHICLES

Companies. A prosecution was brought alleging an intention to deceive in respect of an operator's licence. The company was acquitted and the agency appealed. The appeal was dismissed because there had to be evidence that those with real authority had the relevant knowledge (*VOSA v. FM Conway Limited* [2012] EWHC 2930 (Admin)).

DOORSTEP SELLING

Unenforceability. The County Court held that a householder was liable to pay a cancellation charge to a removal firm. The Court of Appeal upheld the householder's argument that the agreement was unenforceable under the 2008 Regulations (*Robertson v. Swift* [2012] EWCA Civ 1794).