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CONSUMER CREDIT

Amount of Credit. The Defendants to a mortgage possession action argued that the mortgage agreement contained defects that rendered it irredeemably unenforceable under the Consumer Credit Act 1974. The County Court held that whether there was "a term stating the amount of credit" – as required by Schedule 6 to the Consumer Credit (Agreements) Regulations 1983 – was a question of construction and the requirement could be satisfied, for example, by indicating the amount of the total charge for credit as a component item in a gross total. It was held that terms stating the "nett amount of loan" and "total loan inclusive of brokers' fee" did comply, and were not ambiguous. A pre-contractual agreement allowing deferment of legal fees of £295 did amount to "financial accommodation", but here too Schedule 6 had been complied with. If the creditor eventually required the Defendants to repay the fees, that would not render the stated interest rate for the credit incorrect. The court further held that an additional payment of £240 made by the Claimant to the mortgage brokers had been sufficiently disclosed, and did not constitute a secret commission or bribe (*Hurstanger Limited v. Wilson and Burton*, 28th April 2006).

Exempt Agreements. The Consumer Credit (Exempt Agreements) (Amendment) Order 2006 came into force on 1st June 2006, raising the upper limit for CCA-exempt credit union debtor-creditor agreements from 12.7% to 26.9%.

Legal Charge. The Appellant finance company was granted a charging order over its debtors' beneficial interest in property. The debtors then remortgaged the property with the Respondent second creditor. An order for sale was made, but the proceeds of sale were less than the debts owed to the Appellant and Respondent. The Court of Appeal held as a preliminary issue that the Appellant was entitled to seek an inquiry into the amount owing under the mortgage between the Respondent and the debtors (*Close Asset Finance Ltd v. Taylor and others*, 22nd May 2006).

Options. The Appellants sold a property to the Respondents, subject to the grant of a shorthold tenancy and two options of limited duration to re-purchase. The Court of Appeal held that the judge at first instance was entitled to conclude that the transaction was a genuine sale, and not in substance a mortgage. The Appellants would therefore have no equitable right of redemption beyond the expiry of the option periods (*Dutton and another v. Davis and others*, 4th May 2006).

Guarantees. The Appellant company director asked a member of staff to send an e-mail to the Respondent's solicitors requesting an adjournment of a winding-up petition subject to his giving a personal guarantee in favour of the Respondent. The High Court held that the e-mail was capable of being a "memorandum or note" to negate immunity from suit under Section 4 of the Statute of Frauds 1677. However, absent evidence to the contrary, the automatic insertion of the Appellant's e-mail address post-transmission could not be held to be intended for a "signature", and accordingly the summary judgment given to the Respondent would be overturned (*J Pereira Fernandes SA v. Mehta*, 7th April 2006).

Credit Reference Agencies. In an application for summary judgment in a defamation case, the Respondent credit reference agency argued that its offer to make amends pursuant to Section 2 of the Defamation Act 1996 had not been accepted by the Applicant company. The Applicant had written to the Respondent purporting to accept the offer of amends, but reserving the right to claim special damages in the future. The High Court held that this letter was not acceptance but a counter-offer, and that the Respondent was accordingly entitled to rely on a defence under Section 4 (*Loughton Contracts PLC v. Dun & Bradstreet Ltd*, 25th May 2006).

FOOD

Butchers' shops licences. The owner of a butcher's business was convicted under the Food Safety (General Food Hygiene) Regulations 1995 for failing to have a licence. As well as unwrapped red and white meat there were frozen foods such as seafood cocktail and frozen cooked mussels. The Defendant was convicted and appealed to the Court of Appeal. The Court of Appeal upheld the conviction on the basis that the frozen food amounted to ready-to-eat food being food for consumption without further treatment or processing (*R v. Martin,* 18th January 2006).

Sentence. Total fines of £5,000 were imposed in respect of offences concerning the size of chocolate fingers, their packaging and failing to present documents (Daily Telegraph, 13th May 2006).

Smoke flavourings. The United Kingdom brought proceedings in the ECJ to annul a Council Regulation on smoke flavouring. The claim was that the Regulations had been made by virtue of Article 95 which was not the correct legal basis. The Court held that the Regulation contained the essential elements of a harmonisation measure and was rightly based on Article 95 (*UK v. European Parliament* [2006] All ER (EC)).

PRODUCT LIABILITY

Put into circulation. The ECJ gave guidance on the meaning of putting a product into circulation and held that this occurred when it was taken out of the manufacturing process and entered a marketing process in the form in which it was offered to the public. (*O'Byrne v. Sanofi Pasteur MSD Ltd* [2006] All ER (EC)).

Sentence. A sun-bed was hired and was defective resulting in burns to the hirer. The Defendant pleaded guilty under the Consumer Protection Act 1987 and the Electrical Equipment Etc. Regulations 1994 and was sentenced to 56 days (Daily Telegraph, 3rd June 2006).

PROCEDURE

Wrong Defendant. The holding company in a retail group was prosecuted in respect of the sale of jam doughnuts. The information alleged that the holding company was trading as the retail company which sold the doughnuts. The District Judge allowed an amendment after the expiration of the time limit so that the retail company became the Defendant. On judicial review this decision was quashed (*R (Sainsburys Supermarkets Ltd) v. Plymouth City Council,* 14th June 2006).

COSMETICS

Regulations. The Cosmetic Products (Safety) (Amendment) Regulations 2006 came into force on 22nd May 2006.

TRADE DESCRIPTIONS

Director's Liability. In the Crown Court an indictment was preferred in respect of clocking allegations against a company and a director. The Crown Court Judge held that the counts against the director did not constitute charges against him but were merely statements or riders that he was guilty by virtue of Section 20 of the 1968 Act by reason of his neglect etc. The prosecution appealed and the Court of Appeal allowed the appeal on the basis that the Defendant was properly charged and, in addition, the counts were not bad for duplicity because it was necessary to recite that the company was guilty before the Section 20 allegation was made (*R v. T* (2006) 170 JP 313).

COSTS

Defendant's Costs Order. Following an amendment to an information which removed a holding company in a retail group from the proceedings (see above), the District Judge declined to make a Defendant's Costs Order. The High Court reversed this decision on an application for judicial review (*R (J Sainsbury's plc) v. HM Court Service*, 14th June 2006).

HEALTH AND SAFETY

Regulations. The Court of Appeal (Civil Division) held that the general enabling words in the Supply of Machinery (Safety) Regulations 1992 did not rely on the powers contained in the 1974 Act and therefore the Regulations had not been made under that Act (*Vibixa Limited v. Komori UK Limited*, 9th May 2006).

Practicalility. The HSE appealed against rulings in a preparatory hearing in a prosecution under Section 2 of the 1974 Act. The case involved traffic management and the Judge ruled that evidence on foreseeability was admissible with regard to reasonable practicability. The Court of Appeal (Criminal Division) held that foreseeability was a tool with which to assess the likelihood of risk and the appeal was dismissed (*R v. H*, 22nd May 2006).

PHARMACEUTICALS

Strict Liability. The Divisional Court upheld convictions under the Care Homes Regulations 2001 and held that the offences in respect of the recording of the administration of medicines and the non-availability of medicines were offences of strict liability (*Brooklyn House Limited v. Commission for Social Care Inspection*, 25th May 2006).

WASTE

Installation. The Court of Appeal (Civil Division) held that two sets of premises half a mile or more apart and connected only by a pipeline could not be on the "same site" notwithstanding that this resulted in the Directive not being properly transposed into domestic law (*United Utilities Water plc v. Environment Agency*, 19th May 2006).

Licence. An appeal by way of Case Stated against a conviction under the Environmental Protection Act 1990 in respect of the storage of waste was dismissed. Waste was stored once it was deposited and continued to be stored until it was removed (*Skipaway Ltd v. Environment Agency*, 5th April 2006).

WATER POLLUTION

Sentence. The Environment Agency was fined £7,500 for polluting a river. The Agency had contracted a firm to carry out work and cement waste was allowed to flow into the river (Daily Telegraph, 18th May 2006).

HIGHWAYS

Water Flow. In judicial review proceedings following an appeal to the Magistrates' Court in respect of an abatement notice it was held that the word "choked" was not confined to an ever-present or continuous state of affairs (*R (On the Application of Robinson) v. Torridge District Council*, 27th April 2006).

REGULATION

Sanctions. A consultation document was issued in May 2006 entitled "Regulatory Justice: Sanctioning in a Post-Hampton World". It discusses the possibility of alternative sanctions in respect of some regulatory offences.

ANIMALS

Restrictions. The prosecution applied for judicial review of a decision of the Crown Court which ordered that the Defendant should keep no more than 25 horses at any one time. The Administrative Court held that there was no discretion available in respect of the number of animals to which the prohibition extended (*R (RSPCA) v. Chester Crown Court*, 17th May 2006).

TRADEMARKS

Statutory Defence. Magistrates upheld the defence under Section 92(5) of the 1994 Act in respect of various items of clothing on a market stall. The evidence was that the Defendant had bought the items at a very low price from a clearance stock provided by someone he knew only by his first name. The Administrative Court held that the defence was not one of good faith but of reasonableness and it applied equally to experienced and inexperienced traders. In this case a reasonable person would not have taken the risk and the case was remitted for reconsideration (*West Sussex CC v. Kahraman*, 13th June 2006).