



TRADING LAW BULLETIN

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CONSUMER CREDIT

Hire Agreements. The House of Lords upheld the decisions of the lower Courts that providing a photocopier without charging a hire fee was not a regulated consumer hire agreement under Section 15 of the 1974 Act. The photocopiers were leased to operators of retail business in shops and sub-post offices. Customers, and the retailers if they wished, could use the photocopiers and the retailer undertook to collect the sums paid for the copies and account to the owner subject to a deduction of a commission. The commercial purpose of the agreement was entirely different from a consumer hire agreement, the obligations on the retailer were designed to maximise the use of the equipment. The contract could be described as the delivery of the photocopier to the bailee in return for a reward to the bailee by way of commission on all sums paid for the copies made by it; the photocopier itself was not being hired by the bailee (*TRM Copy Centres (UK) Limited v. Lanwall Services Limited*, 30th March 2009).

Second Charge Lending. The OFT published draft Guidance for industry in respect of second charge lending in May 2009.

Declarations. The Liverpool County Court considered the interaction between Sections 106, 113 and 142. It was held that no amount is received by the creditor so that Section 106 is not engaged in circumstances where nothing was in fact received at the conclusion of the agreement but the outstanding debt was merely re-financed by another agreement (*Watson v Progressive Financial Services*, 21 April 2009).

Cancellable Agreements. The Court of Appeal dismissed an application for permission to appeal against a High Court decision that there had been no breaches of the copy agreement provisions under Section 78 nor were there any defects in respect of the cancellable agreements or default notices as alleged by the cardholders (*Rankine v. American Express Services Europe Limited*, 28th April 2009).

Winding Up. The Secretary of State petitioned to wind up a number of companies on the ground that it was expedient in the public interest. The main activity of the relevant company was acting as a broker in the sale of financial products in particular to the sub-prime market. The Court upheld the allegations of a lack of commercial probity and the winding up order was made (*Secretary of State for Business Enterprise and Regulatory Reform v. Charter Financial Solutions Limited*, 22nd May 2009).

Licensing Appeals. The Tribunals Service have announced that the Consumer Credit Appeals Tribunal is scheduled to become part of the First Tier Tribunal in September 2009 and will be transferred into the new General Regulatory Chamber.

FOOD

Sentence. A fine of £58,000 was imposed on Sainsbury's for use-by date offences in the Crawley Magistrates' Court.

Food Hygiene. An Environmental Health Officer visited a restaurant to inspect the fume extraction system. A number of shortcomings were identified and an improvement notice was served. The Appellants were convicted before the Magistrates of offences under the Food Hygiene (England) Regulations 2006 and appealed to the High Court on the basis that every defect in the extractor system related to those parts of the system which were outside of the building. The High Court held that it was not open to the Justices to conclude that the extractor system was not "suitable and sufficient" for the purposes of the Regulations and the convictions were quashed (*Kothari and Others v. London Borough of Harrow*, 17th June 2009).

Date Coding. A consultation exercise is proposed on reducing consumer confusion regarding labelling to prevent edible food from being thrown away which could involve phasing out "sell-by" and "display until" labels.

BANK CHARGES

Stay of Proceedings. A consumer appealed from a County Court decision refusing to lift the general stay on proceedings in respect of bank charges. It was said that the consumer had mortgage arrears and had been served with a warrant of possession. The High Court held that no application had been made to suspend the warrant which could have been done and the appeal was dismissed (*Rutherford v HSBC Bank plc*, 6 April 2009).

NUISANCE

Abatement Notice. An appeal was made against an abatement notice in respect of a light which was said to cause a nuisance. The Magistrates allowed the appeal but the chairman had visited the site and taken photographs and spoken about it with the other Magistrates. The High court quashed the decision and remitted it to a differently constituted Bench (*R(Broxbourne Borough Council) v. North and East Hertfordshire Magistrates' Court*, 3rd April 2009).

DOGS

Procedure. The appellant appealed a conviction for

owning a dog which was dangerously out of control. The aggravated form of the offence was originally charged but the Crown Court accepted that it was a summary offence and a plea of guilty was entered. The Court of Appeal (Criminal Division) held that there was no relevant statute or authority to accept such a summary offence (*R v. Buckley*, 13th May 2009).

TRADING SCHEMES

Pyramid Trading. An OFT investigation has continued into an unlawful pyramid selling scheme in the Southwest of England and South of Wales. An OFT press release on 29th April 2009 said that the scheme appears to be aimed at women with each participant promising to enlist two more members. Up to £18 million may have passed through the scheme with thousands paying up to £3,000 each to join.

UNFAIR TERMS

Estate Agents. The Court of Appeal have upheld an appeal by the OFT in respect of the remedies which would be available if the Court found that certain terms in relation to letting agreements with landlords were held to be unfair. The distinction was between a general challenge by a body such as the OFT and an individual challenge which could arise in litigation between an estate agent and a landlord (*OFT v. Foxtons Limited*, 2nd April 2009).

International Agreements. The Court of Appeal considered whether the reasonableness test in the Unfair Contract Terms Act 1977 applied. The Court held that the policy of excluding international supply contracts from the statutory controls of exclusions clauses was the purpose of Section 26 and this applied to the Misrepresentation Act. If a person carrying on business abroad hired equipment from a supplier in the United Kingdom and both parties knew the intention was for it to be used abroad, the lease was one under which the goods would be carried from the territory of one state to the territory of another and could be described as an international supply contract (*Trident Turbo Prop (Dublin) Limited v. First Flight Couriers Limited*, 2nd April 2009).

CARE HOMES

The Care Standards Tribunal dismissed an appeal against a decision to cancel a registration for the proprietor of a care home. The Divisional Court held that the burden of proof lay on the proprietor and the decision of the Tribunal was upheld (*Marshel v Commission*, 3 April 2009).

HEALTH AND SAFETY

Employer. The appellant had taken charge of the building of an extension of house. A fatal accident occurred. The deceased was one of a number of unqualified Slovakian nationals paid between £25 and £30 per day to work. It was submitted that the workers were not employees within the 1974 Act. The Court of Appeal said that the jury had to be sure, before it convicted, that when at work the worker was under an obligation to work during the day for which he was paid. Despite defects in the summing up the verdict

was safe as it was fanciful to suggest that any particular worker would regard himself as free to walk off site during the course of the day (*Pola v. Health and Safety Executive*, 7th April 2009).

Work Equipment. The claimant was employed by a local authority and was required to collect people from their homes to take them to a day centre by minibus. One had a wooden ramp to enable her to manoeuvre her wheelchair. It had been installed some years earlier by the health service. The ramp was not within the direct sphere of the local authority's undertaking and the House of Lords, in a civil case, held that it was not work equipment within the Regulations which had to be construed on the basis they were intended to give effect to the proposals submitted by the Commission and guided by the need to implement Directive 89/655 (*Smith v. Northamptonshire County Council*, 20th May 2009).

CONTROLLED WASTE

Escape. A Magistrates' Court upheld a submission of no case to answer in a prosecution against a leisure centre operator. There was no dispute that the rubbish had been produced by the defendant and the Magistrates said that there was no evidence it had undertaken any underlying measures to prevent the escape of the controlled waste but no reasonable Tribunal could infer a failure to comply with the statutory obligations. The Divisional Court held that the only reasonable inference open was that the local authority had established a prima facie case in that the defendant had failed to take all reasonable steps to prevent the escape (*Milton Keynes Council v. Leisure Connection Limited*, 5th June 2009).

CONSUMER PROTECTION

White Paper. The Department for Business Innovation and Skills has published a consumer White Paper with four themes; Help for Vulnerable Consumers, A New Approach to Consumer Credit, Empowering Consumers Through Better Enforcement and Information and Modernising Consuming Law.

LICENSING

Premises Licence. The holder of the premises licence was not automatically liable for the carrying out of unauthorised licensable activities at the licensed premises because the liability for such activities was dependent on a factual finding of who the person was who carried out those activities. The defendant owned a number of public houses and it was alleged that there were breaches of the conditions of the premises licence. The manager and designated premises supervisor admitted breaches and pleaded guilty. The defendant denied the offences but was convicted. The Divisional Court held that the statutory provision focussed on the actual conduct and the mere fact that a person was the holder of a licence did not mean he was responsible for the licensed activities carried out at those premises and the appeal against conviction was allowed (*Hall and Woodhouse Limited v. Poole Borough Council*, 3rd April 2009).