



TRADING LAW BULLETIN

ISSUE NO. 77
JUNE 2013

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CONSUMER CREDIT

Hire Agreement. The Court of Appeal considered the duty to mitigate in respect of a breach of a hire agreement for a forklift truck. The forklift truck turned out to be the wrong size. The supplier offered to modify it and the offer was rejected. The Court of Appeal upheld the Judge's decision that the rejection had not been unreasonable (*Manton Hire v. Ash Manor Cheese Co Ltd* [2013] EWCA Civ 548).

Mortgages. A substantial number of properties were bought to let by the Claimant with finance provided by the Defendant. Receivers were appointed. There was a dispute about possession and control and the Claimant alleged an oral agreement about the issue. The High Court held that the Defendant had been entitled to appoint receivers, there was no obligation to terminate the receivership and any agreement of the kind alleged was a variation but was inherently improbable given the express terms (*Jumani v. Mortgage Express*, 17th May 2013).

High Cost Credit. The House of Commons have issued a research paper (13/44) on the high cost credit bill.

Harassment. A bank appealed against a finding that it was liable to a customer in respect of harassment. The Court of Appeal upheld the order requiring payment of £7,500 damages. The harassment was repeated telephone calls when the customer had asked not to be called (*Roberts v. Bank of Scotland Plc* [2013] EWCA Civ 882).

Fixtures. The High Court has given a detailed judgment in respect of what can constitute fixtures as opposed to chattels (*Peel Land & Property Ltd v. T S Sheerness Steel Ltd* [2013] EWHC 1658 (Ch)).

Green Deal. DECC had issued a consultation on the proposal to amend the definition of "debtor" for the purposes of the Green Deal. The OFT and DECC had issued joint guidance in respect of circumstances in which the suspension of the Green Deal charge be considered. The OFT has published a paper in respect of the licensing requirements for Green Deal participants.

Bankruptcy Funding. The Court of Appeal has again considered the issue of the categorisation of the agreement where funds have been made available to annul a bankruptcy. It was held that it was a re-financing within Section 11(1)(c) (*Consolidated Finance Limited v. Collins* [2013] EWCA Civ 475).

Statutory Interest. Consideration was given to the award of post-judgment interest and it was held that there was no power to award the same except under the Judgments Act 1838 in respect of a charging order. The contractual rate was high but it did not result in an unfair relationship (*Chubb v. Dean*, 24th April 2013).

Penalties. The High Court of Australia have considered the issue of penalties in respect of unauthorised overdrafts (*Andrews v. Australia & New Zealand Banking Group* (2012) HCA 30).

Licensing. In June 2013 the OFT used its power to suspend a consumer credit licence for the first time.

Debt Recovery. The Solicitors' Regulation Authority has issued guidance on the need to keep control of debt recovery work particularly with regard to the OFT guidance.

Limitations. The Court of Appeal considered limitations in respect of a hire-purchase agreement. It was held that the period did not begin to run from the time of the first default (*BMW Financial Services v. Hart* [2012] EWCA Civ 1959).

Financial Compensation. The Financial Services Compensation Scheme failed in an appeal against a decision that a mortgagor could obtain compensation for the full loss occasioned by bad advice concerning an investment property in Spain (*Emptage v. Financial Services Compensation Scheme* [2013] EWCA Civ 729).

Regulated Activities. The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 has been made.

Regulation. HM Treasury and BIS has issued a summary of responses on transferring consumer credit regulation in June 2013. The House of Commons committee of public accounts has published a report on regulating consumer credit (HC 165).

Harassment. A bank successfully appealed against a decision granting an injunction to prevent the bank from harassing a customer (*Bank of Scotland v. Johnson*, 19th June 2013).

Modifying Agreements. The High Court of Northern Ireland has considered the issue of modifying agreements in respect of successive agreements (*Swift Advances v. McKay* [2013] NI Ch 3).

FOOD

Abuse of Process. The High Court dismissed an application for judicial review of a decision refusing to stay as an abuse of process the prosecution of a pub business under the Food Hygiene Regulations (*R (On the application of Barons Pub Co Ltd) v. Staines Magistrates' Court* [2013] EWHC 898 (Admin)).

De-sinewed Meat. The High Court has referred to the European Court the question of whether de-sinewed meat is mechanically separated meat whilst giving the view that it is not (*R (On the application of Newby Foods Ltd) v. Food Standards Agency* [2013] EWHC 1966 (Admin)).

PROPERTY MISDESCRIPTION

Repeal. From 1st October 2013 the Property Misdescriptions Act 1991 will be repealed.

UNFAIR COMMERCIAL PRACTICES

No Case to Answer. The Court of Appeal allowed a prosecution appeal against a decision that there was no case to answer in respect of a prosecution under the 2008 Regulations concerning a company selling security systems (*R v. X Limited* [2013] EWCA Crim 818).

FINANCIAL SERVICES

Financial Ombudsman. An independent financial adviser sought judicial review of an FOS decision concerning unsuitable advice to take out a personal pension. The principal grounds were the time taken to determine the matter, the absence of an oral hearing and the unfairness of the investigation. The High Court rejected the application (*R (on the application of Calland) v. Financial Ombudsman Service Limited* [2013] EWHC 1327 (Admin)).

Disciplinary Procedures. The Court of Appeal refused an application for anonymity in respect of proceedings brought by the FSA (*R (on the application of Wilford) v. Financial Services Authority* [2013] EWCA Civ 674).

Alternative Remedy. A finance director sought to quash a decision notice issued by the FSA for lack of proper reasons. The Court of Appeal held that, save where the circumstances were exceptional, such an application would not succeed if there was an alternative remedy available. The Court was not to entertain such an application even if the FSA was alleged to have exceeded its powers so the decision was a nullity (*R (on the application of Wilford) v. Financial Services Authority* [2013] EWCA Civ 677).

UNFAIR TERMS

Gas Provision. The European Court considered alleged unfair terms in consumer contracts in proceedings in Germany. The issue was the relationship with the contractual terms and rules of national legislation (*RWE Vertrieb AG v. Verbraucherzentrale e. V.* C-92/11).

BETTING

Horse Racing Levies. The Court of Appeal dismissed an appeal against a decision that when people used betting exchanges that did not constitute bookmaking within the 1963 Act (*R (on the application of William Hill Organisation) v. Horserace Betting Levy Board* [2013] EWCA Civ 487).

ENFORCEMENT

Transfer of Consumer Advice. On 27th March 2013 the Public Bodies (OFT Transfer of Consumer Advice Scheme Functions and Modification of Enforcement Functions) Order 2013 was made.

DENTISTRY

Tooth Whitening. The Divisional Court held that dentists usually performed tooth whitening so it was a treatment within the Dentists' Act 1984 (*General Dental Council v. Jamous*, 10th May 2013).

LICENSING

Taxis. The High Court allowed a local authority's appeal against the decision allowing the appeal of a taxi driver to revoke his licence because of public safety. The High Court said that the Magistrates' decision took into account a negative view of the procedure of the local authority and the Magistrates had not considered the evidence afresh. The matter was remitted for a re-hearing (*Canterbury City Council v. Ali*, 18th June 2013).

COPYRIGHT OFFENCES

TV Football. The Divisional Court allowed an appeal from a decision of a District Judge dismissing an information under the 1988 Act. The issue related to a residential package and licensed premises (*Federation Against Copyright Theft Ltd v. Ashton*, 7th June 2013).

NOTICES

Time. The High Court granted an application for judicial review in respect of enforcement notices. It was held that the Claimant's failure to appeal on time had been caused by a planning consultant and the local authority (*R (on the application of Stern) v. Horsham District Council*, [2013] 3 All ER 798).

HIGHWAYS

Significant Interference. The High Court rejected an application for judicial review of a decision that the Council should be ordered to remove an obstruction and to pay the interested parties' costs (*Derbyshire County Council v. High Peak Magistrates' Court* [2013] EWHC 1762 (Admin)).

RATING

Business Rates. An appeal was allowed in respect of a liability order. The issue was whether the summons had been served at a place of business. The matter was remitted (*Chowdhury v. Westminster City Council*, 11th June 2013).

COSMETICS

Regulations. On 11th July 2013 the Cosmetic Products Enforcement Regulations 2013 came into force.

FRANCHISING

Expenses. The High Court determined the issue of a contingency fee in respect of reports for calculating savings in respect of expense reduction services (*Derek Hodd Limited v. Climate Change Capital*, 14th June 2013).

CONSUMER DISPUTES

Regulations. On 21st May 2013 Regulation No. 524/2013 was made on dispute resolution and on the same day Directive 2013/11/EU was made on alternative dispute resolution.

SEX ESTABLISHMENTS

Licensing. The High Court held that a local authority could take into account the character of an area both at the present time and in the future in respect of the renewal of a sexual entertainment venue licence for a lap dancing club (*R (on the application of Thompson) v. Oxford City Council* [2013] EWHC 1819 (Admin)).

Charges. The Court of Appeal upheld a Judge's decision that enforcing the licensing system against unlicensed operators did not qualify as the costs of authorisation proceedings and formalities and could not be reflected in the licence fee (*R (on the application of Hemming) v. City of Westminster* [2013] EWCA Civ 591).

ABBATOIRS

Charges. The High Court held that there was no authority for the Food Standards Authority to charge slaughterhouse and cutting plant operators for a shortfall in the EU minimum charge (*R (on the application of Jasper) v. Food Standards Agency* [2013] EWHC 1788 (Admin)).

HEALTH & SAFETY

Sentencing. The Court of Appeal dismissed an appeal against a fine of £450,000 in respect of a fatality where the company had had sub-contracted the work but was directly involved in the circumstances leading to the death (*R v. Watkin Jones & Sons Ltd*, 24th April 2013).

Sentencing. The Court of Appeal reduced from £100,000 to £70,000 a fine in respect of the death of an elderly woman at a rest home (*R v. D Roche Ltd*, 6th June 2013).