



TRADING LAW BULLETIN

ISSUE NO. 54
SEPTEMBER 2007

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

Litigation Funding. The issue of enforceability in respect of credit agreements to finance an insurance premium and solicitor's disbursements in litigation funding was considered in the Commercial Court. Following the earlier case of *Goshawk Dedicated (No.2) Limited v. Bank of Scotland* [2006] 2 All ER 610, the Court found that the inclusion of the 12 words in a footnote to the cancellation notice was correct in respect of the insurance because it was an exempt linked transaction. It was also held that the expressions "outstanding loan" and "accrued interest payable" did not refer to amounts which were legally enforceable as unenforceability under the Consumer Credit Act 1974 did not result in a void contract (*Bank of Scotland v. Euclidian* [2007] CTLC 151).

Hire Agreements. A company supplied photocopying machines to retailers. Takings from the photocopiers were paid by the retailers to the company after the deduction of a commission. The High Court held that any agreement between the company and a retailer who was an individual was not a regulated hire agreement because the retailer was given an opportunity to earn commission by housing the photocopier and, further, the concept of hire is one which entails a stipulated payment or payments as consideration for the hire (*TRM Copy Centres (UK) Limited v. Lanwall Services Limited*, 18th July 2007).

Redemption Charge. The claimants bought a property using a buy-to-let mortgage. The claimants wished to re-pay early and challenged an early redemption charge on the grounds that it was a penalty and was not binding by virtue of the Unfair Terms in Consumer Contracts Regulations 1999. The High Court held that the provision was for a payment of money on the happening of a specified event other than breach and was therefore not a penalty. In addition the early redemption charge was an essential term of the mortgage so that it was a core term and not within the 1999 Regulations (*Smith v. Mortgage Express* [2007] CTLC 134).

Overdraft Charges. On 26th July 2007 the Office of Fair Trading announced that High Court proceedings

were being issued for a declaration on the applicable law in respect of unauthorised overdraft charges.

Discretionary Relief. The Privy Council considered the terms of the Jamaican Moneylending Act 1938 in respect of an agreement which failed to conform to the Act. It was said that the discretionary power conferred on the Court is particularly apt to cater for accidental inaccuracies in the statement of the amount of money lent, the rate of interest, the date of the transaction or in any of the other matters specified in the Act. In the present case the overstatement of the amount lent was very substantial and the transaction would not be enforced (*Palmer v. Cornerstone Investments and Finance*, 16th July 2007).

Debt Management. The High Court dismissed a judicial review application by an IVA provider, Debt Free Direct, in respect of an Advertising Standards Agency determination concerning a television advertisement.

Loan Sharks. On 19th September 2007 the Department for Business, Enterprise and Regulatory Reform announced a "crack down on loan sharks" by way of funding almost £3 million for local authority action.

Financial Ombudsman Service. Directions were given by the ombudsman to two financial advisers which had the effect of requiring payments by them to their former clients of sums in excess of the statutory monetary limit. The firms were willing to pay that amount but no more. In injunction proceedings to require the firms to make payment of the greater sums the High Court held that the firms could raise the issue of the effect of the directions in the proceedings and that the ombudsman did not have power to make a direction that would require a firm to make payment in excess of the statutory maximum (*Bunney v. Burns Anderson plc* [2007] 4 All ER 246).

Home Credit. The competition commission has made the Home Credit Market Investigation Order 2007 which came into force on 4th October 2007.

FOOD

Colourings. Chilli powder supplied to the claimant contained a minute quantity of an industrial dye that was not a permitted additive in food. The High Court held that whether the dye was within the Colours in Food Regulations 1994 did not depend upon the amount present. The dye had been added deliberately and because the powder contained measurable quantities of dye it was not reasonably fit for its purpose (*Hazlewood Grocery Limited v. Lion Foods Limited*), 26th July 2007).

Packaging. From April 2009 the restrictions on the packaging of food in different sizes in respect of a number of foods such as butter, cereal, potatoes, sugar, dried fruit, pasta and rice will be removed.

Jurisdiction. A number of people became ill due to gastrointestinal infections as a result of using the services of a hotel in Cyprus. The question of jurisdiction arose and it was held that the challenge of the Part 20 Defendant to the jurisdiction should succeed because the Part 20 claim did not count in the "third party proceedings". The third party proceedings had been issued by the defendant company against the hotel in Cyprus (*Barton v. Golden Sun Holidays Limited*, 3rd August 2007).

MONEY TRANSFERS

Hawala System. The claimant submitted that money he had placed with the operator of a Hawala money transfer facility was held on trust because there was an obligation to apply the money for a specific purpose. The High Court held that the operator of the facility was a trader using his customers' money for trade and he was not a trustee. It was inherent in the system that the money paid was not kept in separate accounts (*Re I*, 4th July 2007).

UNDER-AGE SALES

Tobacco Products. The Children and Young Persons (Sale of Tobacco Etc.) Order 2007 comes into force on 1st October 2007 increasing the minimum age for sales to 18.

HEALTH AND SAFETY AT WORK

Evidence. The Court of Appeal (Criminal Division) considered the standard of proof in respect of an offence allegedly committed through neglect under the Health & Safety At Work Etc. Act 1974. Where there was no actual knowledge of a state of facts, the question was whether the defendant should have been put on enquiry so as to require him to check that the relevant safety procedures were in place.

There was a distinction between consent, connivance and neglect (*R v. P*, 11th July 2007).

Sentence. A fatal accident resulted from an attempt to recover a single deck bus. A fine of £160,000 on the company was reduced to £80,000. It was necessary to discount the starting point for the fine because of the modest financial position of the company (*R v. Farrell*, 12th July 2007).

POLLUTION

Sentence. Following a plea of guilty of failing to comply with a condition in a permit in respect of an external door a fine of £400,000 was imposed. The Court of Appeal (Criminal Division) substituted a fine of £50,000 (*R v. Cemex Cement Ltd.*, 18th July 2007).

ESTATE AGENTS

Legislation. The Consumer, Estate Agents and Redress Act received Royal assent on 19th July 2007. It will be compulsory for all estate agents to belong to an independent ombudsman scheme.

PRIZE DRAWS

Enforcement Order. The Office of Fair Trading obtained a High Court enforcement order against a prize draw promoter which had distributed a substantial number of mailings purporting to offer rewards.

CLAIMS MANAGEMENT

Legislation. On 23rd April 2007 provisions of the Compensation Act 2006 came into force and created an offence of providing regulated claims management services unless authorised or otherwise being within Section 4(1) of the Act.

BETTING

Discriminatory Legislation. The European Court of Justice has held that national legislation prohibiting the taking of bets etc. without a licence or police authorisation given by the Member State constituted a restriction on the freedoms to provide services and of establishment (*Criminal Proceedings against Placanica* [2007] All ER (EC) 827).

TRADE DESCRIPTIONS

Applying the Description. The High Court held that a trade description was applied in a clocking case when the odometer was reversed. The Court also ruled that, even though a local authority officer laid the information, the prosecutor was the local authority for the purpose of the time limits under Section 19 of the Trade Descriptions Act 1968 (*R (Donnachie) v. Cardiff Magistrates' Court* [2007] CTL 174).