



TRADING LAW BULLETIN

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CONSUMER CREDIT

Categorisation. A company assisted people to have their bankruptcy annulled and, when this had been arranged, another company in the group provided credit to enable the bankruptcy debts to be paid and to pay the fee to the other company. It was argued that this was a debtor-creditor-supplier agreement for a “package” and therefore exempt. The Court of Appeal held it was not a debtor-creditor-supplier agreement. The purpose stated in the agreement was circular and no term could be implied as to the purpose of the financing. An amendment to the Notice of Appeal to argue that Section 12(c) applied was refused (*Consolidated Finance Limited v. McCluskey* [2012] EWCA Civ.1325).

Assignment. A borrower argued that because there had been an assignment, the assignee was not a creditor as defined in the 1974 Act because only rights can pass and only a creditor can enforce a regulated agreement. The High Court rejected that argument saying that duties are the statutory duties and that a legal assignee may be a creditor. In any event there would be a right to sue unaffected by the Act (*Jones v. Link Financial Limited* [2012] EWHC 2402 (QB)).

Payment Protection. In a PPI case the claim was rejected because accurate and contemporaneous transcripts of telephone calls cast grave doubts on the reliability of the evidence of the Claimants (*Goodman v. Central Capital Limited* [2012] EWHC B8 (Mercantile)).

Stay of Proceedings. In a PPI case the High Court considered a “scheme stay” and a “Harrison stay”. Because the Harrison case is not proceeding to the Supreme Court such a stay is no longer relevant. Guidance was given as to when a scheme stay would be imposed so that the claim can first be made through the Ombudsman (*Andrew v. Barclays Bank Plc* [2012] EWHC B 13 (Mercantile)).

Legal Charge. The High Court considered the position where there was a mistaken release of a charge and the Court held that the bank was protected by the standard solicitors’ undertaking (*Menelaou v. Bank of Cyprus Plc* [2012] EWHC 1991 (Ch)).

Licensing. The OFT had issued a draft guidance on the power to suspend consumer credit licences (OFT 1458).

Surveyors’ Negligence. The High Court held that surveyors had failed to exercise reasonable skill because they did not identify any incentives being offered but the resulting valuation would have been the same (*Platform Funding Limited v. Anderson* [2012] EWHC 1853 (QB)).

Fraud. A judgment was set aside where the alleged borrower said that she had been a victim of fraud and her signature on the legal charge was a forgery (*Barons Bridging Finance v. Nnadikeueu*, 6th September 2012).

Licensing. The OFT have imposed requirements on the company which acquired a log book loan business.

Leasing. The Court of Appeal considered an indemnity in respect of a lease agreement of a lorry and held that the appellant was not liable under the indemnity in respect of a payment made by the finance house to settle a claim relating to alleged defects (*Waite v. Paccar Financial Plc* [2012] EWCA Civ.901).

FOOD

Genetic Modification. The ECJ have considered the question of genetically modified matter. It was held that a substance such as pollen derived from a variety of genetically modified maize which had lost its ability to reproduce and was totally incapable of transferring the genetic material no longer came within the scope of Regulation 1829/2003 (*Bablok v. Freistaat Bayern* [2012] All ER (EC)).

UNFAIR TERMS

Set Off. The Commercial Court held that a no set off provision satisfied the requirement of reasonableness under the 1977 Act in respect of a sale of goods claim (*Wilson v. Holt* [2012] EWHC 2477 (Comm)).

SALE OF GOODS

Jurisdiction. The European Court has considered the question of jurisdiction in respect of a case involving the rescission of a contract for the sale of a motor vehicle. It was held that the provisions of Article 15 of Brussels 1 did not require the contract to be concluded at a distance (*Muhlleitner v. Yusufi* Case C-190/11).

Bespoke Systems. The Court of Appeal that the design and installation of a bespoke system in respect of a fire suppression system could not be treated as a supply of goods (*Trebor Bassett v. ADT Fire and Security* [2012] EWCA Civ 1158).

Forgery. In a trial relating to a painting which had been found not to have been painted by a certain artist it was held that the requirement of reasonableness was met for the purposes of a Misrepresentation Act 1967 (*Avrora Fine Arts v. Christie* [2012] EWHC 2198 (Ch)).

ENVIRONMENTAL POLLUTION

Noise. A notice was served in respect of noise pollution concerning a metal waste disposal yard. The High Court held that the steps which were to be taken had not been identified and the notice was quashed (*R (On the Application of European Metal) v. Environment Agency* [2012] EWHC 2361 (Admin)).

False Entries. A reasonably junior employee made false entries and returns as to river discharge. The Court of Appeal overturned his corporate employer's conviction (*R v. St Regis Paper* [2011] CTLC 291).

CLAIMS MANAGEMENT COMPANIES

Amendments to Rules. On 22nd August 2012 the Ministry of Justice published proposals for amendments to the conduct rules.

Civil Restraint. The High Court granted a civil restraint order against a claims management company as a result of their conduct in respect of litigation (*Malik v. Sir Robin Wales*, 11th July 2012).

FINANCIAL SERVICES

Damages. The High Court ruled that, although an advisor had been negligent, no loss was suffered because the loss was caused by unprecedented market turmoil and was therefore too remote. The Court of Appeal held that the risk of market movement was of the type that the Claimant did not realise he was committed to and was exactly the risk which caused his loss (*Rubenstein v. HSBC* [2012] EWCA Civ.1184).

PAYMENT SERVICES

Regulations. The Payment Services Regulations 2012 will come into force on 1st October 2012.

GAMBLING

Licences. The High Court held that a local authority could not issue concurrent bingo and casino licences for the same premises under the Gambling Act 2005 (*Clockfair v. Sandwell MBC* [2012] EWHC 1857 (Admin)).

BYELAWS

Fines. Following a prosecution in respect of blocking a river and abuse of a rowing coach the Defendant was fined £75 and the prosecution awarded costs of £6,871. The High Court quashed the costs order and remitted the matter for reconsideration (*R (On the Application of Middleton) v. Cambridge Magistrates' Court*, 3rd July 2012).

CONFISCATION

Unlawful letting. The Court of Appeal (Criminal Division) held that confiscation proceedings could not be brought where a landlord was found guilty of renting property without a licence, contrary to the Housing Act 2004 (*Sumal & Sons v. Newham LBC* [2012] 2 P & CR DG 19).

BETTING

Internet. The applicant alleged that customers of internet betting exchanges should pay the horserace betting levy. The High Court said that they were not bookmakers and therefore not liable (*R (On the Application of William Hill) v. Horserace Betting Levy Board* [2012] EWHC 2039 (Admin)).

UNFAIR COMMERCIAL PRACTICES

Warrants. Warrants under the 2008 Regulations had been issued by a District Judge and they were challenged in the Divisional Court. The Court commented on the close involvement of trade and commercial entities in the prosecution. The warrants were set aside for material non-disclosure (*R (On the Application of Vuciterni) v. Brent Magistrates' Court* [2012] EWCA 2140 (Admin)).

ALTERNATIVE DISPUTE RESOLUTION

Draft Directive. The European Commission have issued a draft Directive on alternative dispute resolution for consumer disputes (COM (2011) 794).

CONSUMER RIGHTS DIRECTIVE

Consultation. BIS has issued a consultation paper on the Consumer Rights Directive.

PRIVATE PROSECUTION

Laying of Information. Informations were laid concerning TV broadcasting. They were laid by an individual acting on behalf of a company retained by the Football Association to investigate and prosecute infringements. It was held that the District Judge had been correct to dismiss the informations because the prosecutor was conducting litigation which was a reserved legal activity and the proceedings were void (*Media Protection Services Limited v. Crawford* [2012] EWHC 2373 (Admin)).

COSMETIC SURGERY

Offences. The High Court held that a doctor who performed cosmetic surgery at a private clinic committed the offence of having carried on an independent hospital without being registered under the Care Standards Act 2000 (*Waghorn v. Care Quality Commission* [2012] EWHC 1816 (Admin)).

COSTS

Regulations. Amendments to Costs Regulations come into force on 1st October 2012 limiting the amount which can be recovered from central funds under a defendant's costs order.

DATA PROTECTION

Processing. The defendant was a credit reference agency under the 1974 Act. The Claimant said it had been in breach of its duty under the 1998 Act to ensure that his personal data was accurate and up-to-date. The High Court agreed (*Smeaton v. Equifax Plc* [2012] 4 All ER 460).