



TRADING LAW BULLETIN

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CONSUMER CREDIT

Litigation Funding. Litigation funders sued a firm of solicitors in respect of an obligation to make payment if borrowers under regulated credit agreements did not pay. They maintained that the regulated agreements were unenforceable because they did not express the interest rate, there was a failure to state how the repayments would be made, and that there was an incorrect notice of cancellation. The High Court held that the agreements were unenforceable but the Defendants were liable for the total amount payable under the unenforceable agreements but not any default interest (*Sutherland Professional Funding Limited v. Bakewells* [2014] CTLC 1).

Charges Register. A claim was brought for an indemnity in respect of losses suffered through rectification of the charges register. It was held that the claim was not defeated if there were overriding interests (*Swift v. Chief Land Registrar*, 31st January 2014).

Gaurantees. The High Court held that where a wife and husband had given a charge over their property and the husband had given the guarantee the wife could rely on the principle of exoneration (*Day v. Shaw* [2014] EWHC 36 (Ch)).

Registered Charge. The Court of Appeal dealt with the issue of a unilateral notice placed on the register to protect a charge. It was held that it was sufficiently accurate to be valid (*Bank of Scotland Plc v. Joseph* [2014] EWCA Civ 28).

Unlicensed Trading. Directions have been given by the Mercantile Court in the litigation involving the Barons Finance Limited cases (*In the Matter of Gopee* [2014] EWHC 138 (QB)).

Possession. In defence to a bank's possession claim it was alleged that there had been failures to comply with MCOB by not treating the customer fairly and not using other attempts before seeking possession. The Court of Appeal upheld the possession order (*Masih v. Yousaf* [2014] EWCA Civ 234).

Consumer Credit Regulation. The Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014 was made on 3rd February 2014.

Mortgage Code. The High Court held that the alleged failure on the part of the mortgagee to comply with MCOB was not a defence to possession proceedings (*Thakker v. Northern Rock (Asset Management) Plc*, 6th February 2014).

Statutory Statements. The High Court considered when the period of non-compliance started in the case of defective Section 77A statements which were given for the first time (*JP Morgan v. Northern Rock (Asset Management) Plc* [2014] CTLC 33).

Fitness Clubs. In the context of VAT issues arose as to arrears under contractual documentation requiring monthly payments (*Esporta Limited v. HMRC* [2014] EWCA Civ 155).

Instalments. A shipbuilder borrowed money from the business for which the ship was being built because of difficulty in meeting its obligations. There was a failure to repay and an application for summary judgment was made. The Judge held that there was an implied term of the loan agreement that the lender would cooperate in achieving contractual milestones. The Court of Appeal upheld the decision (*Swallowfalls Limited v. Monaco Yachting* [2014] EWCA Civ 186).

Mortgagee in Possession. The High Court considered the issue of the duty to sell the property at the best reasonable price (*Aodhcon Llp v. Bridgeco Limited* [2014] EWCA 535 (Ch)).

Mortgagor's Chattels. The Court of Appeal held that a mortgagee's duty in respect of a mortgagor's chattels remaining on the property after eviction had been discharged having regard to the mortgage conditions. The mortgagee had a choice of removing and storing the chattels or disposing of them (*Da Rocha-Afodu v. Mortgage Express Limited* [2014] EWCA Civ 454).

Credit Hire. An Order in a credit hire case recited that the Claimant could not rely on impecuniosity and this applied both to the justification for the duration of the hire as well as the payment of the credit hire charges (*Zurich Insurance Plc v. Umerji* [2014] EWCA Civ 357).

Bills of Sale. The High Court considered issues relating to bills of sale in the case of a viola, and whether the agreement was made in the course of a consumer credit business and the issue of electronic signatures (*Bassano v. Toft* [2014] EWHC 377 (QB)).

Section 75 Liability. The Supreme Court upheld an appeal from Scotland in respect of a laptop computer acquired in 1998 using a Section 12(b) agreement. It was held that the consumer was entitled to rescind and had validly rescinded the credit agreement. The credit agreement was tied to a specific supply transaction and if that was brought to an end there would be an implication of a term by law that the credit agreement was conditional upon the survival of the supply contract (*Durkin v. DSG Retail Limited* [2014] UKSC 21).

PPI. The Court of Appeal considered a further payment protection insurance case in the context of ICOB. It was held that the broker should have elicited the genuine demands of the borrowers. The breach of ICOB was a causative loss to the borrowers (*Saville v. Central Capital Limited* [2014] CTLC 97).

FINANCIAL SERVICES

Ombudsman. The Court of Appeal held that consumers did not have a right to claim through the Court for compensation in excess of the amount awarded by the Financial Ombudsman being the maximum within that jurisdiction (*Clark v. Infocus Asset Management* [2014] EWCA Civ 118).

Data Protection. The Court of Appeal held that the Financial Services Authority was entitled to refuse to disclose the names of

members of staff who had dealt with an information request (*Edem v. Information Commissioner* [2014] EWCA Civ 92).

Interest Rate Swap. A claim that an interest rate swap transaction had not complied with Italian law and was therefore void was dismissed (*HSH Nordbank AG v. Intesa* [2014] EWHC 142 (Comm)).

Interest Rate Swap. In an application to strike out it was held that swaps are not insurance policies and the application to strike out was dismissed (*Nextia Properties Limited v. Royal Bank of Scotland* [2013] EWCA 3167 (QB)).

ANIMALS

Livestock Ban. The High Court held that a ban on livestock exports interfered with trade and could not be justified under Article 36 so that the local harbour authority was liable in damages to the exporters affected (*Braco De Vapor v. Thanet District Council* [2014] EWHC 490 (Ch)).

COMMERCIAL AGENTS

Compensation. The Court considered the Commercial Agents Regulations and held that they were inconsistent with a clause in an agreement that on termination the agent would not be entitled to compensation but would be indemnified (*Shearman v. Hunter Boot* [2014] EWHC 47 (QB)).

PRODUCT LIABILITY

Hip Replacements. The issue of jurisdiction arose in a personal injury claim. The claims were made by non-EU claimants. The implants were manufactured by an English company. It was held that had English law been applicable the Consumer Protection Act 1987 would not have benefited the claimants. The applicable law was that of New Zealand (*Allen v. Depuy International* [2014] EWHC 753 (QB)).

SALE OF GOODS

Car Registration. The Court of Appeal upheld a decision that the sale by auction of a car excluded its personalised registration number (*Harrison v. Madejski* [2014] EWCA Civ 361).

Alcohol. In February 2014 the Home Office issued a guidance on banning the sale of alcohol below the cost of duty plus VAT.

Passing of Property. The Court of Appeal considered the sale of generator parts and spares and held that there was no claim for the price independently of Section 49 of the Sale of Goods Act 1979 (*Caterpillar v. John Holt* [2014] 1 All ER 785).

LICENSING

Lap Dancing. It was held by the Court of Appeal that a local authority could have regard to imminent development even though it was not certain that it would be completed within the licence period but as licences could only be granted for 12 months reliance could not be placed on a development plan dealing with the next five years (*R (Thompson) v. Oxford City Council* [2014] EWCA Civ 94).

Taxi Licence. The Divisional Court upheld the decision of the Crown Court to grant a taxi driver his costs following substantial financial hardship when his licence was suspended. None of the complainants attended Court and the authority should have appreciated that the decision to suspend was unsustainable (*Luton Borough Council v. Zeb* [2014] EWHC 732 (Admin)).

Limitations. There was an application to transfer a premises licence and such application should be made within three months of the interim authority period. The Divisional Court held that the words of the Section excluded the day on which the interim authority notice was received and the application for judicial review of the refusal to consider the licence transfer was upheld (*R (on the application of Bednash) v. Westminster City Council*, 21st February 2014).

ADVERTISEMENTS

The Court of Appeal upheld the decision of Transport for London not to display a bus advert as it was likely to cause offence to a large number of members of the public but the case was remitted to determine whether Mayor of London had made the decision to further a re-election campaign (*R (on the application of Core Issues Trust) v. Transport for London* [2014] EWCA Civ 34).

ASA. The ASA have stated that it intends to explore whether the regulation of food and soft drink advertising is effective and proportionate.

ENVIRONMENT

Regulated Facility. In order to prove the Defendant guilty of knowingly permitting the operation of a regulated facility without a permit the prosecution only had to establish that the defendant was aware that waste operations were taking place and that he allowed or failed to prevent them (*Walker v. Environment Agency* [2014] EWCA Crim 100).

CONSUMER PROTECTION

Cancellation. The Court of Appeal considered a credit hire case and the Cancellation of Contracts Regulations 2008 and upheld the decision of the lower Court that the credit hire agreement was unenforceable (*Salat v. Barutis* [2013] CTL 250).

Transactional Decision. The Court of Justice (6th Chamber) gave a preliminary ruling concerning Article 6(1) of the Unfair Commercial Practices Directive in the context of a complaint that an IT product in question was not available and the consumer's trip to the shop and entering the shop was a transactional decision (*Svilupdosrl v. Autorita* (Case C-281/12)).

STATUTORY NOTICES

Noise. The Divisional Court upheld a District Judge's finding that a notice in respect of noise abatement was justified and not irrational. Although the notice was quashed because it was served outside the time limit the Court would not interfere with the decision as to costs (*R (Bramford Royal British Legion) v. Ipswich Magistrates Court* [2014] EWHC 526 (Admin)).

Tree Preservation. The Divisional Court held that a notice in respect of a tree preservation order should have been personally served (*Village Developments Plc v. Tandridge District Council*, 28th February 2014).

UNFAIR TERMS

Foreign Currency. In an Advocate General's opinion advice was given as to contractual terms in respect of the advancement of a loan in foreign currency and whether this related to the main subject matter, whether the agreement was drafted in plain intelligible language and the assessment as to whether it was unfair (*Kesler v. OTP Jelzalogbank Zrt* (C- 26/13)).