



# TRADING LAW BULLETIN

ISSUE NO. 78  
SEPTEMBER 2013

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## CONSUMER CREDIT

**Harassment.** A bank appealed to the Court of Appeal against an order made in respect of unlawful harassment. An injunction application had been made in the County Court. By the time of the hearing before the Circuit Judge on appeal the debts had been written off. The Judge made an order recording that fact and requiring the bank to pay 50% of the Claimant's costs. The bank's appeal to the Court of Appeal was dismissed (*Bank of Scotland v. Johnson* [2013] EWCA Civ 871).

**Lease purchase.** The High Court considered the interpretation of a lease purchase agreement and guarantees in respect of machinery in a factory following the appointment of administrators (*Lombard North Central plc v. Nugent* [2013] EWHC 1588 (QB)).

**Bills of Sale.** In County Court proceedings the Judge made a declaration that a car had been released and discharged from a bill of sale and declined to order delivery up. This was because a bankruptcy order had been made against one of the borrowers. The decision was reversed by the Court of Appeal (*Evans v. Finance-U-Limited* [2013] EWHC Civ 869).

**Unfair Relationships.** A bank lent over £50 million to the defendants. In proceedings they argued that there had been misrepresentations, there were conditions precedent, that there were unfair terms and an unfair relationship. These submissions were dismissed by the Commercial Court (*Deutsche Bank SA v. Khan* [2013] CCLR 5).

**VAT.** The Upper Tribunal considered the issue of residual input tax under hire purchase transactions (*HMRC v. Volkswagen Financial Services (UK) Limited* [2012] UKUT 394 (TCC)).

**Licensing.** The Solicitors' Regulation Authority have issued a press release about the need for solicitors' firms to seek their own consumer credit licence as a precursor to interim authorisation by the FCA if they carry on consumer credit activities.

**Mortgages.** The High Court refused an injunction in respect of mortgages taken out by former solicitors who have been struck off. The arguments included reference to Section 126 of the 1974 Act (*Waterside Finance Limited v. Karin* [2012] EWHC 2999 (Ch)).

**Mortgages.** Mortgagors appealed against a possession order. They alleged an oral agreement that a company could trade out of its debt. The Court of Appeal allowed the appeal and remitted the matter to the County Court (*Dunbar Assets Plc v. Dorcas Holdings Limited* [2013] EWCA Civ 864).

**Mortgages.** A question arose before the Court of Appeal as to property which had been leased in breach of a mortgage term. It

was held that the mortgagee had not treated the occupier as a tenant or waived its right to treat her as a trespasser by accepting rent (*Paratus MC Limited v. Doe Fosuhene* [2013] EWCA Civ 827).

**Unjust Enrichment.** The Court of Appeal considered the remedies which may be granted to reverse the effect of unjust enrichment namely subrogation to an unpaid vendor's lien (*Menelaou v. Bank of Cyprus UK Limited* [2013] EWCA Civ 1960).

**Guarantors.** The Appellant appealed against a decision which dismissed his appeal against a refusal to set aside a statutory demand. The Court of Appeal considered issues as to the signature on a guarantee and the need for all guarantors to sign and allowed the appeal (*Harvey v. Dunbar Assets Plc* [2013] EWCA Civ 952).

**Mortgages.** The High Court considered the duty owed in exercising a power of sale. The Court gave judgment for the claimant companies against a mortgagee in respect of the sale of aircraft (*Alpstream AG v. PK Air Finance SARL* [2013] EWHC 2370 (Comm)).

**Enforceability.** The High Court of Northern Ireland dealt with issues of enforceability under the 1974 Act and the question of subsequent credit agreements (*Swift Advances Plc v. McKay* [2013] NI Ch 3).

## FOOD

**Use-by Dates.** The Supreme Court allowed a prosecution appeal in respect of use-by dates and the necessity of proving that the labelling was required (*Torfaen CVC v. Douglas Willis Limited* [2013] CTLC 136).

**De-sinewed Meat.** Over a number of hearings the Administrative Court considered the issue of what was mechanically separated meat in the context of de-sinewed meat. The issue was referred to the European Court of Justice and interim relief was continued (*R (on the Application in Newby Foods Limited) v. Food Standards Agency* [2013] EWHC 3694 (Admin)).

**Duplicity.** The Divisional Court remitted a case following a conviction in respect of nut mixture in food. It held that the information on which the conviction was obtained was bad for duplicity (*Euro Foods Group v. Cumbria CC* [2013] EWHC 2659 (Admin)).

## FINANCIAL SERVICES

**Penalties and Prohibition Order.** A trader was the subject of penalties and a prohibition notice. He referred the matter to the Upper Tribunal which allowed his reference and decided that the trading did not amount to market abuse. On appeal to the Court

of Appeal, the Authority did not seek to go behind that finding but said that the trader was not a fit and proper person. The Court of Appeal allowed the Authority's appeal (*FCA v. Hobbs* [2013] EWCA Civ 918).

**FOS.** A financial services company applied for judicial review of an FOS decision that it had jurisdiction. The complaint related to a foreign exchange trading account. The High Court held that there was jurisdiction (*R (London Group) v. FOS* [2013] EWHC 2425 (Admin)).

**Mis-selling.** The Court of Appeal dismissed an appeal by claimants in respect of alleged mis-selling of an interest rate swap (*Green v. Royal Bank of Scotland* [2013] EWCA Civ 1197).

**Rate Swaps.** Defendants were permitted to plead issues relating to the alleged manipulation of LIBOR (*Deutsche Bank AG v. Unitech Global Ltd* [2013] EWHC 2793 (Comm)).

## TRADEMARKS

**Device Marks.** Spectacle suppliers were successful in a claim against a supermarket relating to the use of certain marks (*Specsavers International Limited v. Asda Stores Limited* [2013] E.T.M. R 46).

**Survey.** In a case involving cosmetics and internet advertising the High Court refused permission to conduct a survey in respect of alleged infringement and passing off where it was unlikely to be of real value to a Judge putting himself in the position of an average consumer (*Cosmetic Warriors Limited v. Amazon* [2013] EWHC 2471 (Ch)).

**Sentencing.** The Court of Appeal reduced a sentence of six months' imprisonment to four months in respect of trademark offences following a test purchase by Trading Standards (*R v. Guest* [2013] EWCA Crim 1437).

## SALE OF GOODS

**Affirmation.** The Court of Appeal dealt with a situation where a porch had been provided. The claim by the buyer was dismissed by the Court of Appeal and a counterclaim allowed (*Alliott v. Cheeld* [2013] EWCA Civ 508).

## ENVIRONMENT

**Confiscation Orders.** A scrap vehicle recovery business operator appealed against a confiscation order. The Court of Appeal held that the order was not disproportionate in respect of the unlawful unlicensed activity (*R v. Morgan* [2013] EWCA Crim 1307).

## TAXIS

**Licensing.** The High Court dealt with an appeal against an acquittal of plying for hire without a licence. It was held that the Magistrates appeared to have disregarded the evidence of Trading Standards Officers that they had flagged down the respondent at a certain time. The case was remitted (*Central Bedfordshire v. Shah* [2013] EWHC 536 (Admin)).

## UNFAIR COMMERCIAL PRACTICES

**No Case to Answer.** The prosecution appealed against a decision that there was no case to answer in respect of alleged offences under the 2008 Regulations in respect of a company selling

domestic security systems. The Court of Appeal allowed the appeal and remitted the matter for trial (*R v. X Limited* [2013] CTL 145).

**Misleading Practices.** In a case between two snow holiday companies the European Court dealt with a preliminary ruling on the contents of brochures (*CHS Tour Services GmbH v. Team4 Travel GmbH* (Case C-435/11)).

**Combined Offers.** The European Court of Justice considered car adverts which offered free comprehensive insurance in relation to Belgian legislation which generally prevented combined offers. It was held that the Unfair Commercial Practices Directive did not preclude a national provision laying down a general prohibition of the type in question (*Citroen v. Feeratie* [2013] All ER (EC) 1098).

## UNFAIR TERMS

**Mortgages.** The European Court of Justice considered Spanish legislation in the context of mortgage enforcement (*Aziz v. Caixa d'Estalvis* [2013] AUER (EC) 770).

## DATA PROTECTION

**Liquidators.** The High Court held that whilst liquidators often had to be registered as data controllers they were not personally liable for compliance because the company in liquidation retained control (*In the Matter of Southern Pacific Personal Loans Limited* [2013] EWHC 2485 (Ch)).