



TRADING LAW BULLETIN

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CONSUMER CREDIT

Data Protection. In 1997 a consumer entered into a hire-purchase agreement for a computer. The documentation was defective and the agreement was irredeemably unenforceable. In due course the debt was written off but an entry was filed with credit reference agencies. The Court of Appeal dealt with limitations and held that there was a breach of the Data Protection Act because the consumer could not properly be described as a defaulter (*Grace v. Black Horse Limited* [2014] CTLC 312).

Unfair Relationships. The borrower under a buy-to-let mortgage appealed to the Court of Appeal relying on Section 140A because of the way the lender had exercised its rights in the light of the borrower's mental disability. It was held that the borrower had not established that the relationship was unfair and the appeal was dismissed (*Graves v. Capital Home Loans Limited* [2014] CTLC 233).

Without Prejudice Negotiations. The High Court held that a claimant could rely on without prejudice negotiations in respect of the restructuring of a debt because the negotiations were solely directed at attempting to agree a restructuring of an admitted liability (*Avonwick Holdings Limited v. Webinvest Limited* [2014] EWCA 1436).

All Monies Charge. The Court of Appeal considered cause of action estoppel in respect of one of the securities given for a loan (*Commercial First v. Munday* [2014] EWCA Civ. 1296).

Solicitors' Negligence. The Court determined preliminary issues concerning the obligation on a lender's solicitor to inform the lender about the consequences of a lease in respect of shared ownership (*Redstone Mortgages Limited v. B Legal Limited* [2014] EWHC 3398 (Ch)).

Gifted Deposit. Damages were assessed in the High Court in respect of claims by borrowers where the vendor of buy-to-let properties operated a "gifted deposit/seller's cash back scheme" (*Morkot v. Watson and Brown* [2014] EWHC 3439 (QB)).

Chattel Leasing. The High Court considered the issue of possession under a chattel leasing agreement in respect of properties containing serviced office units (*In the Matter of Business Environment Fleet Street Limited* [2014] EWHC 3540 (Ch)).

Equitable Compensation. A bank appealed against an award in respect of equitable compensation as a result of a breach of trust by solicitors. It was held that a liability for breach of trust was not generally the same as a liability in damages for tort or breach of contract (*AIB Group v. Mark Redler* [2014] UKSC 58).

Payment Protection Insurance. The Supreme Court considered the issue of commission and held that the non-disclosure made the relationship unfair. The Court also held that the expression "by, or on behalf of, the creditor" did not extend beyond agency relationships (*Plevin v. Paragon Personal Finance Limited* [2014] 1 WLR 4222).

Valuer's Negligence. The High Court held that a claim against a valuer in respect of a bridging loan was time barred because the damage arose when the borrower failed to pay (*Toombs v. Bridging Loans Limited* [2014] EWHC 4566 (QB)).

Fixtures. In a High Court case involving a construction contract consideration was given as to whether certain items of equipment amounted to fittings forming part of the land (*Savoye Limited v. Spicers Limited* [2014] EWHC 4647 (TCC)).

Stay of Execution. The High Court refused a stay of execution in respect of summary judgment in a mortgage action. It was said that there were special circumstances where the action involved fraud. It was held that there were no substantiated grounds for a stay (*Park Street (Investments) v. Mortgage Trust Limited*, 17th November 2014).

Guarantee. The Commercial Court granted summary judgment in a guarantee claim because the allegation of an oral agreement waiving rights was entirely fanciful (*Franklin Management v. Central Eastern European* [2014] EWHC 4127 (QB)).

Suspension of Rights. A bank suspended its rights under a power of sale but that did not amount to giving up its security rights under the loan agreement completely (*Ahmad v. Bank of Scotland Plc* [2014] EWHC 4611 (Ch)).

Guarantees. The High Court imposed conditions on giving leave to defend by ordering the payment of £1 million into Court. An amount to be paid into Court should test the bona fides of the defence but should be affordable (*Bank Leumi (UK) plc v. Akrill* [2014] EWHC 4341 (Ch)).

Non-Regulated Agreements. The High Court held that agreements above the then monetary limit but written as regulated agreements imported an obligation on the part of the creditor to give statutory statements under Section 77A (*NRAM Plc v. McAdam* [2014] CTLC 244).

Secured Loan. The High Court rejected an allegation that the loan and charge deeds had been forged and the alternative claims of misrepresentation and undue influence. In addition there was no foundation for a claim of non est factum as there was no misrepresentation (*Destine Estate Limited v. Muir* [2014] EWHC 4191 (Ch)).

Third Party Debt Order. In an appeal against the making of a third party debt order the claim that the funds in the account were subject to a trust had not been sufficiently established. The mortgagee was therefore entitled to summary judgment (*Mizrabi v. Preferred Mortgages Limited*, 10th December 2014).

Personal Chattels. The High Court held that a mortgagee had become an involuntary bailee of personal chattels remaining on the property after possession and had acted reasonably in removing and disposing of them (*Campbell v. Redstone Mortgages Limited* [2014] EWHC 3081 (Ch)).

Pre-Contractual Information. The European Court of Justice considered issues of creditworthiness and the pre-contractual information duties imposed by the Consumer Credit Directive (*CA Consumer Finance SA v. Bakkaus* [2014] EU ECJ C-449/13).

Solicitors' Duties. The Claimant alleged a breach of a collateral contract, an implied retainer and duty of care against its solicitors. The claim was dismissed. It was held that there was no implied retainer in respect of the transaction and the obtaining of a loan (*Metropolitan Venues Limited v. Watson and Burton LLP* [2014] EWHC 883 (Ch)).

FINANCIAL SERVICES

Limitations. A claim was brought in respect of advice as to an investment bond. The provisions of Section 14A of the Limitation Act 1980 were relied on in order to pursue a claim in negligence. It was held that loss was suffered the moment there was the investment and the investor had acquired the relevant constructive notice outside of the limitation period (*Jacobs v. Sesame Limited* [2014] EWCA Civ.1410).

Swap Agreements. The Court of Appeal allowed Defendants to raise a rescission defence and the High Court held that it was therefore inappropriate to make a conditional order (*Deutsche Bank v. Unitech Global Limited* [2014] EWHC 3117 (Comm)).

Indemnity. The Court considered the interpretation of an indemnity clause in a contract for sale of an insurance broker and how it included loss caused by mis-selling (*Andrew Wood v. Sureterm Direct Limited* [2014] EWHC 3240 (Comm)).

Financial Ombudsman. In an application for judicial review it was held that an insurance company had acted reasonably in declining to fund the costs of legal proceedings about a bicycle. The High Court upheld the decision of FOS that the insurance company was reasonable in relying on internal legal advice from a solicitor (*R (On the Application of Fisher) v. Financial Ombudsman Service*, 15th October 2014).

Land Banking. The High Court declined to restrain the advertisement of winding up petitions on public interest grounds. The Secretary of State alleged that sales agents had made misleading statements as to potential planning permission (*Re: A Company*, 13th November 2014).

Jurisdiction. Proceedings were brought by a hedge fund in respect of borrowing secured on a majority shareholding in a hospital company in Ireland. The High Court refused an extension of time to challenge the jurisdiction because the delay

appeared deliberate and tactical (*Talos Capital Limited v. JSC Investment Holdings* [2014] EWHC 3977 (Comm)).

Financial Ombudsman. Independent financial advisers applied for judicial review following the refusal by FOS to stay complaints brought by former clients because there was litigation which covered the same issues. The High Court rejected the application saying that the complaint should be dealt with quickly and the litigation would add nothing (*Westcott Financial Services v. Financial Ombudsman Service* [2014] EWHC 3972 (Admin)).

Land Banking. The Court of Appeal considered whether land banking was a collective investment scheme (*Financial Conduct Authority v. Asset Land* [2014] EWCA Civ.435).

Solicitor's Undertakings. An application by the Law Society for summary judgment in respect of allegations of negligent misrepresentation by listing an imposter on the published official solicitors' roll was dismissed as it was eminently suitable for trial. It called into question the solicitor's undertakings to discharge mortgages (*Murphy v. The Law Society* [2014] 4561 (QB)).

Breach of Fiduciary Duty. An allegation was made against a bank that an employee had recommended an individual as a finance director without telling the Claimants that the individual was disqualified as a director and had criminal convictions. The High Court dismissed an appeal against striking out but the decision to award security for costs was upheld (*Ali Band Co v. Royal Bank of Scotland*, 15th December 2014).

Fiduciary Duty. The High Court held that an investment manager acted in breach of fiduciary duty in committing the Claimants' fund to a loss-making investment and at the same time obtaining substantial fees (*SPL Private Finance v. Arch Financial Products* [2014] EWHC 4268 (Comm)).

Swap Agreements. In a claim in respect of swap transactions the bank failed in its application for costs because there had been a full and final settlement and there was nothing said about costs (*Freehold Estates Limited v. National Westminster Bank Plc* [2014] EWHC 4621 (Comm)).

COPYRIGHT

Injunctions. The High Court granted a final injunction against the manager of a club whereby he was restrained from playing music at the club without being licensed or permitted to do so. The mere fact that he was an employee did not mean he could avoid personal liability (*Phonographic Performance Limited v. Nash* [2014] EWHC 3986 (Ch)).

Costs. Following a successful appeal against convictions for copyright offences, there was an application for third party costs orders against the Football Association who had engaged an investigation company. The Divisional Court held there were no exceptional circumstances justifying a third party costs order (*Hull Magistrates' Court v. Darroch* [2014] EWHC 4184 (Admin)).

VIDEO RECORDINGS

Free Movement of Goods. The classification regime under the

Video Recordings Act 1980 did not constitute unlawful interference with trade contrary to the treaty because restrictions were permitted on grounds of public morality and public policy (*R v. Dryzner* [2014] EWCA Crim 2436).

DANGEROUS DOGS

Procedure. The High Court held that Magistrates had been entitled to award costs against the police where a prosecution had been continued on insufficient evidence notwithstanding that the CPS had conducted the case (*Chief Constable of Warwickshire v. Young* [2014] EWHC 4213 (Admin)).

PROCEDURE

Prosecutions. Prosecutions were brought by the river manager in respect of alleged contraventions of legislation concerning the river. The Magistrates' Court held that the river conservators had not been entitled to delegate the function of bringing prosecutions to enforce by-laws to the river manager. The Divisional Court held that there was power to delegate (*Moon v. Samuel Matthews* [2014] EWHC 4330 (Admin)).

HEALTH AND SAFETY

Prohibition Notices. A husband and wife appealed against the affirmation by an employment tribunal of prohibition notices. They owned a property which was being converted. HSE Inspectors formed the view that the works were being carried out in a dangerous manner and issued the notices. The High Court examined the difference between a measure of control over the works and whether the husband and wife had joint control of what happened. An appeal by the wife was allowed (*Eze v. Health & Safety Executive* [2014] EWHC 3474 (Admin)).

Fines. A prosecution was brought in respect of an insufficient risk assessment of a traffic management system. An appeal against conviction was dismissed because there was no need for the Judge to go beyond directing the Jury that the risk had to be material. In addition the fine of £225,000 was upheld (*Balfour Beatty v. Health & Safety Executive* [2014] EWCA Crim.2684).

ENVIRONMENT

Fines. The Court of Appeal Criminal Division upheld a fine of £450,000 imposed on a wealthy person who arranged the felling of several trees on a site of special scientific interest without prior authorisation. The Court said the actions were grossly negligent and carried out for commercial gain (*Natural England v. Day* [2014] EWCA Crim.2683).

TRAVEL

Personal Injuries. A claim was bought against a travel company by a holidaymaker who suffered personal injuries by slipping on a wet staircase. The holiday company appealed against a judgment awarding damages. The Court of Appeal held that standards of maintenance and cleanliness varied as between countries and it was unrealistic to expect uniformity of approach (*Lougheed v. On the Beach Limited* [2014] EWCA Civ.1538).

COSMETICS

Animal Testing. The High Court referred to the ECJ issues concerning the provision which prohibited the placing on the market of cosmetics with ingredients tested on animals (*R (On the Application of the European Federation for Cosmetic Ingredients) v.*

Secretary of State [2014] EWHC 4222 (Admin)).

SALE OF GOODS

Hip Replacement Surgery. An application for summary judgment and striking out of a defence to a personal injury claim in respect of alleged product liability was refused. There were triable issues of causation and the assessment of damages (*Unwalla v. Spire Healthcare Limited* [2014] EWHC 4257 (QB)).

ADVERTISING

Supermarkets. An application for judicial review of the decision of the independent reviewer of the Advertising Standards Authority was refused. The issue related to price comparisons (*R (On the Application of Sainsbury's Supermarkets Limited) v. Independent Reviewer* [2014] EWHC 3680 (Admin)).

COUNTERFEIT GOODS

Confiscation. Following a plea of guilty to conspiring to cheat the Revenue in respect of counterfeit vodka the Judge's finding of the value of a bottle being £5 had not been supported by the evidence and the Defendant successfully appealed (*R v. Eddishaw* [2014] EWCA Crim 2793).

FOOD

Regulations. The Weights and Measures (Food) (Amendment) Regulations 2014 came into force on 13th December 2014.

Regulations. The final parts of Regulation 2014/1855 enforcing Regulation 1169/20 were mainly brought into force on 13th December 2014.

GAMING

Casinos. A casino gambler sued for his winnings and the claim failed on the basis that the Claimant had cheated to the extent of the civil law and it was unnecessary to consider whether it was a contravention of Section 42 of the 2005 Act (*Ivey v. Genting Casinos UK Limited* [2014] EWHC 3394 (QB)).

Remote Gambling. The High Court held that the regulation of remote gambling was not unlawful under domestic law or a disproportionate restriction on the freedom to provide services (*Gibraltar Betting and Gaming Association v. Secretary of State* [2014] EWHC 3236 (Admin)).