



TRADING LAW BULLETIN

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CONSUMER CREDIT

Retirement Loan. A partner whose firm of solicitors agreed to pay his bank loan on retirement but had failed to do so had no defence to the bank's claim (*RBS v. McCarthy* [2015] EWHC 3626 (QB)).

Factoring. In a claim by a factor in respect of debts which it had bought, it was held that the customers were entitled to rely on equitable set-off. The cross claim was closely connected with the demands of the factor (*Bibby Factors Northwest v. HFD* [2015] EWCA Civ 1908).

Security. In an appeal challenging the findings of the Judge below regarding the enforcement of a security the Court of Appeal held the Judge had been entitled to make the finding that he had (*Rivertrade Limited v. EMG* [2015] EWCA Civ 1295).

Mortgages. In a mortgage action the mortgagee failed to show that it had used its best endeavours to get the price reasonably obtained for the sale of aircraft. However, no better price could have been obtained (*PK Air France v. Alpstream* [2015] EWCA Civ 1318).

Mortgages. The Court of Appeal upheld a decision that it was an abuse of process for mortgagors to invoke the FSMA 2000 relating to the unenforceability of a loan two years after a possession order had been granted (*Dickinson v. UK Acorn Finance Limited* [2015] EWCA Civ 1194).

Transfer of Assets. In a High Court case where a borrower had entered into a trust deed which transferred properties to his wife it was held that the transaction had the intention of placing assets beyond the reach of creditors. The deed was set aside (*Swift Advances Plc v. Ahmed* [2015] EWHC 3265 (Ch)).

Vehicle Leasing. The Court of Appeal referred to the European Court of Justice the interpretation of the VAT Directive in respect of vehicle finance lease agreements and whether they were a supply of goods or a supply of services (*Revenue and Customs v. Mercedes-Benz* [2015] EWCA Civ 1211).

Possession. The Administration of Justice Act 1970 Section 36 enabled a period of suspension of the execution of a possession order to be further extended (*LBI HF v. Stanford* [2015] EWHC 3130 (Ch)).

Charging Orders. In an application for a charging order with a defence of prior disposal there was an appeal from the Master where there were witness statements to the effect that the debtor had sold the properties to the appellant and that he had no beneficial interest. The High Court held the issue could not be decided on the papers and the matter was remitted to a different

Master (*Care London Limited v. Nationwide Building Society* [2015] EWHC 3615 (Admin)).

Mortgages. The principle that an owner who had given an agent the means of holding himself out as the owner had to bear the risk of fraud by the agent and this precluded an owner and occupier who had left the purchase of a property in the hands of a business partner who had fraudulently obtained a mortgage so that any claim to a beneficial interest in priority over the mortgage failed (*Wishart v. Credit & Mercantile Plc* [2015] 2 P & CR 15).

Foreign Law. Summary judgment was refused in respect of a claim under a personal guarantee in connection with a property purchased in Spain. The defendant contended that Spanish insolvency law might have the result that the guarantee might have been extinguished (*Edgeworth Capital v. Maud* [2015] EWHC 3464 (Comm)).

Consumer Hire. Delivery up of vehicles which the defendant used to transport children to school was ordered as there had been a default in payment but the order was not immediately enforceable so that the local authority could make alternative arrangements (*Dawsonrentals Bus & Coaches Limited v. Geldards Coaches Limited* [2015] EWHC 2596 (QB)).

Securitisation. The Court gave consideration to the construction of provisions in a complex security structure and held that rent from properties was to be classified as interest but the proceeds of sale were to be classified as principal. The dispute arose because of the treatment of principal and interest and the priorities in respect of note-holders (*CBRE Loan Servicing Limited v. Gemini* [2015] EWHC 2769 (Ch)).

Regulated Agreements. The Court of Appeal allowed an appeal in respect of agreements which have been written as regulated ones when in fact the amounts advanced exceeded the then monetary limit. The case was brought to determine the extent to which redress in respect of Section 77A statements should be given (*NRAM plc v. McAdam* [2015] CTL 169).

Restitution. The parents of the claimant owed the defendant bank a substantial amount which was secured on the family home owned by the parents. So that there could be a part-repayment the bank agreed to release those charges on the basis it would be granted a charge over the claimant's new house for the remaining indebtedness. The claimant was unaware of this. The bank conceded the invalidity of the charge but counterclaimed on the basis of unjust enrichment seeking an equitable charge. The Supreme Court held that the claimant had been unjustly enriched so that the bank was entitled to a lien (*Menelaou v. Bank of Cyprus UK Limited* [2015] 3 WLR 1334).

Estoppel. Personal guarantees were executed in favour of a lender in respect of debts arising from loans made in favour of two companies. It was said that the guarantees were unenforceable or there was a promissory estoppel because of representations that if the guarantor continued to work for the companies in an unpaid management capacity the guarantees would be postponed indefinitely. It was held there is no estoppel. The respondent's case could not be reconciled with the contemporaneous correspondence (*Dunbar Assets Plc v. Butler* [2015] BPIR 1358).

FINANCIAL SERVICES

Debentures. Summary judgment was granted to the Defendant because an assignment of the choses in action relied upon by the Claimant was ineffective. The relevant companies had purported to assign choses in action under a debenture to the claimant. They included the right to pursue all or any claims against the defendant bank. The Court held it was plain that the parties did intend that some of the choses in action held against the defendant were charged but these could not be pursued as they were inalienable under a debenture (*Morris v. Royal Bank of Scotland*, 3rd July 2015).

Limitations. The Defendant insurance companies sought summary judgment against their insured (a financial advisor) in a professional negligence claim. The High Court held that notwithstanding the fact that the advice was given 14 years earlier and FOS had made determinations unfavourable to the Claimant there was a possibility that Section 14A of the Limitation Act 1980 could be relied upon (*Lenderink-Woods v. Zurich Insurance Limited* [2015] EWHC 3634 (Ch)).

Investments. The claimants alleged that a bank had given bad advice result in losses suffered on an investment. They said they should have been advised that the portfolio was a medium-risk investment and was inappropriate as they only wanted low-risk. The Judge found that they understood that it was a medium-risk investment and they knew what they were getting. Even if the original advice had been wrong the bank was not under a continuing duty with regard to the original advice (*Worthing v. Lloyds Bank Plc* [2015] EWHC 2836 (QB)).

PRODUCT SAFETY

Inquest. A Coroner's Inquest was quashed and a new Inquest ordered in respect of two men who had been poisoned by carbon monoxide from a cooker with a design flaw. Since the Inquest it had become known that the flaw had come to light in Ireland and there had been a recall before the deaths in the United Kingdom (*Smith v. HM Coroner for Cornwall* [2015] EWHC 3475 (Admin)).

FOOD

Appeals. Meat suppliers sought judicial review following an official vegetarian's decision rejecting meat as unfit for human consumption. The suppliers attempted to challenge that decision but the High Court held there was no right of appeal and this did not contravene the relevant EU Food Safety & Hygiene Regulations (*R (On the application of Association of Independent Meat Suppliers v. Food Standards Agency* [2015] EWHC 1896 (Admin)).

ANIMALS

Time Limits. The RSPCA laid a complaint seeking authority to dispose of cats following the animals' seizure. The Divisional Court held that the six month time limit for laying a complaint arose on the date of seizure and the complaint was out of time (*RSPCA v. Webb* [2015] EWHC 3802 (Admin)).

SALE OF GOODS

Title. The Court of Appeal considered a retention of title clause and held that it was not a contract for the sale of goods because it involved fuel for a ship with a licence to consume it (*PST Energy v. OW Bunker Malta Limited* [2015] EWCA Civ 1058).

Jurisdiction. The European Court considered a case involving a car dealer established in Germany who purchased the car from a website of a German based company. A claim was brought because the Defendant cancelled the sale because of alleged damage to the car. The terms and conditions of the website said that the Court in Belgium had jurisdiction. One of the issues was the method of accepting the general terms and conditions and it was held that a contract for sale by "Click-wrapping" constituted a communication by electronic means providing a durable record of the agreement (*El Majdoub v. Carsothweb* [2015] All ER (EC) 1073).

Conversion. The Chancery Division held that a local authority's title to a sculpture had been extinguished pursuant to Section 3(2) of the Limitation Act 1980 (*Tower Hamlets LBC v. Bromley LBC* [2015] EWHC 1954 (Ch)).

Misrepresentation. A Judge held that a contract to buy a car should be rescinded and the purchase price recovered. It had been described as brand new but, whilst it had never been registered, it had been manufactured and delivered two years before and had since undergone various repairs. The Court of Appeal said there was a conflict of authority as to whether there was a bar to rescission. It was held that restitution was possible and that intermittent enjoyment and depreciation were not reasons for saying that restitution was impossible (*Salt v. Stratstone Specialist Limited* [2015] EWCA Civ 745).

LICENSING

Markets. A local authority revoked a market trader's licence as a result of an under-age sale of cigarettes. In judicial review proceedings an application for specific disclosure was refused because it would amount to a fishing expedition and was irrelevant to the issue of whether the sanction was proportional (*R (On the application of Pardon) v. Havering LBC*, 4th November 2015).

Taxis. The Divisional Court held that an applicant bore the burden of proof in applying for a taxi licence where it was necessary to show that the applicant was fit and proper but when there was a revocation it was for the local authority to prove that the applicant was no longer fit and proper (*Kaivanpor v. Sussex Central Justices*, 28th October 2015).

HEALTH & SAFETY

Traffic Management. A civil engineering design company was convicted of health and safety offences in respect of traffic management designs for airports. The Court of Appeal

(Criminal Division) upheld the trial Judge's refusal to accept a submission of no case to answer (*R (on the application of HSE) v C-T Aviation* [2015] EWCA Crim 1620).

PRICES

Sales Promotions. The Competition and Markets Authority announced a number of measures to improve compliance because it had found examples of pricing and promotional practices that had the potential to confuse or mislead consumers (CMA Press Release 16th July 2015).

BETTING

Spread-betting. In an action to enforce a settlement agreement against a trader, the trader brought a counterclaim alleging that the spread-betting company was contractually liable for failing to close out his bets earlier and was in breach of the Code of Business Rules. The High Court dismissed the counterclaim holding that even if there had been a breach of COBS the trader had been contributory negligent in particular having regard to the terms of the legislation and the principle that consumers should take responsibility for their decisions (*IG Index Limited v. Ehrentreu* [2015] EWHC 3390 (QB)).

UNFAIR COMMERCIAL PRACTICES

Sentence. Following pleas of guilty to offences under the 2008 Regulations in respect of two motor vehicles with altered mileage a Director's Disqualification Order was made but this was overturned on appeal (*R v. Chandler* [2015] EWCA Crim 1825).

Trader. A local authority appealed against the dismissal of a prosecution under the 2008 Regulations in respect of the sale of a motor vehicle. It had been advertised on a website. The Magistrates decided that they could not be sure whether the seller was a trader. The High Court held that the reasons given were inadequate (*Reading BC v. Younis* [2015] EWHC 3212 (Admin)).

Single Consumer. The European Court held that a communication by a professional to a consumer had to be classified as a misleading commercial practice even though the information concerned only one single consumer (*Nemzeti v. UPC* [2015] All ER (EC) 876).