



TRADING LAW BULLETIN

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CONSUMER CREDIT

Commissions. The Court of Appeal held that a broker commission could be recovered on the basis that it was a half-secret commission (*McWilliam v. Norton Finance (UK) Limited* [2015] TLC 60).

Registered Charges. A bank successfully argued that it could rely on a mistake in sending a cancellation request to the Land Registry following a re-finance (*NRAM Plc v. Evans* [2015] EWHC 1543 (Ch)).

Business Exemption. An elderly woman was persuaded by her son-in-law to obtain a bridging loan secured over her home. He wished to use the money for a business and a Section 16B declaration was signed. The Court of Appeal held that the declaration was invalid because the lender knew that the money was not for the business of the borrower. She was not estopped from alleging that the agreement was regulated (*Wood v. Capital Bridging Finance Limited* [2015] EWCA Civ 451).

Registered Charges. The Land Registry failed in an appeal from an Order that a lender be paid compensation for the cancellation of a registered charge. The background was the fraudulent execution of legal charges in respect of a property owned by a third party (*Swift 1st Limited v. The Chief Land Registrar* [2015] EWCA Civ 330).

Right to Buy. The High Court held that the cost of amendments be costs in the case where the Claimant sought to amend the Particulars of Claim in right to buy litigation (*Right to Buy Litigation v. Goldsmith Williams* [2015] EWHC 1559 (Ch)).

Business Exemption. A petitioning creditor failed in his appeal against Orders made by the Chief Registrar in Insolvency. The High Court held that a purposive approach was required to the construction of Section 16B(3). There was also an issue as to whether the lender was carrying on a business. There were substantial disputes on both grounds (*Woolsey v. Payne* [2015] EWHC 968 (Ch)).

Solicitor's Negligence. The High Court found that a solicitor was in breach of the undertaking and warranty of authority and also there was a breach of duty of care. The Claimant was a commercial lender and a loan was made to a purported client of the solicitors (*LSC Finance Limited v. Abensons Law Limited* [2015] EWHC 1163 (Ch)).

Payment Protection. On appeal from a District Judge the High Court held that the Judge had been entitled to give summary judgment notwithstanding a claim of PPI mis-selling. One difficulty was there was a lack of any real relationship as the

borrowers had negotiated with the broker and the lender played no part (*Axton v. GE Money Mortgages Limited* [2015] EWHC 1343 (QB)).

FSMA Regulation. The Financial Services and Markets Act 2000 (Miscellaneous Provisions) (No.2) Order 2015 came into force on 18th March 2015. This provision includes replacing four repayments with twelve in the Article 60F exemption.

Possession. A Trustee in Bankruptcy appealed against the dismissal of an application for possession which was occupied by the bankrupt and his wife. The property was registered in the bankrupt's sole name and there was a mortgage. The wife raised an argument that there was an equity of exoneration extinguishing the Trustee's beneficial interest. This was based on an alleged inference that there was an intention that she would be indemnified in respect of business loans. The High Court held that the fact there was a family unit was not enough to prevent the equity or right and the appeal was dismissed (*Armstrong v. Omyearu* [2015] EWHC 1937 (Ch)).

Payment Protection. The Claimant sold PPI and then transferred its business to the First Defendant under a scheme sanctioned by the Court. The High Court held that the liability for mis-selling did not arise under a contract of insurance and the liability did not attach to the Defendants (*PA (GI) Limited v. GICL 2013 Limited* [2015] EWHC 1556 (Ch)).

Professional Services Lending. A bank developed a programme for making loans available to partners of firms providing professional services. A claim by the Defendant that there was no obligation to repay the loan which was to the firm was dismissed (*Barclays Bank Plc v. McMillan* [2015] EWHC 1596 (Comm)).

Tracker Mortgages. The High Court held that there was no inconsistency in contractual documentation for a tracker mortgage and that the lender was entitled to vary the interest rate without it being tracked (*Alexander v. West Bromwich Mortgage Company Limited* [2015] EWHC 135 (Comm)).

Costs. The High Court ordered a creditor to pay 80% of the fees incurred by a Trustee in Bankruptcy in respect of a bankruptcy which was subsequently annulled. The debt was £4,000 and the fees totalled £150,000. The debt had become statute barred (*Mowbray v. Saunders*, 26th June 2015).

Accountant's Negligence. The Court of Appeal considered the damages payable where an accountant's firm gave advice to a lender. It was held that the damages were not reduced because the lending company had provided further funds to repay some of the loans (*Swynson Limited v. Lowick Rose LLP* [2015] EWCA Civ 629).

FINANCIAL SERVICES

Rate Misselling. The High Court refused permission to a borrower to amend the Particulars of Claim in respect of a case against the bank for alleged misselling of an interest rate swap. The application had been made too late (*Wani LLP v. Royal Bank of Scotland* [2015] EWHC 1181 (Ch)).

Rate Swaps. An application to bring judicial review proceedings in respect of alleged missold interest rate swaps has been allowed on the basis that the independent reviewer of the redress scheme could be potentially a public body and subject to judicial review (*Holmcraft Property Limited v. KPMG* [2015] EWHC 1888 (Admin)).

Ranking of Debt. The Privy Council considered the issue of a charge and the effect on a Jamaican statute where an authorised financial institution sought to benefit from the statutory *pari passu* ranking (*JMMV Merchant Bank Limited v. Real Estate Board* [2015] UKPC 16).

Lost Cheque. The Claimant was refused permission to amend his Particulars of Claim in respect of a lost cheque. There had been insufficient funds in the account so the cheque would have been dishonoured in any event (*Patel v. National Westminster Bank* [2015] EWCA Civ 332).

Warning Notices. The Court of Appeal dismissed an appeal by the FCA against a decision that the Respondent had been identified in notices given to a bank by the FCA (*FCA v. Macris* [2015] EWCA Civ 490).

Collective Investments. A solicitor has been jailed for five-and-a-half years in respect of a land banking scheme and being involved in a collective investment scheme without authorisation.

Anti-Suit Injunction. A claim was brought against a Danish company in respect of a derivatives contract. The High Court held that the Claimant was not entitled to an injunction in respect of proceedings in Denmark (*Swiss Marine Corporation Limited v. OW Supply* [2015] EWHC 1570 (Comm)).

Final Notice. A bank was ordered to disclose documents relating to a regulator's allegation of LIBOR misconduct. The issuance of a final notice did not mean that the right to rely on without prejudice was lost but it was in respect of the civil proceedings where the final notice was the issue (*Property Alliance Group Limited v. Royal Bank of Scotland* [2015] EWHC 1557 (Ch)).

Service. The purchasers of bonds bought through a bank registered in Singapore claimed that the bank had procured the sale through misrepresentation. The main issue was the question of the service of the claim form but there were issues as to jurisdiction and unfair terms (*Chopra v. Bank of Singapore Limited* [2015] EWHC 1549 (Ch)).

Summary Judgment. The High Court granted summary judgment for the repayment of a bridging loan. The Defendant's arguments amounted to a form of claim for set off which was excluded by the facility agreement (*Formula E Holdings Limited v. CDC Entertainment Limited* [2015] EWHC 2110 (Comm)).

Enhanced Capital Notes. The High Court held that banking subsidiaries were not entitled to redeem enhanced capital notes before they matured. The issue turned upon the taking into account of the notes in respect of stress tests (*BNY Mellon Corporate Trustee Services v. LBG Capital* [2015] EWHC 1560 (Ch)).

Notices. The Upper Tribunal considered the responsibility of the FCA when publicising notices (*Bayliss v. Financial Conduct Authority* [2015] UKUT 265 (TCC)).

Personal Liability. A collective investment scheme used a special purpose vehicle to make finance available. A claim against an individual was dismissed because it was plain that the only assumption of responsibility was through the limited liability partnerships. The agent had always dealt with the partnerships (*First Bespoke Limited Partnership v. Hadjigeorgiou*, 12th June 2015).

FOOD

Labelling. The European Court determined a preliminary reference relating to the use of the indication raspberry and vanilla adventure and the depiction of raspberries and flowers. It was held that the Directive precluded the labelling of a food stuff from giving the impression, by means of the appearance, description or pictorial representation of a particular ingredient, that that ingredient was present even though it was not present (*Bundesverband v. Teekanne GmbH* case C-1195/14).

Health Claims. In two judgments of the general court consideration was given to the making of health claims and the annulment of Regulations (Cases T-296/12 and T-334/12).

ENVIRONMENT

Sentence. Guidance was given by the Court of Appeal on fines to be imposed on substantial commercial organisations for environmental offences. Following a plea of guilty in respect of the discharge of untreated sewerage, the Defendant appealed a fine of £250,000. This was dismissed (*R v. Thames Water Utilities Limited* [2015] EWCA Crim 960).

SALE OF GOODS

Lack of Conformity. The European Court considered a number of issues in respect of the purchase of a second-hand car. The Court held that Directive 1999/44 meant that a national court is required to determine whether the purchaser may be classified as a consumer even if the purchaser has not relied on that status if the Court has at its disposal the matters of law and fact necessary. It was also held that the Directive was of equal standing to a national rule, the national court must of its own motion apply any provision which transposes it into domestic law and that the presumption as to the lack of conformity arises if the consumer furnishes evidence that the goods were not sold in conformity with the contract and the lack becomes apparent within six months of delivery (*Faver v. Autobedrijf* Case C-497/13).

GAMING

Licensing. The Privy Council allowed an appeal in respect of judicial review proceedings where there had been no reasons for the impugned decision and the lack of candour by the applicant did not mean that it should be denied the opportunity to

challenge the decision (*Peerless Limited v. Gambling Regulatory Authority* [2015] UKPC 29).

PARKING

Penalties. The Court of Appeal dismissed an appeal by a motorist against a parking fine. Both the arguments that the sum charged was an unenforceable penalty and an unfair term were dismissed (*Parking Eye Limited v. Beavis* [2015] CTLC 82).

CONFISCATION

Cattle. The Court of Appeal set aside a confiscation order against a farmer who had been allegedly involved in the unlawful slaughter of cattle. The order was vitiated by a number of flaws (*R v. Moss* [2015] EWCA Crim 713).

Trade Mark Offences. The Court of Appeal upheld a calculation of the available amount when making a confiscation order in respect of Defendants who had pleaded guilty to the sale of counterfeit goods. They had failed to establish that there should be a discount on account of expenses (*R v. Jieuyu* [2015] EWCA Crim 1076).

HEALTH AND SAFETY

Prohibition Notice. The Court of Appeal held that a Judge had wrongly substituted his own view on the merits of an inspector's decision to issue a prohibition notice in respect of electrical conductors on a construction site. An appeal was limited to matters of law (*Rotary Yorkshire Limited v. Hague* [2015] EWCA Civ 696).

UNFAIR COMMERCIAL PRACTICES

Sentence. The Court of Appeal allowed an appeal against an immediate custodial sentence in respect of convictions in connection with the carrying out of work on a domestic property. There was no over bullying or aggression and the conduct fell short of being fraudulent (*R v. Hamilton* [2015] EWCA Crim 278).

Warrants. The High Court considered challenges by way of judicial review to the execution of warrants under the 2008 Regulations. The warrants were quashed as the decisions revealed that the relevant conditions were not met (*Hargreaves v. Powys County Council Trading Standards Department* [2015] EWHC 1803 (Admin)).

CANCELLATION

Claims Management. The High Court held that an insurance claims management agreement could not be enforced where the representative had mistakenly taken home with him the written notice of the right of the client to cancel under the 2008 Regulations (*AllPropertyClaims Limited v. Tang*, 29th June 2015).

Conditional Fee Agreement. The Court of Appeal considered the issue of costs in the context of the 2008 Regulations. The Court upheld the decision below that it was impossible to say that there was no intention to create legal relations. The agreement was unenforceable and the appeal was dismissed (*Cox v. Woodlands Manor Care Home* [2015] EWCA Civ 415).