



TRADING LAW BULLETIN

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Gough Square Chambers
6-7 Gough Square
London EC4A 3DE
Telephone: 020 7353 0924
Fax: 020 7353 2221
DX: 476 London
Email: gsc@goughsq.co.uk

CONSUMER CREDIT

Mortgage Arrears Consolidation. The High Court in Northern Ireland has considered cases where the mortgage lender unilaterally consolidated arrears but relied on the arrears to seek possession. It was said that there was an element of “double counting” (*Bank of Scotland plc v. Rea* [2014] NI Master 11).

Subrogation. The Court of Appeal considered the situation where a chargee purported to exercise a right of subrogation in circumstances where the debtor had a cross-claim for unliquidated damages (*Day v. Tiuta International Limited* [2014] EWCA Civ 1246).

Possession. The High Court has considered the issue of costs where a second mortgagee brought possession proceedings notwithstanding that there was insufficient equity in the property to satisfy the mortgage (*The Cooperative Bank Plc v. Phillips* [2014] EWHC 2862 (Ch)).

Information Requirements. Amendments were made to the 2007 Regulations in respect of the Green Deal.

Possession. The ECJ has held that Member States must adopt protective measures to prevent unfair terms having regard to the fundamental right to accommodation (*Kusionova v. SMART C* Case 34/13).

EU Mortgage Directive. HM Treasury has opened a consultation on the implementation of the EU Mortgage Credit Directive.

Electronic Signatures. The Department for Business Innovations and Skills has issued a guide on electronic signatures in September 2014.

Solicitors' Liability. A firm of solicitors acted for a borrower and, despite evident discrepancies, effected a security over property in which the borrower had no interest. When the solicitor concerned learned of the fraud he nevertheless allowed a further tranche of borrowing. The Inner House, Court of Session held that the firm was liable to the lender (*Royal Bank of Scotland Plc v. Carlyle* [2013] CSIH 75).

Solicitors' Negligence. The High Court considered the quantum of loss following a significant shortfall under a mortgage having regard to planning issues. The Court said that there was a distinction between a person under a duty to advise as to what course of action be taken and someone under a duty to provide information upon which to base a decision as to a course of action (*Credit and Mercantile Plc v. Nabarro* [2014] EWHC 2819 (Ch)).

Credit Unions. Amendments have been made in respect of the Cooperative and Community Benefit Societies' and Credit Unions Act 2010.

Green Deal. Amendments have been made to the Regulated Activities Order in respect of the Green Deal pursuant to SI 2014 No. 1850.

Leasing. The High Court gave permission to apply to enforce a delivery up order where the company in possession had issued a notice of intent as to administration (*X-FAB Semiconductor Foundries v. Plessey Semiconductors Limited*, 17th July 2014).

Guarantees. Conditional leave to defend was granted in respect of a property developer who had given personal guarantees. The defendant's case was the guarantees were given only because of assurances that the bank would only seek to enforce in the event of a shortfall (*Bank Leumi (UK) Plc v. Akrill* [2014] EWCA Civ 907).

Surveyors. A bank submitted it had been given an over-valuation. The valuation had been of the gross development value and was different from the valuation of the site (*Bank of Ireland v. Faithful and Gould Limited* [2014] EWHC 2217 (TCC)).

Legal Charge. The Chancery Division held that a legal charge was valid as an equitable mortgage notwithstanding that it was void because of an absence of attestation of signatures (*Bank of Scotland plc v. Waugh* [2014] EWHC 2117 (Ch)).

Regulated Activities. Borrowers who were former solicitors alleged that a loan to them was a regulated activity because it was secured on a dwelling house which they occupied. The Court said that the contractual factual basis was that the property was vacant (*Waterside Finance v. Karim* [2012] EWHC 2999 (Ch)).

Regulated Activities. The Court of Appeal considered whether an unsecured loan was within a possible meaning of the word “debenture”. The Court of Appeal allowed an appeal saying that the word had the ordinary meaning of an acknowledgement of a debt recorded in a written document (*Fons HF v. Corporal Limited* [2014] EWCA Civ 304).

Valuation. The purchaser of a loan following securitisation could successfully sue a property valuer for negligence (*Titan v. Colliers* [2014] EWHC 3106 (Comm)).

Customers' Information. The Claimant alleged that a bank had taken its own clients' deal for its own account. The bank were held to be in breach of its obligations of confidentiality (*CF Partners v. Barclays Bank* [2014] EWHC 3049 (Ch)).

Personal Possessions. A mortgagee taking possession was an involuntary bailee of the mortgagor's personal possessions but was not liable for the disposal of them (*Campbell v. Redstone Mortgages* [2014] EWHC 3081 (Ch)).

Subrogation. The Court of Appeal considered the doctrine of subrogation in the context of a voidable security (*Day v. Tituta International Ltd* [2014] EWCA Civ 1246).

Duty of Care. A claimant company failed in its claim against a bank based on negligence because, although the company showed there was a duty of care in respect of explaining interest rates, the length of the loan and a swap agreement, the bank had successfully disclaimed responsibility (*Crestsign Ltd v. National Westminster Bank* [2014] EWHC 3043 (Ch)).

FINANCIAL SERVICES

Insider Information. The Upper Tribunal heard an appeal against a decision of the FCA that the applicant had committed market abuse. The test was whether there was a real prospect that future events would occur (*Hannam v. Financial Conduct Authority* [2014] UKUT 233 (TCC)).

Collective Investments. The High Court considered a scheme in respect of the acquisition of plots of land and held that all the schemes had been “managed as a whole” and so were all collective investment schemes (*FCA v. Capital Alternatives Limited* [2014] 3 All ER 780).

Collective Investments. The Court of Appeal dismissed an appeal against orders including an injunction in respect of collective investment schemes involving plots of land (*Asset Land Investment Plc v. Banner-Eve* [2014] EWCA Civ 45).

Pension Schemes. The appellants were actuaries and appealed against the decision allowing pension trustees to introduce new causes of action. The Court said permission should not be granted as it had not been shown that there was no reasonably arguable limitation defence (*Mercer Limited v. Sedgewick Limited v. Ballinger* [2014] EWCA Civ 996).

Approval. The Upper Tribunal considered a reference from an FCA decision including the withdrawal of approval to carry out controlled functions. The Tribunal concluded that the conduct in question was in many cases dishonest and dismissed the reference in respect of approval (*Micalizzi v. Finance Conduct Authority* [2014] UKUT 0335 (TCC)).

FOOD

Information. The Food Information Regulations 2014 were made on 15th July 2014 and the Food Information (Wales) Regulations 2014 have also been made.

ENERGY

Damages. The High Court has ruled that businesses which abandoned installations following unlawful proposals to reduce the feed in tariff were entitled to seek damages (*Breyer Group v. DECC* [2014] EWHC 2257).

COMMERCIAL AGENTS

Compensation. The Court of Appeal upheld a decision that a commercial agent was entitled to compensation under the Regulations as the Defendant had failed to show that the agency was worthless (*Warren v. Drukkerij Flach BV* [2014] EWCA 993).

Fiduciary Duty. The Supreme Court has considered the issue of a bribe or secret commission. It was held that the principal had a proprietary claim to the money (*FHR European Ventures v. Cedar Capital Partners* [2014] UKSC 45).

Distribution Agreements. The High Court assessed damages following the licensor’s repudiatory breach of contract concerning the distribution of cordial (*Jul Bottlers v. Nichols Plc* [2014] EWHC 2173 (Comm)).

Service out the jurisdiction. In respect of a claim principally based on the Commercial Agents’ Regulations the Court gave consideration to whether the applicant could pass through a service out gateway and the merits of the claim (*Fern Computer Consultancy v. Intergraph* [2014] EWHC 2908 (Ch)).

Agents. An application for permission to appeal was dismissed in respect of the dismissal of the appellant’s claim for damages for breach of a sole estate agency. One of the questions was the impact of the Cancellation etc. Regulations 2008 (*Gibbs Gillespie v. Sturch* [2014] EWCA Civ 392).

HEALTH & SAFETY

Prohibition Notice. An appeal against the upholding of a prohibition notice was successful. The case involved the risk of death by electric shock and it was held that it was wrong to say that the only means of dealing with the situation was the issue of the notice (*Rotary Yorkshire Limited v. Hague* [2014] EWHC 2126 (Admin)).

No Case to Answer. The Court of Appeal dismissed an appeal against a conviction under the 1974 Act. An expert for the prosecution had given evidence that if someone was going to do something stupid you cannot stop them. The creation of a material risk by carelessness, including gross carelessness, on the part of an employee remained a material risk (*Polyflor Limited v. Health & Safety Executive* [2014] EWCA Crim 1522).

Statement of Offence. The Court of Appeal dismissed an appeal by the owner of a hotel which was managed by a company of which he was the sole director. There was a fire. The Court of Appeal held that the Fire Safety Order 2005 did not create a discreet stand alone offence in respect of a director’s consent (*R v. Wilson* [2014] 2 WLR 1180).

CONFISCATION

Private Prosecution. The applicant private prosecutor obtained an order for costs in defending an appeal against a conviction for conspiracy to defraud and a consequential conviction order (*R (Virgin Media Limited) v. Zinga* [2014] EWCA Crim 1823).

ADVERTISING

The High Court gave judgment for the defendants when it was alleged that the refusal to allow an anti-gay advertisement had been made for an improper purpose regarding the election campaign for the Mayor of London (*R (Core Issues Trust Limited) v. Transport for London* [2014] EWHC 2628 (Admin)).

SALE OF GOODS

Jurisdiction. The High Court held that there was jurisdiction to hear a claim served on a company in France despite the argument that the general conditions of sale contained an exclusive jurisdiction provision in respect of a commercial port in France. It had not been shown that the clause was incorporated (*Chester Hall Precision Engineering Limited v. Services Centres Aero France* [2014] EWHC 2529 (QB)).

CONSUMER PROTECTION

Regulations. The Consumer Protection (Amendment) Regulations 2014 were made on 31st March 2014 and principally deal with consumers' rights to redress under the 2008 Regulations.

National Trading Standards Board. The Board has made its first arrests and executed four warrants in an alleged copycat Government website scheme.

Cancellation Rights. The Supreme Court has allowed a consumer's appeal from the Court of Appeal in respect of cancellation rights in a removal contract. The failure to give a notice of the right to cancel does not deprive the consumer of the right to cancel (*Robertson v. Swift* [2014] UKCS 50).

Defective Products. Following a fridge/freezer catching fire the owner had not succeeded in proving liability under the 1987 Act because the evidence indicated that the cause of the fire was the ignition of combustible material immediately outside the appliance (*Hufford v. Samsung Electronics* [2014] EWHC 2956 (TCC)).

UNFAIR TERMS

Public Interest. A consumer protection authority brought public interest proceedings against a telephone network operator in connection with its "money order fees". Where an unfair term had been acknowledged national courts were required of their own motion to draw all the consequences which were provided for to ensure consumers would not be bound (*Hattosag v. Invitel Case C-472/10*).

LICENSING

Mandatory Conditions. The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 comes into force on 1st October 2014. It deals with irresponsible promotion.

GAMING

Casino. A casino claimed damages from a defendant bank in respect of a reference for one of its customers. The reference said that the prospective player was trustworthy for £1.6 million in any week when the balance on his account had been nil. The fact that the casino accepted forged cheques had not been sufficient to break the chain of causation but there was contributory negligence (*Playboy Club London Limited v. Banca Nazionale Del Lavoro* [2014] EWHC 2613 (QB)).

Credit. The High Court held that the fact that cheques were only presented if the player lost did not amount to credit and therefore the amounts claimed for dishonoured cheques were not claims barred for illegality. Further, the casino was not under a duty of care on the basis that they knew of a gambling problem (*Ritz Hotel Casino Limited v. Al Daher* [2014] EWHC 2847 (QB)).