



TRADING LAW BULLETIN

ISSUE NO. 115
DECEMBER 2022

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FINANCIAL SERVICES

Section 75. In a holiday case where the cardholder's wife had suffered injury and the holiday company had become insolvent, the Court of Appeal rejected the argument that the wife could be a "debtor" for the purposes of bringing a Section 75 claim against the creditor (*Cooper v. The Freedom Travel Group* [2022] EWCA Civ. 1557).

Statutory Demand. A District Judge set aside statutory demands based on guarantees for loan repayments. The High Court held there were procedural irregularities and considered the possible duty on a lender to act in good faith in its exercise of discretion as regards repayments (*Sibner Capital Ltd v. Jarvis*, [2022] EWHC 3273 (Ch)).

Jurisdiction. Individual investors ("pensioners") sought to bring proceedings in England and Wales where they predominantly live against a professional trustee company registered and domiciled in Gibraltar. The Court of Appeal allowed the pensioners appeal and held that the Courts of England and Wales had jurisdiction. The issues related to the meaning of services and consumer contracts *Dooley v. Castle Trust and Management Services Ltd*. [2022] EWCA Civ. 1569).

Misconduct Outside the Workplace. The FCA has issued a final notice withdrawing approval from a director of a consumer credit company who was sentenced to imprisonment for GBH in a non-work context.

Costs. The Senior Courts Costs Office considered issues relating to claims based on secret commission in which the Claimants were successful. They had taken non-recourse loans to fund the litigation. The Costs Judge declined to award pre-judgment interest, but did allow fees of Legal Hub saying that it had not been shown the fees for reports were disguised referral fees. The cases were said to be "test cases" for over 600 outstanding assessments (*Adcock v. Blemain Finance Ltd*. [2022] EWHC 3280 (SCCO)).

Guarantee. In insolvency proceedings the Chief Insolvency and Companies Court Judge rejected a trustee's proof of debt by a bank founded on a guarantee. The Court held that the signature had not been made on the guarantee and that the person alleged to have signed it and the witness were truthful. There had been expert handwriting evidence which the Chancery Judge on appeal said had been misunderstood by the Judge. The matter was remitted for a new trial (*Aldermore Bank PLC v. Lynch* [2022] EWHC 3050).

FRCS. In a judicial review by purchasers of defective apartments, they challenged the refusal by the Scheme to pay costs and interest. This followed the insolvency of the insurers and a home warranty company to which the original warranty issuers had transferred the warranty policies. The Judge held that costs and

interest were payable (*R (Manchikalapati) v. FSCS* [2022] EWHC 2228 (Admin)).

Mortgage Broking. A couple took an interest only mortgage to fund an investment which was a fraud. They claimed against their mortgage advisor. The investment was an off plan purchase of property in St Vincent which was never completed. It was said that the appointed representative of the mortgage broker should have ensured that they obtained independent advice and, if this had happened, the investment would not have been made. It was accepted any breach of contract claim would be statute barred and they relied on negligence and Section 14A of the Limitation Act 1980. The Claimants placed reliance on MCOB. The High Court dismissed the claim (*Taylor v. Legal and General Partnership Services Ltd* [2022] EWHC 2475 (Ch)).

Procedure. The Court of Appeal dealt with issues regarding sealed orders and requests for a transcript in the context of a proposed appellant who was subject to an Extended Civil Restraint Order. The case originated from a bridging loan and a repossession trial in the County Court (*Anwer v. Central Bridging Loans Ltd* [2022] EWCA Civ 201).

Consumer Credit. The High Court dismissed an appeal from a decision that there was not a debtor-creditor-supplier agreement when a consumer paid a trustee company by way of a credit card in respect of a timeshare purchase (*Steiner v. National Westminster Bank plc* [2022] EWHC 2519 (KB)).

Credit Hire. In a libel case a credit hire company and solicitors sued a publisher of an insurance media outlet. The Judge ruled that certain words were potentially defamatory but that ruling was on a preliminary issue and no findings were made as to justification (*Direct Accident Management Ltd v. Newsquest Specialist Media Ltd* [2022] EWHC 2572 (KB)).

Winding Up. Petitions for winding up were granted by the High Court in respect of companies without authorisation carrying on collective investment (*BEIS v. Sentor Solutions Commercial Ltd* [2022] EWHC 2734 (Ch)).

ISDA. The Commercial Court determined that a default notice of an event of default issued by a bank was valid under the 2002 ISDA Master Agreement (*Macquarie Bank Ltd v. Phelan Energy Group* [2022] EWHC 2616 (Comm)).

Mutual Legal Assistance. Evidence of any kind other than set out in an MLA is inadmissible. The FCA brought civil proceedings relying on such evidence. The High Court considered an abuse of process application but ruled that the inadmissibility of the material was a sufficient safeguard (*FCA v. Papadimitrakopoulos* [2022] EWHC 2792 (Ch)).

PPI. Home shopping catalogues users complained to FOS about

being misold PPI. The retailers were not then subject to the regulatory regime on selling insurance. The complaint was against the PPI insurers. FOS agreed to accept the complaint. The High court said it was a jurisdictional challenge. The decision took into account the position of the retailers acting as agents for the insurer and the claim against FOS was dismissed (*Assurant General Insurance Ltd v. FOS* [2022] EWHC 2766 (Admin)).

Mortgages. The Bank of England have published a statement about residential mortgages with features similar to the Mortgage Guarantee Scheme (26th October 2022).

Consumer Credit Reform. In December 2022 HM Treasury issued a consultation paper about reforming consumer credit legislation.

Retained EU Law (Revocation and Reform) Bill 2022. This Bill provides for a “Sunset” date of 31st December 2023 in relation to retained EU Law with numerous powers to extend that date until up to 2026, powers to restate EU Law etc. However, consumer credit and other financial services are excluded because they will be dealt with by way of revocation under the Financial Services and Markets Bill 2022.

PPI. The CMA have found that Barclays did not send annual reviews to a large number of former mortgage payment protection insurance policyholders thereby not complying with the Payment Protection Insurance Market Investigation Order 2011.

FOOD

Storage. The Claimant claimed £395,588 for an alleged breach of contract by the Defendant in respect of storing by the Defendant of the Claimant’s meat which was found to be covered in mould and unfit for humans or animal consumption. The Chancery Division held on a preliminary issue that the contract did not incorporate the Food Storage and Distribution Federation terms and conditions and was not therefore time barred nor limited by the conditions (*Scotbeef Ltd v. D&S Storage Ltd* [2022] EWHC 2434 (TCC)).

ADVERTISING

Highways. The High Court upheld a District Judge’s order which upheld a local authority removal notice in respect of advertising hoardings which were oversailing the highway under Section 225A of the Town and Country Planning Act 1990 (*Build Hollywood Ltd v. Hackney BC* [2022] EWHC 2806 (Admin)).

TRAFFIC

Commissioner’s Decision. The Upper Tribunal upheld a Traffic Commissioner’s decision to revoke an operator’s licence and to make disqualification orders (*Traffic Commissioner v. Singh* [2022] UKUT 284 (AAC)).

UNFAIR TERMS

Students. The Chancery Division has decided in respect of a challenge to the entitlement to licensed patents, whether a university could claim rights to inventions made by a student and held that the 1999 Regulations apply (*Oxford University Innovation Ltd v. Oxford Nanoimaging Ltd* [2022] EWHC 3200 (Pat)).

COSTS

Appeals. The High Court considered the issue of costs in respect

of judicial review and case stated appeals where the Defendant had yet to be tried in the Magistrates’ Court (*LB Barking and Dagenham v. Argos Ltd* [2022] EWHC 2466 (Admin)).

SALE OF GOODS

Satisfactory Quality. The Court of Appeal ruled on an issue regarding the sale of a luxury car. It was essentially a question of fact assisted by expert evidence and the decision of the trial Judge in favour of the buyer was upheld (*Kynaston-Mainwaring v. GVE London Ltd* [2022] EWCA Civ 1339).

HOUSING

Unlawful Evictions. At Canterbury Crown Court four defendants were found guilty of various offences including conspiracy unlawfully to evict a tenant and interfering with the peace or comfort of a residential occupier. The principal defendant was given a total of five years imprisonment (Local Government Lawyer, 13th October 2022).

Right to Manage. An application as to whether a breach of covenant or condition had occurred could only be made by the Landlord in respect of a Section 146 forfeiture notice and not a right to manage company (*Eastpoint Block A RTM Co Ltd v. Otubaga* [2022] UKUT 319 (LC)).

TRAVEL

Compensation. The ECJ has ruled on the issue of “connecting flight” where travel departing from a Member State and made up in a number of flights which had been combined by a travel agency which issued a single ticket (*Fliightright* (Case C-436/21)).

Compensation. Subject to one issue the Claimants were entitled to compensation. The issue considered by the Court of Appeal related to whether the Claimants complied with the airline’s terms and conditions before Court action using the online dispute resolution system. The District Judge and County Court Judge held in favour of the airlines. The Court of Appeal allowed the Claimants’ appeal. An airline was entitled to use a well-designed online dispute resolution portal but the automated response had not been helpful. It had not given access to what had been submitted. The role of a flight claim agency and issue of fresh evidence were considered (*Fore v. Easyjet Airline Co Ltd* [2022] EWCA Civ 1553).

CONSUMER LAW

CMA Notification. Evidence by the CMA includes the question of notifying the CMA of private consumer law actions. It also deals with the possibility of the CMA seeking permission to intervene in cases (CMA, 12th October 2022).

ENVIRONMENT

Sentence. The Court of Appeal (Criminal Division) upheld a suspended sentence of a director of a waste and recycling company in respect of offences relating to storage and disposal of waste (*R v. Anderson* [2022] EWCA Crim 1465).

Noise Nuisance. Appellants by way of a case stated appeal from a Magistrates’ Court decision lived near a games area and skate park. They said the noise therefrom was a statutory nuisance. The High Court had previously ruled ([2022] EWHC 1909) in favour of the Appellants and dealt with remedies. A general abatement order was made (*Jones v. Chapel-en-le-Frith Council* [2022] EWHC 2709 (KB)).