

complaint

Mr N has complained that John Lewis Financial Services Limited, trading as partnership card, has not accepted his claim for a refund of his purchase of three plots of land. He paid the deposits with his partnership credit card and is bringing a claim under section 75 of the Consumer Credit Act 1974.

background

Mr N bought five plots of land between 2008 and 2010. In the case of three plots, he paid the deposits with his credit card.

In 2012, the company that sold Mr N the land was wound up in the High Court. In 2014 Mr N submitted a claim of £47,709 to John Lewis for misrepresentation and breach of contract under section 75. His claim was rejected on the basis that there was no debtor-creditor-supplier link as required by the legislation, and that in one case his purchases were outside the monetary limit of section 75. Because of this Mr N referred his complaint to the ombudsman service.

Our adjudicator confirmed that there was a debtor-creditor-supplier link and went on to say that there had been misrepresentation by the supplier. Our adjudicator recommended that the complaint should be upheld and asked John Lewis to reimburse Mr N in full.

John Lewis asked that an ombudsman review the case as it does not believe that there is a valid claim under section 75.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence provided.

is John Lewis liable under section 75?

Section 75 provides that, under a specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from his or her credit card provider. Before considering the merits of the claim, I must first establish whether the circumstances are covered by section 75.

John Lewis has said it has no liability under section 75. It does not believe the purchase of two of the three plots meet the monetary limits for a valid claim under section 75.

Section 75 states that the cash price value of any single item purchased must be over £100 and under £30,000. I have considered all the available evidence and I broadly agree with our adjudicator's position. I accept John Lewis's point that the collective purchase price for two plots of land amounts to £30,209 (although Mr N only paid £29,709). However each plot is given its own reference and I am satisfied that each is an individual plot. I am in no doubt that the individual costs of those two plots is under £30,000 each, as demonstrated by the evidence, and therefore this brings Mr N's transactions within the scope of section 75

John Lewis also said that the payment was not made directly to the supplier and it considered that there was no valid debtor-creditor-supplier link as required by section 75.

So, I have considered whether a valid debtor-creditor-supplier agreement exists, in particular whether there is an association between the supplier and the body that accepted Mr N's credit card payments.

To assist my decision, I have considered the High Court judgment made on 8 February 2013 about Mr N's supplier. Paragraph 4(vi) of the judgment states that the directors of both companies – the supplier and the company that accepted credit card payments – have a familial connection. I am satisfied this meets the “*association*” requirement of section 184 of the Consumer Credit Act 1974 and therefore there is a valid debtor-creditor-supplier relationship.

misrepresentation

My role is to make a final decision based on all of the evidence before me and in doing so I have looked at the complaint as a whole and focussed on those elements that I consider to be material to the outcome. Both Mr N and John Lewis provided detailed submissions to support their respective positions, which I have read and considered in their entirety. But my findings focus on what I consider to be the central issues.

I have examined whether there has been misrepresentation or breach of contract in accordance with section 75. Mr N argues that there was verbal misrepresentation. Specifically the supplier told him that they would pursue re-zoning and planning permission of the plots of land. This would lead to the plots of land being worth significantly more money than he paid for them. He would then be in a position to sell them to a developer, as arranged by the supplier.

It's worth saying upfront that I am aware of the documentary evidence that contradicts the verbal submissions from Mr N. However I find his verbal evidence credible. Specifically I can easily see why he believed that the supplier would be managing the whole investment.

I also acknowledge what is stated at paragraph 27 of the High Court judgment. I know that John Lewis believes this does not support individual claims of misrepresentation. However I do not agree. The central aspect of that judgment is indeed not about whether the supplier misrepresented the land to individuals who purchased land as the case was brought by the Financial Services Authority (now known as the Financial Conduct Authority). However the judgment does comment very specifically about how the supplier operated and what sort of statements were being made to its customers about their investments.

I believe the judgment goes a considerable way in telling us about the mis-sale of the plots of land. The judge accepted that investors were told and understood that:

- the supplier would seek to progress planning procedures with a view to the sites being used for housing;
- the supplier would then procure their sale, probably to developers; and
- the investors who sold the plots on the site would be paid a share of the total consideration paid by the purchaser.

I am satisfied that in the light of these wider circumstances Mr N's verbal submissions are not inconsistent with the documentary evidence provided. I am persuaded that Mr N had the same understanding as described in the judgment when he agreed to enter into the contract and purchased the plots of land. In other words, it's reasonable that Mr N did not query the documentary evidence which appeared to contradict what he had been told. As it was reasonable for him to assume that this was not the whole story. Because the supplier would provide documents at a later date dealing with how the site would obtain planning permission and be developed for the proposed resale. In this case it is also fair to note that Mr N did not receive contracts for all the plots of land he purchased.

I would like to highlight the following from the judgment:

“Different investors also had different understandings about quite how the sale of the plots would be organised, but essentially they understood that [XXX] would arrange the sale of all the plots in a site to a developer”

I am satisfied it was that understanding which induced Mr N to enter into the contract. Had he known that he was simply being sold plots of land and would in fact be responsible for all of the above I do not believe he would have agreed to purchase them.

And on this basis I am satisfied a misrepresentation has taken place, and that it is fair to hold John Lewis liable. As I believe that there was a misrepresentation, the fair redress is that Mr N is put in the position he would have been in if he had not entered these contracts at all. John Lewis will need to repay Mr N £47,709 plus 8% simple interest from the date these payments were made until the date of settlement. They will also need to rework his credit card account as if he had not paid the two deposits – of £3,000 and £1,800 – on his card at all.

It's worth saying that the ombudsman service did not re-open Mr N's complaint as John Lewis felt. Mr N's complaint was awaiting an ombudsman's decision as we reviewed the evidence that Mr N has presented to us, as well as the judgment of the High Court. This led the adjudicator to conclude that he should amend his original view and that led him to the adjudication issued at the end of October 2014. When John Lewis confirmed that they wished this case to be reviewed by an ombudsman, I did speak to their representative to discuss the concerns they had raised.

I know that John Lewis will be disappointed by this decision. However it is not unusual for us to consider that verbal evidence outweighs documentary evidence or to take account of court judgments which directly impact a decision. I am satisfied that this is the right course of action to take in this case.

my final decision

For the reasons set out above, my final decision is to uphold Mr N's complaint and instruct John Lewis Financial Services Limited, trading as partnership card, to:

- a) rework Mr N's credit card account as if the transactions of £3,000 and £1,800 had not been made;
- b) refund £47,709 for the three plots of land he purchased; and
- c) pay simple interest of 8% on £47,709 from the date of payment to the date of settlement. For clarity the simple interest on the transactions at a) should be applied from the date these were repaid to the account in full, to the date of settlement.

In turn, John Lewis may take ownership of the land and can make arrangements to do so with Mr N at a mutually convenient time.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr N to accept or reject my decision before 23 February 2015.

Sandra Quinn
ombudsman