Durkin v DSG Retail Ltd: what does it mean?

The case of Durkin v DSG Retail Ltd has been reported as a 'David and Goliath' victory: Mr Durkin came close to bankrupting himself pursuing his claim against HFC Bank plc ('HFC' (part of HSBC)) arguing that he was entitled to (and did) rescind a credit agreement entered into with HFC. He further argued that HFC was liable for the losses he suffered as a result of reports of his default on the agreement, made to credit reference agencies.

Mr Durkin's claim was upheld by the Supreme Court, but does the decision offer assistance to others suffering adverse credit scores or trying to rescind credit agreements?

Background

In December 1998 Mr Durkin bought a laptop computer in PC World. He specifically required a laptop with a built-in modem for internet access. The sales assistant informed him that he could return the laptop if it did not have a built-in modem. Mr Durkin paid a £50 deposit and entered into a credit agreement to pay the balance of £1,449. The credit agreement was a debtor-creditor-supplier agreement, between Mr Durkin and HFC, but was signed by the PC World sales assistant on behalf of HFC and was entered into for the sole purpose of Mr Durkin purchasing the laptop from PC World.

The laptop did not contain a built-in modem and Mr Durkin returned it to PC World the following day. There were ongoing issues about whether he had rescinded the sales contract. However, these were eventually resolved by in 2008 with the Sheriff Court in Aberdeen's finding that the sales contract had been validly rescinded.

The issue of rescission of the credit agreement was treated separately and, while the Sheriff Court found that Mr Durkin had validly rescinded the credit agreement, and granted Mr Durkin damages of over £100,000, the decision and the award were overturned on appeal to the Court of Session.

Mr Durkin appealed to the Supreme Court. The damages he sought against HFC were set out under three heads of loss: (1) damage to his credit (2) loss caused by interest payments as he was unable to obtain interest free credit and (3) capital loss caused by his inability to purchase a property in Spain in October 2003.

Supreme Court decision

The Supreme Court considered that Mr Durkin had validly rescinded the credit agreement. The decision was based on what the Supreme Court found to be an implied term of the credit agreement that such an agreement must be conditional on the survival of the sales contract. A purchaser who rejected goods and rescinded the sales contract for breach of contract may also rescind the credit agreement by invoking that condition. The Court found that Mr Durkin's written letter rescinding the credit agreement was, therefore, effective.

The Court also found that HFC was under a duty to properly investigate Mr Durkin's assertion that the credit agreement had been rescinded and that, until those investigations

had been completed, HFC should not have reported details of any default on the credit agreement to credit reference agencies.

Damages

Mr Durkin was awarded £8,000 which HFC had agreed was the level of damage to Mr Durkin's credit which would fall due in the event that HFC was found to have breached its duty of care.

However, there were procedural reasons why Mr Durkin's damages could not be higher, as the Supreme Court was restricted to considering points of law. The Court of Session had found that there was insufficient evidence to support Mr Durkin's other heads of loss, namely his inability to make use of 0% interest credit cards and borrowing, and his loss of the opportunity to make a capital gain on a property purchase in Spain. The Court of Session had held that it was not clear whether Mr Durkin's losses were caused by his failure to obtain credit due to his poor credit rating or by the general levels of his expenditure. As this was found as a matter of fact, it was out of the scope of issues which could be considered by the Supreme Court.

What does this mean for everyone else?

An organisation providing credit (which is likely to extend to cover banks, credit card providers and mobile phone companies) has been shown to have a duty of care in respect of reports it makes to credit reference agencies about its customers. Breach of that duty of care can give rise to a claim for damages.

This does not mean that all adverse credit references can be challenged, but does provide slightly more power to customers in terms of disputed sums or defaults. In order to obtain the possible protection established by this ruling, any dispute about a default or a sum due should be put in writing at the first possible instance and followed up to ensure the lender is aware of the dispute.

The lender is then under a duty to investigate the dispute and only once those investigations are completed and then only in the event that the lender is properly satisfied that the dispute is groundless should an adverse report be sent to a credit reference agency. To do otherwise would be a breach of duty of care which could be actionable by the customer.

Anyone who thinks they might have been affected by adverse credit in a situation where they had raised disputes about the debt or the agreement should seek legal advice.

A copy of the judgment is available here.

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