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PLEVIN: CANADA SQUARE V POTTER
LIMITATIONS ARGUMENT

CANADA SQUARE OPERATIONS LIMITED V POTTER (PLEVIN)

The proceedings raised a point of some general importance, concerning the interaction of s32 of the Limitation Act 1980 (LA 1980), which deprived a defendant of a limitation defence if he had deliberately concealed a breach of duty, with s140A-D of the Consumer Credit Act 1974 (CCA 1974).

The respondent (Potter) alleged that she had been mis-sold payment protection insurance, in respect of which the appellant company (Canada Square Operations formerly Egg Banking plc), from which she had taken a loan, had received a commission.

On 26 July 2006, the respondent entered into a regulated fixed-sum loan agreement with the appellant. The loan was in the sum of £16,953 and was repayable over 54 months at an interest rate of 7.9% APR. At the same time, the respondent entered into a payment protection insurance (PPI) policy with an insurer, the aggregate premia for which, net of interest, amounted to £3,834.24. Unbeknownst to the respondent, the appellant received a commission which amounted to 95.24% of the premia.

The respondent brought a claim to recover the balance of the premia she had paid, together with contractual and statutory interest, relying on CCA 1974 s140A-D. The appellant relied on the defence of limitation, however, the recorder found in the respondent's favour. The Queen's Bench Division, in dismissing the appellant's appeal, construed LA 1980 s32(2) and held that the appellant's non-disclosure of the commission had been unfair and amounted to a legal wrongdoing, for the purposes of the statutory 'right of action' conferred by CCA 1974 s140A-D. Accordingly, the court held that the appellant had committed a 'breach of duty' for the purposes of LA 1980 s32(2). Further, the court held that the recorder had not erred in inferring from the evidence that the appellant had to have known that its failure to disclose the extent of the commission it had retained had been a breach of duty for the purposes of LA 1980 s32.

PLEVIN DECISION

Therefore, two important issues, which have to date been raised by Defendants in our current cases, have been decided in favour of Claimants:

1. The Defendant's failure to disclose commission relating to PPI amounted to a deliberate breach of duty, invoking s140A-D of CCA 1974; and
2. The Defendant cannot raise the defence of limitation, by virtue of s 32(2) of the LA 1980, given that it had committed this breach of duty.

What is perhaps more surprising, is that some of the responses we have received from CSO have sought to rely on the limitation Defence. This was a decision at first instance by a County Court Recorder, which was then appealed by CSO to the High Court. Clearly, the department corresponding with us had no idea about this case.

As this is a recent decision (20 March 2020), there is a possibility that it may yet be appealed further to the Court of Appeal. However, the judgment of Mr Justice Jay seems to be very robust and carefully thought out and did, of course, agree with the findings of the lower court.

Another Defendant (Capital One), has recently sought to rely on the decision of a Deputy District Judge in the Small Claims Track of the County Court, although such decision has obviously been superseded by 'Potter'.

CONCLUSION

The success of a case is determined by damages (quantum) , limitation and liability. Our proprietary calculation tool allows us to reconstruct the account and calculate the amount of damages. Liability is clear and set as per Supreme court decision, those levels of undisclosed commission are unfair.

Limitation was the latest attempt from the banks to stop clients getting the compensation they deserve.

In summary; this decision has provided us with confidence that the process of litigating Plevin cases is not under any imminent threat of a limitation or deadline. From an investment perspective this should provide any prospective or existing investors with reassurance that the opportunities will continue to grow.