DRN-4720850

The complaint

Mr M, who is represented by a professional representative ("PR") complains that Santander UK PLC rejected his claim under s.75 Consumer Credit Act 1974 ("CCA"). Mr M made the purchase along with Miss S, but as the deposit was made by him using his credit card account he is the eligible complainant. For simplicity, in this decision I will refer to him as the sole purchaser.

What happened

Mr M was timeshare member with another supplier and in July 2016 he agreed to enter into another agreement whereby the points he held with the existing supplier were transferred to a new supplier.

The contract was with Group Global Hotels ('GGH') which is the trading name of Intergroup SLU and there was also a Management Mandate Agreement with General European Consultants ('GEC'). Payment of €5,995 was made to GEC using Mr M's Santander credit card.

The total cost was €47,118 which according to the agreement equated to £39,930.51. The balance was paid for by means of a loan from a separate lender, the trade in value of the old timeshare and rental income.

PR submitted a claim under s.75 in July 2022 and asked that it be treated as a complaint. It said that there had been both misrepresentation and a breach of contract by GGH. The details are well known to both parties so I will not repeat them here.

Santander rejected the claim as it considered there had not been a debtor, creditor, supplier (DCS) agreement which is required by s.75. It said that the payment had been made to GEC, but the agreement was with GGH.

PR didn't agree and brought a complaint to this service where it was considered by one of our investigators who didn't consider it should be upheld. He said there were two reasons why the complaint should not be upheld. Firstly, the cash value of the transaction exceeded £30,000 and so fell outside the monetary limits for a s.75 claim. Secondly, he believed that the DCS agreement was broken by payment being made to a third party.

PR didn't agree and said the agreement included both GGH ad GEC as suppliers and the total purchase price include the €5,995 paid to GEC. It said that the credit card payment was made to one of the suppliers of the timeshare product. Alternatively, it argued that GEC was acting as an agent for GGH and it had been established that an agent did not break a DCS

agreement. It did not address the matter of the s.75 financial limit being breached.

I issued a provisional decision as follows:

"The contract is shown as being entered into by GGH as one party and Mr M and Miss S as the other. The contract describes GGH's activities as follows:

“- Sale of properties, real estate transactions,

- Sale of rights on properties, located in Spain, as an offer of specialised tourism products,

- Broker, agent or intermediary in the aforementioned sales.”

The contract goes on to describes what GGH is supplying:

“The DISTRIBUTOR, as an intermediary, authorises the sale and transfer to the

PURCHASER of a private right to make use of the properties for tourist purposes in the Mondial Club floating system…”

It adds:

“The DISTRIBUTOR, as an intermediary, authorises the sale and transfer to the PURCHASER of a private right to make use of the properties for tourist purposes in the Mondial Club floating system relating to:-

- 1 Real Estate Period/s

- Season: red

- Capacity: 6

- Usable for the PURCHASER'S benefit as of: 2017

In all of the residences mentioned above and described In the Appendix.”

It then provides more detail and sets out the purchase price as €38,268. It breaks this down with €5,995 being paid by credit card and €25,865 by bank transfer.

We then have a Management Mandate Agreement with GEC. It describes GEC as follows:

“That the Agent is a consultancy company with tax identification number [xxx], which specialises in management consultancy services and support for other largely commercial services.

The Principal wishes to engage the services of the Agent in order to be assisted in the acquisition of a real estate/tourism product, in accordance with the following:-“

It then lists a number of services it will provide such as ensuring registration formalities, checking the documentation, providing administration services. For these Mr M and Miss S agreed to pay €5,995.

This contract or these contracts are far from being clear. One can either regard this as a single contract for which the cash price was €39,930.51 or two contacts with €5,995 being paid by Mr M for administrative services provided by GEC. Whichever one considers to be correct I believe Mr M’s s.75 claim fails.

If it is one contract then the cash price exceeds the upper limit of transactions covered by s.75.

S. 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a

misrepresentation or breach of contract on the supplier's part.

For s. 75 to apply, the law effectively says that there has to be a:

- *Debtor-creditor-supplier chain to an agreement and*
- *A clear breach of contract or misrepresentation by the supplier in the chain.*

It also operates within financial limits and only applies where the cash price of the goods or service is more than £100 but no more than £30,000. For completeness I would note that s.75a allows claims on purchases up to £60,260, but this does not apply to payments made by credit card and it also only covers certain specific situations.

That means that if one is to take the purchase as one purchase to which GEC was a supplier then the claim fails due to it being more that £30,000.

In the alternative if one treats these contracts as being separate and the agreement with GEC being a standalone contract then one had to consider if there was any basis for a claim of misrepresentation or breach of contract.

In its claim PR set out in some detail what happened and the reasons why it considered there had been both a breach of contract and misrepresentation. It has not shown that GEC misrepresented the services it offered or failed to deliver in such a way as to amount to a breach of contract. I have noted that the document setting out the services to be provided by GEC is vaguely worded and it would be very difficult to establish that the contract had been breached or misrepresented. Nor does the documentation indicate that GEC was acting as an agent for GGH. It was providing services to Mr M and not to GGH.

In conclusion it seems that whichever construction one puts on the claim it fails and I cannot hold Santander to have been wrong to reject the claim."

PR did not agree and said that the purchase price was less than £30,000. It said the net price of the timeshare was €47,118 and a discount of €8,550 was applied for the Supplier assuming responsibility for the timeshare owned by Mr M. A further deduction of €6,408 was applied leaving €31,860 payable. It then applied the conversion rate at the time of £1.19 which meant the sterling contract price was £26,773.10. This meant the cash price attached to the product was £26,773.10 and to reach any other conclusion would be perverse.

As for the issues of misrepresentation and breach of contract PR said Mr M's witness statement made this clear. It argued that the documents showed an inflated value being used and a discount in lieu of rental value. This it said was evidence of the timeshare being sold as an investment. PR said timeshares had little or no value as confirmed by the House of Commons Research Brief dated 13 April 2022.

It believed the contract to have been deliberately vague, but the trade in of the old timeshare was front and centre of the side letter. It said that if there was no contractual liability for the Supplier to assume responsibility for the old timeshare then the promises to do so must be false. However, if the side letter has force, then it is clear it has been breached. The old timeshare was never transferred as Mr M continued to receive demands for maintenance fees and he only was able to end the contract some four years later. Finally, it said that I should have given more credence and weight to Mr M's witness statement.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I thank PR for its response, but I remain unpersuaded that I should uphold this complaint. I will explain why.

PR has endeavoured to break down the price so as to eliminate several elements of it. In the original claim made to Santander it said the total purchase price for the product is €38,268. I think it was right to use this figure though it is arguable that the true total price was €47,118.

The contract with GGH states that the 'total purchase price' is €38,268. It goes on to say that there is a deduction of €6,408 which is described as financial compensation for non-use of the Real Estate in 2017 and 2018. It then states: "*Under the agreements (my emphasis) made, payment of the amount mentioned above shall be made by the PURCHASER according to the following terms*": a 'deducted amount' of €5,995 will be made by credit card and the balance of €25,864 by bank transfer.

If we assume this is one sum due to one Supplier then the fact that it is made up of separate components does not reduce the cash price as required by s.75. This is further reinforced by the document titled Euro Sterling Conversion which show the value of €47,188 less a trade in value of €8,850 leaving a balance of €38,268. This is described again as the purchase price. From this is deducted €6,408 which is annotated rental fee and then a further €5,995 which is an admin fee to GEC.

The term 'cash price' has different meanings depending on circumstances and usage. It seems PR is conflating different meanings. In the FCA handbook it is defined as follows: *"(in relation to any goods, services, land or other things) the price or charge at which the goods, services, land or any other things may be purchased by, or supplied to the borrower for cash, account being taken of any discount generally available from the dealer or supplier in question*".

The deduction of €6,408 is not a discount generally available but makes up part of the purchase price. Regardless of what the Supplier did with the €6,408 I consider it was part of the total price paid by Mr M and so it takes the sum paid to over £30,000. Nothing I have seen shows why that sum should be ignored.

I turn now to the payment of €5,995. I do not think it has been established that the payment of €5,995 was part of a single contract. Nor has it been established that it was paid to the same Supplier or that they were connected as required by s.75. Although there is undoubted vagueness in the documentation the extract quoted above refers to contracts in the plural and there is a separate document which addresses the services to be supplied by GEC.

It seems the main contract is between GGH and Mr M and Miss S. It is not between GGH, Mr M and Miss S and GEC. It does mention a payment of €5,995 in one of the clauses to be paid by the Purchaser, but it does not specify to whom that sum is to be paid. There is a separate document titled Management Mandate Agreement signed by an individual 'acting in the capacity of authorised person and legal representative' for GEC. It sets out the services GEC will provide and the fee payable of €5,995.

Although I can see the two agreements were signed by Mr M and Miss S on the same day and they may well have regarded them as connected I do not consider them to be so for the purposes of s.75. GEC is not acting as an agent for GGH. It is providing separate services. I think it is similar, say to buying a new car and taking out an agreement for roadside cover at the same time. The deals may be arranged at the same time by the same salesperson in relation to the purchase of the car, but separate goods/services are being supplied by separate suppliers. As I explained in my provisional decision, I could see no evidence that

GEC either misrepresented what it was to provide, nor was I given detail of any breach of contract by it. The evidence relates to GGH and not GEC and what it agreed to supply.

In conclusion I remain of the view that if one views the transaction as a single entity the cash price exceeds £30,000 and if one views the GEC agreement as separate there is no evidence to support the claim under s.75.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 October 2024.

Ivor Graham
Ombudsman