

complaint

Mr and Mrs D complain about a car purchased using Mr D's credit card. The complaint is brought against The Co-operative Bank Plc ('Co-op') under section 75 of the Consumer Credit Act 1974.

background

Mr D raised a section 75 claim against Co-op for breach of contract and misrepresentation in respect of the car purchased on his credit card.

Co-op refused to uphold his complaint. In summary, it said there was no valid 'debtor-creditor-supplier' relationship for a section 75 claim.

Our adjudicator did not recommend this complaint be upheld. She said that because the contract for the car was made with Mrs D but the credit card account is Mr D's there was not the correct 'debtor-creditor-supplier' relationship for a valid claim under section 75.

Mr D disagreed with the adjudicator's view. He says there is a valid section 75 claim because he is the contracting party. In summary, he says that he initiated the contract as a gift to his wife. He says that he (rather than Mrs D) negotiated all the main terms of the contract with the supplier, provided valid consideration to contract, and intended to be legally bound. He adds that registration documents are supplementary to the contract and do not show that Mrs D has contracted with the dealer in this instance.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

does section 75 apply?

Section 75 makes the provider of credit (Co-op in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when there is a direct relationship between the debtor, creditor and supplier.

It is Mr D who is considered to be the debtor in this instance as he holds the credit agreement with Co-op. In this case I consider that Mr D does not have the required relationship with the supplier (the car dealer) for a section 75 claim as the contract for the goods (the car) was with Mrs D.

In coming to this finding I consider it persuasive that all the sales documentation is in the name of Mrs D only. While not always a sole determining factor I find this indicates that Mrs D is the contracting party here. I have also carefully considered other surrounding evidence and note that the log book for the car is also in Mrs D's name. And it also appears that the insurance was put in Mrs D's name. This all supports the finding that Mrs D is the sole contracting party in this instance.

Mr D has said that some of this paperwork is supplementary and does not form part of the contract. However, for the purposes of section 75 I consider that all this documentation is relevant as an indicator of who intended to be the contracting party in this instance.

Mr D has stated that he purchased the car as a surprise gift and negotiated all the main contract terms, however, it appears that it was Mrs D who first noticed the car and picked it out as the one she wanted. It also appears that the purchase involved the part exchange of Mrs D's existing car. Overall, I am satisfied that Mrs D was likely to have been involved in the decision making process which led to the purchase of the car, and that ultimately it was her choice to go ahead with the sale.

Mr D has mentioned that he entered into the contract over the phone when he called the dealer to arrange to purchase the car. However, for him to be able to make a claim under section 75 I need to be persuaded that he is a contracting party. Mr D has not been able to provide sufficient documentation or other evidence which persuades me that it was he who contracted with the car dealer. Although I have no doubt that he had some involvement in the process of helping with the purchase in the capacity of Mrs D's spouse, I am not satisfied that this is enough to make him a contracting party for the requirements of section 75.

Overall, in these particular circumstances I am satisfied that Mrs D is the sole contracting party under the agreement with the car dealer. Therefore, taking into account my reasoning above, I do not consider that the necessary 'debtor-creditor-supplier' relationship exists for a valid claim against Co-op under section 75. Therefore, I am unable to consider Mr D's complaint about the car.

I appreciate this is a technical area of the law, and that this is not the outcome Mr D wanted. I can understand why he feels strongly about the matter. I am not saying that he and Mrs D have no further options, merely that they cannot proceed with a claim through this service.

my final decision

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

Mark Lancod
ombudsman