

complaint

Mr G has complained that Mortgages Plc has failed to provide him with a copy of the contract to show there is a valid mortgage.

background

In September 2006 Mr G granted a mortgage to Mortgages Plc (under its trading name of Mortgages 1 Limited) as security for a loan. Mr G signed a Legal Charge granting the mortgage and acknowledging receipt of the principal sum, which is set out in the mortgage offer as £139,564.

In 2014 Mr G complained to Mortgages Plc and to us that he hadn't been provided with a copy of his mortgage contract "*with two wet signatures*". He is unhappy with the copy of the mortgage offer that has been provided to him. Mr G contends that there is no evidence of a legal contract under contract law.

Our adjudicator didn't recommend the complaint should be upheld. She was satisfied that the mortgage offer was sufficient to show a valid loan to Mr G.

Mr G disagreed. He disputes that the mortgage offer is evidence of a loan. It now falls to me to reach a decision on this complaint.

my findings

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

The crux of Mr G's complaint is one with which I am familiar. It is a subject discussed at some length on various debt-avoidance websites on the internet. Mr G's belief is that if there is no document with 'wet signatures' of both parties, then there is no valid contract between him and Mortgages Plc.

But Mr G has misunderstood the legal position. Mortgage lenders typically send a mortgage offer letter that they invite their borrower to sign. Often the mortgage lender does not formally sign the offer letter. At the time of an advance there is a mortgage deed which is signed by the borrower but not the lender. I have seen a copy of Mr G's mortgage deed signed by him in June 2006 in which he acknowledges receipt of the money advanced to him.

In an unreported case in Preston County Court decided in July 2013 a borrower raised the argument that the mortgage documentation did not comply with the required legal formalities and was therefore void. This is the argument Mr G has raised here and so it is important to look at what the court said about this.

Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (LP(MP)A) provides that a contract for the disposition of an interest in land must be made in writing, incorporating all the terms of the contract, and signed by each party to the contract. Section 27 of the Land Registration Act 2002 (LRA) provides that if a disposition is required to be completed by registration then it does not operate at law until the relevant registration requirements are met; and that the grant of a legal charge (or, a mortgage) is a disposition which is required to be completed by registration.

In the case I refer to, the borrower's argument was that her mortgage was null and void for want of statutory formality because it was signed by the borrower only and not the lender (as is the case with the vast majority of mortgage deeds) and as such it did not comply with the LP(MP)A. Therefore, according to her, the mortgage didn't exist at law and so could not be completed by registration as required by the LRA, and so it was not binding on the borrower.

But the judge held that the borrower's argument was "illusory" and "false". He was concerned that the spreading of these dangerous arguments on the internet could mislead borrowers into wrongly thinking that their mortgage was not binding upon them and that in the event of default they would not be in danger of losing their homes.

The relevant statutory provision for a mortgage, section 53 of the Law of Property Act 1925, does not require every term to be included in a document signed by both parties; rather the document just needs to be signed by "the person creating or disposing of the interest" (i.e. the mortgagor/borrower). The judge also explained that section 27 LRA does not go so far as to say that a disposition required to be completed by registration (such as a mortgage) is created by registration and that it does not therefore exist or operate in equity before registration.

So as far as the law is concerned, I am not persuaded there is any merit to Mr G's argument that he does not have a valid mortgage agreement with Mortgages Plc. He signed the mortgage deed and acknowledged he'd received the money. That is all that is required for the creation of a valid mortgage.

I have no power to decide whether there is some legal technicality that would absolve Mr G of any responsibility for repaying the money he borrowed from Mortgages Plc. My remit, pursuant to the powers granted to the Financial Ombudsman Service by the Financial Services and Markets Act 2000, is to decide what's fair and reasonable in all the circumstances. I am satisfied that it is fair and reasonable for Mr G to repay the money he borrowed from Mortgages Plc in 2006 and that Mortgages Plc is entitled to receive this money.

As far as I am aware, no court or tribunal has found in favour of a borrower on the basis of the arguments put forward by Mr G as to why he might think there is no valid contract between him and Mortgages Plc. On the other hand, there have been a number of cases where borrowers have lost their case after trying to raise these arguments and as a result have been ordered to pay the lender's substantial legal costs. So I would strongly suggest Mr G takes legal advice from a qualified solicitor rather than relying on advice obtained on the internet before attempting to raise in court the arguments he has put forward here.

If Mr G is finding it difficult to meet his mortgage repayments, he may wish to take advice from a debt advisory service such as StepChange or National Debtline. We can provide Mr G with contact details for these organisations, if he would like us to.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 27 March 2015.

Jan O'Leary
ombudsman