

complaint

Mr E complains that a car which he purchased using his credit card is faulty. He says that the dealer refused to repair it and has now ceased trading. He brings his claim against Santander UK Plc under section 75 of the Consumer Credit Act 1974.

background

Mr E used his Santander card to pay £1,500 and paid the remainder of the balance of £3,000 using his debit card. Santander refused to uphold the complaint. It concluded that the car was 'sold as seen' and the dealer cannot be responsible for any on-going repairs. It has also said that there is no valid 'debtor-creditor-supplier' relationship for Mr E to make a section 75 claim because the invoice is in his wife's name.

Our adjudicator said this complaint should be upheld. He was satisfied that Mr E contracted with the supplier and that there is the correct 'debtor-creditor-supplier' relationship for him to have a valid claim under section 75. He was persuaded that the car was not of satisfactory quality, and noted that the cost of repairs is uneconomical. He was satisfied that Mr E is entitled to reject the car for a full refund of the price paid and the cost he had incurred as a result of attempted repairs and diagnostics.

Santander does not agree. It maintains that there is no valid 'debtor-creditor-supplier' relationship for there to be a valid section 75 claim because the invoice for the car is in the name of Mr E's wife. It also says that it does not believe it should take possession of the car as the issue of who has title to the goods is between Mr E and the supplier.

my findings

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

Where matters are in dispute or unclear I make my findings on the balance of probabilities – which is to say, what I find most likely to have occurred based on the evidence that is available and the wider surrounding circumstances.

does section 75 apply?

Section 75 makes the provider of credit (Santander 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.

Although Mr E is the cardholder it is his wife's name that appears on the invoice. Santander has indicated that this shows that it is her who has the direct relationship with the supplier and not him. However, when considering the contracting parties this service takes into account not just the paperwork but all of the surrounding circumstances.

Mr E has said the car was for him to use and that his wife took delivery of the car while he was out - which is why the sales documentation was made out in her name. Santander has pointed out that the documentation is not a delivery note but an invoice and that payment was made on the same day. Mr E has explained that he paid a deposit on his credit card at the dealership a few days before delivery and then his wife paid the balance on delivery

(using his cards) while he was at work. He says that she was only signing the documentation to acknowledge delivery.

Overall, I find Mr E's submissions to be persuasive. I find his explanation is backed up by a credit card statement which shows that he made a deposit payment a few days before the total balance was paid. Furthermore, in this instance I do not consider it to be a crucial factor that the documentation is titled an 'invoice' rather than 'delivery note'.

Overall, I am satisfied that Mr E intended to be a contracting party in the purchase even though the dealer put his wife's name on the paperwork. Mr E made the total payment for the car. And I find his submissions are particularly supported by the fact that he is named on the logbook and he is the one who has taken responsibility for contacting the dealer post sale regarding the problems with the car - and for paying for the post sale repairs and diagnostics (it is his name that appears on all the invoices from the garage). Furthermore, there is no indication that Mr E and his wife specifically asked the dealer to leave his name off the paperwork.

Overall, in these particular circumstances, I am satisfied that Mr E contracted with the supplier of the car. Therefore, taking into account my reasoning above, I consider that the necessary 'debtor-creditor-supplier' relationship exists for him to make a valid claim against Santander under section 75. As a result, I am able to consider Mr E's complaint about the breach of contract by the supplier of the car.

breach of contract

Santander has said that the car was 'sold as seen' and that it is unreasonable for the dealer to be held liable for the cost of on-going repairs. However, I do not agree that this is an accurate interpretation of a consumer's rights when purchasing goods. Goods purchased must be of satisfactory quality and free from inherent defects. If they are not then this gives rise to a claim for a breach of contract under section 75.

It is not reasonable to necessarily expect a consumer to be aware of all defects at the time of sale, or to say that those defects have been accepted. Furthermore, if repairs are the result of problems caused by an inherent defect then it is not reasonable to say that a supplier cannot be held liable for their cost.

With this in mind, I consider that the car which Mr E purchased was not of satisfactory quality at the time of sale. Mr E has produced credible and detailed submissions which satisfy me that he had serious problems with the car almost immediately after purchase and that he reported these to the dealer straight away. I note that the dealer was not willing to look at the car and Mr E was told to take it to a garage. On balance, I believe this to be the case. Mr E then took it to a garage which identified various problems including overheating, engine misfires and sensor failure.

Considering the dealer's reluctance to assist I consider that Mr E took reasonable steps by having some initial repairs done on the car. However, it soon became apparent that there were even more serious issues with the car – in particular a gearbox repair which would cost around £6,000 to fix (and may not even be repairable). This is backed up by a credible diagnostic report from an independent garage. The report also states that there were various other faults noted with the vehicle including problems with the engine idling incorrectly. Considering the nature of the on-going issues with the car, the total cost of the repairs

compared to the cost of the car, and the fact that Mr E had only had the car for around 3 months, I am not satisfied that it was of satisfactory quality at the time of sale.

In these particular circumstances I do not consider a repair to be an appropriate remedy. I am also satisfied from his credible submissions and the wider evidence that Mr E has had minimal use from the car and that he is currently unable to use it. I also note that Mr E says that the dealer has been unresponsive to his more recent attempts to contact it and appears to have ceased trading. I consider it is fair and reasonable in these circumstances that Mr E is able to reject the car for a full refund. I also find (and considering the lack of co-operation from the dealer from the outset) it reasonable that Mr E is refunded for the repairs and diagnostic checks that he has already paid for.

Santander has argued that it is not liable to take back the car. However, under section 75 Santander has joint liability for the breach of contract by the dealer. Therefore, as part of this settlement it should take back the car at no cost to Mr E.

my final decision

I direct Santander UK Plc to:

- take back the car at no further cost to Mr E;
- rework his credit card account as if the payments of £100 and £1,400 were never made, refunding any resulting credit balance plus 8% annual interest from the date of that credit balance to the date of settlement;
- pay Mr E £3,000 representing the amount paid on his debit card plus 8% annual interest from the date of payment to the date of settlement; and
- refund him the payments, totalling £721.80, for repairs and diagnostic tests plus 8% annual interest from the date of the payments to the date of settlement.

Santander should deduct basic rate tax from the interest element of my award and provide Mr E with a certificate of tax deduction so he may claim a refund, if appropriate.

Mark Lancod
ombudsman