

complaint

Mr B complains that Capital One (Europe) plc will not refund to him the money that he paid for a timeshare. His complaint is made against Capital One under section 75 of the Consumer Credit Act 1974. Mr B is being helped with his complaint by a representative.

background

Mr B paid £2,395 for a timeshare in September 2010 using his Capital One credit card. He considered that the holidays that he was offered were unacceptable and he says that the timeshare company had been dissolved in April 2010. He complained to Capital One under section 75 but was not satisfied with its response so complained to this service.

The adjudicator did not recommend that this complaint should be upheld. She concluded that the debtor-creditor-supplier relationship required for a claim under section 75 was not present as Mr B had made his payment to one company but the timeshare services were to be provided to him by a different company. She concluded that the two companies were not associates. She also noted that the timeshare company had not been dissolved until September 2012.

Mr B's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. The representative says that Mr B feels like he has been conned by the whole process.

my findings

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

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier.

In these circumstances the debtor is Mr B because he has used his Capital One credit card to make a payment, the creditor is Capital One because it has provided credit to Mr B and the supplier is the timeshare company. However, Mr B has made his payment to a company that is not the timeshare company and Capital One therefore has no direct relationship with the timeshare company. I do not consider that the timeshare company and the company to which Mr B has made his payment are "associates" as defined in section 184 of the Consumer Credit Act 1974. Although I sympathise with Mr B for the difficulties that he has encountered, I consider that the debtor-creditor-supplier relationship required for a successful claim under section 75 is not present in these circumstances.

I therefore do not consider that it would be fair or reasonable for me to require Capital One to refund to Mr B the payment that he made for the timeshare or to pay him any other compensation.

my final decision

For these reasons, my decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 23 February 2015.

Jarrold Hastings
ombudsman