

complaint

Mr D says that a supplier misrepresented and breached a contract to purchase land. He brings his claim against MBNA Limited under section 75 of the Consumer Credit Act 1974.

background

Mr D bought a plot of land and paid the deposit using his MBNA credit card. Mr D complained to MBNA about the purchase and requested a full refund under section 75, saying that the contract was misrepresented and breached by the supplier.

In summary, Mr D says the supplier inflated the prospects of successfully achieving planning permission for the land. And that it falsely claimed that it would assist in obtaining planning permission. He says that the land was misleadingly marketed as a great investment opportunity and the supplier claimed to be an expert with excellent credentials. He also says that the supplier was running an unauthorised collective investment scheme.

MBNA says the documentary evidence provided by Mr D does not support his claim. It says the contract has been fulfilled and Mr D is the owner of the land he purchased.

Our adjudicator did not recommend this complaint be upheld. She considered that the contract had not been breached or misrepresented. In summary, she said that the marketing material did not make any guarantees about planning permission and noted that the sales contract made it clear that the supplier would not apply for planning permission.

Mr D disagrees and says that he was conned. He says that he did not sign the contract so it should be disregarded, and there was verbal misrepresentation and numerous examples of written misrepresentation in the marketing materials and pre-sale literature he was provided. He says he bought the land because he was presented with what appeared to be an opportunity to get a 30% return on his savings within 18 months.

my findings

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

I thank the parties for their submissions. Mr D has written in detail and asked numerous questions. While I have read and considered these submissions I will be focusing on the matters which I consider to be central to his section 75 complaint.

I cannot say with certainty what was discussed between Mr D, and the supplier. However, where the evidence is incomplete or inconclusive, as some of it is here, I reach my decision on the balance of probabilities – which is to say, what I consider is most likely to have happened based on the evidence that is available and the wider surrounding circumstances.

Section 75 of the Consumer Credit Act 1974 provides that, under a very specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from his or her credit card provider. There can only be a valid claim under section 75, however, if payment was made under what is known as a 'debtor-creditor-supplier' agreement and if it can be shown that the supplier has breached or misrepresented the contract. MBNA initially said there was no valid 'debtor-creditor-supplier' relationship for a

section 75 claim. It has now accepted that a valid 'debtor-creditor-supplier' arrangement exists here – therefore I am left to consider misrepresentation and breach of contract.

Overall and on balance, I am not persuaded that the contract was breached or misrepresented as Mr D has suggested. I say this because I have carefully examined all of the information provided by Mr D, including the promotional materials and the contract. And whilst I can see that the promotional materials do contain some persuasive language (no doubt repeated by the salesperson(s)), I consider that it is clear that the supplier would not apply for planning permission and did not offer any guarantee that planning permission or specific investment returns would be achieved.

In coming to this conclusion I find the contract Mr D has provided to be particularly persuasive. It does not contain any guarantee that planning permission will be obtained and in one clause it specifically states that the supplier will not apply for it, as follows:

'For the avoidance of doubt, the Seller is not obliged to and will not apply for planning permission in relation to the Property or in relation to the land as a whole of which the Property forms part...'

Mr D says he did not sign this contract and that it was a sample. However, considering the wider circumstances of this complaint I am not satisfied its terms changed in any way. And Mr D appears to have made notes on the contract and scrutinised it in some detail. Overall and on balance, I am satisfied that Mr D had a reasonable opportunity to consider this contract and that he ultimately agreed to be bound by its terms and conditions in respect of this purchase. I am not satisfied that the written contract should be disregarded in this instance.

I accept that the pre-sale promotional literature does specifically refer to planning and re-zoning. However I consider that these statements are either opinion or general marketing comments that would not be sufficient for me to conclude that there has been a misrepresentation in this instance.

Mr D has added that he entered into the contract for investment returns. He has said that he expected to get profits in a short period of time and that he was misled about this. However, the contract does not make any guarantees about investment returns. And although the promotional literature refers to investment opportunity I am not satisfied there is any guarantee of profit. The comments appear to be statements of opinion or general marketing terms. In absence of specific guarantees about returns it would appear (as with many investments) that there was a speculative aspect to this transaction.

I also note that contrary to making claims of guaranteed planning permission or investment returns the supplier's letters (pre and post-sale) to Mr D specifically state that it does not guarantee these things. While I accept this information is not prominently placed, in light of the lack of sufficient evidence that the supplier made claims to the contrary I consider it relevant to my overall findings on the issue of misrepresentation.

While I accept that Mr D has taken the promotional information he was given in good faith and has interpreted it to mean that planning permission will be granted or that he is guaranteed to make money from his investment – I cannot fairly conclude that there has been a breach of contract or misrepresentation under section 75 in this instance.

Mr D has made reference to other statements in the promotional literature and documentation which he says are misleading. For example he says that the supplier made false claims about its level of experience and its registration with regulatory bodies.

I have read and considered all of Mr D's points. However, for a finding of misrepresentation I need to be satisfied that these are false statements of fact that have caused him to enter a contract he would otherwise not have entered. In each case I consider that each statement which Mr D has highlighted to be too imprecise (or opinion based) to be considered a false statement of fact – or (bearing in mind his overall motivation for the purchase) I am not persuaded that the particular statement induced Mr D to enter a contract that he would otherwise not have entered.

Furthermore, Mr D has also said that the supplier was running an unauthorised collective investment scheme. However, this is a regulatory matter that does not automatically give rise to a valid claim for breach of contract or misrepresentation under section 75. On balance, I am not satisfied that whether or not this happened to be the case was a significant factor in Mr D's decision to purchase the land at the outset - or that it means that the contract was not performed as specified. Mr D may have subsequently discovered that there was some regulatory breach by the supplier, but he entered into a contract to purchase a plot of land, and ultimately this is what he received – as shown by the land transfer documentation.

I know that Mr D has strong views on this matter and this is not the outcome he wanted. However, he does not have to accept it and may pursue this matter by alternative means, including court, if he wishes to do so.

my final decision

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

Mark Lancod
ombudsman