

complaint

Mr D complains that Moneybarn No.1 Limited, trading as Moneybarn, is unfairly asking him to repay the outstanding balance on a conditional sale agreement.

background

Mr D entered into a conditional sale agreement with Moneybarn in July 2008, but then due to financial difficulties, he was unable to continue to repay the agreement. He said that Moneybarn told him in October 2008 that if he gave the car back, he would only have to pay it the difference between the auction price it achieved and the cash price paid for the car. He said he then heard no more until 2013, and Moneybarn is now asking him to pay it £12,151. He wants the debt written off.

The adjudicator did not recommend that the complaint should be upheld. She noted that Moneybarn had not been able to contact Mr D since 2009 because he had moved and it was unable to locate him for several years. She said that she had not seen sufficient evidence of the conversation that took place between Moneybarn and Mr D in October 2008. But she noted that the voluntary surrender form he signed said that he would be liable for any sums due but unpaid under the terms of the agreement, prior to and after the agreement had ended. She noted that if the correct information had been given to him, his only options would have been to either voluntary surrender or voluntary terminate. Having reviewed the evidence, she was satisfied that Mr D agreed to voluntarily surrender the car, but that Moneybarn had treated the agreement as ending by way of voluntary termination. She noted that Mr D had benefitted from this as the amount due to Moneybarn by ending the agreement in this way was less than by voluntary surrender.

Mr D disagreed and responded to say, in summary, that he had not spoken to Moneybarn in 2009, nor had he received letters from it since ending the agreement.

my findings

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

Moneybarn's contact notes do not show any detailed information about the termination of the agreement. But the notes do refer to a quote being sent to Mr D of an early settlement amount of over £18,150 on 21 October 2008, and that it had received his signed surrender letter on 27 October 2008. So, I can see that Mr D should have known the amount due to Moneybarn before signing the letter.

I can then see that the surrender letter referred to the amounts that would be due to Moneybarn on surrender. The letter said:-

"I understand that in surrendering the vehicle the above agreement will be treated as at an end. I further understand that I will be liable for any sums due but unpaid under the terms of the agreement prior to the ending of the agreement and all further sums which become due after the agreement has ended."

If Mr D had any doubts as to what he needed to pay Moneybarn, I would have reasonably expected him to clarify this before signing the surrender letter. I cannot hold Moneybarn responsible if Mr D did not read or query the terms of the letter.

Mr D said that he did not contact Moneybarn in 2009. But I can see from Moneybarn's contact notes that he spoke to Moneybarn three times at the end of March 2009. Moneybarn had sent him a letter offering an early termination settlement amount of over £7,600 if he paid quickly, but I can see that Mr D wanted to see a letter to see how this was made up. He agreed to contact Moneybarn when he received the letter, but did not do so.

I can see that Moneybarn attempted to contact Mr D numerous times by phone, text and by letter after March 2009 until 2013, but was unable to do so as the phone numbers it had for Mr D did not work, and he had moved from the last contact address he had given it. I would have reasonably expected Mr D to have given Moneybarn his new contact details, and I do not consider that he can blame it if he did not receive correspondence and calls for a period when it did not have his correct details.

Whilst I have sympathy for the position Mr D finds himself in, I do not consider that it is unreasonable for Moneybarn to seek repayment from Mr D for the amounts still due from him under the terms of the conditional sale agreement. In view of the terms of the surrender settlement letter signed by Mr D, I also cannot safely conclude that Moneybarn had told Mr D that the surrender would be on a different basis to that set out in the letter.

If Mr D is still experiencing financial difficulties, I would urge him to contact Moneybarn to discuss this. I would remind Moneybarn of its duty to treat cases of financial difficulty positively and sympathetically.

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 D to accept or reject my decision before 18 March 2015.

Roslyn Rawson
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