26 March 2014

PRESS SUMMARY

Durkin (Appellant) v DSG Retail Limited and another (Respondents) [2014] UKSC 21

On appeal from the Inner House of the Court of Session (First Division), [2010] CSIH 49

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Sumption, Lord Reed and Lord Hodge.

BACKGROUND TO THE APPEAL

Richard Durkin visited a PC World store in Aberdeen on 28 December 1998 to purchase a laptop computer, making clear that he wanted one with an internal modem. A sales assistant identified a laptop but said he was unsure whether it had an internal modem. He agreed that Mr Durkin could take the computer home and return it if it did not. Mr Durkin paid a £50 deposit and signed a credit agreement given to him by the sales assistant for the balance of £1,449. The assistant signed the credit agreement on behalf of a lender, HFC Bank plc **[2]**.

On returning home, Mr Durkin found that the computer did not have an internal modem. At about 9am the next day, he returned it and asked for his deposit back and for the credit agreement to be cancelled. A store manager refused to accept his rejection of the goods and took no step to cancel the credit agreement **[2]**. Mr Durkin eventually raised an action and in March 2008 the sheriff declared he had validly rescinded the contract of sale. This was not challenged on appeal **[3]**.

Mr Durkin did not pay any money to HFC under the credit agreement. In February 1999, he responded by telephone to a request for payment, explaining that he had rejected the laptop and rescinded both his contract with PC World and the credit agreement. The following month, Mr Durkin wrote to the managing director of PC World to explain that he had rejected the computer, that PC World's manager had refused to refund the deposit and that HFC was demanding money from him because the manager would not tell HFC the goods had been rejected **[4]**.

HFC wrote again in July 1999 warning Mr Durkin that if he did not resume payments he might have difficulty obtaining credit because HFC made monthly reports to credit reference agencies. It added that if he did not respond to the letter, HFC would serve a default notice on him under the Consumer Credit Act 1974. Mr Durkin telephoned HFC to re-affirm his position **[5]**. Without making any enquiries about his claim to have rescinded both agreements, HFC issued a default notice and intimated to credit reference agencies that Mr Durkin had been in default of his obligations under the credit agreement since 14 January 1999. Entries remained on their registers until 2005 or 2006 **[6]**.

Mr Durkin recovered his deposit out of court, but found that the credit register entries prevented him from opening new accounts with other lenders, meaning he could not continue to take advantage of offers of 0% credit on transferred balances to minimise the costs of his borrowing by transferring from one credit card company to another **[7]**. He raised an action in the Sheriff Court in 2004 seeking a declarator that he had validly rescinded both the contract of sale and the credit agreement. He claimed damages of £250,000 from HFC for its negligence in representing to the credit reference agencies that he had defaulted. He did so under three heads: (i) damage to his financial credit, (ii) loss from interest

charges caused by his inability to exploit offers of 0% credit and (iii) loss of a capital gain caused by his inability to put down a 30% deposit on a Spanish property in 2003 **[8]**.

In March 2008, the sheriff held that section 75 of the 1974 Act meant that Mr Durkin had been entitled to rescind and had rescinded the sale contract and the credit agreement. He awarded £8,000 for injury to credit, £6,880 for additional interest Mr Durkin had to pay, and £101,794 for the loss in respect of the Spanish property **[9]**. In June 2010 Mr Durkin's appeal against the sheriff's assessment of damages was refused by the First Division of the Inner House of the Court of Session and HFC successfully cross-appealed the findings that section 75 allowed him to rescind the credit agreement and that it had breached its duty of care. The First Division also held that the evidence did not entitle the sheriff to find that a breach of duty by HFC had caused the alleged interest charges and Spanish property losses **[10-11]**.

JUDGMENT

Lord Hodge delivers the unanimous judgment of the Court, allowing Mr Durkin's appeal.

REASONS FOR THE JUDGMENT

Lord Hodge finds that Mr Durkin was entitled to rescind the credit agreement and validly did so by giving notice to HFC in about February 1999 **[27]**. He sets out the legal framework, explaining that the agreement was a regulated consumer credit agreement and a 'debtor-creditor-supplier' agreement under the 1974 Act **[13-17]**. The key provision is section 75(1), which provides that "*if the debtor under a debtor-creditor-supplier agreement… has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor*" **[18]**.

Lord Hodge explains that the purpose of the restricted-use credit agreement is to finance a transaction between the consumer and the supplier. Where, as here, the contract is tied to a particular transaction, it has no other purpose **[22-23]**. The rescission of the supply agreement excuses the innocent party from further performance of any obligations he has under it **[24]**. It is inherent in a debtor-creditor-supplier agreement under the 1974 Act, which is also tied into a specific supply transaction, that if the supply transaction it financed is brought to an end by the supplier's repudiatory breach of contract, the debtor must repay the borrowed funds recovered from the supplier. In order to reflect that reality, the law implies a term into such a credit agreement that it is conditional upon the survival of the supply agreement. The debtor on rejecting the goods and thereby rescinding the supply agreement for breach of contract may also rescind the credit agreement by invoking this condition **[26]**.

Knowing of Mr Durkin's assertion that the credit agreement had been rescinded, HFC was under a delictual duty to investigate that assertion in order reasonably to satisfy itself that the credit agreement remained enforceable before reporting to the credit reference agencies that he was in default. HFC made no such enquiries, accepting without question DSG's position that Mr Durkin had not been entitled to rescind the contract of sale **[29-33]**.

HFC did not contest the award of £8,000 for damage to credit if breach of duty were established. However, the Supreme Court rejects Mr Durkin's attempt to restore the sheriff's award of damages for the extra interest he paid and for the loss of the capital gain on the Spanish property. Appeals like the present may only be made on matters of law, meaning the Supreme Court cannot go behind the First Division's findings of fact on these alleged heads of loss **[36-39]**.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: