



SELBORNE CHAMBERS

The Court's jurisdiction under sections 140A and 140B of the Consumer Credit Act 1974

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Under sections 140A and 140B of the Consumer Credit Act 1974 the Court has the ability to change the terms of a consumer credit agreement. In order to exercise the jurisdiction the Court must find that the relationship between the creditor and the debtor is unfair as a result of one or more of three factors:

- a. Any of the terms of the agreement (or any “related agreement”);
- b. The way in which the creditor has exercised or enforced any of their rights under the agreement (or any “related agreement”); or
- c. Any other thing done or not done by, or on behalf of, the creditor.

The wording above is broad, and the existence of the jurisdiction is well-known. But the number of cases in which the power is successfully invoked is surprisingly few.

This writer recently acted for Claimants who successfully persuaded the Court to invoke the jurisdiction. It was a useful reminder of the sorts of acts and omissions that can persuade a Court to reopen an agreement even if the debtor is unsuccessful on other aspects of their claim.

The facts, shortly stated, were that the Claimants, without representation, borrowed from an accountant friend in order to repay a mortgage that had fallen due. That borrowed loan was not written down at the time. Some time later, the debtor reduced what he said were the terms of the lending to writing. They included a provision that interest would accrue at the rate of 15% per annum, and that the Claimants would transfer to him shares in a company that owned their commercial enterprise as a form of 'security'. It was the Claimants' case that the interest agreed was actually less than 15% per annum, and that the transfer of the shares was not intended to be security but was, instead, done at the recommendation of the Defendant in order to save tax. In the alternative, and in any event, the Claimants asked the Court to re-open and vary the terms of the lending under sections 140A and 140B of the 1974 Act.

In this respect, the Claim followed a pattern that one often sees in such cases, in which there is a dispute as to the terms or validity of the lending, but a Claimant asks, in the alternative, the Court to vary the terms if they lose those arguments.

The trial Judge rejected the evidence of the Claimants as to the terms of the lending and the reason why they transferred ownership of the shares. The Judge also rejected the Claimants' protestations that the lending had been procured by undue influence or fraud.

Notwithstanding their failures above, the Claimants partly succeeded in their claim under the 1974 Act and the terms of the lending were varied. The interest rate was reduced for a period, and so was the length of the term over which it was to be paid. In explaining the reasons why, the Court gave a useful reminder of the sorts of conduct that can lead to a successful claim. The key points were these:

- a. The creditor did not write down the terms of the loan when it was made. Had they been written down, the Claimants would have been clearer as to their obligations and the litigation would likely have been avoided;
- b. Prior to the issue of the Claim, the creditor did not give the Claimants a clear redemption statement;
- c. The creditor made no attempt to enter into a payment plan with the Claimants when, the creditor said, the Claimants defaulted;
- d. The creditor made no attempt to enforce the loan, instead simply allowing interest to accrue; and
- e. On at least one occasion the creditor appeared to reject offers of payment.

Perhaps the most notable feature of the case was that the Claimants were successful even though their evidence on the other aspects of their claim was disbelieved. It remains the case that the Court can, and in appropriate cases will, assist debtors, even if they are found to have let themselves down in the way they present other aspects of their claim.



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