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Multiple Agreements under the Consumer Credit Act 1974: Common Sense Triumphs in the Court of Appeal

Few who work in or around the lending industry will have failed to notice the rise in the number of challenges to the recovery of debt, particularly with the growth of claims management companies moving into the area of financial services. The methods employed in pursuit of this objective vary, but many centre upon the formalities required to be observed by lenders when a regulated loan is taken out. For loans made prior to 6 April 2007, failure to observe these formalities may well render the agreement irredeemably unenforceable.

One such challenge, which recently faced scrutiny by the Court of Appeal, was *Southern Pacific Mortgage Limited –v- Heath.*[1] This challenge was based on section 18 of the Consumer Credit Act 1974 ('the Act'), which deals with multiple agreements.

The Issue

In 2002, Heath took out a mortgage of £28,000. It was a term of the loan agreement that £19,000 of the advance would be used to repay an existing mortgage. The remainder was available to Heath to use as she wished. As a defence in repossession proceedings, Heath argued that the £19,000 was what is known as 'restricted-use credit' and the remaining £9,000 was a different category of credit, known as 'unrestricted-use credit'. As a result she argued that the agreement was a multiple agreement in two separate parts under section 18. As each part was under the then threshold of £25,000, it was argued that the agreement was regulated and the relevant formalities under the Act should have been observed for each part.. As these formalities had not been followed, then it was said that the agreement was wholly unenforceable. The Judge hearing the case at first instance disagreed and found for the lender. Heath appealed.

The Outcome

The Court of Appeal held that whether or not an agreement is in parts depends on the terms of the agreement, and not the categories of the credit in it. The loan agreement did not state how much was to be paid to the existing mortgagee, or how much was for Heath's own use. There was only one advance, which could only be drawn down as a whole. Therefore, there was only one loan agreement for more than £25,000 and which was unregulated.

So What does this Mean?

The unregulated loan agreement was enforceable. This is good news for lenders, who would otherwise have had to grapple with the impractical consequences of having to separately document the different categories of credit. The decision may though be subject to challenge if the Supreme Court gives permission to appeal.

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[1] [2009] EWCA Civ 1135