DRN-4184340

The complaint

Mr S complains that Vacation Finance Limited ("VFL") didn't fairly or reasonably deal with claims under Sections 75 and 140A of the Consumer Credit Act 1974 (the 'CCA') in relation to the purchase of a holiday product in July 2017. The purchase was in Mr and Mrs S's name but the loan was taken out by Mr S so he is the eligible complainant. For simplicity, in this decision I will refer to him as the sole purchaser.

What happened

In July 2017 Mr S purchased a timeshare product from a company I will call A. It cost £31,500 and this was funded with a loan from VFL. In October Mr S submitted a letter of claim to VFL. He said that the product was sold to him as an investment and it was implied by the sales representatives that he would own property. Mr S says he was also told that he would be able to rent it out, but this never happened.

He explained that when he visited the resort he was subjected to six hour meetings and pressed to upgrade. At these meetings he was told how his investment was increasing in value. In May 2020 A went into liquidation and the club was taken over by another company. Mr S has told this service that the resale programme was discontinued. Mr S says he had intended to make use of the accommodation for a period of time and then sell it. But he cannot do that and he has now learned that he does not have ownership, but is member of a club.

He made a claim under s.75 that the product had been misrepresented and there had been an unfair relationship under s.140A due to the high pressure sales tactics.

VFL rejected his claim and said it had been given no evidence in support of the allegations. It said he had been given all the necessary documentation by A and he had the opportunity to cancel the agreement within 14 days, but he had not done so. VFL also pointed out the various documents he had been given and signed all referred to membership and not to ownership. It mentioned one reference in the documents to "Owners Rewards" as referring to ownership of membership rewards.

It said Mr S was not obliged to use finance from VFL and could have paid by alternative means. It also noted that Mr S had taken out two previous agreements with A and would have been aware of how it worked. He had also made use of the 2017 purchase.

Mr S brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. She said there was insufficient evidence to support the claim of misrepresentation and she had not been given anything which showed that Mr S had lost and specific rights after the liquidation of A. Nor did she think there was evidence of an unfair relationship.

Mr S didn't agree and said he had been shown documentation at the time of sale which showed how his investment would increase in value, but he had not been given a copy of these. He said he had been promised that a re-sale branch would be available but now he cannot sell the membership.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account the:

"(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time."

And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don't think this complaint should be upheld. I will explain why.

S.75 CCA

S. 75 of the CCA states that, when a debtor (Mr S) under a debtor-creditor-supplier agreement has a claim of misrepresentation or breach of contract against the supplier that relates to a transaction financed by the agreement, the creditor (VFL) is equally and concurrently liable for that claim – enabling the debtor to make a 'like claim' against the creditor should they choose to.

It's important to note that, as VFL was the lender rather than the supplier, under the Act a claim is limited to one for misrepresentation or breach of contract, rather than general unhappiness with what was available under the contract.

On the matter of misrepresentation I have seen no evidence of this. A misrepresentation is when a false statement of fact has been made and that false statement of fact induced a consumer to purchase the goods or services. In order to find a misrepresentation has occurred, there must be proof that a false statement of fact has been made and it needs to be decided that that false statement induced the consumer to enter into the agreement.

If I accept that Mr S was told that A had a re-sale branch and this was true, but its ceased to operate after the liquidation that is not misrepresentation. From what he has told this service it would appear this option was available at the time the sale was made and so I cannot see how letting him know there was such a branch could be misrepresentation. What he says he was told was apparently accurate.

However, I have seen no evidence that the membership was sold as an investment or that he owned any property as a result of his purchase. Even if A offered a re-sales facility for membership it does not demonstrate that the product was sold as an investment. I have not been given all the sales documentation, but nothing I have been given shows the product

was sold as an investment. Nor can I see, apart from one reference, that it was suggested that he owned property.

In addition, I am aware of the standard documents used by A for this type of product does not describe it as an investment which can be resold. I appreciate that these sales meetings can last for some time, as Mr S has said, and the sales representatives will put the best gloss on the product. However, that alone does not necessarily amount to misrepresentation.

On the matter of breach of contract, I have not been given evidence of any breach. The event which apparently led to Mr S's claim was the liquidation of A. However, the club has been taken over and the facilities are being operated as before. Mr S says he can no longer sell the membership, but as I have said I have seen no evidence that he signed up to an agreement that promised a re-sale option. I have taken due note of his testimony and of VFL's rebuttal. As such I have to give due weight to the documentary material and I have seen nothing in that which would allow me to uphold this complaint.

Quite simply I cannot conclude from the evidence that the liquidation of A caused a breach of contract.

The S.140A Claims for an Unfair Relationship

Only a court has the power to decide whether the relationships between Mr S and VFL were unfair for the purpose of s. 140A. But, as it's relevant law, I do have to consider it if it applies to the credit agreement – which it does.

However, as a claim under Section 140A is "an action to recover any sum recoverable by virtue of any enactment" under Section 9 of the LA, I've considered that provision here.

It was held in Patel v Patel [2009] EWHC 3264 (QB) ('Patel v Patel') that the time for limitation purposes ran from the date the credit agreement ended if it wasn't in place at the time the claim was made. The limitation period is six years and Mr S's claim was made in time.

However, I'm not persuaded that Mr S could be said to have a cause of action in negligence against VFL anyway.

Mr S's alleged loss isn't related to damage to property or to him personally, which must mean it's purely financial. And that type of loss isn't usually recoverable in a claim of negligence unless there was some responsibility on the allegedly negligent party to protect a claimant against that type of harm.

Yet I've seen little or nothing to persuade me that VFL assumed such responsibility – whether willingly or unwillingly – over and above ensuring that Mr S could afford to repay what he was borrowing. As such I do not see that a claim under s.140A would succeed.

For the above reasons I do not consider I can ask VFL to do anything in respect of Mr S's claims.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 August 2023.

Ivor Graham
Ombudsman