DRN-3665728

The complaint

Mr and Mrs B complain through their professional representative, ("PR"), that Vacation Finance Limited trading as VFL Finance Solutions ("VFL") didn't fairly or reasonably deal with their claims under Sections 75 and 140A of the Consumer Credit Act 1974 (the 'CCA') in relation to the purchase of a holiday product in October 2017.

What happened

Mr and Mrs B had owned a number of holiday products supplied by a company I will call A. They apparently were happy with these and were used to being asked to buy other products and generally refused. In 2017 they were persuaded to purchase a new product at a cost of £79,909 which was funded in part with a loan from VFL. I gather this was for a new apartment which was to be completed and they say they were told it would be a good investment.

In March 2021 PR submitted a letter of claim to VFL. In summary it said that Mr and Mrs B held highly desirable products with A and were pressurised to make an additional purchase. It claimed they were told there was a special price on the day. It said there was no second-hand market for the product. No choice was given as to a lender and A contravened the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010, SI 2010/2960. It also said Unfair Trading Regulations (CPUT) 2008 had been broken by A. PR claimed that VFL had not disclosed the commission paid to A.

VFL rejected the claim. It denied Mr and Mrs B had been pressured to make the purchase and that they had been told it was a special price on the day. They were not required to take finance from VFL and they repaid the loan without making any monthly payments and at a discount. It explained that that following the liquidation of A the holiday product was being run by a replacement company and as such there had been no breach of contract. Finally it said no commission had been paid.

PR brought a complaint to this service. It was considered by one of our investigators who didn't recommend it be upheld. She said s.75 was not relevant as the purchase price was in excess of the financial limits for a claim. She also took the view that there wasn't a substantive allegation that there was an unfair relationship.

PR didn't agree and said the Timeshare Regulations had been breached and so that created an unfair relationship.

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 would add that many of the arguments put forward are not relevant to the purchase made in 2017.

S.75 CCA

S. 75 of the CCA states that, when a debtor (Mr and Mrs B) 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 s.75 states that it "does not apply to a claim—

(a)under a non-commercial agreement,

(b)so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000**.**

The cash price exceeds £30,000 and this means that Mr and Mrs B do not have a claim under s.75. I have also considered s.75A which covers purchases up to £60,260, but this too does not assist Mr and Mrs B.

Affordability

PR says no or insufficient checks were carried out at the time of sale and this means the lending was irresponsible. I have seen no evidence that they found the loan unaffordable. Indeed it was repaid almost immediately. When considering a complaint about unaffordable lending, a large consideration is whether the complainant has actually lost out due to any failings on the part of the lender. So, if VFL did not do appropriate checks (and I make no such finding), for me to say it needed to do something to put things right, I would need to see that Mr and Mrs B lost out as a result of its failings. Mr and Mrs B have provided no evidence whatsoever that they would have found, nor found, it difficult to repay the loan, so I do not need to consider this point further.

S. 140A

Only a court has the power to decide whether the relationships between Mr and Mrs B 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 s. 140A is “an action to recover any sum recoverable by virtue of any enactment” under s. 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 the claim was made within this period.

However, I’m not persuaded that Mr and Mrs B could be said to have a cause of action in negligence against VFL anyway.

Their alleged loss isn’t related to damage to property or to them 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.

Nor can I say that they were given insufficient information in order to reach an informed decision. I believe they were given details of the product and they were used to the sales process of A. They had made a number of purchases before and had used the 14-day cool off period on one previous occasion. I appreciate Mr and Mrs B are dissatisfied with their purchase and they have my sympathies for this, but, in summary I cannot see why any of their claims were likely to have succeeded. So overall I think that VFL acted reasonably in declining the claims under s.75 and s.140A CCA.

As such I can see no basis for a successful claim under s.140A. Nor do I think the alleged pressure to which PR says Mr and Mrs B had been subjected at the time of the sale would allow me to uphold their complaint.

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 Mrs B and Mr B to accept or reject my decision before 27 November 2023.

Ivor Graham
Ombudsman