

The complaint

Ms S complains that she was mis-sold a timeshare product. Because she paid for it in part using her credit card, issued by Nationwide Building Society, she says she has a claim against it, as well as against the seller.

Ms S has been represented by a claims business, which I'll refer to as "M". Where I refer to Ms S's submissions and arguments, I include those made on her behalf.

What happened

Ms S has explained that she was on holiday in Florida in March 2016. She was offered cheap show tickets, on the condition that she attend a short presentation. She says that the presentation was, however, lengthy and pressured. At the end of the presentation she was persuaded to buy a timeshare interest in a property in Las Vegas, Nevada. Ms S paid most of the purchase price with a loan from the seller, but she also paid US\$3,904 with her Nationwide credit card.

Around a year later Ms S indicated that she was not happy with the timeshare and that she thought she had been misled into buying it. Specifically, she said:

- The sales presentation had been pressured and lengthy. She was not allowed to leave and felt intimidated.
- She was told she could rent out the timeshare property and that it would be a good investment. That was not the case.
- There would be many options to exchange the timeshare for other properties through a timeshare exchange. In fact, there was little availability or flexibility.

When M referred the matter to Nationwide, it said in addition that it was an implied term of the contract that the seller would comply with relevant local statutes. The seller in this case had not provided a public offering statement to Ms S, which was a requirement of both Florida and Nevada law. Ms S had been unable to take advantage of the cooling-off period because it expired after only five days – and before she returned home. In addition, she did not receive the resort brochure until after the end of the cooling-off period.

Nationwide declined Ms S's claim that it was liable for the actions of the seller. It said that it did not believe there was sufficient evidence of misrepresentation.

Ms S referred the matter to this service, where one of our investigators considered what had happened. She did not recommend that the complaint be upheld. Ms S did not accept the investigator's assessment and asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

One effect of section 75(1) of the Consumer Credit Act 1974 is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a creditor. Those conditions includes :

- *that the credit financed the contract giving rise to the claim; and*
- *that the credit was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.*

The supplier in this case was Eldorado Resorts Corp., a Florida company. Ms S's credit card statement shows a payment on 7 March 2016 of £2,774 to the same company. I am satisfied therefore that there was a debtor-creditor-supplier arrangement in this case and that section 75 of the Consumer Credit Act could apply.

I have therefore considered what Ms S has said about the sale contract and the statements which led her to enter into it.

As a matter of English law, a misrepresentation is, broadly speaking, a statement of fact or law made by one party to a contract, which (i) is untrue and (ii) induces the other into the contract.

The documents here indicate that the contract was governed by the laws of Nevada, but I have approached this decision on the assumption that Nevada law is not materially different from English law, at least insofar as it relates to Ms S's complaint. The parties can tell me in their response if they believe there are material differences. Section 75(1) of the Consumer Credit Act applies to overseas contracts.

I am minded to agree with Nationwide's assessment that there is insufficient evidence of misrepresentation in this case. That position is supported by a one-page document headed "Purchaser's Acknowledgment". It included twelve numbered statements, each of which Ms S initialled. They included statements that:

- *Ms S was buying the timeshare for personal use, not as an investment, and that she had no expectation of profiting from its rental or sale (paragraph 1);*
- *Ms S was not relying on oral statements in entering into the timeshare agreement (paragraph 5); and*
- *she had not been pressured or coerced into the transaction (paragraph 11).*

The Acknowledgment ended with a statement that everything had been explained and that Ms S had read and understood the relevant documents.

Of course, Ms S's initials and signature on the individual statements and Acknowledgment do not mean that they were true. However, given in particular Ms S's account of the sale and the pressure she felt she was under, I think it is surprising that she signed a statement saying something completely different and did not then consider whether to exercise her cancellation rights.

I note that Ms S did not return home until after the cooling-off period had expired. But, as Nationwide said, it was clear that the cancellation period ran from the date of the contract. In any event, it is not apparent to me how that could be relevant to a claim under section 75 of the Consumer Credit Act.

M says that Ms S was not provided with a copy of the public offering statement – a document showing that the developer is allowed to sell timeshare properties. It says that was a regulatory requirement and that it was an implied term of the contract that local regulations had been complied with.

I do not accept the general proposition that it is an implied term of a contract that applicable regulations have been complied with. In any event, there is no suggestion that Ms S has lost

out as a result or that the seller was not properly authorised. I note that Ms S has re-sold the timeshare, indicating that the sale to her was valid. I therefore make no finding as to whether the public offering statement was or was not provided.

I indicated that I was not minded to uphold the complaint, and I invited further comments from the parties. Neither side, however, had anything to add.

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.

Because neither Nationwide nor Ms S has made any further submissions or submitted any further evidence, I see no reason to depart from my provisional conclusions.

My final decision

For these reasons, my final decision is that I do not require Nationwide Building Society to do anything further to resolve Ms S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 4 September 2023.

Mike Ingram
Ombudsman