DRN-4170350

The complaint

Mrs O, who is represented by a professional representative ("PR") complains that Mitsubishi HC Capital UK Plc ("Mitsubishi") rejected her claims under the Consumer Credit Act ("CCA") 1974 in respect of a holiday product. I gather the product was purchased by Mrs O and her husband or partner, but the loan is in her name and so she is the eligible complainant. In this decision for simplicity I will refer to Mrs O as the sole purchaser.

What happened

In March 2020 Mrs O purchased a holiday product from a company I will call C at a cost of £12,968 which was funded by a loan from Mitsubishi. She made use of this taking several holidays.

In August 2022 PR submitted letter of claim to Mitsubishi. In summary it said:

- The product had been misrepresented.
- There had been an unfair relationship.
- Undue pressure was applied.
- Insufficient information was provided.

Mitsubishi rejected the claim and set out in detail why it did so. PR submitted a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. She said that there was insufficient evidence to support the claim of misrepresentation under s.75 CCA. Nor did she identify evidence which would support a claim under s.140A CCA. Finally she said that the issue of the lending decision had not been raised with Mitsubishi so she did not consider it appropriate to address this matter.

PR did not agree, but submitted no further evidence or argument as it thought it was unable to respond to what it called a copy and paste decision.

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 (Mrs O) 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 (Mitsubishi) 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 Mitsubishi 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.

Misrepresentation

On Mrs O's behalf PR alleges that the holiday product was misrepresented to her, in particular that:

- She was advised that holidays were available at any time;
- She could get discounted RCI holidays at any time; and,
- She could sell the timeshare for a profit later as it was an investment.

Not having been present at the sale it's not possible for me to say exactly what was said, and in what circumstances. But the terms of the contract set out fairly clearly what was being purchased. C has said that Mrs O has access to 150 resorts worldwide and availability is offered on a first come first served basis. It explained that it was unaware Mrs O had membership with RCI. Finally it said that the product wasn't sold as an investment and this was made clear in the documentation.

I have not had any testimony from Mrs O as to what was said and other than the claim made by PR I have seen no supporting evidence to back up the claims.

As our investigator has said the sales representatives would have put the best gloss on the product and emphasised the benefits membership would offer, but that does not mean that this amounted to misrepresentation. I also note that Mrs O had 14 days to withdraw from the agreement which she could have used had she believed she had been unduly pressurised.

Overall it is difficult for me to conclude that any misrepresentations were made.

S.140A CCA

Only a court has the power to decide whether the relationships between Mrs O and Mitsubishi 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 Mrs O could be said to have a cause of action in negligence against Mitsubishi anyway.

Mrs O’s alleged loss isn’t related to damage to property or to her 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 Mitsubishi assumed such responsibility – whether willingly or unwillingly.

PR seems to suggest that Mitsubishi owed Mrs O a duty of care to ensure that C complied with the 2010 Regulations. And P says that Mitsubishi breached that duty by failing to carry out – before granting Mrs O credit and paying C – the due diligence necessary to ensure that the product purchased by Mrs O wasn’t sold by C in breach of the 2010 Regulations.

I have seen no evidence that undue pressure was applied and C denies this. I don’t consider I can uphold this complaint on the basis of simple assertion by PR. Nor can I see what information |C failed to provide. PR has made a generalised claim, but not identified what information was withheld from Mrs O which put her at a disadvantage. For example the agreement identifies that there will be annual management charges and this is reiterated in the Member’s Declaration which sets out the current annual service charge.

I have no power to make an order under section 140B, and it is not for me to say whether a court would make an order if invited to do so. In the circumstances, however, it is reasonable to think that a court would not do so.

Affordability

This was not raised with Mitsubishi and I don’t believe it would be right for me to consider this part of the complaint without the business having had the opportunity of addressing it. Nor do I consider it necessary to submit the list of questions to Mitsubishi as PR has suggested.

Conclusion

I appreciate Mrs O is dissatisfied with her purchase and she has my sympathies for this, but, in summary I cannot see why any of her claims were likely to have succeeded. So overall I think that Mitsubishi acted reasonably in declining the claims under s.75 and s.140A CCA.

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 O to accept or

reject my decision before 11 December 2023.

Ivor Graham
Ombudsman