

This'll Grab Your Interest!

Sternlight & Ors –v- Barclays Bank Plc & Ors

Ian Norman, 16 August 2010

Background

This case involved numerous Claimants who brought claims based upon the same principle against a number of banks and credit card providers in respect of credit card agreements (running-account credit agreements) regulated by the Consumer Credit Act 1974 ('the Act').

The cases were gathered up by various County Courts around the country and were transferred to the Manchester District Registry of the High Court to be heard by His Honour Judge Waksman QC as test cases. The outcome of his judgment is set out, in summary, below:

The Issues

The main issue pleaded by the Claimants in each case was that the interest rate was mis-stated. This, they contended, was because the annual percentage rate (APR) should be regarded as the driver for the calculation of the interest rate under the various agreements.

As this was not the case in each of the agreements, if the Claimants' contention was correct; each of the credit card agreements would be rendered irredeemably unenforceable if entered into before 6 April 2007. This is because the interest rate is a prescribed term for the purposes of s.61 1(a) of the Act and Schedule 6 to the Consumer Credit (Agreements) Regulations 1983 ('the Agreements Regulations').

The Judgment

His Honour Judge Waksman QC found for the Defendants in each case. He stated that the Claimants' proposition had a "surreal quality to it".

His view was that the driver for the calculation of the APR was the interest rate and not the other way round; as contended by the Claimants. Taking the *Sternlight* agreement as an example, the debtor had agreed, as a contractual term, to pay a monthly rate of 1.531% on cash advances. If the Claimants' were correct in their assertions, the debtor in that

agreement would have agreed no such thing. Instead he would have agreed to pay interest at a rate of 1.3205%. The calculations were supplied by Nigel Young, a mathematician and computer expert. It would mean that the interest rate would have to be "derived backwards from the APR."

The Judge held that there was a clear difference in the nature and functions of the stated monthly (or annual) rate on one hand, and the APR. He concluded that the stated monthly or annual rate is the contractual term. He rightly found that the APR is a product of statute, based upon a complex calculation, created in order to provide instant information to consumers on not only the rate of interest but other charges.

His Honour held that the APR is not to be regarded as the truthful requirement of paragraph 4 of Schedule 6 to the Agreements Regulations i.e. 'the prescribed term'. In support of this finding, he referred to the fact that credit card agreements enable providers to vary the rates and charges over the life of the agreement. Accordingly, the APR is only reliable at the moment the agreement is signed, a fact which was accepted by the Claimants. If the APR, the supposed 'driver' for the calculation of the interest rate cannot act as such over the life of the agreement, it suggests that it should not act as the driver at all.

In light of the above and for other reasons, His Honour Judge Waksman struck out the claims against the various credit card providers.

Summary

This Judgment is excellent news for lenders and reinforces the Judgment made in a similar but not identical case by His Honour Judge Tetlow on 16 April 2010 in the Oldham County Court. That case was *Brooks –v- Northern Rock (Asset Management) Plc*. In that case, His Honour Judge Tetlow described a similar argument as “*looking through the wrong end of the telescope*”.

This outcome, which as a High Court Judgment will bind Judges deciding cases in County Courts is to be applauded; as it will no doubt see many such claims struck out or summarily decided in favour of creditors.

For further information or advice in relation to Consumer Credit Litigation and/or Consumer Credit Regulation and Compliance, please contact:

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