

IN THE PETERBOROUGH COUNTY COURT

Claim No: 8SF07494

Crown Building
Rivergate
Peterborough
Cambridgeshire
PE1 1EJ

28th October 2009

BEFORE:

HIS HONOUR JUDGE DE MILLE

RTA (SALES) LIMITED

CLAIMANT

-v-

G DRAPER

DEFENDANT

The Claimant appeared in person

MR WILLIAMS appeared on behalf of the Defendant

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(Official Court Reporters to the Court)

JUDGMENT

JUDGE DE MILLE:

1. This is an appeal against the decision of Deputy District Judge Dack at the Huntingdon County Court on 16th September 2009. He granted permission for the claimant to appeal, “only in respect of the decided point that in this case the defendant was acting as a consumer in accordance with the provisions of the Unfair Terms in Consumer Contract Regulations 1999”, so it is a very limited point of appeal that arises under those Regulations.
2. The preliminary point that he dealt with was put by him this way: Did the defendant act as a consumer pursuant to the Unfair Terms in Consumer Contract Regulations 1999 in respect of the contract between the parties. He made the following findings: (a) the defendant is an individual; (b) the contract between the parties was for the claimant to endeavour to find a purchaser for the defendant’s business, which was a public house, for a fee; (c) the trade business or profession of the defendant was that of publican, not of selling businesses; (d) the defendant engaged the professional services of the claimant to sell the defendant’s business, the business of the claimant being the selling of businesses; (e) this engagement was outside the scope of the defendant’s business as a publican, which is primarily as a purveyor of alcoholic and non alcoholic beverages to the public; (f) the purpose of the business sale was to bring to an end the defendant’s connection with the business so that any funds realised from the sale could be used for her own purposes.
3. Those were the findings of that which he made. The question for me is whether on those findings of fact the defendant was acting as a consumer in accordance with the provisions of the Unfair Terms in Consumer Contract Regulations.
4. The relevant Regulation is Regulation 3, in which a consumer is defined as meaning “any natural person who in the contracts covered by these Regulations is acting for purposes which are outside his trade, business or profession”. The defendant was a natural person. The factual finding of the District Judge was that it lay outside her business, trade or profession.
5. Mr Edwards, in advancing the case for the appellant today, has done so clearly. He has not provided any written material before the court, and said on several occasions that he is not a lawyer but agreed that it is a very narrow point for my consideration. A number of previously decided cases have been referred to by both parties. Principally, the appellant relies upon the case of Stephenson v Rogers. This is a decision of the Court of Appeal, which was concerned with the interpretation of section 14.2 of the Sale of Goods Act 1979. I quote: “Where the seller sells goods in the course of a business there is an implied condition that the goods supplied under the contract are of merchantable quality.”

6. In the course of its judgment, the Court of Appeal referred to Hansard and a report from the Law Commission, and it held, and I now quote the section, in fact, from the skeleton argument of the respondents: “The mischief which Parliament intended to rectify in relation to section 14.2 was that section 14.2 of the Act of 1893, the previous Sale of Goods Act, had a restrictive effect and was inadequate to impose on every business seller, whether or not habitually dealing in goods of the type sold, the implied conditions as to merchantable quality”, and merchantable quality was what that case was principally about.
7. Mr Edwards submits that the facts of that case are much closer to the facts of the case before me now because it was dealing with, in effect, the sale of a business, which was the fishing boat. That was the business that was being sold, in effect, rather than an asset, which is referred to in the other cases.
8. Turning to those other cases, I begin with the decision of the House of Lords in the case of Davies, and this was considering the interpretation of section 1.1(a) of the Trade Descriptions Act 1968, which involved applying a false description upon sale in the course of its (inaudible word) business. The question certified by the court was whether, when a person who almost exclusively in the course of his occupation uses his car for the purposes of that occupation, and then disposes of that vehicle for another, for similar use, he acts in the course of a trade or business when applying a false trade description of the said sale.
9. The House of Lords held that in the course of a trade or business implied a degree of regularity. It was not part of the normal practice of the business of the courier to buy and sell cars - cars were not his stock in trade - and so they held that that sale was not in the course of a trade or business.
10. The next case relied on by the respondents is R & B Customs Brokers Company Limited v United Dominions Trust Limited. That concerned the interpretation of section 12 of the Unfair Contracts Terms Act 1977. The freight and shipping company entered into a hire purchase agreement for a motorcar to be used by the company director. The contract and the finance application were made in the company’s corporate name. The Court of Appeal held, applying the House of Lords’ decision of Davies v Sumner, that the same test should be applied, with the result that the company was dealing as a consumer, and therefore the vendor was not entitled to rely upon an exclusion clause contained in the written agreement.
11. What these cases show is that, first, the factual circumstances are, of course, extremely important as to how one applies the law. I have to come back, however, to the Regulations. It is on the Regulations that this narrow point depends. I repeat, consumer means any natural person who, in contracts covered by these Regulations, and it is agreed that this one did, is acting for purposes which are outside his trade, business or profession.
12. Mr Edwards argues that this was not outside the business or profession because the business was to continue. The purpose of the sale was not merely so that the respondent would gain personal benefit. It was to enable the business to continue, as, indeed, it did, and, therefore, he submits that this was within the

purposes of that business. I should say that he also has referred me to a passage in *Chitty*, which refers to the European jurisprudence. This is at paragraph 15023.

13. The paragraph begins, or this section begins: “While the European Court of Justice has not had occasion to explain the notion of consumer for the purposes of the 1993 directive, it has made clear it will take an autonomous interpretation of the concept. In this respect it is likely take a fairly restrictive view for these purposes, particularly when contrasted with the expansive view taken by English law for the purposes of the Unfair Contract Terms Act, where it has been held that: ‘A business which makes a contract of a kind which does not form a regular part of its business may deal as a consumer.’ Certainly, the European Court has taken a restrictive view of consumer.”
14. Then it quotes the case of *De Pinto*: “The question arose whether a trader could ever be a consumer for the purposes of the doorstep selling directive, whose article, too, uses the same defining language for consumer as the 1993 directive.” The main part is then quoted that: “The criteria for the application of protection lies in the connection between the transactions.” I will not quote the rest of that paragraph. The court added, because this is the part upon which Mr Edwards relies: “Act which are preparatory to the sale of the business, such as the conclusion of a contract for the publication of an advertisement in a periodical, are connected with the professional activity of the trader, although such acts may bring the running of the business to an end. They are managerial acts performed for the purpose of satisfying requirements other than the family or personal requirements of the trader.”
15. *Chitty’s* comment continues: “(Two or three inaudible words) phrase could be seen as suggesting that one does not act as a consumer unless contracted for one’s family or personal needs.” Mr Edwards submits that there is a similarity here between the advertising of the business for sale and the sale itself, as was the contract here, and the circumstances, therefore, of the present case.
16. Once again, I have to come back to the Regulation that I have to apply. It is clear that the respondent was selling as a natural person. The question then comes back yet again to whether she was acting for purposes which are outside her trade, business or profession. In my judgment the facts of this case show that she was acting outside that, and the reasons are these: Firstly, I accept the submission made on her behalf that her business or profession was not the selling of businesses, and the Regulation says “outside his trade, business or profession”; that is, of the natural person.
17. Insofar as the business itself was going to continue, that is a separate matter because it was the business that was being sold outside the profession. One then has to look at the purposes of the transaction. The purposes of the transaction for her were to bring her involvement in the business to an end, and it was to use the proceeds of sale for her own purposes, and I refer back to the finding of fact made by the Deputy District Judge, that the purpose of the business sale was to bring to an end the defendant’s connection with the business so that any funds realised from the sale could be used for her own purposes.

18. That is, in fact, precisely within the exception quoted in *Chitty* in the case of De Pinco, and in the commentary to that by *Chitty*. It was performed for the purposes of satisfying requirements other than the family or personal requirements of the trader. The purpose of this sale was for the personal requirement of the trader, was for the personal requirement of what was for the personal requirement of the respondent.
 19. Next, and, again, another reason why I find against the appellant, I also accept as completely correct in law the submissions made by Mr Williams as to the application of the cases of Davies v Sumner in the House of Lords, R & B Customs Brokers, and his submission that the case of Stephenson v Rogers was an exception to that, and that the reason for that exception was that in different ways it was, in fact, dealing with a similar mischief, and was dealing with the protection of the consumer.
 20. I have already quoted from the skeleton argument on behalf of the respondent and the reasons why it is submitted on their behalf, that the law should require me to follow the line of authorities of Davies v Sumner and those along that line, rather than Stephenson v Rogers. I do not think I need to repeat that again now. I accept that as being accurate in law in the way in which those submissions were made, and since they are there written in the skeleton argument I am not going to read it out again.
 21. Accordingly, for all those reasons this appeal must be dismissed, and it follows that I consider that the Deputy District Judge made the correct finding at first instance.
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