

Pilgrim Rock Ltd v Iwaniuk

Chancery Division

17 January 2019

Case Analysis

Where Reported

[2019] 1 WLUK 106;

Case Digest

Subject: Consumer law **Other related subjects:** Real property

Keywords: Agents; Consumer credit; Creditors; Debtors; Unfair relationships

Summary: A judge had been entitled to find that a debtor/creditor relationship was unfair under the Consumer Credit Act 1974 s.140A because of the terms of the loan agreement and the way in which the creditor had exercised its rights, and to vary the agreement under s.140B. The judge's unfairness decision did not rest on the basis that the individual who controlled the creditor company was its agent under s.140A(1)(c) or associate under s.140A(3).

Abstract: The appellant company appealed against an order declaring that the relationship between the appellant and the respondent was "unfair" for the purposes of the Consumer Credit Act 1974 s.140A and granting relief under s.140B varying the terms of a loan agreement.

The respondent had borrowed £1.2 million from a company (B) to purchase a property for development. The benefit of the loan and of a charge over the property had subsequently been transferred to the appellant. The respondent's case, which the judge accepted, was that the property purchase was an informal joint venture between him and another individual (S) who controlled both B and the appellant, which were among the many corporate vehicles used by S for his business dealings. The judge found that the loan was not an ordinary commercial loan but part of an informal joint venture and so not for the respondent's sole benefit. The contractual rate of interest was 6% compounded quarterly rising to 9% in the event of default. The judge found that the appellant had failed to show that the relationship between it and the respondent was fair. The unfairness resided in the terms of the agreement and the fact that the appellant had done nothing to enforce its rights for four years while interest was accruing at an escalated rate. The judge gave judgment for the appellant for the capital sum and interest, but varied the terms of the loan agreement to reduce the rate of interest, to provide for compounding annually rather than quarterly and to lengthen the term or repayment date thereby limiting the period for which default interest could be charged.

The appellant argued that it had been wrong for the judge to have attributed any of S's acts or omissions to the appellant or to have taken them into account at all when considering the fairness of the relationship between the appellant and the respondent, in the absence of any finding that S was acting as the appellant's agent or was an "associate" of the appellant within s.140A(3). The appellant further argued that even if the relationship was unfair the judge had erred in the way in which he had exercised his discretion to vary the terms of the loan.

Held: Appeal dismissed.

Unfair relationship - Unfairness could only arise under s.140A(1) because of one of the following: (a) the terms of the agreement or a related agreement; (b) the way in which the creditor had exercised or enforced any of its rights under the agreement or a related agreement; (c) any other thing done or not done by or on behalf of the creditor. The words "on behalf of" in s.140A(1)(c) connoted an agency relationship, *Plevin v Paragon Personal Finance Ltd* [2017] UKSC 23, [2017] 1 W.L.R. 1249, [2017] 3 WLUK 706 considered. Section 140A(3) provided that something done by an associate of the creditor was treated as something done by the creditor. The judge had not found that S was the appellant's agent or associate, but against the background of the respondent's largely uncontradicted evidence he had found that B and the appellant were only vehicles carrying out the wishes of S, not commercial lenders, and that S and the respondent were joint venturers and friends, and not dealing at arm's length. Those were matters that he was entitled to take into account under s.140A(2) which required the court to have regard to all matters it thought relevant including matters relating to the creditor and to the debtor. The judge found that the debtor/creditor relationship was unfair because of the escalation of the interest rate at the end of a fixed term and because the interest provisions were more onerous than terms obtainable in the open market, because interest was compounded quarterly and because the appellant had done nothing for four years to notify the respondent of the amount of the debt or to enforce the loan. He thus found that the relationship was unfair on the basis of the terms of the loan, under s.140A(1)(a), and on account of the way in which the appellant had sought to enforce its rights, under s.140(1)(b), and not on account of anything done or not done by or on behalf of the creditor, under s.140A(1)(c). Accordingly, he did not conclude that S as agent or associate of the appellant or B had done anything or failed to do anything that made the relationship unfair. The appellant's argument failed to distinguish between the question of attributing to the creditor the acts or omissions of an agent or associate under s.140A(1)(c) and s.140A(3), as considered in *Plevin*, and the consideration under s.140A(2) of the true nature, identity and role of the appellant and B, namely that they were not commercial lenders but mere corporate vehicles of S through which it was convenient for him to channel the funding for the agreed joint venture with the respondent to develop the property. The judge did not err in taking into account the evidence about the origins of the loan agreement and the understanding between S and the respondent. He was not confined to the relationship between the appellant and respondent disclosed by the loan agreement and legal charge.

Variation of loan terms - In view of the reasons that the judge gave for his conclusion on the unfairness of the relationship, his variations of the loan agreement were not unreasonable and were within the scope of the broad discretion given to him by s.140B.

Judge: Fancourt J

Counsel: For the appellant: Morwenna Macro. For the respondent: Matthew Bradley.

Solicitor: For the appellant: Christofi Law. For the respondent: Bishop & Sewell LLP.

Significant Cases Cited	Plevin v Paragon Personal Finance Ltd [2017] UKSC 23; [2017] 1 W.L.R. 1249; [2018] 1 All E.R. 292; [2017] 3 WLUK 706; [2017] 2 Costs L.O. 247; Times, April 6, 2017; SC; 29 March 2017
All Cases Cited	Plevin v Paragon Personal Finance Ltd [2017] UKSC 23; [2017] 1 W.L.R. 1249; [2018] 1 All E.R. 292; [2017] 3 WLUK 706; [2017] 2 Costs L.O. 247; Times, April 6, 2017; SC; 29 March 2017
Significant Legislation Cited	Consumer Credit Act 1974 (c.39) s.140 Consumer Credit Act 1974 (c.39) s.140A(2) Consumer Credit Act 1974 (c.39) s.140B
Legislation Cited	Consumer Credit Act 1974 (c.39) s.140 Consumer Credit Act 1974 (c.39) s.140A(2) Consumer Credit Act 1974 (c.39) s.140B