

Sherrards Achieves Landmark Ruling in England's highest Court, The House of Lords

Sherrards Solicitors has won a landmark ruling in the House of Lords which is the UK's highest Court, in the long-running case of *TRM Copy Centres (UK) Ltd & others -v- Lanwall*. In a unanimous judgment, the Law Lords upheld the Court of Appeal's decision, finding in favour of Sherrards' client TRM.

The Law Lords ruled that a commercial agreement, in which the retailer's only relevant obligation was to pass on to TRM such monies as it received from customers who chose to use the photocopiers, subject to deduction of its commission, did not fall within the definition of a hire agreement under section 15 of the Consumer Credit Act 1974 (CCA). The ruling has clarified what can be considered a 'consumer hire agreement' and at the same time determined, finally, the central issue in the proceedings.

Sherrards' Litigator, Barney Laurence, who led the case said,

"We are obviously delighted that the Law Lords found unanimously in our client's favour. It has been a long and protracted case so far, and we are a major leap further forward in the proceedings, although this ruling relates only to a preliminary (albeit fundamental) issue in the litigation and there is work to be done yet."

Martin Vodden, Director of TRM Copy Centres (UK) Limited said,

"I am delighted by the result, bearing in mind the significant impact that the decision could have had, on the operations of our own companies, should the decision have not been in our favour. Sherrards' support and professionalism have been second to none throughout the process."

The case:

Sherrards' client, TRM (and others), supplied photocopiers to retailers using 'location agreements' under which the retailers paid no rent/charge for the copier. Instead, customers would pay so much per copy and the retailers would deduct a commission and account to TRM for the balance.

In 2006 TRM discovered that a rival firm, Lanwall, had been removing their copiers and installing their own, after enticing the retailers to enter into lease hire agreements with Lanwall.

Sherrards was instructed and launched injunctive proceedings seeking to restrain Lanwall's dubious activities and the return of the copiers. High Court proceedings were then issued on the basis that Lanwall had induced the retailers to breach their contracts with TRM. Lanwall's defence was that there had been no breach as the location agreements were in fact regulated 'hire agreements' within the CCA, under which the retailers had a statutory right to terminate early. The Court was prepared to determine the key legal issue relating to the Consumer Credit Act at an early stage in the proceedings, and this took the form of a hearing before a High Court Judge in July 2007, then the Court of Appeal in 2008 and, finally, the House of Lords earlier this year.

Delivering the leading Judgment of the House, Lord Hope of Craighead said:

"The Location Agreement lacks the most obvious badge of an agreement for hire. The obligations that the Business [retailer] undertakes...do not include an obligation to pay anything in cash or kind for the hire of the photocopier. The only obligation which involves the making of payments by the Business to TRM is that described... In consideration of TRM carrying out its obligations under the agreement, the Business undertakes to pay TRM monthly for all copies made on the equipment multiplied by the rate per copy set out in [the agreement]. If no copies are made there is nothing to pay at all. If the copies made during the month are made only by customers using the equipment, the obligation is to account for the sums collected from the customers. If it has not used the photocopier itself during that month, the Business does not have to pay anything at all to TRM out its own money."

He went on to conclude that:

"I agree with both the judge and the Court of Appeal that the preliminary issue must be decided in TRM's favour. The Location Agreement in TRM's standard form is not a consumer hire agreement within the meaning of section 15 of the Consumer Credit Act 1974. I would dismiss the appeal."

Barney Laurence comments,

"There is a lot of excitement in the leasing world about this case and this Judgment. It provides an interesting ruling on what is meant by a 'hire agreement'. However, it must be stressed that it is concerned only with agreements that take the form of the Location Agreements and will therefore have little if any application to agreements of this nature in general.

That said, it is welcoming that the Courts have maintained their approach in construing contracts by reference to the substance of the transaction rather than simply looking at what form the contract takes. In my opinion it was always beyond question that these were not hire agreements and the ruling ought to now pave the way for Lanwall to concede TRM's claim."

Paul Marmor, Sherrards' Head of Litigation concludes,
"This is an excellent outcome so far and I am delighted for both TRM who are now a major step closer to holding Lanwall to account for their actions and for the Sherrards team who have worked tirelessly on this case."

ENDS

Notes

1. For further information contact Paul Marmor at Sherrards, as above.
2. A full copy of the Judgment may be found at:
<http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090617/trm.htm>