Neutral Citation Number: [2022] EWCA Civ 1557

Case No: CA-2021-001953

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM BRIGHTON COUNTY COURT
His Honour Judge Simpkiss
Claim Number E27YX938

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 November 2022

Before :

LADY JUSTICE MACUR
LADY JUSTICE NICOLA DAVIES
and
LADY JUSTICE CARR

- -

Between :

MRS JANETTE COOPER	**Claimant/Appellant**
- and -	
THE FREEDOM TRAVEL GROUP LTD	**Defendant**
- and –	
BANK OF SCOTLAND PLC (TRADING AS HALIFAX)	**Respondent/Proposed Defendant**

- -
- -

William Audland KC and Max Archer (instructed by **Blake Morgan LLP**) for the **Appellant**
Toby Riley-Smith KC and Lia Moses (instructed by **Eversheds Sutherland (International) LLP**) for the **Respondent**

Hearing date: Wednesday 19 October 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on 25 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Nicola Davies :

1. The issue in this appeal is the interpretation of the word "debtor" in section 75 of the Consumer Credit Act 1974 ("CCA 1974"). Should "debtor" be interpreted as referring only to contractual parties to a credit agreement or should it include third party beneficiaries of such an agreement?

Factual background

2. In October 2014 the appellant's husband entered into a contract with the Freedom Travel Group Ltd ("the original defendant") for a package holiday to Greece in May 2015. Mr Cooper used a Halifax Mastercard ("the credit card") issued by the respondent under the terms of a credit card agreement regulated by the CCA 1974 ("the Credit Agreement"). The parties to the Credit Agreement were Mr Cooper and the respondent. Mr Cooper was the only cardholder under the Credit Agreement. The appellant was not a party to the Credit Agreement nor was she an additional cardholder. Mr Cooper used the credit card to pay the deposit of £499.80, he later paid the balance of the holiday sum by other means. Mr Cooper booked the holiday for himself and the appellant. The invoice for the holiday contract was addressed to Mr Cooper as the contracting party. On the invoice the appellant was named as the "other passenger". Travel insurance for the holiday was obtained elsewhere.

3. Whilst on holiday the appellant fell and suffered a fracture to her left leg. On her return to the UK she brought a claim for personal injury, loss and damage against the original defendant under the Package Travel Regulations 1992 ("the 1992 Regulations"). The appellant relied upon the statutory cause of action created by Regulation 15(2) namely that "the [holiday company] is liable to the consumer for any damage caused to him by the failure to perform the contract or the improper performance of the contract….". The definition of a "consumer" in Regulation 2(2) of the 1992 Regulations includes both the "principal contractor" and "any person on whose behalf the principal contractor agrees to purchase the package ("the other beneficiaries")". Mr Cooper was the "principal contractor" for the holiday within the 1992 Regulations.

4. In paragraph 5 of the Amended Particulars of Claim it is pleaded that "within the meaning of the Regulations" the Freedom Travel Group Limited was identified as "the organiser and/or retailer" of the holiday and was the "other party to the contract". The appellant was stated to be "the "consumer" and/or "beneficiary".

5. On 2 February 2018 the appellant accepted an offer made by the original defendant to compromise liability on the basis of a 70:30 apportionment in her favour. A quantum only trial was due to take place in November 2019. In September 2019, Thomas Cook Ltd entered into liquidation and the original defendant, being a wholly owned subsidiary of Thomas Cook, also entered into liquidation. Proceedings against the original defendant were stayed following the winding up order in respect of Thomas Cook.

6. The terms of the original defendant's travel insurance were such that no claim by the appellant was possible, the original defendant being self-insured for the first £2,475,000 of any claim.

7. By an application notice dated 27 January 2020 the appellant applied to add the respondent to the proceedings under CPR 19.5 as a consequence of its joint and several liability with the original defendant for breach of contract under section 75 of the CCA 1974.

8. On 21 April 2020 the Deputy District Judge dismissed the appellant's application holding that (i) the appellant could not bring a claim under section 75 as she was not a "debtor" within the meaning of the CCA 1974 and (ii) the primary limitation period under section 11 of the Limitation Act 1980 would not be disapplied as the respondent was prejudiced by the admission of liability of the original defendant.

9. The appellant appealed on three grounds, the first two of which were:

   (i) The judge was wrong in law to find that the appellant has no claim under section 75 of the CCA 1974;

   (ii) The judge was wrong in law and fact to find that, even if the appellant had a claim under section 75, the respondent was prejudiced by the original defendant's admission of liability and to refuse to give a direction disapplying the limitation period under section 11 of the Limitation Act 1980.

   The third ground of appeal related to a costs issue and is not pursued in this appeal.

10. In a judgment dated 1 September 2021 HHJ Simpkiss dismissed the appeal. The judge held that the appellant could not be said to be a "debtor" within the meaning of the CCA 1974. At [41] he held that "there is a plain and unambiguous meaning to the word "debtor" and it means a party who receives credit and would be liable to repay the debt if the credit had not been contractually extended to him." At [43] the judge explained that "… credit involves the contractual right to defer payment of the debt for which the debtor would otherwise be liable to pay." He noted at [45] "… that the only person to whom credit was extended in this case, applying the plain meaning rule, was Mr Cooper. He was the only person who was liable to repay any money to the credit card company. If he had not paid then the latter would have charged interest and would have been entitled to bring proceedings to recover the money once the contractual deferment had ceased. The claimant would not have been liable to repay anything and was never in any contractual relationship with the credit card company. I cannot see how it can be said that she had "received credit" in these circumstances."

11. The judge addressed the appellant's argument that, in the event that the meaning of "debtor" was plain, it is in conflict with EU law such that the court must depart from the unambiguous meaning to bring it in line with the aims of the Package Travel Directive (Council Directive 90/314/EEC of 13 June 1990) ("the Directive") in accordance with the principle set out in *Marleasing SA v LA Comercial Internacional de Alimentacion SA (1990) C-106/89,* namely that domestic law must be interpreted harmoniously with European law. The judge held that the aims of the Directive were not directed towards damages claims such as that of the appellant against credit providers. He held that it could not be said that an interpretation of the CCA 1974 which prohibited the appellant from bringing her claim was contrary to the aims of the Directive such that the *Marleasing* principle could apply. Having so found in respect of ground 1, the judge did not address or determine the second ground of appeal.

12. Permission to appeal was granted on the primary ground of appeal, namely that the judge was wrong in law to find that the appellant has no claim under section 75 of the CCA 1974. In the event that the appellant succeeds upon ground 1, permission was granted to the appellant to argue ground 2 of the original grounds of appeal.

The relevant statutory provisions.

The Consumer Credit Act 1974

> "8.— Consumer credit agreements.
>
> (1) A [consumer] credit agreement is an agreement between an individual ("the debtor") and any other person ("the creditor") by which the creditor provides the debtor with credit of any amount….
>
> ………..
>
> 9.— Meaning of credit.
>
> (1) In this Act *"credit"* includes a cash loan, and any other form of financial accommodation……..
>
> …………
>
> 75.— Liability of creditor for breaches by supplier.
>
> (1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor…..
>
> ……………
>
> 189.— Definitions.
>
> (1) [...][1]In this Act, unless the context otherwise requires—
>
> *"consumer credit agreement"* has the meaning given by section 8, and includes a consumer credit agreement which is cancelled under section 69(1), or becomes subject to section 69(2), so far as the agreement remains in force;…………..
>
> *"creditor"* means [(except in relation to green deal plans: see instead section 189B(2))] the person providing credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement, includes the prospective creditor;………….

> *"debtor"* means [(except in relation to green deal plans: see instead section 189B(3))] the individual receiving credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement includes the prospective debtor;…"

The Package Travel, Package Holidays and Package Tours Regulations 1992/3288

> "reg 2. Interpretation
>
> (1) In these Regulations— …………..
>
> "contract" means the agreement linking the consumer to the organiser or to the retailer, or to both, as the case may be;……..
>
> (2) In the definition of "contract" in paragraph (1) above, "consumer" means the person who takes or agrees to take the package ("the principal contractor") and elsewhere in these Regulations "consumer" means, as the context requires, the principal contractor, any person on whose behalf the principal contractor agrees to purchase the package ("the other beneficiaries") or any person to whom the principal contractor or any of the other beneficiaries transfers the package ("the transferee")…...
>
> reg. 15. Liability of other party to the contract for proper performance of obligations under contract
>
> (1) The other party to the contract is liable to the consumer for the proper performance of the obligations under the contract, irrespective of whether such obligations are to be performed by that other party or by other suppliers of services but this shall not affect any remedy or right of action which that other party may have against those other suppliers of services….
>
> reg.16. Security in event of insolvency – requirements and offences
>
> (1) The other party to the contract shall at all times be able to provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency."…………

The appellant's submissions

13. The appellant accepts that she did not have a credit agreement with the respondent but contends that she was a "debtor" within the meaning of the CCA 1974. Her primary case is that such an interpretation follows from the natural meaning of the words in

section 189 but failing that, the same result flows from an interpretation of section 75 which is both purposive and consistent with EU law.

14. It is contended that the effect of section 75 is to override privity of contract. Section 75 applies to any person where a credit card has been used to pay for a contractual service or contractual goods. A claimant has their own claim against the supplier notwithstanding the fact that the claimant is not the contracting debtor or cardholder. The removal of privity should be interpreted extensively so as to encompass within the meaning of "debtor" anyone who has a claim in breach of contract against the supplier.

15. Reliance is placed upon the authority of *Office of Fair Trading v Lloyds TSB Bank [2008] 1 AC 316* in which the House of Lords held that section 75(1) contained no words of territorial limitation and thus applied to overseas transactions as well as to domestic supply transactions, in which there was no pre-existing relationship between the creditor and supplier.

16. Further, it is submitted, if section 75(1) were intended to exclude the appellant, it could have stated that it is only a contractual debtor who obtains the benefit of a credit agreement. When read in conjunction with section 9 of the CCA 1974, "credit" includes "… a cash loan, and any other form of financial accommodation". Any other form of financial accommodation is said to be so wide as to include the benefit of a credit agreement and, it follows, includes beneficiaries under a credit agreement.

17. The appellant accepts that she is required to have a claim in contract in order to pursue a claim under section 75. She contends that she is deemed to have a contractual claim against the supplier under the 1992 Regulations as she is a "consumer" as set out in Regulation 2(2), being "any person on whose behalf the principal contractor agrees to purchase the package ("the other beneficiaries")". The appellant was expressly named on the invoice for the holiday contract, albeit as the "other passenger". Credit was extended to her which benefited the respondent: the creditor who takes the benefit of the transaction also takes the burden of it.

18. The "like claim" brought by the appellant against the respondent pursuant to section 75(1) is a claim brought pursuant to the 1992 Regulations which implements the Directive. The appellant contends that the objectives of the Tenth Recital and Articles 5 and 7 of the Directive include protecting all consumers by providing that such consumers can bring a claim in their own name even if not a party to the contract and that they will have protection in the event of the insolvency of the tour operator. Recitals 8 to 10 state:

> "Whereas disparities in the rules protecting consumers in different Member States are a disincentive to consumers in one Member State from buying packages in another Member State;
>
> Whereas this disincentive is particularly effective in deterring consumers from buying packages outside their own Member State, and more effective than it would be in relation to the acquisition of other services, having regard to the special nature of the services supplied in a package which generally involve the expenditure of substantial amounts of money in advance

> and the supply of the services in a State other then than in which the consumer is resident;
>
> Whereas the consumer should have the benefit of the protection introduced by this Directive irrespective of whether he is a direct contracting party, the transferee or a member of a group on whose behalf another person has concluded a contract in respect of a package;."

Article 5.1 provides that:

> "All Member States shall take the necessary steps to ensure that the organiser and/retailer party to the contract is liable to the consumer for the proper performance of the obligations arising from the contract, irrespective of whether such obligations are to be performed by that organiser and/or the retailer or by other suppliers of services without prejudice to the right of the organiser and/or retailer to pursue those other suppliers of services."

Article 7 states:

> "The organiser and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency."

19. The appellant contends that the 1992 Regulations provide a right by statute to bring a claim in contract as a consumer in accordance with the Directive. Contractual recourses are provided notwithstanding the absence of a contract between the parties, thus achieving the Directive's wider purpose of consumer protection. A wider definition of the parties to a contract and their rights is imposed by European law in the specific context of package travel cases. Following *Marleasing,* domestic law must be interpreted harmoniously with European law. In *Howe v MIB [2017] EWCA Civ 932* at [27] the Court of Appeal held that the *Marleasing* principle applies not only to national provisions enacted in order to give effect to EU directives but also to national law as a whole.

20. The judge was wrong to find that the *Marleasing* principle is not engaged. The broader aim of the Directive is consumer protection to enable consumers as opposed to contracting parties to bring a claim. The CCA 1974 must be interpreted in the light of the wider definition set out in the 1992 Regulations to ensure consistent interpretation of domestic legislation with European law and to give effect to the Directive's aims. The appellant's interpretation of "debtor" under section 75 as being an individual who "receives credit", is consistent with European law. Alternatively European law operates to pass the appellant's husband's right to bring a claim under the credit agreement to her.

The respondent's submissions

21. The respondent describes the CCA 1974 as a carefully crafted, unified, coherent and comprehensive code for regulating all forms of consumer credit and consumer hire. The quality and comprehensive nature of the legislation supports the contention that "debtor" when used therein is a carefully defined term of art within a carefully constructed regulatory scheme. "Debtor" has a plain and unambiguous meaning, namely the contractual debtor. No purposive construction is required. It is clear from section 75 that Parliament did not intend that definition to include third party beneficiaries of the credit extended under the agreement such as other family members.

22. It is the respondent's case that within the CCA 1974 "debtor" and "creditor" have strict definitions. The only person who can be viewed as receiving credit under the Credit Agreement is Mr Cooper. Only he satisfies the definition in section 189(1). The appellant was not a party to the credit card contract nor to the holiday contract. The appellant was not receiving credit, she had no contractual rights nor obligations under the Credit Agreement, she was not liable for the sums under it, she had no contractual right to defer any payments. It follows that the appellant is not a "debtor" as the judge correctly found.

23. Within the CCA 1974, "debtor" is given a different meaning in section 140(c)(ii) which is within provisions of the Act which introduce the concept of an "unfair relationship". There is no similar carve out in section 75.

24. The respondent contends that what section 75(1) envisages is a breach of contract between the debtor/purchaser and a supplier. The appellant did not have such a contract. A claimant, such as the appellant, pursuing an action under the 1992 Regulations is not pursuing a claim for breach of contract, it is a statutory claim under the Regulations by a non-contracting party. The touchstone of liability under Regulation 15 is "proper performance under the contract". The appellant is able to take advantage of improper performance under the contract albeit that she does not have a contractual claim.

25. In *X v Kuoni Travel Ltd [2021] 1 WLR 3910* Lord Lloyd-Jones, with whom the other justices agreed, distinguished between a claim for breach of contract and a claim under the 1992 Regulations. At [8] he stated:

> " …Before the Supreme Court, although a claim for breach of the 1992 Regulations was maintained, counsel for Mrs X emphasises that the claim was essentially a claim for breach of contract…".

At [50] he stated:

> "… In my view vicarious liability is not relevant here. Kuoni is liable both under the Directive as implemented by the 1992 Regulations and in breach of contract because the services it undertook to provide were not provided with care and skill by an employee of the hotel which was a supplier of the services…."

26. As to the *Marleasing* principle, the respondent submits that judge was correct to conclude it is not engaged because the CCA 1974 is not implementing legislation. In so far as it is non implementing legislation, it does not produce a result which is in conflict with the Directive. The Directive aims to provide a targeted scheme to protect holidaymakers whereas the CCA 1974 regulates consumer credit. The 1992 Regulations contain a raft of measures to meet their particular objectives including informational requirements (Articles 3 - 4), statutory causes of action (Articles 5 – 7) and insurance requirements and requirements in case of insolvency (Article 7). The insurance provision in the event of insolvency covers only the cost of refund and repatriation. The drafters of the Directive did not extend this to include personal injury claims. There is nothing in the 1992 Regulations relating to personal injury claims.

Discussion and conclusions

27. The preamble to the CCA 1974 identifies the aim of the Act, namely consumer protection. It states:

> "An Act to establish for the protection of consumers a new system, administered by the Director General of Fair Trading, of licensing and other control of traders concerned with the provision of credit or the supply of goods on hire or hire-purchase, and their transactions, in place of the present enactments regulating money-lenders, pawnbrokers and hire-purchase traders and their transactions; and for related matters…."

28. The concept underlying the CCA 1974 was the provision of a basic framework of regulation to cover all types of credit transactions with, in addition, specific provisions relating to particular forms of transactions when they were required. It replaced fragmented legislation with a unified, comprehensive and regulated code concerning all forms of consumer credit and consumer hire. It provided a spectrum of provisions for the protection of the consumer, supported by enforcement mechanisms.

29. It was the late Francis Bennion, then Parliamentary Counsel, who drafted the entirety of the statute. Professor Sir Roy Goode and the editors of *Goode, Consumer Credit Law and Practice* in acknowledging the work of the draftsman state:

> "It is a tribute to his skill that his creation, widely praised for its lucidity and originality, when the Bill was introduced managed to withstand the pressures of a Parliamentary procedure as well as it did…"

30. The attention to detail exhibited by the draughtsman is seen in the use of strictly defined terms in part 2 of the CCA 1974, in particular the inclusion of a collection of specific definitions in section 189. As to section 189 the editors of *Goode* state at [21.17]:

> "… section 189 not only gives definitions of its own but also indicates all the other sections in which definitions appear. When reading the Act it is essential to refer continually to

> s.189, because even words that might be assumed to have a meaning that was self-evident – such as 'creditor', 'pre-existing arrangements', 'security', and the like – are specially defined. The definitions are crucial to the understanding of the Act because the exhaustive and self-contained nature of the Act may mean that an item which does not come within the (often quite narrowly drafted) definition in s.189 may be wholly excluded from the operation of the Act."

31. "Debtor" is expressly defined in section 189. Save for limited exceptions, the word is used consistently throughout the statute. *Bennion, Bailey and Norbury on Statutory Interpretation* (7th Edition) states that:

> "There is a presumption that where the same words are used more than once in an Act they have the same meaning."

Leggatt LJ in *R (Good Law Project) v Electoral Commission [2018] ECHC 2414*, [33] stated:

> "It is generally reasonable to assume that language has been used consistently by the legislature so that the same phrase when used in different places in a statute will bear the same meaning on each occasion – all the more so where the phrase has been expressly defined."

32. As to the interpretation of "debtor" within section 75(1) of the CCA 1974, it is of significance that "debtor", as defined in section 189, confines the category to an individual who is a party to a consumer credit agreement. The words "individual receiving credit" are qualified by the phrase "under a consumer credit agreement". The CCA 1974 does not focus upon credit per se but the provision of credit under an agreement.

33. Sir Richard Scott V-C in *Dimond v Lovell [2000] QB 216* at [56–57] approved the ingredients of credit as set out in *Goode* and the general principle underlying the same namely:

> " debt is deferred, and credit is extended, whenever the contract provides for the debtor to pay, or gives him the option to pay, later than the time at which payment would otherwise be earned under the express or implied terms of the contract."

It is clear that the receipt of "credit" is not simply having the benefit of funds. It is having the contractual right to defer repayment of the debt, hence the phrase used by the appellant, "contractual debtor".

34. The narrowness of the definition of "debtor" is consistent with other statutory definitions in the CCA 1974 for example "credit" and "consumer credit agreement". It is of note that within the Act, any wider interpretation of "debtor" other than that contained in s.189 is expressly stated (para 23 above). No such expansion is contained in section 75.

35. An individual cannot have a contractual right to defer payment of a debt if they are not a party to the agreement from which the debt originates. This interpretation is relevant to the definition of "credit" in section 9(1) which can include any other form of financial accommodation. Underpinning such a definition must be the fact that the accommodation or agreement is between the "debtor" and the "creditor". It follows that the only person who can receive "credit" under a consumer credit agreement is a contracting party to that consumer credit agreement. The definition of "consumer credit agreement" in section 8 is at one with such an interpretation in that it identifies a consumer credit agreement as being "an agreement between an individual ("the debtor") and any other person ("the creditor") by which the creditor provides the debtor with credit of any amount." "Creditor" is defined in section 189 as meaning "… the person providing credit under a consumer credit agreement or the person to whom this rights and duties under the agreement have passed by assignment or operation of law…".

36. The credit provided under the Credit Agreement in issue in this appeal was extended solely to Mr Cooper. The respondent agreed to defer Mr Cooper's obligations to repay the respondent for goods and services paid for using his credit card. He was the only signatory to the Credit Agreement. He was the only individual who had a contractual right to defer his obligation to pay the respondent under the terms of agreement. He was the only individual who was obliged to pay the respondent under the terms of the Credit Agreement. The appellant was not a party to the Credit Agreement, she was not liable to the respondent for any of the sums due under it and had no contractual right to defer payment for any such sums.

37. As set out above, the purpose of the CCA 1974 was to provide a unified, expanded and regulated code governing all forms of consumer credit and consumer hire together with a spectrum of provisions for the protection of the consumer which were supported by enforcement measures. Given the enforcement mechanisms contained within the statute there is a need for precise definitions. The "creditor" should know with certainty the identity of the "debtor" in the event of enforcement proceedings. If such a definition were to be expanded beyond the strict confines of section 189, and section 75 was interpreted so as to include a third party beneficiary, it is not difficult to envisage the practical and legal difficulties of any creditor to a credit agreement.

38. Having considered the relevant provisions of the CCA 1974, I conclude that the word "debtor" in section 75 has a plain and unambiguous meaning, namely the contractual debtor. There is nothing in section 75 which indicates an intention to extend the definition set out in section 189 to include third party beneficiaries of the credit extended under the agreement. Further, I do not accept the appellant's contention that the effect of section 75 is to override privity of contract. The reference to "any claim against the supplier in respect of …. breach of contract" in section 75 is clearly qualified by the preceding words of s.75(1) namely "If the debtor under a debtor-creditor-supplier agreement … has, in relation to a transaction financed by the agreement …". The "claim" is limited to the contractual debtor under the credit agreement.

39. Given my finding as to the plain and unambiguous meaning of the word "debtor" in section 75, it should be unnecessary for the court to engage in a purposive construction of the word. In *Duport Steels v Sirs [1980] 1 WLR 142*, Lord Diplock at [157] stated:

> "… Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters … there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our constitution it is Parliament's opinion on these matters that is paramount."

40. In *Pinner v Everett [1969] 1 WLR 1266* Lord Reid stated:

> "My Lords, the only rule for the construction of Act of Parliament is, that they should be construed according to the intent of the Parliament which pass the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

41. In the event of the court determining that the meaning of "debtor" is plain, the appellant's further submissions relate to EU law, the provisions of the Directive and the 1992 Regulations. As to a claim by the appellant pursuant to the 1992 Regulations, I accept the respondent's contention that such a claim is not a claim for a breach of contract but rather a statutory claim under the regulations by a non-contracting party. Regulation 15 imposes statutory liability on the organiser of a package holiday contract in favour of a consumer. Regulation 2(2) defines "consumer" as "the principal contractor, any person on whose behalf the principal contractor agrees to purchase the package ("the other beneficiary")…". The appellant was not the principal contractor, she was an "other beneficiary". What she is able to take advantage of is a statutory claim as another beneficiary because Regulation 15 provides her with the statutory cause of action. It does not transform her into a party to the original contract. I accept that the touchstone for liability under Regulation 15 is "proper performance under the contract". The appellant would be able to take advantage of improper performance under the contract but that does not mean that she has a contractual claim.

42. It is of note that those who drafted the Directive address the issue of a travel operator becoming insolvent. The limited nature of recourse was to require insurance for the purposes of insuring refunds and the costs of repatriation. This was not extended to any personal injury claims which might arise. There is nothing in the 1992 Regulations which addresses the issue of personal injury claims.

43. I am satisfied that the interpretation of "debtor" within s.75 as confining it to an "individual who is a party to the credit agreement" does not produce a result which is in conflict with the Directive. In my view there is a fundamental difference between the Directive and the CCA 1974. The Directive provided a targeted scheme to protect package holiday makers, the purpose of the CCA 1974 is to regulate consumer credit and hire. The CCA 1974 is not implementing legislation. Each piece of legislation provides different measures in order to address different policy objectives. It follows and I so find, that an interpretation of section 75(1) of the CCA 1974 which prohibits

the appellant, who was not a party to the Credit Agreement, from bringing a personal injury claim is not contrary to the aims of the Directive such that the *Marleasing* principle could apply.

44. For the reasons given, and subject to the views of Macur LJ and Carr LJ, I would dismiss the appeal on ground 1. Any arguments on ground of appeal 2 were dependent upon ground 1 succeeding. It did not. It follows that ground of appeal 2 does not fall for determination.

Lady Justice Carr:

45. I agree.

Lady Justice Macur:

46. I also agree.