

**Southern Pacific Personal Loans Ltd v Walker and another
[2009] EWCA Civ 1176 ; [2009] WLR (D) 333**

CA: Mummery, Sullivan LJJ, Owen J: 12 November 2009

A credit broker's administration fee entered into the "charge for credit" did not form part of the total "amount of credit" for the purposes of the Consumer Credit Act 1974, even though payment of the fee was deferred and interest was charged on the amount of the fee remaining unpaid. Nothing in the 1974 Act or in the relevant Regulations prohibited the inclusion of the charge for credit in the consumer credit agreement as part of the "total amount financed" or rendered a consumer credit agreement so drafted totally unenforceable.

The Court of Appeal so stated allowing the appeal of the claimant, Southern Pacific Loans Ltd, from the decision of Judge Halbert, sitting in the Chester County Court on 27 April 2009, that the consumer credit agreement regulated by the 1974 Act, entered into between the claimant and the defendants, Michael Walker and his wife Suzanne Walker, for a fixed sum loan of £17,500, was unenforceable on the basis that the agreement stated the total amount financed as £18,375 including a broker's fee of £875 which was separately stated in the agreement. The claimant claimed possession of the defendants' property on which the loan was secured on the basis of an outstanding debt under the agreement of over £40,000 with the estimated costs of over £100,000.

MUMMERY LJ said that the question was whether the judge had been wrong to rule that the credit agreement made between the parties was unenforceable on the ground of non-compliance with a requirement of the consumer credit legislation. The answer would affect other cases in the current spate of consumer credit litigation and potentially many other credit agreements. The Consumer Credit Act 1974 had been passed to protect consumers of credit, an aim which accounted for its substantive content and conditioned its judicial interpretation. A prominent feature of protection was ensuring that the credit agreement brought to the borrower's attention the true cost of credit. In this case what was and what was not "credit" for the purposes of the legislation was governed by the meaning of s 9 of the 1974 Act. The nub of this case was in the construction and application of subs (1) and (4). It was not the function or effect of s 9 to prohibit anything, but rather to supply a special statutory meaning to the core concept of "credit" in the 1974 Act and to distinguish it from a charge for credit. S 9(1) gave a general definition of credit stating in wide terms what it included. Subs (4) was expressly directed to what credit did not include "for the purposes of the Act." Even though time was allowed for its payment, an item entering into the "total charge for credit" was not itself "credit" for the purposes of the statute. On the facts of this case, the broker administration fee was an item entering into the charge for credit and was prevented by s 9(4) from being treated as "credit" or as part of credit under the 1974 Act. It did not prevent interest from being charged on it during the period allowed for repayment. Nor was the fee converted from a charge for credit into "credit", as defined in s 9(1), by virtue either of repayment being deferred, or of a provision for the payment of interest on it during the period allowed for repayment. It was wrong to treat the sum of £18,375 as "credit" and then to assert that the "amount of credit" was incorrectly stated. The agreement was clear. Inclusion of £18,375 in box E made it clear that it was not the amount of credit. The "amount of credit" was the sum of £17,500 stated in box C. The fee of £875, which appeared separately in Box D, was not added and included in Box C, because it was part of the total charge for credit, not part of "credit". The amount appearing in box E was different from the "amount of credit" as a sum and in designation. The designation was "Total Amount Financed", not an expression used in the 1974 Act. It was neither prescribed nor required information. There was nothing in the 1974 Act or in the Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51) and Consumer Credit (Agreements) Regulations 1983 (SI 1983/1535) to prevent or prohibit the inclusion in the agreement of the total amount financed or to make its inclusion a reason for rendering the agreement unenforceable.

SULLIVAN LJ and OWEN J agreed.

Appearances: Nicholas Elliott QC and William Edwards (instructed by Rosling King LLP) for the claimant; David Berkley QC and Adrian Salter (instructed by Turner Coulston) for the defendants
Reported by: Ken Mydeen, barrister.