DRN-5043272

The complaint

Mr B complains that Clydesdale Financial Services Limited (trading as Barclays Partner Finance) did not uphold his claim under section 75 of the Consumer Credit Act 1974 in relation to a kitchen.

What happened

In October 2021 Mr B entered into a regulated fixed sum loan agreement with Barclays Partner Finance ("BPF") to finance his purchase of a kitchen from a third party ("the merchant"). The kitchen was subsequently supplied and installed.

Mr B later noticed that the kitchen cabinets were not the same as the ones he had seen in the merchant's showroom. He found that they were not precisely the same size as the ones he'd ordered, and he had difficulty in opening them. He complained to the merchant, who told him that that the display in the showroom had been an older version of the range, which had been updated in 2019, and this accounted for the slight difference; therefore the merchant had sent him samples of the new range when he placed his order. Mr B then complained to another ombudsman service, which did not uphold his complaint. In June 2023 he complained to BPF.

BPF treated Mr B's complaint as a claim for a refund under section 75. However, it did not agree to refund him, because the cabinets which were supplied were the correct ones according to Mr B's written contract with the merchant. BPF did not accept what Mr B had said about the ones he'd seen in the showroom being different. Being dissatisfied with that response, Mr B brought this complaint to our service. He is represented by Mrs B.

Our investigator did not uphold this complaint. She thought that a clause in the contract said that any samples, descriptions or drawings of products were only intended to convey "an approximate idea" of what the products were like, and they did not form part of any contract that might be entered into. Based on that, she thought that any "slight variation" between what Mr B saw in the showroom and what had been supplied did not amount to either a misrepresentation or a breach of contract. She thought that the difference in size of the cabinets (about 4 mm) was only a slight variation within the meaning of that clause. She also accepted the merchant's explanation that it had sent Mr B a sample of the new version. She concluded that BPF had not been wrong to decline Mr B's claim for a refund.

Mrs B asked for an ombudsman's decision. She denied that the merchant had sent a sample until after the kitchen was installed, and she asked for proof that it had been sent earlier. She argued that the changes that were made in 2019 were not a slight variation, but were substantial.

I wrote a provisional decision which read as follows.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Section 75 makes BPF jointly liable with the merchant for any *breach of contract* or *misrepresentation* by the merchant in relation to the kitchen. A misrepresentation is a false statement of fact which caused Mr B to enter into his contract with the merchant, if he would not have done but for that statement.

However, section 75 does not apply to a *mistake* made by either party, or both parties, about the terms of the contract – that is, about which kind of kitchen was going to be sold, or the measurements of the cabinets.[1] If either party was mistaken about what had been ordered, or if both parties failed to realise that they had not actually reached an agreement about precisely what was being purchased, then I think that is outside the scope of section 75. If so, then that would mean that Mr B would only have a remedy against the merchant, and not against BPF.

Since Mr B's claim is that he thought he was buying *X*, but the merchant sold him *Y*, and since the written contract says that he ordered *Y*, I think that issue is best categorised in law as a mistake, rather than as a breach of contract or misrepresentation (whether that was a mistake made by one or by both parties).

The essence of Mr B's claim is that there is a dispute about what the terms of the contract actually were. The written contract sets out what the merchant was agreeing to sell, and the merchant complied with those terms. But the terms envisaged by Mr B were to buy a different kitchen (for the purposes of this paragraph, I don't need to decide whether the difference was slight or significant). If the parties were genuinely at cross-purposes, then there was really no contract at all, and section 75 does not cover that situation.

That isn't the only possible outcome of a mistake as to the terms of a contract; another is that there was still a valid contract. But since the terms of the contract were in writing, I don't think it was unreasonable of BPF to conclude that both parties ought reasonably to have understood those written terms to be the agreed terms (with the result that there was a valid contract to supply the kitchen that was actually supplied). So I don't think that BPF's response to Mr B's section 75 claim was so obviously wrong that I should interfere with it.

For these reasons, I do not think that BPF has done anything wrong.

Responses to my provisional decision

BPF accepted my provisional decision. Mr and Mrs B did not reply to it. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B (or Mrs B on his behalf) to accept or reject my decision before 23 October 2024. But apart from that, this decision brings our process to an end.

Richard Wood
Ombudsman

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[1] On the subject of mistake in contract law, I have referred to *Chitty on Contracts*, 35th ed., chapter 5.