

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY
HH JUDGE SIMON BROWN QC**

B E T W E E N:

- (1) BASIL RANKINE V. AMERICAN EXPRESS SERVICES EUROPE LIMITED**
- (2) AMANDA RANKINE V. THE GOVERNOR & COMPANY OF THE BANK OF SCOTLAND**
- (3) TESCO PERSONAL FINANCE V. AMANDA RANKINE**
- (4) BASIL RANKINE V. HALIFAX PLC**
- (5) AMANDA RANKINE V. HFC BANK LIMITED**

JUDGMENT

1. This is a Judgment upon five related claims concerning Mr and Mrs Rankine and their financial affairs under the Consumer Credit Act 1974 and ancillary Regulations.
2. Mr and Mrs Rankine profess to be financial advisors and have some limited qualifications in the provision of financial services. They are the directors of two apparently dormant limited companies, Momentum Network Limited and Mortgage Love Limited. Since at least 1996 they have personally had credit from various financial institutions under credit card agreements and personal loans.
3. Recently eight (I believe) claims arrived in various courts in the Birmingham Civil Justice Centre about the Rankine' financial affairs. These are just five of them and an undisputed schedule of debts amounts to £20,231.50 and £17,334.80 in the cases of Mr and Mrs Rankine respectively. During evidence, Mr Rankine boasted to the court that they had managed to wriggle out of a further £65,000 of similar debts by raising Consumer Credit Act legal technicalities leaving the financial institutions to write them off as bad debts rather than take the trouble and expense of litigating for dubious reward by enforcement against two individuals who are apparently on income support and exempt from paying court fees.
4. It also emerged during evidence that Mr Rankine was seeking to make a business out of this by offering his services to others for percentage reward as a credit card buster

with a website and publicity generated in the media about his "victory" in the Court of Appeal in one of his cases against MNBA.

5. Mr and Mrs Rankine have represented themselves throughout all these claims and have been granted the usual indulgences to litigants in person by the court and the advocates appearing for the financial institutions. However, Mr and Mrs Rankine have misused those indulgencies to a great extent in all these proceedings by producing blizzards of lengthy, argumentative and incoherent pleadings and witness statements that has meant that the overriding objective has been impossible to achieve. In an effort to try to do so at pre trial review, the court ordered Mr and Mrs Rankine to produce a comprehensible List of Issues to be tried. They produced a List of 9. Upon reviewing them at the outset of the trial, it appeared that only 6 were pleaded issues. The trial then proceeded with trying those 6 issues.
6. All the claims had similar points but there were two claims with a variation. First, in the Tesco claim, Tesco's were the Claimants seeking payment of £5,889.30. Secondly in the HFC claim, Mrs Rankine was additionally making a claim about a personal loan under a personal loan agreement. HFC Bank has a counterclaim for sums due under the agreement with sums due under the credit card agreement.
7. This judgment will follow the issues that were live, rather than go case by case: (2) Copy Agreements under Section 78 of the CCA; (4) Cancellable agreement; (5) True Copies; (6) Default Notices; (7) Default Charges ; (9) Declaration of Unenforceability and finally the Personal Loan issues.
8. The Court heard evidence from representatives of each of the financial institutions involved. Needless to say, most of the evidence involved formally producing or referring to documentation much of which had been electronically generated or produced. Mr Rankine cross examined all these witnesses but I am satisfied that all the information they produced was an accurate contemporaneous record of events and that all the financial institutions followed the standard procedures of the highly technical CCA and ancillary regulations. They are all highly sophisticated financial institutions whose systems and programmes have long since been well geared to the mechanics Consumer Credit Act that has been on the statute book for over 30 years and Regulations of some longstanding and development. Nevertheless, Mr and Mrs Rankine have sought to challenge these procedures and contend that there are loopholes in the Act and the Regulations that nobody else has detected before until they have done so and that this enables consumers to run up debts and not pay for them.
9. It is worth remembering that the context and purpose of the CCA: the Consumer Credit Act was introduced to protect the individual unsophisticated in financial affairs

in contracts with unscrupulous and sophisticated financial institutions. It was not designed to help individuals in the financial services business make money out of financial institutions through exploiting its undoubted technicalities.

10. **Issue 2.** *Copy Agreements under Section 78 of the CCA*

11. Section 78(1) of the Act provides as follows:

“The creditor under a regulated agreement for running-account credit, within the prescribed period after receiving a request for in writing to that effect from the debtor and payment of a fee of [£1], shall give the debtor a copy of the executed agreement (if any) and of any other document referred to in it, together with a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer:

(a) the state of the account, and

(b) the amount, if any, currently payable under the agreement by the debtor to the creditor, and

(c) the amounts and the due dates for any payments which, if the debtor does not draw further on the account, will later become payable under the agreement by the debtor to the creditor.”

Section 78(6) provides;

“If the creditor under an agreement fails to comply with subsection (1):

(a) he is not entitled while the default continues, to enforce the agreement; and

(b) if the default continues for one month he commits an offence.”

12. Mr and Mrs Rankine assert that in the Tesco, Halifax, BOS and HFC cases that they, or via their dormant limited company Momentum Network Limited through a “Mr Smithson” requested a copy of the relevant credit card agreement but none was supplied as it ought to have been under Section 78 of the Consumer Credit Act. I am satisfied on the evidence of Rachel Hinchcliffe (BOS & Halifax), Mrs Glanville (Tesco) and Manoj Dudrah (HFC) that copies were despatched as requested in each case. The contemporaneously recorded electronic records of each company supports and verifies their evidence. Mr and Mrs Rankine are being perversely and deliberately untruthful to assert to the contrary. Mr and Mrs Rankine also sought to contend as a new thought at trial that as only the front page was scanned in, therefore the entire agreement had not been sent. The back only contained the standard conditions which were sent separate anyway so that is a very bad point and perhaps it was not surprising that it had not emerged until then.

13. In any event, even if requests under section 78 of the Act have been complied with, this issue is irrelevant in the claims by the Rankines, against Halifax and HBOS as there is no claim by the Defendants to enforce the agreements in these proceedings.

The Rankines may well try to contend that section 78(6) acts as a bar to enforcement, but the Court has no power to make a declaration in this regard under section 142 of the Act.

14. Section 142(1) of the Act provides as follows:

“Where under any provision of this Act a thing can be done by a creditor or owner on an enforcement order only, and either –

(a) the court dismisses (except on technical grounds only) an application for an enforcement order, or

(b) where no such application has been made or such an application has been dismissed on technical grounds only, an interested party applies to the court for a declaration under this subsection,

the court may if it thinks just make a declaration that the creditor or owner is not entitled to do that thing, and thereafter no application for an enforcement order in respect of it shall be entertained”

15. Thus the power to make a declaration under section 142(1) exists only in a case where the court could grant an enforcement order. The court cannot do so in a case where a lender has failed to comply with a request made under section 78 and accordingly there is no power to make a declaration in this regard even if the Court finds that the Defendant did not comply.

16. In the Tesco case, where they are seeking enforcement, section 78(6) of the Act does not have the effect contended for by the Rankines. First, the prohibition is against a creditor “under an agreement”. The agreement was at an end. Therefore there is no reason why there cannot be enforcement. Secondly, the word “enforce” is not descriptive of the commencement of proceedings. Bringing proceedings during a time when the agreement has been brought to an end is only a step taken with a view to enforcement. It is not actually enforcement. Sufficient information has been provided during the proceedings to comply in any event. Thirdly, the proceedings cannot be said to be a nullity or otherwise affected. The appropriate step to be taken by the Rankines would have been to seek a stay of the proceedings pending provision of the information. A cause of action had arisen when the proceedings were commenced. An analogy can be drawn between section 78 and section 69(1) of the Solicitors Act. The latter section provides that: “Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a bill of those costs is delivered in accordance with the requirements mentioned in subsection (2)”. It can thus be said that had Parliament intended that section 78 have the consequence of preventing the commencement of proceedings the section would have so provided in the same way as section 69 of the Solicitors Act does. Fourthly, and most significantly, the provisions of section 170(1) of the Act support the contention that a failure to comply with section 78 does not of

itself give rise to the consequence that pending compliance with a request made under section 78 any steps taken are in some way invalid. It provides so far as relevant as follows:

“(1) A breach of any requirement made (otherwise than by any court) by or under this Act shall incur no civil or criminal sanction as being such a breach, except to the extent (if any) expressly provided by or under this Act.

...
(3) Subsection (1) does not prevent the grant of an injunction...”

It follows that where a breach of the Act occurs, such as one of section 78, where no remedy is specified, the appropriate step is to seek an injunction. A view to this effect is set out in the notes to section 170 by the editors of *Goode Consumer Credit: Law and Practice*. In any event it is to be kept in mind, as the editors of *Goode* observe, that any such breaches may lead to questions relating to the licence of the lending body in question.

17. In my Judgment the Rankines submissions on Issue 2 are unsound in fact and in law.

18. **Issue 4** *Cancellable agreement*

19. Section 67 of the CCA provides that “A regulated agreement may be cancelled by the debtor or hirer ... if the antecedent negotiations included oral representations made when in the presence of the debtor or hirer by an individual acting as, or on behalf of the negotiator, unless (b) the unexecuted agreement is signed by the debtor or hirer at premises at which any of the following is carrying on any business (whether on a permanent or temporary basis) (i) the creditor or owner; (ii) any party to a linked transaction (other than the debtor or hirer or a relative of his); (iii) the negotiator in any linked negotiations.”

20. This section is designed to protect the consumer against the persuasive doorstep sales. It is not applicable in any of the claims here where it is common ground that there were no “antecedent negotiations.”

21. The common feature in all of these cases is that the agreements are drafted as “cancellable” agreements. Section 67 of the Consumer Credit Act 1974 provides that a regulated agreement will be cancellable if the borrower signed it away from trade premises (e.g. at home) *and*, before signing it, he had face to face discussions with the lender (or his representative or agent) which included oral representations in relation to the agreement. An agreement which meets these criteria has to contain certain statements and notices of the right to cancel, in a form prescribed by the Consumer Credit (Agreements) Regulations 1983 (“the Agreements Regulations”) and the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983

("the CNC Regulations"). If it does not, the agreement will be wholly unenforceable, by virtue of sections 64(1) and 127(4)(b) of the Act.

22. The vast majority of credit card agreements are concluded with no face to face contact between card issuer and borrower. They are therefore most unlikely to be cancellable within the meaning of section 67 of the Act. Most such agreements are, however, drafted as cancellable agreements. Lenders historically chose this course to avoid the risk of unenforceability in relation to the relatively few cases where the criteria of section 67 were met (such as a situation where a borrower takes an application form from a branch after speaking to an advisor, and signs it at home). Such agreements therefore grant a contractual right to cancel the agreement notwithstanding that there is unlikely to be any statutory right to cancel.

23. The Rankines argue that in such circumstances the Banks are to be taken to be bound by the consequences of a failure to comply with the strict requirements as to the form of notices of rights referred to above in just the same way as if the agreement was truly cancellable within the meaning of section 67. They rely in making that assertion on regulation 5(4) of the CNC Regulations, which provides:

*"In the case of [an agreement]...which is not a cancellable agreement within the meaning of the Act and these Regulations but which may be cancelled by the debtor in accordance with terms of the agreement conferring upon him similar rights as if the agreement were such a cancellable agreement, the agreement may be treated **for the purposes of this Regulation** as if it were a cancellable agreement within the meaning of the Act and of these Regulations, and Regulation 2 shall then apply as if the agreement were such a cancellable agreement"* [emphasis added]

24. The Rankines have already recently litigated this issue in a case involving MBNA Europe Bank Ltd. They were unsuccessful, but notwithstanding this, they rely on the judgments given by Recorder Corner QC at first instance, and by the Court of Appeal in rejecting their application for permission to appeal, as being supportive of this argument.

25. In the Court of Appeal, Gage LJ took the view that regulation 5(4) means only that a contractually cancellable agreement will be treated as cancellable for the purposes of the CNC Regulations, not that it will be treated as cancellable within the meaning of section 67 of the Act. As such, whilst any failure to include the correct notices of cancellation rights would mean that the agreement was improperly executed (and thus a court order would be required for enforcement), the absolute bar to enforcement in section 127(4) of the Act would not apply. This is clear binding authority against the Rankines on this point and there is no basis on which to distinguish it.

26. The commentary to regulation 5(4) in *Guest & Lloyd: Encyclopaedia of Consumer Credit Law* at paragraph 3-241 is explanatory:

“[Regulation 5(4)] enables agreements which are not cancellable agreements within the meaning of the Act to confer similar rights of cancellation and to be treated as cancellable agreements. As such (otherwise non-cancellable) agreements “may be treated for the purposes of this Regulation as if it were a cancellable agreement” (emphasis added), it would seem that they are not to be so treated for the purposes of other provisions (in particular s.127(4) – rendering cancellable agreements “irredeemably unenforceable” if the copy requirements are not fulfilled)”.

27. The argument is therefore pure sophistry and it is perverse to seek to persuade this court to the contrary when the matter has already been authoritatively ruled upon.

28. **Issue 5 True Copies**

29. A credit card issuer is required to provide three copies of agreement to a borrower.

The first copy (which is set out as an application form) is signed by the borrower and sent to the lender. The borrower is given, with this application copy, a copy to keep (in accordance with the requirements of section 62 of the Act. This is the requirement to provide a copy of the *unexecuted* agreement (unexecuted because at that stage it has not been accepted or signed by the lender). When the agreement is executed, a credit card is sent out, and usually this is attached to the “card carrier” copy of the agreement. This copy has to be sent to the borrower by virtue of section 63(4) of the Act and this is the *executed* copy. The requirement for such documents to be “true copies” is set out in regulation 3(1) of the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983. Regulation 3(2) provides that the lender can omit from this document any signature and/or signature box, so although the card carrier is the executed copy, it does not have to (and invariably will not) bear the parties signatures.

30. This issue was not raised in the pleadings and there is no evidential basis produced by the Rankines to support the contention that each of the financial institutions did not provide the “copies” of the documents at the relevant times from electronically stored and generated data bases.

31. Again, the submissions of the Rankines are totally without factual or legal merit.

32. **Issue 6 Default Notices**

33. Section 87 of the Act provides that service of a notice in accordance with section 88 “is necessary before the creditor or owner can become entitled, by reason of any breach by the debtor or hirer of a regulated agreement” amongst other things “to terminate the agreement”.

34. Section 88 of the Act provides so far as material as follows:

“(1) The default notice must be in the prescribe form and specify-

(a) the nature of the alleged breach;

(b) if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken;

(c) if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be paid.

(2) A date specified under subsection (1) must not be less than seven days after the date of service of the default notice, and the creditor or owner shall not take action such as is mentioned in section 87(1) before the date so specified...

....

(4) The default notice must contain the information in the prescribed terms about the consequences of failure to comply with it.”

35. Again, Mr and Mrs Rankine assert that there have been deficiencies in each case concerning the provision of default notices. Again this is irrelevant in all the cases apart from the Tesco and HFC claim as the other financial institutions are not seeking herein to enforce and the Court has no power to order a declaration as to enforceability in these circumstances. Section 87 of the Act requires a creditor to serve a default notice before it can, by reason of the borrower's default, become entitled to take action, such as making a demand for earlier payment of any sum. The default notice is required by section 88 of the Act to be in the form prescribed by the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983.

36. The Court has no power to order a declaration as to the enforceability of the agreement in these circumstances. Section 142(1) of the Act provides as follows:
“Where under any provision of this Act a thing can be done by a creditor or owner on an enforcement order only, and either –
(a) the court dismisses (except on technical grounds only) an application for an enforcement order, or
(b) where no such application has been made or such an application has been dismissed on technical grounds only, an interested party applies to the court for a declaration under this subsection,
the court may if it thinks just make a declaration that the creditor or owner is not entitled to do that thing, and thereafter no application for an enforcement order in respect of it shall be entertained”

37. Thus the power to make a declaration under s.142(1) exists only in a case where the court could grant an enforcement order. The court cannot do so in a case where a

defective default notice has been served and accordingly there is no power to make a declaration in this regard.

38. In the Tesco case where enforcement is sought then the following is the situation.

39. The default notice was sent under cover of a letter dated 18 January 2005. It was stated to enclose a default notice and required rectification of the situation within 10 days. It stated the current balance to be £5,978.66, arrears to be £347.00 and credit limit £5,800.00. The default notice under the heading "Description of the breach" set out the figures as in the previous paragraph and went on to say:

"The breach is capable of remedy if you make a payment sufficient to clear any arrears and which leaves the balance within the credit limit."

It went to provide the payment must be made by 1 February and that if payment was not made "the Bank will terminate the agreement".

40. The Defence is difficult to follow. However in her second witness statement, Mrs Rankine makes a number of points. By paragraph 14 of her second witness statement she asserts that in breach of section 88 of the Act and the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 ("the Enforcement Regulations") the Default Notice failed to state the exact provision of the agreement said to have been breached in "that all that is stated that (sic) the terms and conditions have been breached". It goes on to allege that the "whole document must be read as one whole cohesive document and if one element is missing or misstated then the whole document is rendered invalid".

40. The Enforcement Regulations provide by regulation 2(2) that:

"Any notice to be given by the creditor or owner in relation to a regulated agreement to a debtor or hirer under section 87(1) of the Act (which relates to the necessity to serve a default notice on the debtor or hirer in accordance with section 88 before taking certain action by reason of any breach of the agreement by the debtor or hirer) shall contain:

...

(b) the information set out in paragraphs 1 to 3, 6 and 8 of Schedule 2 to these regulations."

Paragraph 3 of Schedule 2 provides as follows:

"Details of breach of the agreement and action required to remedy, or pay compensation for, the breach. A specification of:

(a) the provision of the agreement alleged to have been breached; and

(b) the nature of the alleged breach of the agreement, specifying clearly the matters complained of; and either

(c) if the breach is capable of remedy, what action is required to remedy it

and the date, being a date not less than seven days after the date of service of the notice, before which that action is to be taken; or
(d) if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach and the date, being a date not less than seven days after the date of service of the notice, before which it should be paid.”

41. There is no merit in the contention that the default notice failed to specify the precise term which D had breached fatal to the effect of the default notice served. It was clearly stated when read as a whole what the breach was and what was required to be done to remedy it. Second, even if there was a breach, it was a de minimis breach of the provisions of the Enforcement Regulations and of no significance. Thirdly as with Section 78 (supra) section 170(1) of the Act is applicable.
42. Next, Mrs Rankine asserts that in breach of “paragraph 2(3)(d)” to Schedule 2 of the Enforcement Regulations Tesco failed to state the exact sum required to be paid to remedy the breach. The breach was capable of remedy. That paragraph was not relevant. Rather it is paragraph 2(3)(c) which is relevant. It set out the steps that were required to remedy the breach. In her witness statement at paragraph 11 Ms Glanville demonstrated why the content of the notice is correct in terms of the amount that is sought. In any event it cannot be said that the sum sought was in excess of that due, and accordingly had Mrs Rankine complied with the notice she would no longer have been in default.
43. Next it is said that the notice was not in the correct form because words were included “contrary to regulation 6 Schedule 2” of the Enforcement Regulations. There is no such requirement by that paragraph. Even if there were, the same principles apply by reason of section 170(1) as have already been discussed.
44. Finally an allegation of a breach of paragraph 8(2)(a) of Schedule 2 is made. It is not a relevant consideration. It is concerned with the early payment of money. Tesco was not seeking early payment of money.
45. If it be said that there was a breach of the regulations because the amount said to be owed was overstated by £10, for reasons discussed below under Issue 7, it would be a de minimis breach, given the size of the debt and the amount required to be repaid. Further it is clear from the evidence of Mrs Rankine she could not meet it, and the overstatement did not have an effect in that regard. Such a breach does not invalidate the notice: see Woodchester Lease Management Services Limited v Swain & Co[1999] 1 WLR 263 at 268.
46. Again, the contentions of Mrs Rankine are factually and legally flawed.
47. *Issue 7 Default Charges*
48. It is contended that there have been deficiencies in all cases to make good default

charges wrongly made.

49. In fact, in the BOS and AMEX case, they have been refunded. In Tesco, there is only £10 outstanding. In HFC, Mr Dudrah has demonstrated that such minimal charges were justified. In my judgment, this is immaterial and a trivial matter of no significance.

50. **Issue 9 Declaration of Unenforceability**

51. Again, although it is raised in all cases, it simply cannot apply to those cases brought by the Rankines. The Court has no power to make such a declaration.

52. Section 127(1) of the Act provides as follows:

“In the case of an application for an enforcement order under (a) section 65(1) (improperly executed agreements)...the court shall dismiss the application if, but only if, it considers it just to do so having regard to –

(i) prejudice caused to any person by the contravention in question, and the degree of culpability for it; and

(ii) the powers conferred on the court by subsection (2) and sections 135 and 136¹”

53. In the Tesco case, the Court has the residual discretionary power under Section 127 of the CCA to order enforcement notwithstanding any technical breaches of the Act or Regulations. For the reasons above, the Court does not consider it necessary to invoke these powers but for the avoidance of any doubt it would have no hesitation in doing so if required in this case. The benefits have all been to the advantage of the Rankines, their personal lives and even their business interests and there is no prejudice to them apart from those entirely brought upon themselves by their deliberate actions.

54. **Residual Matter Personal Loan**

55. Mrs Rankine contends that an agreement for a Personal Loan to buy computer equipment she is still using was misrepresented to her by the staff of PC World as being an agreement with a limited company. The agreement itself makes it abundantly clear that the borrower was the Claimant, and not any limited company, and that the Claimant chose to take optional payment protection insurance. The Claimant does not suggest that she did not sign the agreement. She did not put forward any positive case as to the alleged oral misrepresentation in her witness statement and when she was given the opportunity to do so in cross-examination she once again failed to put forward any case at all as to what she

¹ Subsection 2 gives the Court power to reduce the amount payable as compensation for the prejudice. Sections 135 and 136 allow the court to impose conditions on the parties and vary agreements.

alleged to have been said. The salesman can be identified but not surprisingly he did not give evidence as he would have been of no evidential value even if he had been called as he could not reasonably be expected to add to anything that the documents themselves say. There is no evidence of any misrepresentation.

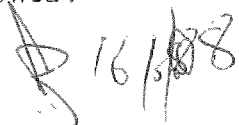
56. Mrs Rankine also asserts that there are errors in the form of the default notice and that the sums quoted were incorrect because they included default charges which were unfair. By her witness statement she makes further contentions as to alleged inaccuracies in the figures quoted.

57. The default notice is dated 20th December 2005. In my judgment, it cannot invalidate a default notice if elements of the sums claimed in that notice are subsequently found to be irrecoverable by virtue of other legislation, such as the Unfair Terms in Consumer Contracts Regulations 1999. The obligation imposed on the lender is to state the sums due on the face of the agreement. To impose any other requirement would remove any certainty from the process, since it would require lenders to anticipate and calculate, in advance, a Court's likely view as to a fair sum to levy in respect of default charges. This is a virtually impossible task which Parliament cannot have intended that lenders would have to carry out when issuing default notices.

58. In my judgment, Mrs Rankine was deliberately seeking to be perverse and untruthful in seeking to avoid a substantial debt despite having all the benefits of equipment she expects the credit company to pay for on her behalf. Her behaviour in Court was perverse, argumentative and obstructive.

59. Conclusion

60. In my judgment, the Claims by the Rankines do stand dismissed and the Claim by Tesco and counterclaim by HFC be allowed .

 16/5/08

His Honour Judge Simon Brown QC

Sitting as a High Court Judge at Birmingham Civil Justice Centre

Authorised by Section 9 of the Supreme Court Act 1981

16th May 2008.