Negligence and the Consumer Credit Act 1974: Bailey v (1) Bijlani (2) MBNA Ltd [2025] EWHC 175 (KB)

Introduction

A Judge has awarded substantial damages to the patient of a private dentist after failed implant surgery. The Claimant also recovered against her credit card company, which was jointly and severally liable for the damages, as she had used her card to pay for the treatment.

Background

The dentist, named as First Defendant in the claim, operated a private dental clinic under a limited company, "Brilliant Dental Ltd" ("BDL") by which she was employed and of which she was sole director. The Claimant had been treated by the dentist in 2016 when she had several veneers placed. She returned in 2018 looking to replace a bridge at the front of her lower teeth with an implant.

The Claimant had a gap at her two lower front teeth (LL1 and LR1) with which a bridge had been previously constructed resting on the two teeth behind (LL2 and LR2). The bridge had only one tooth in place of the front two for reasons of space, the gap being narrower than usual.

The First Defendant agreed to insert an implant in the gap between LR2 and LL2 to replace the bridge. She did not undertake a cone beam computed tomography scan, which could have helped to plan the case, determine the amount of available bone, and minimise the risk to adjacent teeth. As a matter of fact, the Judge found that there was only 1mm of available clearance on either side of the proposed implant post (as opposed to the 1.5mm usually required), which increased the risk of failure and damage to the adjacent teeth. The Judge held that the Claimant had not been warned about this increased risk.

Upon the First Defendant drilling and inserting the post, the Claimant experienced significant pain. It later transpired that the First Defendant had positioned the post in such a way that it was angled and impinging on the root of LL2. The Claimant attended her regular dentist the next day, who diagnosed an infection, but on returning to the First Defendant later that day, the First Defendant dismissed this and instead undertook root canal treatment to the two neighbouring teeth. This did not resolve the pain.

Ultimately, the Claimant attended Addenbrooke's Hospital where it was identified that the implant had been drilled into the adjacent tooth. She had surgery to remove the post, but she went on to require further substantial surgery to fix her teeth. She also developed colitis as a result of overuse of NSAID painkillers.

The Claim

The Claimant issued proceedings against the First Defendant in negligence. She issued proceedings against her credit card provider, MBNA Limited, for liability under section 75 of the Consumer Credit Act 1974 ("the CCA").

The First Defendant disputed liability but did not call any expert evidence to respond to the Claimant's expert, Professor Harding.

At trial, HHJ Simon found against the First Defendant in negligence. He was required to determine whether the Second Defendant was also liable, in respect of any breach of contract in relation to the dental care provided, under the provisions of section 75 of the CCA.

Section 75 of the CCA provides for the liability of a creditor under certain debtor-creditor-supplier agreements (as defined by section 12). Where there is a claim against a supplier in respect of a misrepresentation or breach of contract, in relation to a transaction financed by the relevant agreement, the debtor will have a like claim against the creditor.

In this case, the Claimant was the debtor and the Second Defendant was the creditor. Specifically, the Second Defendant was the card issuer for the credit card with which the Claimant had paid in full for the relevant treatment.

The Judge found that the Claimant had contracted with BDL. BDL was thus the supplier for the purposes of the CCA. The necessary contractual relationship was therefore established such that the Second Defendant was liable under section 75.

The CCA: An Important Reminder

Where a supplier of services purchased via credit card has caused actionable damage, the possibility of using section 75 of the CCA to recover against the card provider is well established: see *Bond v Livingstone & Co* [2001] P.N.L.R. 30. This provision is often overlooked in proceedings for clinical or professional negligence as indemnity is often taken for granted.

This case is an important reminder that section 75 of the CCA is a potentially useful mechanism for obtaining compensation in circumstances where a negligent supplier may be unlikely to be able to satisfy a judgment. Recourse under the CCA is therefore an avenue worthy of careful consideration in cases where a professional is unindemnified.

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