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Is There a Fiduciary Duty Owed by a Dealer in Motor Finance Agreements?

A review of the judgment in Johnson examining the distinction between a dealer and a broker in motor finance cases

Romona Morgan

Pupil Barrister

St John's Buildings

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This question of fiduciary duty owed by a dealer was the subject of the court's decision in the recent judgment in *Johnson v FirstRand Bank Ltd (unreported)*, 6 July 2023, (Cardiff County Court).

The Claimant, Mr Johnson, brought a claim in damages on the ground that commission totalling 62.7% of the total interest payable under a credit agreement was paid by the lender to the dealer without his knowledge or consent in circumstances where the dealer owed him a fiduciary duty. The Claimant, sought to draw a comparison with the dealer and a broker in the sense that they were both intermediaries promoting finance options to assist buyers.

It has been established in cases such as *Wood v Commercial First Business Ltd [2021] EWCA Civ 471* and *Hurstanger Ltd v Wilson [2007] EWCA Civ 299* that a broker owes single-minded loyalty to their client in identifying the best possible deals available from lenders. Should the broker accept commission from a lender without disclosing this information to their client, to allow for informed consent, this would compromise the broker's loyalty to the client. Thus, damages could be claimed against the lender for commissions paid to a broker in secret.

The court in Johnson found that the dealer was not a fiduciary owing single minded loyalty to their client as they were primarily involved with selling the vehicle. The financing of the vehicle was ancillary to the primary transaction. The fact that the dealer was an agent of the lender was not sufficient to establish a fiduciary duty.

The court did however consider that the failure to disclose the commission or insufficient disclosure could render the relationship between borrower and lender as unfair within the meaning of s.140A of the Consumer Credit Act. The case was remitted to the original judge to determine whether the dealer had disclosed the commission in any way and whether the facts taken together gave rise to unfairness for which damages would follow. We await the decision of the lower court on these points.

The commercial barristers at St John's Buildings are available to represent your client in their motor finance small claims in courts across England and Wales. Contact our clerks to book a barrister for your next trial.

Romona Morgan

Clerk@stjohnsbldings.co.uk