

## Introduction

On 22 August 2012 Mr Justice Hamblen (sitting in the High Court and on appeal) handed down judgment in *Patricia Jones v Link Financial Limited* [2012] EWHC 2402. This considered an important issue for buyers (and sellers) of regulated consumer credit agreements: whether the assignee of a debt was a 'creditor' for the purposes of the Consumer Credit Act 1974 (the "CCA 1974"). In a sensible and pragmatic decision, the High Court decided that an assignee is a 'creditor' under the CCA 1974 and is therefore entitled to enforce the agreement against the debtor.

## Facts

Mrs Jones entered into a fixed-sum loan agreement with GE Money Consumer Lending Limited ("GE Money") on 1 December 2006 (the "Agreement"). After initially making repayments under the Agreement, Mrs Jones fell into arrears and a default notice was issued on 16 January 2009. Mrs Jones failed to comply with the default notice and the agreement was terminated by GE Money. On 15 June 2009, GE Money (as allowed under the terms of the Agreement) assigned the Agreement to Link Financial Limited ("Link"). For the purposes of the appeal, it was accepted that (a) GE Money had complied with its obligations under the CCA 1974 for the service of demands and a default notice and (b) GE Money was entitled (subject to the assignment) to bring proceedings against Mrs Jones for the balance due under the Agreement.

## The Issues

Mrs Jones argued that:

- only the 'creditor' (as defined under the CCA 1974) could enforce a regulated consumer credit agreement; and
- Link was not the 'creditor' for the purposes of the CCA 1974 because only rights, and not duties, pass by assignment

The definition of 'creditor', contained in Section 189(1) of the CCA 1974, is "the person providing credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement, includes the prospective creditor".

## The Decision

After hearing submissions, Mr Justice Hamblen decided that:

- Section 189(1) of the CCA 1974 "clearly contemplates that an assignee may become a creditor";
- the approach set out in *Encyclopaedia of Consumer Credit Law*, now edited by Professor Lomnicka, was correct and that "the 'duties' referred to in section 189 are...those statutory duties under the [CCA 1974] which the assignee has to perform in order to enforce his assigned rights. These duties have 'passed by assignment' in the sense that it is by reason of the assignment that the assignee becomes obliged to fulfil them";
- there is a distinction between a legal assignment (where, subject to notice of the assignment being given to the debtor, the assignee is the 'creditor') and an equitable assignment (where the original creditor remains the 'creditor' under the agreement); and
- it was not necessary to add to or change the language of Section 189(1) of the CCA 1974 to reach this conclusion.

It therefore followed that a legal assignee of a debt due under a regulated consumer credit agreement was the 'creditor' for the purposes of the Agreement. Because Link was the creditor, it was therefore unnecessary to decide the first issue raised in the appeal.



## Comment

It is unsurprising that Mr Justice Hamblen dismissed the appeal and came to the conclusion that a legal assignee of a debt due under a regulated consumer credit agreement is the creditor for the purposes of Section 189(1) of the CCA 1974. To come to any other decision would, as Mr Justice Hamblen rightly pointed out, have created an “*absurd result*” in which neither the assignor nor the assignee could enforce the debt. That cannot have been the intended effect of the CCA 1974. This welcome decision therefore confirms that in the context of the CCA 1974, post assignment duties, as well as rights, will pass to an assignee under a legal assignment. If, however, the assignment is equitable, the original creditor will remain the ‘creditor’ and be the person required to perform any duties imposed on the creditor under the CCA 1974. Because the definition of ‘creditor’ is similar to the definition of ‘owner’, it must also follow that the same point arises on the legal assignment of a consumer hire agreement (ie the assignee under a legal assignment is the ‘owner’ for the purposes of the CCA 1974).

## Further Information

This article has been written by:

### **Russell Kelsall**

Senior Associate

T +44(0)113 284 7265

E russell.kelsall@squiresanders.com

### **Leanna Geary**

Associate

T +44(0)113 284 7229

E leanna.geary@squiresanders.com

Squire Sanders has a contentious and non contentious regulatory practice which operates from all its UK offices. For further information on this article or if you would like any FSA, regulatory or consumer credit advice, please contact Russell Kelsall in the first instance.

---

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Sanders.