Hilary Term
[2014] UKSC 21
On appeal from: [2010] CSIH 49

JUDGMENT

Durkin (Appellant) *v* DSG Retail Limited and another (Respondents) (Scotland)

before

Lady Hale, Deputy President
Lord Wilson
Lord Sumption
Lord Reed
Lord Hodge

JUDGMENT GIVEN ON

26 March 2014

Heard on 28 January 2014

Appellant
Andrew Smith QC
Richard Pugh
(Instructed by Patrick
Campbell and Company)

2nd Respondent
Alistair Clark QC
Fintan McShane
(Instructed by DAC
Beachcroft Scotland LLP)

LORD HODGE (with whom Lady Hale, Lord Wilson, Lord Sumption and Lord Reed agree)

1. Mr Durkin has fought this battle for many years. He purchased a laptop computer from PC World in Aberdeen for £1,499 on 28 December 1998. He entered a debtor-creditor-supplier agreement with HFC Bank plc under section 12(b) of the Consumer Credit Act 1974 to fund the purchase, apart from a £50 deposit which he paid. On the next day he rejected the computer because it did not conform to his contract. PC World did not accept that he had validly rescinded the contract until the sheriff at Aberdeen in a judgment dated 26 March 2008 determined that he had. In the meantime, HFC treated him as being in default and intimated that default to credit reference agencies. Mr Durkin claimed damages for financial loss caused by the damage to his credit. The principal issue in this appeal is whether Mr Durkin was entitled to rescind the credit agreement on rescission of the sale agreement.

The factual background

2. In December 1998 Mr Durkin wanted to buy a laptop computer which had an internal modem by which he could connect to the internet. On 28 December 1998 he went to PC World in Aberdeen to purchase a suitable product. He specified his requirements to Mr Andrew Taylor, a member of the store's management, who introduced him to a sales assistant, Mr Robert Slorance. The sales assistant identified a product but said he was unsure whether it had an inbuilt modem. Because PC World did not allow customers to remove a laptop from its box before purchase, the sales assistant agreed that Mr Durkin could take the computer home and, if on inspection it was found not to contain an internal modem, he could return it. Mr Durkin paid the deposit and completed and signed the credit agreement, which the sales assistant gave him, for the balance of £1,449. The sales assistant signed the credit agreement on behalf of HFC. When he took his purchase home and opened the sealed box, he discovered that the laptop did not have an internal modem. At about 9 am on the following day he handed back the computer to the store and asked for his deposit of £50 to be returned and the credit agreement cancelled. Mr Taylor refused to accept Mr Durkin's rejection of the goods and took no step to cancel the credit agreement.

3. That remained PC World's position in the action which Mr Durkin initiated in the sheriff court in Aberdeen in 2004 until the sheriff in his judgment of 26 March 2008 granted a declarator that Mr Durkin had validly rescinded the contract of sale. In the later proceedings before the Inner House PC World did not challenge the sheriff's finding that the contract of sale had been rescinded.

4. Mr Durkin did not pay any money to HFC under the credit agreement. In late February or early March 1999, after he returned from working offshore, he responded to a request for payment by telephoning HFC to advise it that he had rejected the laptop and had rescinded his contract with PC World. He intimated to HFC that he had rescinded the credit agreement also. On 8 March 1999 Mr Durkin wrote to the managing director of PC World to explain that he had rejected the computer, that PC World's manager had refused to refund the deposit, and that HFC was demanding money from him because the manager would not tell it that the goods had been rejected.

5. On 22 July 1999 HFC wrote to Mr Durkin to warn him that he had arrears of £326.22 and that if he did not resume payments under the credit agreement it was possible that he might have difficulty in obtaining a mortgage or other credit because HFC reported monthly to credit reference agencies on the status of customer accounts. HFC also informed him that if he did not respond to the letter it would serve a default notice on him in accordance with section 87(1) of the 1974 Act. Mr Durkin telephoned HFC to re-affirm his position that the sales contract had been rescinded and that he was not due to pay any sums under the credit agreement.

6. Without making any enquiries about Mr Durkin's claim that he had rescinded both the contract of sale and the credit agreement, HFC issued a default notice and intimated to the UK credit reference agencies, Experian Ltd and Equifax Ltd, that he had been in default of his obligations under the credit agreement since 14 January 1999. They recorded the alleged default on their registers. Thereafter Mr Durkin attempted without success to persuade the credit reference agencies to correct their registers. The entries remained on the registers until about 2005 or 2006.

The legal proceedings

7. Mr Durkin raised a small claims action against DSG Retail Limited, which trades under the name of, among others, PC World, and recovered his £50 deposit in an out-of-court settlement in which DSG did not admit any liability. But that did not resolve his problem with HFC. He found that the entries on the credit registers prevented him from opening new accounts with credit card companies and other lending institutions. He had used credit cards in funding his lifestyle and wished to make use of offers of 0% credit on transferred balances to minimise the cost of his borrowing by transferring from one credit card company to another at the end of each period of interest-free credit. The entries on the registers of the credit reference agencies prevented him from doing so.

8. Mr Durkin therefore raised an action in Aberdeen sheriff court in early 2004 against both DSG and HFC. He sought a declarator that he had validly rescinded

both the contract of sale and the credit agreement and claimed damages of £250,000 from HFC for its negligence in representing to the credit reference agencies that he had defaulted on the credit agreement. He claimed damages from HFC under three heads of loss: (i) damage to his financial credit, (ii) loss from interest charges caused by his inability to exploit *seriatim* the offers of 0% credit and (iii) loss caused by his inability to put down a 30% deposit on a house in Benalmedena, Spain in October 2003, measured essentially by the difference between the price available in 2003 and the enhanced value of that property three years later.

9. DSG contested Mr Durkin's claim that he had rescinded the contract of sale and it was only after proof of the facts that he established that DSG had been in material breach of contract entitling him to rescind the sale contract. HFC contested both his entitlement to rescind the credit agreement and his claim for damages. Sheriff Tierney followed the opinion of Sheriff Principal Reid in *United Dominions Trust Ltd v Taylor* 1980 SLT (Sh Ct) 28 and held that section 75 of the 1974 Act (which I discuss in paras 18 - 26 below) had the effect that Mr Durkin had been entitled to rescind and had rescinded both the sale contract and the credit agreement. The sheriff awarded Mr Durkin (i) £8,000 for injury to his credit, (ii) £6,880 for the extra interest which he had had to pay and (iii) £101,794 for the loss of a capital gain arising from his inability to purchase the Spanish property in 2003.

10. Mr Durkin appealed to the Inner House of the Court of Session against the sheriff's assessment of his damages. HFC cross-appealed against the sheriff's findings (i) that section 75 of the 1974 Act enabled Mr Durkin to rescind the credit agreement, (ii) that HFC was in breach of its duty of care, and (iii) that HFC's breach of duty had caused the second and third heads of loss. HFC did not dispute the award of £8,000 if it had been in breach of its duty but submitted that there was no evidence to entitle the sheriff to make the awards which he did under the second and third heads of loss.

11. At a hearing before the First Division of the Inner House Mr Durkin's appeal on the amount of damages failed. Worse for him, HFC's counsel persuaded the court that section 75 did not allow him to rescind the credit agreement. In addition, the court accepted HFC's submission that, absent averments and evidence of the sort of enquiries which a bank could reasonably have been expected to make, Mr Durkin had not shown that HFC had failed in its duty of care. Further, counsel for HFC analysed the evidence in the transcripts of evidence and the documents and persuaded the court that the evidence did not permit the sheriff to hold that a breach of duty by HFC had caused Mr Durkin loss under the second and third heads of claim. The court therefore amended the sheriff's findings of fact to exclude his claims for loss of interest and the loss arising from his inability to purchase the property in Spain. On 15 June 2010 the First Division granted decree of absolvitor to HFC.

This appeal

12. Mr Andrew Smith QC sought permission to advance a new ground of appeal, namely that there was on a proper analysis no contract of sale and no credit agreement. As this stance contradicted the basis on which the case had been pleaded from the outset and argued in the courts below, we refused his application. The issues for this court therefore are (i) whether Mr Durkin had rescinded the credit agreement, (ii) whether HFC was in breach of a duty of care to him and (iii) whether on the findings of fact any breach of HFC's duty of care caused him loss exceeding the £8,000 which the sheriff had awarded for the loss of his credit.

Whether Mr Durkin rescinded the credit agreement

13. The credit agreement, which DSG's sales assistant presented to Mr Durkin for his signature in the PC World store, was a personal loan agreement which described in a schedule the purchase of the computer, the £50 deposit payable on supply and the amount of credit which was the balance of the purchase price. The first clause of the terms and conditions was entitled "Payment of the Supplier" and stated

> "(a) We [HFC] agree to lend to you and you agree to borrow the Amount of Credit. Subject to clause 1(b) below, you authorise us to pay the Amount of Credit to the Supplier.
>
> (b) We may withhold payment to the Supplier until we are satisfied that the Goods and/or Services have been supplied and/or installed or completed to your satisfaction.
>
> (c) By signing this Agreement you declare that you have paid the Deposit (if any is shown in the Schedule) to the Supplier."

14. In order to understand the arguments about the interpretation of section 75 of the 1974 Act, it is necessary to set out certain statutory provisions. The agreement was a consumer credit agreement under section 8(1) of the 1974 Act as it was "an agreement between an individual ('the debtor') and any other person ('the creditor') by which the creditor provides the debtor with credit of any amount." It was a regulated consumer credit agreement under section 8(3) of the 1974 Act as it was not an exempt agreement. It was also a debtor-creditor-supplier agreement under section 12 of the 1974 Act.

15. To understand the definitions in section 12 one must first look at section 11. That section lists three types of restricted-use credit agreement and also an unrestricted-use credit agreement. It provides:

> "(1) A restricted-use credit agreement is a regulated consumer credit agreement –
>
> (a) to finance a transaction between the debtor and the creditor, whether forming part of that agreement or not, or
>
> (b) to finance a transaction between the debtor and a person ('the supplier') other than the creditor, or
>
> (c) to refinance any existing indebtedness of the debtor's, whether to the creditor or another person,
>
> and 'restricted-use credit' shall be construed accordingly.
>
> (2) An unrestricted-use credit agreement is a regulated consumer credit agreement not falling within subsection (1), and 'unrestricted-use credit' shall be construed accordingly.
>
> (3) An agreement does not fall within subsection (1) if the credit is in fact provided in such a way as to leave the debtor free to use it as he chooses, even though certain uses would contravene that or any other agreement."

16. Section 12 provides:

> "A debtor-creditor-supplier agreement is a regulated consumer credit agreement being –
>
> (a) a restricted-use credit agreement which falls within section 11(1)(a), or
>
> (b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under

pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or

(c) an unrestricted-use credit agreement which is made by the creditor under pre-existing arrangements between himself and a person ('the supplier') other than the debtor in the knowledge that the credit is to be used to finance a transaction between the debtor and the supplier."

17. We are not concerned in this case with the circumstance in which the creditor is also the supplier (sections 11(1)(a) and 12(a)). Section 75, which I set out below, covers both restricted-use credit agreements under section 12(b) and unrestricted-use credit agreements under section 12(c). The agreement in this case is an example of the former, where the creditor pays the money to the supplier. An example of the latter would be where a supplier introduces the customer to a financial organisation to obtain a loan to finance the transaction with him but the customer, who receives the money, could use it for another purpose, even if by that use he broke a contract (section 11(3)).

18. Section 75 provides (so far as relevant):

"(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

(2) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under subsection (1), including costs reasonably incurred by him in defending proceedings instituted by the debtor."

19. In my view the First Division was correct to hold that section 75(1) did not give the debtor any right to rescind the credit agreement if he did not have such a right under the general law. I have reached this view for the following five reasons. First, it is consistent with the ordinary meaning of the words of section 75(1): they give the debtor who has a claim against a supplier a "like claim" against the creditor.

Thus a debtor, who has a right of action against the supplier for misrepresentation or breach of the contract of supply, can sue the creditor for that misrepresentation or breach of the supply contract. In other words, the creditor is concurrently liable for the supplier's breach. Secondly, it is consistent with that concurrent primary liability that the creditor and the supplier should be jointly and severally liable to the debtor. I do not suggest that the provision of joint and several liability of itself means that the claim against the supplier must be a monetary claim, because the closing words of the subsection can readily be interpreted as having effect where applicable and not as words of limitation. Thirdly, the creditor's entitlement to indemnity from the supplier under subsection (2) is consistent with his incurring of concurrent liability for matters which he cannot control.

20. Fourthly, my view matches the relevant recommendation of the Report of the Committee on Consumer Credit chaired by Lord Crowther in 1971 (Cmnd 4596), whose review led to the 1974 Act. In its discussion of the liability of connected lenders (paras 6.6.24-6.6.31) the committee favoured an approach which made the lender "answerable in damages for misrepresentations made by the seller in antecedent negotiations and for breaches of any term of the agreement relating to title, fitness or quality of the goods" (paras 6.6.26-27). I set out in full the committee's recommendation (at para 6.6.28).

> "We therefore recommend that where the price payable under a consumer sale agreement is advanced wholly or in part by a connected lender that lender should be liable for misrepresentations relating to the goods made by the seller in the course of antecedent negotiations, and for defects in title, fitness and quality of the goods. Further, we consider that where the sale and the loan are made by separate contracts, the borrower should nevertheless have the right to set off against any sum payable by him under the loan contract any damages he is entitled to recover from the lender for breaches of the sale agreement by the seller."

It is of note that in this recommendation the claim against the lender is derived from the seller's breach of contract or misrepresentation and is not a claim relating to the credit agreement or the actions of the creditor.

21. Fifthly, section 75 also applies to an unrestricted-use credit agreement under section 12(c) in which the supplier introduces the debtor to a financial organisation in order to fund a supply transaction with him but the debtor, who receives the money, is not restricted in fact, even if he is by contract, to using the loan which he obtains to finance that particular transaction. In such a case where there was no contractual restriction, if the supply contract were rescinded and the purchase price repaid, the debtor could use the borrowed money for other purposes. There is no

obvious need for a right to rescind the finance agreement where the debtor can use the borrowed funds to obtain substitute or other goods and services, if such use does not contravene the credit agreement.

22. Mr Smith relied on section 75 for Mr Durkin's entitlement to rescind. For the reasons set out above, I do not think that he can do so. But that is not the end of the matter. In the course of the debate counsel were asked how the debtor would obtain his remedy if the contract of sale were rescinded and the credit agreement were not. Mr Clark submitted that, if the supplier contested the rescission of the contract of supply, the credit contract would remain in force until the debtor had established his right to rescind the supply agreement and had repaid the creditor or made a claim to offset against the creditor's claim. On establishing his right to rescind the debtor could raise an action against the supplier to recover his deposit on the basis of unjustified enrichment and also claim damages for breach of contract. Those damages could include the loss he had incurred and would incur in meeting his obligations under the credit agreement. Thus he could pay off his obligations to his creditor. Section 75 would allow him to claim those damages against the creditor, who would probably counter claim for the sums outstanding on the credit agreement and make a third party claim against the supplier. The debtor could wait until the creditor sued him and then plead a section 75 claim for damages to offset the creditor's claim. In Scots law the debtor would be able to plead a defence of compensation as the amount of his damages claim against the creditor could readily be measured by the creditor's claim against him and any deposit (*Henderson & Co Ltd v Turnbull & Co* 1909 SC 510, 517 per Lord Low). In English law he could plead an equitable set off (*Federal Commerce & Navigation Co Ltd v Molena Alpha Inc* [1978] QB 927, 974-975 per Lord Denning MR). In neither jurisdiction would the debtor's claim for damages extinguish his debt to the creditor until either it was upheld by a court or the creditor agreed to cancel the debt.

23. It is not consistent with the policy of the 1974 Act that the debtor in a case such as this should have to work out the consequences of the rescission of the supply contract in such a complex way. In my view he does not have to. Section 11(1)(b) of the 1974 Act states that the purpose of the restricted-use credit agreement, such as the agreement in this case, is to finance a transaction between the consumer and the supplier. Where, as here, the contract is tied to a particular transaction, it has no other purpose.

24. The rescission of the supply agreement excuses the innocent party from further performance of his obligations (if any) under the supply agreement (*Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827, 844 per Lord Wilberforce) and entitles him to repetition of sums paid and damages. If the supplier were to pay in damages the sums needed to pay off the creditor under the credit agreement, the debtor could not retain those sums or spend them on anything else.

He would have to pay the creditor forthwith because he had borrowed money solely for a transaction which had ceased to have effect.

25. In most cases the consumer's acceptance of the repudiation of a supply agreement does not frustrate the credit contract by analogy with the coronation case, *Krell v Henry* [1903] 2 KB 740, because the creditor will have paid the supplier and the purpose of the credit agreement will have been fulfilled by the purchase of the goods, before the consumer rescinds the supply contract. But that does not mean that the debtor has no remedy.

26. It is inherent in a debtor-creditor-supplier agreement under section 12(b) of the 1974 Act, which is also tied into a specific supply transaction, that if the supply transaction which it financed is in effect brought to an end by the debtor's acceptance of the supplier's repudiatory breach of contract, the debtor must repay the borrowed funds which he recovers from the supplier. In my view, in order to reflect that reality, the law implies a term into such a credit agreement that it is conditional upon the survival of the supply agreement. The debtor on rejecting the goods and thereby rescinding the supply agreement for breach of contract may also rescind the credit agreement by invoking this condition. As the debtor has no right to retain or use for other purposes funds lent for the specific transaction, the creditor also may rescind the credit agreement. It appears to me that similar reasoning would apply to a section 12(c) agreement where the credit agreement tied the loan to a particular transaction.

27. I am satisfied therefore that Mr Durkin was entitled to rescind the credit agreement.

28. Mr Clark submitted that it was not open to Mr Durkin to argue that the common law gave him a right to rescind because he had staked his case on section 75. I disagree. Mr Durkin's assertion throughout has been that he had rescinded both the sale agreement and the credit agreement. His legal advisers relied on a decision of the sheriff principal in *United Dominions Trust* which, although criticised in textbooks and legal articles, had been followed in other sheriffdoms. If I am correct that a restricted-use credit agreement which falls under section 12(b) of the 1974 Act and relates to a specified supply transaction is conditional upon the substantive survival of that supply transaction, so the purchaser can bring to an end the credit agreement without invoking section 75, the result is the same but the mechanism more simple. In this case I do not think that the different legal analysis of the rescission amounts to a different case. I am satisfied therefore that this reformulation of his claim does not come too late for Mr Durkin.

29. Before considering the delictual case against HFC, it is necessary to take into account section 102(1) of the 1974 Act, which provides:

> "Where the debtor or hirer under a regulated agreement claims to have a right to rescind the agreement, each of the following shall be deemed to be the agent of the creditor or owner for the purpose of receiving any notice rescinding the agreement which is served by the debtor or hirer –
>
> … (b) any person who, in the course of a business carried on by him, acted on behalf of the debtor or hirer in any negotiations for the agreement."

"Notice" means notice in writing (section 189 of the 1974 Act).

30. In this case the sales assistant in the PC World store, Mr Slorance, was the person who discussed with Mr Durkin the provision of credit for the purchase of the computer. He did so on the instructions of the manager, Mr Taylor. Mr Durkin intimated the cancellation of the credit agreement to Mr Taylor orally on 29 December 1998. That was not sufficient for section 102 as it was not in writing. But his letter of 8 March 1999 to the managing director of "PC World" was confirmation of the rejection of the computer and intimation of the rescission of the credit agreement. By virtue of section 102(1) DSG was deemed to have received notice of that rescission as HFC's agent at that time.

31. But Mr Durkin does not have to rely on section 102. HFC had notice of his asserted rescission of the credit agreement directly through the telephone calls in February and March 1999 which I described in para 4 above.

The delictual case against HFC

32. The First Division rejected Mr Durkin's case in delict. HFC accepted that it was under a duty to exercise reasonable care not to make untrue statements about Mr Durkin to the credit reference agencies. But HFC submitted that Mr Durkin had failed to plead or prove the nature of the enquiries that it should have carried out and what the outcome of those enquiries would have been. The First Division accepted that submission. Accordingly they held that Mr Durkin had not established that any act or omission by HFC amounted to a breach of duty which had caused him loss.

33. I take a different view. HFC, knowing of Mr Durkin's assertion that the credit agreement had been rescinded, was under a duty to investigate that assertion in order reasonably to satisfy itself that the credit agreement remained enforceable before reporting to the credit reference agencies that he was in default. HFC could readily foresee that registration of a default could damage Mr Durkin's credit: it said so in its letter of 22 July 1999. As it knew that Mr Durkin's assertion of rescission of the sale agreement was unresolved, it had the options of (i) saying nothing to the credit reference agencies or (ii) if it chose to notify them, incurring the duty to him to take reasonable care to ensure that the notification was accurate (cf. *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, 486 per Lord Reid). HFC made no enquiries before intimating Mr Durkin's alleged default to the credit reference agencies. After Mr Durkin complained about the entries on the credit registers, HFC told him to "sort matters out" with DSG. As the First Division recorded in amended finding of fact 21, HFC made no enquiries and, at all material times throughout the litigation, accepted without question DSG's position that Mr Durkin had not been entitled to rescind the contract of sale.

34. It is relevant to ask what would have happened if HFC had made enquiries (*McWilliams v Sir William Arrol & Co* 1962 SC (HL) 70). The answer is clear. If HFC had contacted DSG, it is likely that DSG would have said that it contested the rejection of the computer. But HFC would not have known whether DSG's stance was correct. If it had been faced with a contested rescission of the supply agreement and an asserted rescission of the credit agreement which it was not in a position to resolve, HFC should have refrained from intimating a default until the issues were resolved. HFC could have sought to test the continued effectiveness of the credit agreement by suing Mr Durkin to enforce its terms. Alternatively, it could have waited for Mr Durkin to sue to resolve the issue, as he later did. It would have known that if it did so, it was entitled to be indemnified by DSG under section 75(2) of the 1974 Act. But it should not have intimated the default without a reasonable basis for the belief that it had occurred. In so doing it acted in breach of its duty of care to Mr Durkin.

35. There may be cases in which a creditor, having made enquiries, acts reasonably in reaching the view that the debtor's assertions are unfounded. This is not such a case.

The quantification of Mr Durkin's loss

36. HFC did not contest the award of £8,000 for injury to Mr Durkin's credit if it were established that it had breached its duty of care to him. But Mr Smith sought also to restore the sheriff's award of damages for the extra interest which he had paid and for the loss of the capital gain on the Spanish property.

37. Mr Durkin faces an insuperable difficulty in pursuing this part of his appeal. Section 32 of the Court of Session Act 1988 sets out how the Court of Session is to handle appeals from the judgment of a sheriff after proof and limits the role of the Supreme Court in relation to such appeals. It provides in relation to the Court of Session:

> "(4) Where such an appeal is taken to the Court from the judgment of the sheriff principal or sheriff proceeding on a proof, the Court shall in giving judgment distinctly specify in its interlocutor the several facts material to the cause which it finds to be established by the proof, and express how far its judgment proceeds on the matter of facts so found, or on matter of law, and the several points of law which it means to decide."

In relation to the Supreme Court it provides:

> "(5) The judgment of the Court on any such appeal shall be appealable to the Supreme Court only on matters of law."

38. The First Division held that the evidence before the sheriff did not establish the extent to which Mr Durkin would have made use of 0% interest rate credit cards between 2001 and 2005 or the net benefit which he would have gained from such use (paras 78-80). They altered the relevant finding of fact to exclude this claim. This court is not empowered to go behind the amended finding of fact absent a demonstrated legal error.

39. Mr Durkin's much larger claim for loss of the capital gain on the Spanish property was based on the proposition that his inability to borrow on his credit cards at 0% interest had caused him to borrow more from the Northern Rock Building Society, which had a security over his home. That borrowing used up funds that would otherwise have been available to pay the deposit on the Spanish property which he wished to purchase. The First Division (in paras 80 - 82) concluded that there was no evidence to support the sheriff's crucial finding that Mr Durkin's additional borrowing from the Northern Rock was caused by the non-availability of 0% credit rather than by the general level of his expenditure. Again they altered the relevant finding of fact. As a result, on the findings of fact there is no causal link between the adverse credit reference and Mr Durkin's inability to fund the purchase of the Spanish property. Again we cannot go behind those findings of fact, there being no demonstrated legal error.

Conclusion

40. I would allow the appeal and declare that Mr Durkin was entitled to rescind and validly rescinded the credit agreement by giving notice to HFC in about February 1999. Damages resulting from HFC's breach of its duty of care are confined to injury to Mr Durkin's credit in the sum of £8,000. I would give the parties an opportunity to agree the date from which interest should run and the rate or rates of interest to be applied.