



PRESS SUMMARY

Robertson (Appellant) v Swift (Respondent) [2014] UKSC 50

On appeal from [2012] EWCA Civ 1794

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Wilson, Lord Carnwath, Lord Hodge

BACKGROUND TO THE APPEALS

This appeal concerns the application of the Cancellation of Contracts made in a Consumer's Home Regulations 2008 (the 2008 Regulations).

The respondent, Mr Swift, owns a removal business. The appellant, Dr Robertson, telephoned him on 27 July 2011 to ask for a quotation for moving his furniture from Weybridge to Exmouth on 2 August 2011. Mr Swift visited his home the following day to inspect the items to be moved and while he was there the two men agreed a price of £7,595.40. Mr Swift then sent a removal acceptance document by email, which Dr Robertson signed and handed to Mr Swift on his second visit to the house that day to deliver packing materials. This document provided for charges in the event of cancellation of the contract less than 10 days before the removal was due to start. Dr Robertson paid a deposit of £1,000.

Over the following days Dr Robertson made enquiries of other removal firms and found one which could undertake the work for £3,490. He telephoned Mr Swift to tell him he wished to cancel the contract, and sent him a letter giving notice of cancellation on 1 August 2011. He refused to pay the cancellation charges on the ground that he had been entitled to cancel the contract by virtue of the 2008 Regulations, and when Mr Swift issued proceedings, he denied liability and counterclaimed for the return of his deposit.

Dr Robertson's submissions failed at trial, and on appeal in the Exeter County Court, but the Court of Appeal found that the 2008 Regulations did apply in the circumstances of his case. It held that they prevented Mr Swift from enforcing the contract against Dr Robertson. However, Dr Robertson had not been entitled to cancel the contract because Mr Swift had failed to give him the required notice of his right to cancel. The contract had remained alive and Dr Robertson could not therefore recover his deposit. Dr Robertson appealed against the dismissal of his counterclaim to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows Dr Robertson's appeal. It holds that the 2008 Regulations give consumers the right to cancel contracts made in their homes before and for 7 days after notice of the right to cancel is served, and Dr Robertson was therefore entitled to exercise this right and to recover the deposit he had paid. Lord Kerr, with whom the other judges all agree, gives the only judgment.

REASONS FOR THE JUDGMENT

- The 2008 Regulations gave effect to Council Directive (85/577/EEC) ('the Directive'). The Directive was designed to protect consumers against the risks inherent in the conclusion of contracts away from business premises. It requires traders to give consumers written notice of their right to cancel the contract at the time the contract is concluded and asks member states to ensure through national legislation that appropriate consumer protection measures are put in place for cases where this notice is not given [8-12].
- The Court of Appeal was correct to conclude that the 2008 Regulations applied in the circumstances of this case, and that the contract was therefore unenforceable by Mr Swift, even though there had been two visits to Dr Robertson's home at his express invitation. It had been open to member states to adopt provisions that were more favourable to consumers than those required by the Directive [17-19]. The Court of Appeal had, however, erred when it found that Dr Robertson was not entitled to cancel the contract unless and until he had been served with notice of his right to cancel. The 2008 Regulations should be interpreted in the light of the wording and purpose of the Directive [20-22, 28]. The right to cancel contracts made at home was central to the protection afforded to consumers under the Directive and the requirement to give notice of the right to cancel was not a technical prerequisite to the exercise of the right [23-24]. To hold that it could be nullified by a failure or refusal of a trader to give written notice of the right to cancel to a consumer would run directly counter to the overall purpose of the Directive and create a considerable gap in the level of protection provided [25].
- Accordingly the cancellation period referred to in Regulation 2 (1) should be interpreted to mean 'the period commencing from when the trader is required to give the consumer a written notice of his right to cancel pursuant to regulation 7(2) and expiring 7 days after receipt by the consumer of a notice of the right to cancel' [32]. On this basis Dr Robertson was within the cancellation period provided by the 2008 Regulations when he sent his letter of 1 August 2011 and he was entitled to recover his deposit [34].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.shtml>