

(1990) 09 NCDRC CK 0012

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Sarla Jain

APPELLANT

Vs

Unit Trust of India

RESPONDENT

Date of Decision: Sept. 25, 1990

Citation: 1991 0 CPC 239 : 1991 1 CPJ 320 : 1991 1 CPR 175 : 1993 1 CLT 24

Hon'ble Judges: V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , Brijendra Singh J.

Final Decision: Appeal dismissed

Judgement

1. AS these are two appeals by two appellants against the single order dated 24th April, 1990 of the State Commission of Delhi against the same respondent Unit Trust of India, on common questions of law and with identical grounds of appeals, they are being disposed of together.

2. THE appellants had loaned certain sums of money to one Shri P. P. Gupta on the security of Unit Certificates issued by the Unit Trust of India under Unit Scheme 1964. THEse Unit Certificates were pledged as security with the appellants.

The case of the appellants is founded on the allegation of negligence on the part of the Unit Trust of India. The complaint states that "In the present case the number of units indicated on the Unit Certificates are by a common typewriter, printed by means of an ordinary ribbon. Therefore, it is easy to obliterate the number typed on the certificates and retype the same, thereby inflating the number of units in such certificates. Therefore, the issuance of such type of certificates by the Unit Trust of India amounts to "deficiency" in service by the Unit Trust of India". In short, according to the appellants, the certificates of Unit Trust of India were capable of

being easily tampered with and this facilitated the fraud being committed on the appellants by Shri P. P. Gupta to whom the moneys were advanced and hence the Unit Trust of India has been guilty of negligence; issuing certificates which would be capable of easy tampering and forging.

The Counsel for the respondent submitted before the Commission that the Units could be pledged as collateral security only with Banks and pledging with any other party was not permissible. In fact, according to the instructions of the Unit Trust of India, no transfer of units is valid unless registered with Unit Trust of India and pledging of units as a collateral security for loans is limited only to Banks. In any case it was the responsibility of the pledgees i.e. the appellants here to make sure that the security was sound, genuine and free from encumbrance and this could be done only by referring the Unit Certificates to the respondent. There is no doubt that the appellants failed in exercising their elementary duty of care while giving loans against such security.

3. THE question to be considered by this Commission, therefore, is whether there was any deficiency in service on the part of the Unit Trust of India.

As rightly pointed out by the Counsel for Unit Trust of India, the Trust was not a privy to the contracts of pledge and it is with reference to the pledged property that the claim of the appellant is founded. The Unit Trust of India was a total stranger to the transactions and it had also not received any consideration from the appellants so as to establish the nexus of hiring of service of the Unit Trust of India by the appellants. Hence we are clearly of opinion that the appellants are not consumers in relation to Unit Trust of India in this case, either as primary hirers or as beneficiaries of a hirer.

4. MORE importantly the certificates of the Unit Trust of India had been tampered with and forged. A pledgee cannot claim a right or title or a benefit against such security from the maker of the security when the latter is not a party to the tampering and fraud. The case of Queens Bench Division in (1981) 3 ALL ER cited by the appellant to prove that Unit Trust of India was guilty of negligence in failing to devise Unit Certificates which were not capable of being tampered with and forged does not lend any support to his contention. The mere fact the Unit Trust of India

could have devised more effective safeguards to prevent the certificates from being tampered with does not constitute negligence on the part of the respondent Trust. We have no doubt that it was the appellants alone who failed to exercise the elementary duty exercising due care which they were bound to do and that no deficiency of service has been established against Unit Trust of India. We, therefore, uphold the decision of the State Commission and dismiss these appeals.

The Commission is constrained to observe that the appellants have invoked the Consumer Protection Act unnecessarily both at the original as well as the appellate stages. Each of the appellants will, therefore, pay cost of Rs. 2,000/- to the respondent-Unit Trust of India. Appeal dismissed.