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Insights

IN THE SPOTLIGHT: STATUTORY IMPLIED CONDITIONS, EXCLUSIONS AND QUESTIONS OF REASONABLENESS

Jan 17, 2023

A recent case (*Last Bus Ltd (trading as Dublin Coach) v Dawsongroup Bus and Coach Ltd* [2022]) has provided a useful reminder of the circumstances in which commercial parties may exclude statutory implied terms, as well as highlighting the English courts' reluctance to interfere in commercial transactions entered into by parties of equal bargaining strength. Under the Unfair Contract Terms Act 1977 (UCTA), a party to a business-to-business transaction involving goods let under a hire-purchase agreement cannot limit or exclude liability for breach of terms implied by statute unless that limitation or exclusion is "reasonable". A contractual term is "reasonable" for UCTA purposes if that term was fair and reasonable having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.

CASE ANALYSIS

The defendant sought summary judgment to dismiss a claim that its exclusion of a statutory implied term in a hire purchase agreement for luxury coaches (that the goods supplied would be of satisfactory quality) was unreasonable under UCTA.

The contract between the parties included a provision which purported to exclude all conditions and warranties whether express or implied by law. The claimant argued that some or all of the coaches supplied to it were not of satisfactory quality and claimed damages for breach of the statutory implied quality term. In assessing reasonableness under UCTA, the judge considered the bargaining powers of the parties, the possibility of inducement and whether the claimant reasonably knew of the existence of the exclusion clause.

The judge held that:

- there was no inequality of bargaining position between the parties because the claimant was a substantial commercial party, with extensive experience of concluding hire purchase contracts, and it could have met its requirements for the coaches without contracting with the defendant;

- there was no evidence that the exclusion was included to take advantage of the claimant or that the claimant did not property understand or consider it; and
- the claimant ought to have known of the exclusion given that it had not previously raised objection to it over the long and consistent course of dealings between the parties. In the course of 20 years, the claimant had entered into 45 hire purchase contracts with the defendant, for 200 vehicles, all of which contained the same exclusion clause. It had never indicated that it was unhappy with the exclusion clause.

On that basis, the judge concluded that the exclusion clause was not unreasonable and granted summary judgement to the defendants.

KEY TAKEAWAYS

The case highlights the robust approach taken by the courts in enforcing contractual exclusions and reinforces the reluctance of the court to interfere in commercial transactions where the parties are of equal bargaining power. Particular care should be taken where parties have had a prior course of dealing. Businesses should be aware that any contractual provision which purports to exclude statutory implied terms may significantly limit and even extinguish their ability to claim damages where goods or services do not meet their expectations.

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