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LEGAL BRIEFING

Office politics

Regus (UK) Ltd v Epsot Solutions Ltd

High Court HHJ Mackie QC [2007] EWHC 938

The Facts

Regus (UK) Limited ("Regus") supplies serviced office accommodation. Epcot Solutions Ltd ("Epcot") provides professional IT training. Epcot entered into an agreement with Regus on Regus' usual terms and conditions for the use of serviced office accommodation for Epcot's training courses. Epcot initially rented office accommodation in Heathrow. After Regus closed this location, Epcot were offered, and accepted, alternative accommodation at Stockley Park. Epcot moved to Stockley Park and entered into a new agreement with Regus on the same terms and conditions.

The air-conditioning system at Stockley Park did not work satisfactorily. Epcot made several complaints to Regus regarding the air-conditioning and complained that their training courses were being adversely affected by the extreme hot and cold temperatures generated by the air-conditioning. Despite these complaints, Epcot entered into a further agreement with Regus on the same terms and conditions. Epcot continued to make complaints about the air-conditioning system. Regus did not take any effective steps to repair the air-conditioning and negotiations between the parties failed to resolve the problem. Regus then suspended services to Epcot and claimed unpaid fees up to the end of the agreed term. Epcot counter-claimed for, amongst others, damages for loss of profits, loss of the opportunity to generate profits, and for distress, inconvenience and loss of amenity suffered by reason of Regus' failure to provide adequate air-conditioning.

Regus' usual terms and conditions included an exclusion clause (clause 23) limiting Regus' liability in any circumstances for "loss of business, loss of profits, loss of anticipated savings, loss of or damage to data, third party claims or any consequential loss". Clause 23 also limited liability in respect of other losses, damages, expenses or claims.

The Issues

1. Was Regus' failure to provide adequate air-conditioning a breach of contract?

2. Did clause 23 restrict and/or exclude Epcot's ability to claim for loss of business, loss of profits, loss of anticipated savings, loss of or damage to data, third party claims or any consequential loss?

The Decision

Regus had contracted to provide services to Epcot which included air-conditioning. Therefore a failure to provide adequate air-conditioning was a breach of contract as Regus was in breach of the obligation to provide the services it had promised. Epcot was entitled to recover damages for any loss which it had suffered subject to the effect of clause 23.

The Judge considered Regus' failure to provide adequate air-conditioning to be

negligent and did not accept Regus' argument that it could postpone works on the grounds of cost and profitability. Clause 23 fell within section 3 of the Unfair Contract Terms Act 1977 (the "Act") as it restricted liability in respect of a breach and was within Regus' written standard terms of business. Although it was reasonable for Regus to restrict damages for loss of profits and consequential losses from the categories of loss for which it will become liable when in breach of contract, it was not reasonable to seek to deprive Epcot of any remedy at all for failure to provide a basic service like air-conditioning. Further, clause 23 provided an illusion of a remedy by limiting (as it is in principle reasonable to do) liability to 125% of the total fees paid of £50,000. However, because of the broad working of the exclusion of financial losses, a business would be unable to establish the liability that Regus sought to limit. The Judge did not consider such a broad exclusion to be reasonable when applying the factors in the Act. It was unfair for no remedy at all to be available to customers of Regus who made serious failures in service over the length of their contract. Therefore, clause 23 was of no effect.

The appropriate measure of damages for Epcot's breach was a percentage deduction from the fees paid by Epcot unless Epcot could show additional specific loss caused by the air- conditioning failure.

Comment

Parties generally seek to exclude or limit their liability in contracts. However, a party seeking to rely on such a clause must be able to show that the exclusion/limitation clause is reasonable in accordance with the factors set out in the Act. This decision is an example of a clause held to be unreasonable due to its broad exclusion of liability. When entering into contracts, parties need to ensure that the relevant exclusion/limitation clause is reasonable.

Charlene Linneman
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