Briefing

Dispute Resolution

BURGES SALMON

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Contractual interpretation in cupcakes - applying the interpretation rules in Arnold v Britton

The High Court has been quick to apply the Supreme Court's decision in **Arnold v Britton** on contractual interpretation in a supply agreement for cupcakes. ***Honeyrose Bakery Ltd v Lola's Kitchen Ltd*** (t/a Lola's Cupcakes).

Lola's Cupcakes is a small bakery with stores and kiosks across London. It sells cupcakes and other cakes but needed to outsource some of its baking to meet demand. It entered into an agreement with Honeyrose Bakery for the supply of cupcakes only. The agreement stated that Honeyrose was to be an exclusive supplier of cupcakes to Lola's. A dispute then arose whether Lola's could continue to make its own cupcakes.

Lola's obtained summary judgment against Honeyrose. Honeyrose appealed and argued that clause 6 of the agreement should be construed to read that Lola's could only make its own cakes for the first two months of the agreement.

Clause 6.1 of the agreement stated *"[Lola's] will initially manufacture concurrently with the Supplier; at commencement of the contract, the Supplier will manufacture 20% of the forecasted volume, gradually increasing to 100% over a period of 2 months."*

However clause 6.2 stated *"For the avoidance of doubt [Lola's] may manufacture the Products for itself."*

Honeyrose argued that this was ambiguous and therefore the Court should consider pre-contract information. In effect Honeyrose was seeking to add words to clause 6.2 to limit Lola's production rights to the first two months only.

The High Court disagreed that there was any ambiguity because clause 6.2 removes any doubt as to whether Lola's could continue to make cupcakes after the first two months. It also refused to add any wording to clause 6.2 as *"It would do extreme violence to the language of the Agreement."*

Commentary

Honeyrose's appeal mainly failed due to clause 6.2. Even if clause 6.2 did not exist, clause 6.1 was not ambiguous because Honeyrose was contracted to make 100% of a forecasted amount, this was not a limit on the amount of cupcakes that Lola's would sell.

If the parties had wanted to limit Lola's ability to produce cupcakes after the first two months then it should have said that.

What is interesting in this case was the Court's careful and meticulous application of Lord Neuberger's judgment in *Arnold v Britton* setting out the five considerations on contractual interpretation:

1. Commercial common sense should not override the importance of the literal words used, because the parties chose to use those words
2. The less clear the words are (or the worse the drafting) then the Court can depart from their natural meaning
3. Commercial common sense should not be read with hindsight – the mere fact that the words work out badly for one party is not a reason to depart from the natural language.
4. A court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed. Some contracts are just unwise and the Court should not correct that.
5. Only the facts known by or available to both parties at the date of the contract can be considered. It is not right to take into account a fact known only to one of the parties.

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