Goodlife Foods Ltd v Hall Fire Protection Ltd
[2018] EWCA Civ 1371

1. Who are the claimants?

Goodlife Foods Ltd (G) are a vegetarian food manufacturer who contracted Hall Fire Protection Ltd (H) to install a fire suppression system at their premises back in 2002. H offered services such as design, prefabrication, installation and service maintenance of fire protection products and systems.

2. What happened?

In 2002, H was contracted to supply a fire suppression system to G's premises. Around a decade later, there was a fire at G's premises resulting in a loss of around £6.6m, which was covered by G's property insurers, who then sought to subrogate this amount against H, by alleging negligence in the supply and installation of the fire suppression system.

G's claim for negligence was denied at first instance, as clause 11 of H's contract terms and conditions had adequately excluded liability for negligence:

G sought to appeal this, claiming that the exclusion clause had not been incorporated into the contract or if it had, then it was unreasonable and therefore void, as per the Unfair Contract Terms Act 1977 (UCTA). The Court of Appeal handed down their judgement in June 2018 and concluded that the exclusion clause had been incorporated and was reasonable.

Article Continued →

[1] http://goodlife.co.uk/content/our-story/
[2] http://plexuslaw.co.uk/court-of-appeal-goodlife-foods-ltd-v-hall-fire-protection-ltd/
[3] http://plexuslaw.co.uk/court-of-appeal-goodlife-foods-ltd-v-hall-fire-protection-ltd/

3. Why is this an important case?

There are several parts of this case that are of crucial importance. G's claim in negligence turned on whether clause 11 (excluding all liability apart from faulty components with the offer of additional insurance arrangements to extend their liability) was valid. There were two grounds to consider here: incorporation and reasonableness.

In respect of incorporation, common law has produced the principle that if a clause is held to be particularly unusual or onerous, then it must be fairly and reasonably brought to the contracting parties attention. The Court found that the clause was not unusual or onerous and drew comparison to similar contractors to H, who often limit their liability to the contract price (if H had done this, then their maximum liability would be £7,490 in respect of a potential £7.5m loss). The Court of Appeal thought that it was not therefore a stretch to further this and limit liability to just a warranty to replace any faulty components. In any case, the Court of Appeal went on to confirm that even if the clause was considered unusual or onerous, it had been fairly and reasonably brought to G's attention. Specifically, the Court of Appeal noted that it was printed in clear type and the breadth of this exclusion was at the beginning of H's terms and conditions (rather than hidden at the end). In addition, the Court of Appeal noted that G had sufficient time to review the terms and conditions and it was "commercially unrealistic to say clause 11 was not fairly and reasonably brought to the attention of Goodlife."

The Court of Appeal also had to consider G's claim that clause 11 was void due to being unreasonable, as per UCTA. The Court of Appeal dismissed this, citing the insurance of both parties to be fundamental to their decision on reasonableness. The case was brought via subrogation of G's insurer to recover the claim amount from H's insurer (SSR/QBE). If G did not have insurance in place and was trying to recover their losses from a fully insured contractor, the Court of Appeal may well have viewed the facts before them differently. In addition, the Court of Appeal stressed the importance of both contracting parties being of equal bargaining power – G did not have to accept H's terms and conditions and received no incentive to do so either. The offer from H to extend their liability by way of insurance was also viewed as further demonstrating the reasonableness of clause 11.

4. How can this protect our clients?

Contractors undertaking similar work to Hall Fire, or operating on similar contract terms of quoting to a business of comparatively equal bargaining power to themselves may be able to exclude or limit their liability through the addition of terms that follow the principles in this case. The benefit of incorporating a term such as clause 11, albeit adapting more sophisticated text, would therefore be a strongly recommended risk management provision. If Hall Fire had not incorporated clause 11 into their terms and conditions, their claims history would be burdened with a loss of potentially more than £7.5m, leaving a £2.5m liability directly against Hall Fire Protection Ltd if they only held a £5m Public Liability limit of indemnity. This evidently could escalate to the dissolution of a business, which could be prevented just by amending their standard terms and conditions.

FURTHER INFORMATION

Further information can be found at:

http://plexuslaw.co.uk/court-of-appeal-goodlife-foods-ltd-v-hall-fire-protection-ltd/

https://www.blmlaw.com/default.aspx?appid=2114&news=22227

https://www.legislation.gov.uk/ukpga/1977/50

[4] http://plexuslaw.co.uk/court-of-appeal-goodlife-foods-ltd-v-hall-fire-protection-ltd/