

For Immediate Release

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Contract Ruling Puts Emphasis on Agreeing Key Terms

Businesses cannot expect the courts to uphold a contract for them if they provide goods or services expecting a contract to be signed, but the other party then pulls out of the negotiations and refuses to sign.

However there is some reassurance for companies, with the news that the courts brought in a little-used precedent to stop the buyer gaining an unfair advantage in the situation where no contract exists.

This is the message of a recent case - Whittle Movers v Hollywood Express – where Whittle provided distribution services expecting a six year contract to be signed, even though key terms of the deal had not been agreed.

Whilst the negotiations dragged on, Hollywood decided to sell its business and gave notice to Whittle.

When Whittle sued Hollywood to try and enforce the six year contract that had been under negotiation, the Court of Appeal held that no contract had been entered into because key terms had not been agreed.

But they did respond to claim for compensation from Whittle, made on the basis that the price paid for the work had been on the basis of a six year contract and that a short term contract price would have been substantially higher. Here, the Court of Appeal said that if the payment received by Whittle was too low, they could claim recompense on the basis that Hollywood would otherwise have received what is known as “unjust enrichment”.

Said commercial law expert Patrick McGrath of Enfield-based firm Vanderpump & Sykes:
“The case is interesting for two reasons. Firstly there is the obvious point that businesses who act as if there were a contract when there isn’t one are at real risk, so the message is get everything properly agreed before you start supplying. Even though a contract may be inferred from conduct, this will not happen if key terms have still not been agreed.

“The second aspect which is interesting is around the principle of unjust enrichment. This is a Roman law concept and has only quite recently been applied systematically in English law. In this case Whittle had incurred substantial capital costs in gearing up to provide services and was expecting to pay off those costs over six years. When the arrangement ended after eighteen months they said this left them out of pocket, and the Court ruled that they could be entitled to compensation if it could be shown that Hollywood had gained unfairly.”

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Vanderpump & Sykes serve clients nationwide whilst retaining strong links with the local community. The friendly and dynamic team are specialists in company and commercial work as well as in the traditional areas of litigation, conveyancing, family, wills and probate.