

Clause in standard conditions of sale fails UCTA reasonableness test

Briefing note

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Summary

The Court of Appeal has held that a clause in standard conditions of sale endorsed by the Law Society was not fair and reasonable under UCTA and was thus of no effect.

More information

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Cleaver & Ors v Schyed Investments Limited [2011] EWCA Civ 929

This decision concerned a contract for the sale of land. Cleaver, the seller, gave a truthful answer to commercial property standard enquiries, but then facts arose that made the answer wrong. Cleaver informed his solicitors of this, but the solicitors failed to correct the answers. Once the transaction had gone through, the buyer Schyed learnt about the wrong answer and sought to rescind the contract on the grounds of (innocent) misrepresentation – he probably would not have proceeded had he known the true answer. His problem was that standard condition 7.1.3 excluded errors or omissions except in the case of fraud or recklessness or where the property differed substantially in quantity, quality or tenure from what the purchaser had been led to expect. The High Court held that the condition did not satisfy the test of reasonableness under UCTA and that Schyed was entitled to rescind.

The Court of Appeal upheld the Judges decision. It recognised that there was nothing “self-evidently offensive”, in terms of reasonableness and fairness, in a contractual term which restricted a purchasers right to rescind in the event of misrepresentation to cases of fraud or recklessness. The argument in favour of upholding such a clause was particularly strong where, as here, the term had a long history, it was a well established feature of property transactions, it was endorsed by the Law Society, both sides are represented by solicitors and the parties had negotiated variations of other standard provisions. The issue, however, was whether the Judge had erred in principle or was obviously wrong. It would require some exceptional feature for a Court to conclude that the condition failed to satisfy the test of reasonableness, but the Judge was entitled to have regard to the particular combination of circumstances and to consider that Cleaver had failed to show that the standard clause was fair and reasonable in this case.

It is unusual to come across a case where industry standard terms are found to be unreasonable. Probably, this case should been seen as a one off and a very limited exception to the general principle that the Courts will uphold as reasonable clauses in industry standard conditions. It is also worth noting that the Court of Appeal was considering whether the Judge was entitled to come to the conclusion which he did, rather than whether the Court of Appeal would have come to the same conclusion.

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