Goodlife Foods Ltd v Hall Fire Protection Ltd [2017] EWHC 767 (TCC)

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Background to case

The claimant, Goodlife Foods Limited ("*Goodlife*") engaged the services of Hall Fire Protection Limited ("*Hall*") to install a fire suppression system at its premises for the cost of £7,490.

A number of years later in 2012 a fire broke out at the premises in question, which caused substantial damage to property and also caused interruption to business which resulted in losses in excess of £6m. It was Goodlife's position that the fire suppression system installed by Hall had failed to put out the fire. Due to the fact that the statutory limitation period for bringing an action under contract had expired, Goodlife sued Hall for negligence. Hall claimed in its defence that it was excluded from liability on the basis of clause 11 of its standard terms and conditions which included an exclusion of liability for negligence clause. The relevant clause read as follows:

> *"We exclude all liability, loss, damage or expense consequential or otherwise caused to property, goods, persons or the like, directly or indirectly resulting from our negligence or delay or failure or malfunction of the systems or components provided by HFS for whatever reason. In the case of the faulty components, we include only the replacements, free of charge, for those defective parts. As an alternative to our basic tender, we can provide insurance to cover the above risk. Please ask for the extra costs of provision of this cost if required."*

The court considered the following issues:

1. Whether the defendant's terms and conditions in general had been incorporated into the contract;
2. The construction of clause 11;
3. Whether clause 11 was unusual and onerous, and if so, whether it was effectively incorporated;
4. Whether the purported exclusion of liability for death and personal injury rendered clause 11 as a whole unreasonable.

In relation to the first question as to whether the terms and conditions were incorporated into the contract, in this case almost no written records had been kept by either side. The only document which was put before the court was Hall's quotation which did state that "*standard HFS terms and conditions apply*". The claimant failed to prove that it had not received these terms and conditions, and the court concluded from witness evidence that these terms and conditions had been received by way of fax. Goodlife was unable to produce a purchase order and as such, was not able to prove that any alternative terms and conditions had been put forward. In these circumstances, the court concluded that Hall's standard terms and conditions has been incorporated into the agreement.

Clause 11 purported to exclude liability for personal injury or death. Section 2.1 of the Unfair Contract Terms Act 1977 prohibits clauses which attempt to exclude liability for death or personal injury resulting from negligence. As such, it was found that this portion of clause 11 was in breach of section 2.1 of the Unfair Contract Terms Act 1977 and was therefore held to be invalid.

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However, it did not render the entirety of the clause invalid and it was held by the court that there was an effective but limited warranty regarding re-replacement of faulty components, that was of value to Goodlife. A further element to the clause was that the defendant would be willing to provide insurance to cover excluded risk. However, this was not an undertaking to do so.

In relation to the third question, the ambit of the exclusion of liability included clause 11 was extremely wide-ranging in nature. Hall's quotation made reference to the fact that the terms and conditions did not provide for any form of damage whatsoever. Even to a lay reader it would be clear that the conditions sought to significantly exclude redress against Hall. Having regard to the effect of section 2.1 of the Unfair Contract Terms Act 1977 the attempt to exclude liability for death or personal injury would not be effective in any circumstances. The court found that the remainder of the clause was not unreasonable.

The court held that the terms and conditions in question were fairly and reasonably drawn to the Goodlife's attention and that the claimant had had ample time to consider these terms and conditions before entering into the agreement. Further, no evidence had been put forward that the claimant did not have access to legal or insurance advice. As such, it was held by the court that clause 11 was incorporated into the contract.

In relation to the fourth question, the court in addressing whether the purported exclusion of liability for death and personal injury rendered the remainder of clause 11 unreasonable within the meaning of the Unfair Contract Terms Act 1977, applied the precedent set in *Trolex Productions Limited v Merrol Fire Protection Engineers Ltd* (20 November 1991) and *Stewart Gill Ltd v Horatio Myer & Co Ltd* [1992] QB 600. The decision in the Trolex case was that where a clause sought to exclude liability for death or personal injuries and also for certain other kinds of loss, the words relating to the exclusion for death and personal injuries were to be excluded and the remainder of the clause be upheld when reasonable, where appropriate. The case of *Stewart Gill* followed the decision in this case.

Relevant factors in these cases had been that the parties had been in roughly equal bargaining positions and that the terms and conditions had been brought to the attention of the claimants.

What is of importance in this case is that clause 11 made an explicit reference to the need for insurance protection against the risk of the system failing. As such, the court held that there had been an adequate allocation of risk of loss and damage between the two commercial entities which were of equal size and bargaining power, and that the clause in question had been drawn to the attention of the claimant. In these circumstances, clause 11 was held to be reasonable and the claim was held to be unsuccessful.

Analysis of the court's decision

This case provides useful guidance as to when widely drafted exclusion or limitation clauses will not be held to be unreasonable by the courts. It also demonstrates that an exclusion or limitation clause may be held to be valid even when part of the clause is held to be repugnant to the UCTA.

What can also be taken from this case is the importance of sufficiently incorporating terms and conditions into a contract so that they are effective. This is a reminder of the importance of sending a copy of one's standard terms and conditions to another party when conducting business or entering into an agreement, or at a bare minimum making sure that the agreement states that the standard terms and conditions are available to be viewed on request.

This case is also a further reminder of the importance of keeping adequate records as in the absence of same it can often prove difficult to be successful at trial.