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# Entire agreement clauses: usually, but not always, the entire story

Entire agreement clauses are often used to insulate contracting parties from disputes over pre-contractual representations. The recent decision of *Curtis Chandler v Karl Hollett* demonstrates how bare allegations of pre-contractual misrepresentation will rarely win out over such clauses.

The plaintiffs in this case brought an action against two personal defendants to recover outstanding payments totalling $2,118,475.08 that were owed for the purchase of a portfolio of solar energy companies. The personal defendants had guaranteed these amounts.

The plaintiffs brought a motion for summary judgement. The defendants opposed the motion for summary judgment, alleging that the plaintiffs had made multiple misrepresentations prior to the agreement being entered into that vitiated obligations under the contract.

Mr. Hollett, one of the defendants, made multiple allegations of pre-contractual misrepresentation in his sworn affidavits. However, Mr. Hollett's affidavits included no particular details regarding the alleged misrepresentations (who, where, when), and he produced no documentary evidence in support of his claims.

In addition to the lack of substantiation of the misrepresentations, the agreement at issue posed additional hurdles to the defendants' arguments. The share purchase agreement (SPA) at issue in the transaction included both an entire agreement clause and a mutual drafting clause.

The entire agreement clause stated that the SPA and its accompanying documents constituted the entire agreement and superseded any and all prior agreements, understandings, negotiations, or representations. The mutual drafting clause stated that the SPA had been mutually negotiated and drafted by two sophisticated parties represented at all times by counsel. In addition, the final SPA included ninety-six specific representations and warranties.

During the negotiation process, Mr. Hollett and his counsel were given access to a data room set up by the plaintiffs. This data room contained detailed accounts of the portfolio's pending and outstanding projects and contracts.

The motions judge granted the summary judgment motion in favour of the plaintiffs, finding no genuine issue requiring trial with respect to Mr. Hollett's allegations. In addition to being insufficiently substantiated, the court expressed clear doubts about the consistency and truthfulness of Mr. Hollett's sworn statements.

The motions judge also held the entire agreement clause to be enforceable and unmodified by the alleged misrepresentations. The motions judge also relied on the mutual drafting clause concluding that it accurately reflected a diligent negotiation and drafting process between sophisticated commercial actors represented by competent counsel. In those circumstances, the judge stated, courts will always be more reluctant to interfere with entire agreement clauses.

It remains possible for pre-contractual misrepresentation to displace entire agreement clauses and provide a basis for avoiding obligations under a contract. However, this case serves as a good reminder that, particularly where a detailed contract is negotiated between sophisticated commercial parties, bare allegations of pre-contractual representation are unlikely in most cases to displace mutually drafted entire agreement clauses in contracts containing diligent and detailed representations.

*With notes from Mitch Brown*

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