



Considering Consideration

Dispute Management – July 2010

A briefing from our Dispute Management team

Required elements of a contract

In order for a contract to exist in law, it must be shown that there has been an offer, an acceptance of that offer, consideration and an intention to create legal relations. If one of these essential elements are missing, the law will not recognise that a valid contract has been created.

Chitty defines consideration as being concentrated on the requirement that something of value must be given in return for the promise provided. An example of consideration is where A promises to take a shipment of goods in return for which payment is promised for the service. If no payment was offered, then there is no consideration and therefore no contract.

The meaning and validity of consideration has faced significant debate in the courts over the years. The recent case of [NVA Management Limited v Obafemi Martins \[2010\] EWHC 80 \(QB\)](#) is no exception. What this case does highlight however, is that how an agreement is interpreted (or construed) by the Court will dictate whether the consideration as stated is valid.

NVA Management Limited v Obafemi Martins [2010] EWHC 80 (QB)

The Claimant management company claimed against the Defendant footballer a sum representing an unpaid balance due under an agreement. The agreement in this case was in the form of a letter signed by the Defendant pertaining to services provided by the Claimant to the Defendant in connection with the exploitation of the Defendant's "image rights".

It was the Claimant's case that the Defendant had agreed to pay the Claimant a specified sum upon signature of the Agreement, which was payable in advance, for the service of exploiting the Defendant's image and in the alternative that it was entitled to a commission of 20% on any sponsorship deals that the Defendant entered into. The Claimant claimed that the Defendant had paid part of the sum agreed but had failed to pay the balance.

The Defendant defended the claim on the basis that the services for which the Claimant was claiming had never been provided.

Judge Richard Seymoure QC noted that the real issue in relation to the letter was whether as a matter of construction, the Defendant had agreed to pay the Claimant the specified sum in respect of the services which had been provided and were to be provided in the future concerning the Defendant's image rights. The letter itself was expressed only in terms of what had already been done.

Contract void for want of consideration

Judge Richard Seymore QC noted that there was no suggestion in the letter that the sum owed related, in whole or in part, to services to be provided in the future.

He went on to state that the way to construe the letter was as an agreement to compromise a claim on the part on the Claimant to be paid an amount in respect of services which had been provided to the Defendant, but in relation to which no price had previously been agreed.

However, on hearing the evidence from both parties, the Judge concluded that no work had in fact been done for the Defendant, and thus there was no contract as there was no consideration passing from the Claimant to the Defendant.

The Claimant's claim was dismissed.

Lesson to be learnt

It is clear from the above Judgment that the Court was heavily persuaded by the oral evidence. The Judge seemed to be unimpressed by the Claimant's evidence and favoured the Defendant's version of events instead.

In order for a contract to be enforceable, it must be clearly drafted to evidence all the essential elements that must be present for a contract to exist. What, for the Claimant, should have been a simple contract requesting payment for services provided, failed entirely as a result of the construction of the contract and the Court's finding that no services had been provided, hence a lack of consideration. The Claimant was unable to enforce payment to which it believed it was entitled.

More information

For further information regarding any of the issues raised in this article, please contact Joanne Thompson in our Dispute Management team.



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