Language trumps purpose in relational contracts (Quantum Advisory Ltd v Quantum Actuarial LLP)

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Commercial analysis: This case concerns the applicable principles of construing a term in a bespoke relational contract. In summary, the strict rules of construction when interpreting contracts, even when they are relational in nature, firmly remain. The court was asked to decide if the meaning of 'Services' (a defined term) which were to be provided by the defendant included tendering for new and or repeat business. The court agreed that the long-term nature of the agreement and the efficient operation of the claimant's business were important factors to consider in interpreting the agreement. However, those facts did not override the natural and ordinary meaning of the language used in the agreement. This case is a reminder of the importance of clear comprehensive drafting in relational contracts. Written by Ashley Blood-Halvorsen, barrister at 3PB Chambers.

Quantum Advisory Ltd v Quantum Actuarial LLP [2022] EWHC 1423 (Ch)

What are the practical implications of this case?

The concept of relational contracts is not new, but it is certainly starting to appear more frequently in disputes. Primarily, proceedings concerning relational contracts have considered whether there was good faith implied within the agreement. This matter did not concern good faith but rather the correct approach to interpretation of the contract between the parties. The contract between the parties was for a term of 99 years. The defendant was formed after a re-organisation of the business. The case name might look familiar because there have been other decisions between these parties recently regarding restrictive covenants.

It was argued on behalf of the claimant that the court should respect the parties' mutual intention to enter into a long-term relationship and therefore the contract ought to be construed in accordance with the long-term purpose of the relationship. These submissions were on the basis of the observations made by Lord Justice Peter Jackson in Amey Birmingham Highways Ltd v Birmingham City Council [2016] EWHC 2191 (TCC), [2016] All ER (D) 33 (Oct). The court accepted the factual context to the agreement in that it was a long-term agreement. However, that was as far at the court would go when construing the contract.

Practically, this is a reminder of the importance of clear drafting. It is always easier to point out flaws and weaknesses in drafting once the dispute has presented itself. However, this case is a warning that the law is loyal to the words and language used in relational agreements. This is particularly true when the agreement is a bespoke, professionally drafted contract. Commercial common sense and even an agreed fact that a purpose of the contract was for the long-term and efficient running of a party's business is not enough to get around the plain meaning of words.

It is understood that the claimant is intending to appeal the decision.

What was the background?

The defendant was formed in 2007 as part of a re-organisation of three companies who were providing pension fund related services. It was agreed that the defendant would service the claimant's existing clients and it would receive 57% of the fee income from those clients representing the cost to it of providing such services. The term was negotiated initially for ten years, and several drafts of the agreement were produced. However, concern was expressed that once the term lapsed, the defendant would lose most of its business and income. At a meeting, the term was proposed to be revised to 99 years. This was agreed and incorporated into the express terms of the agreement.

The express terms of the agreement included numerous definitions including 'Clients', 'Services' and Schedule 7 which set out the Services as 'provision of pensions consulting, actuarial, administrative and investment services, including by, way of example:' and it then gave a non-exhaustive list. The

dispute was about whether the Services provided for, and included, the tendering for new and existing clients.

What did the court decide?

It was agreed between the parties that their subjective intentions when entering into the agreement were not admissible as an aid to its construction. The court was also mindful that this concerned an agreement which was a bespoke, long-term agreement and constituted a relational contract. The court then surmised that it could properly expect the parties to adopt a reasonable approach in accordance with what is obviously the long-term purpose of the contract.

Clause 7.3 required the defendant to provide the Services with 'such time and efforts as it deems reasonably necessary for the efficient operation of Quad's Business'. Counsel for the claimant accepted that this clause could not extend the meaning of Services. However, it was argued that the clause shows that there must be an efficiency of operation which was the underlying purpose of the claimant's business. This submission was accepted in part by the judge but it was adjudicated that clause 7.3 was directed at the standard of Services for the efficient operation of the claimant's business. The judge decided that this clause did not assist in determining whether the defendant under the agreement had the responsibility for carrying out tendering.

To resolve that question, the judge focused on the definition of Services and then the non-exhaustive list in Schedule 7. Counsel for the claimant submitted that tendering fell within the meaning of 'administrative services' and/or 'such other administrative support as [the claimant] may reasonably require from time to time' within that schedule. Counsel for the defendant accepted that those were possible interpretations but some of the examples within that schedule were very specific. It follows that one would expect tendering to also be listed as a specific activity. The judge determined that the phrase 'administrative support' and/or 'reasonably' fell to be construed in context, which included the words immediately preceding them and the remainder of the schedule.

Turning to the principles as set out by Lady Justice Carr in Network Rail Infrastructure Ltd v ABC Electrification Ltd [2020] EWCA Civ 1645, (2020) 193 ConLR 66 at para [19], the judge did not consider that commercial common sense was of any assistance to the interpretation. This was because both parties benefitted from successful tendering and that the costs thereof were likely to be factored into the fees enjoyed as a result. Further, the court decided that the fact and circumstances known to the parties do not provide a clear indication as to which interpretation is the proper one.

The judge adjudicated that the natural ordinary meaning of the phrases 'administrative services' and 'other administrative support as Quad may reasonably require from time to time' in the context of the agreement did not extend to the specific, occasional and important task of tendering. On the other hand, the judge also accepted that the overall purpose of the agreement was to ensure that the Services carried out by the defendant were to ensure the efficient operation of the claimant's business and that to be efficient, the business of the claimant must also include tendering. In this case it was ruled that the former outweighed the latter—language trumps purpose.

Case details:

- Court: Chancery Division, Cardiff District Registry
- Judge: Judge Jarman QC (sitting as a High Court judge)
- Date of judgment: 10 June 2022

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