

Your past, present and future: www.daltons-law.co.uk

Directors – Be Careful What You Sign!

The Court of Appeal recently handed down a decision which should convince directors to take great care when they sign contractual documents on behalf of their companies because if the contract contains a misrepresentation, they can be held personally liable for it by the courts.

Personal liability can arise where a director of a company makes a fraudulent misrepresentation on which another person relies and which induces that person to sign the contract. The fact that the contract may not benefit the director is not a defence.

A company entered into a contract to pay for goods received. A director of the company signed the contract knowing that the company was insolvent and would be unable to pay for the goods.

The Court of Appeal ruled that the director had made an implied misrepresentation to the supplier. Since he knew the goods would not be paid for, the Court found him personally liable for the sum owed, as a result of his deceit.

Michael Dalton says, "The message for directors is to be careful what you sign as 'limited liability' may not be limited if the court decides that the director knew that the company could not meet its obligations. This could apply in a variety of instances, for example where the company enters into a long-term agreement such as a lease of new premises."

Michael also says, "The Companies Act 2006 places a statutory burden on directors to adhere to certain standards and consider specifically the effects of their decisions in various ways. A part-time, non-executive or even 'shadow' director (one who has no official position in the company but whose decisions are normally followed) can be in the firing line when things go wrong just as surely as can the full-time working directors".

For advice on Company matters, contact Michael Dalton.
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CONGRATULATIONS

A bottle of champagne went to Pam Besent of Caln in Wiltshire who was drawn from correct entries to the Wordsearch Competition in our Autumn Newsletter.



MediationNow
Your solution | Your way

Launched on 18th January 2007, MediationNow will offer a dedicated mediation service in the Hampshire and West Sussex area.

The breakdown of a relationship is always difficult to manage, whether it be a family problem or a disputes in business. At MediationNow we can offer both civil and family mediation, with locations throughout Hampshire and West Sussex to suit you. MediationNow can also offer a specialist service for children.

Founded by three local and well known solicitors, including Rebecca Todd from Daltons, each with over ten years specialist experience, we are trained to help people resolve disputes. A mediator will meet with both parties to the dispute together and will identify those issues you can't agree on and help you to try and reach agreement.

We are neutral and will not take sides. We will not give legal or professional advice on your individual positions, but will help you to find common ground, often reaching a far cheaper and longer lasting solution. Rebecca said "as lawyers in traditional practice Claire, Michael and I have witnessed the devastating effect of the traditional adversarial system, and believe that our clients deserve better. Our backgrounds in law, our many years experience and expertise gives you and your clients confidence in knowing they are dealing with people who have a clear understanding of their needs and concerns. We passionately believe that our clients should be handed back the reins of control as only they truly know what is best for them".

For further information please contact

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House Owner Pays Price for Contract Failure

Failure to make contractual terms clear is a sure recipe for trouble and in construction contracts, where the sums of money involved can be substantial, getting the contract terms agreed up front is always sensible.

In a recent case, a woman arranged with a property developer that the developer should carry out refurbishment work on her property. The development of the property was to proceed in three stages and it was agreed that the developer would start the first phase as soon as the necessary planning permission and building control permission were obtained.

The woman made up-front payments to cover professional fees and to fund the commencement of the works. Dissatisfied with the subsequent progress, she demanded an account of how the money had been spent and decided that now was the time to have a formal contract. She refused to make further payments until a schedule of payments based on progress achieved was agreed. The developer refused to continue without further progress payments. He sent a solicitor's letter to the woman demanding payment of the sums due.

Each side accused the other of rejecting the original contract and eventually the dispute ended up in court.

The court had to decide the following issues:

- Was there a binding contract or contracts?
- If there was a binding contract or contracts, what were the contractual terms?
- If there was a binding contract or contracts, was either party to the dispute in breach of the contract(s)? and
- If there was a breach of contract, what damages resulted?

The court concluded that the woman had entered into two separate contracts with the developer. The first with regard to the first phase of the works. She had repudiated this contract when she regarded the developer's breach of the contract as a repudiation of it. Her response had not been the correct one. She had herself created a repudiatory breach of contract by failing to pay the second instalment due under the contracts. The developer was therefore entitled to damages for the profits he would have made had the contracts been completed and paid as agreed.

This case shows how, what may seem to be a reasonable reaction (in this case declining to make payments when a development falls behind schedule) can lead to difficulties. The problem was compounded by the woman's response to the solicitor's letter sent on behalf of the developer. Had the original contract contained a clause which linked payments to the meeting of specific targets, then each side would have known where it stood and the dispute could probably have been avoided.

The time to get a contract right is at the beginning. We can help you negotiate a building contract that ensures your interests are protected. Contact Michael Dalton for advice.

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A Promise is a Promise

A woman who was widowed just hours after getting married has been ordered by the Court of Appeal to honour a promise her husband had made to his ex-wife.

Kathleen Soulsby married her husband Owen in 2000 at the London hospital where he was being treated for leukaemia. He was divorced from his ex-wife, Elizabeth, in 1986 and they had agreed a settlement under which he was to pay her £12,000 a year plus maintenance for their children. In 1993, he agreed to give her £100,000 on his death in exchange for being relieved of the obligation to pay further maintenance payments. His will was altered to give effect to the agreement.

Under UK law, however, marriage invalidates any previous will and Kathleen argued that the bequest was therefore invalid.

The Court of Appeal considered that the agreement between Owen and Elizabeth was enforceable. She had ceased to receive maintenance in 1993 and had not pursued him for the payments. She had therefore complied with her part of the bargain and his estate was bound to honour his side of it.

Michael Wilson says, "It is often forgotten that marriage or civil partnership invalidates an earlier will. It may not be very romantic, but it is practical to make sure that after the ceremony a new will is executed as soon as is practicable."

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Ruined Holiday? What to Do

If you are subject to a long delay or the cancellation of your flight when on holiday, the airline is required to give you a leaflet outlining your right to compensation. If the delay or cancellation means that you must rearrange your holiday or incur significant extra cost, make sure you get an exact explanation of the reasons for it.

If you are on a package tour and suffer illness as a result of poor hygiene or some other preventable cause or you have an accident due to a lack of proper safety considerations, make sure you get as much evidence as possible and as quickly as possible.

Photographs or films of unsafe areas and unhygienic food preparation procedures can be very useful in, for example, cases of accident or illness. Make sure your complaints are formally noted in writing and given to the holiday representative and/or the resort manager and make sure you keep a copy. Exchange addresses with any potential witnesses or fellow sufferers. If you are admitted to hospital, retain a copy of your medical notes.

If through no fault of your own you have suffered a preventable accident whilst on holiday or had a holiday ruined by illness caused by procedural failings at your resort, contact Michael Wilson as soon as possible for advice on the next step to take.

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Animal Danger for Owners

Owners of animals that are known to be potentially dangerous are usually aware that if their animal causes an injury, they can be held responsible. However, owners of animals not normally considered dangerous may well assume that they will not be held liable for an injury caused by their animal, for example if their animal causes an accident.

A recent case has brought further clarification to the law and spells out a warning for animal owners.

The case concerned a horse which reared up and threw its 17 year old rider who, as a result, suffered a serious head injury. The horse had no history of misbehaviour and the girl was considered competent to ride it. The girl sued the owners of the horse for negligence or, in the alternative, claimed that the owners were strictly liable for the injury under the Animals Act 1971.

The court rejected the allegation of negligence. However, it accepted that the owners of the horse were strictly liable under the Act.

The Act places strict liability on the keeper of an animal that does not belong to a dangerous species if the animal causes harm where the following points are satisfied:

- where the damage is of a kind which, unless restrained, the animal was likely to cause or which, if caused, is likely to be severe; and
- where the likelihood of the damage or its being severe is due to the characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and
- where those characteristics are known to the keeper of the animal.

All three of these must be present for the animal's keeper to be liable under the Act. The court considered that it was clear that an accident involving a horse rearing is likely to be severe and that in certain circumstances horses are likely to rear if not restrained. The court accepted that in certain circumstances horses are likely to act unpredictably and that the owners, as experienced keepers of horses, would know this. Accordingly, the court found the owners liable.

The owners appealed. In the Court of Appeal the case turned on whether the behaviour of the horse was 'normal'. The Court held that normal means 'conforming to type' and that rearing is natural behaviour for horses in certain circumstances. The owners' appeal was therefore rejected.

"The implications of this case for animal owners are potentially far-reaching," says Michael Wilson. "If the likely result of an accident is severe and it occurs because of the normal behaviour of an unrestrained animal in particular circumstances, then the owner is likely to be found liable, even if the behaviour of the animal is unusual."

The practical solution to the problem this raises for animal owners is probably to be found in their insurance policies, which should be read carefully.

MP Stephen Crabb is proposing changes to the Animals Act which would mean that strict, non-fault based liability would only be applied to genuinely dangerous animals and that an owner's liability for damage caused by a non-dangerous animal would be limited to cases of fault via common law negligence claims or under health and safety legislation. The Government is reported to be sympathetic to a change in the law.

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Why do we call it rush hour when no one goes anywhere?

Credit Card Coverage Extends Abroad

The House of Lords has confirmed that UK credit card companies can be held liable under the Consumer Credit Act for breaches of contract or misrepresentations arising out of foreign credit card transactions.

The decision makes the card issuer jointly liable with the supplier where the misrepresentation or breach of contract applies to a purchase of between £100 and £30,000 and gives rise to a valid claim by the consumer.

The ruling will come as a welcome relief to holidaymakers who will now benefit from protection on their holiday purchases in certain cases. In practical terms, it is likely that banks will seek to recoup the extra cost by a slight amendment to the exchange rate applied in foreign currency transactions.

Home Information Packs

The rules governing Home Information Packs (HIPs) require that estate agents in England and Wales who market homes for sale with HIPs must belong to an approved redress scheme for HIP-related complaints. The schemes allow consumers to pursue compensation claims against agents where a complaint is justified. The administrators of approved redress schemes are required to pass information regarding misconduct of estate agents to Trading Standards Officers and to the Office of Fair Trading (OFT). The OFT has the right to ban persons it deems to be unfit from acting as estate agents.

Two schemes already in operation have now been joined by another, known as the Property Adjudication for Consumers Scheme (PACS), which commenced on 1 December 2007. PACS differs from the existing schemes as it is run by an independent dispute resolution provider rather than an 'industry ombudsman'. This may give an extra level of comfort to some complainants.

Properties on the Market Prior to HIPs

Currently, any property that was already on the market on the date that HIPs were introduced does not require a HIP. At some stage, a date will be set when all qualifying properties on the market will need a HIP, regardless of when they were first marketed. However, the Government has yet to decide when this will be.

We can provide Home Information Packs for you at minimal cost.

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