

Agents beware!

A recent case on termination of agency has highlighted the extent to which abusive behaviour can be a fundamental breach of contract justifying termination of agency without the need to compensate the agent under the Commercial Agents (Council Directive) Regulations 1993 (“the Regulations”).

In *Stephen Gledhill v Bentley Designs (UK) Limited* [2010] EWHC B8 (Mercantile), the court had to decide whether or not Bentley Designs (the defendant principal) had lawfully terminated its agency agreement with Mr Gledhill (the claimant agent) on grounds that Mr Gledhill’s abusive conduct amounted to a fundamental breach of contract.

Mr Gledhill was one of 10 agents appointed by the principal and had been for 17 years, earning an average of £85,000 a year in commission. In a bid to change working practices, Bentley Designs began moving its business to a paperless environment and told all its agents to communicate with it using Word and email rather than fax or post. Unfortunately, Mr Gledhill did not do this, was the only agent who refused to do so and continued sending faxes, even in response to emails sent by Bentley Designs! It was claimed by Bentley Designs that the change in practice was especially necessary in Mr Gledhill’s case due to his illegible handwriting. As a result of his refusal to comply, Bentley Designs started charging Mr Gledhill a monthly £100 administrative fee for dealing with his faxes and letters.

Matters escalated quickly, culminating in Mr Gledhill leaving a personal and abusive voicemail message on the telephone of Bentley Design’s managing director, promptly followed by a fax which Mr Gledhill claimed was an apology for the message. Consequently, Bentley Designs decided to terminate the agency agreement.

If Bentley Designs was to avoid a claim by Mr Gledhill for loss of agency under the Regulations, the reason for termination of the agency agreement was paramount. The Regulations state that, where an agency agreement is terminated because of the agent’s default, an agent will not be entitled to any form of compensation. In the absence of such default, the principal will have wrongly terminated the agency relationship, laying itself open to a sizeable claim under the Regulations.

Judge Simon Brown QC, the presiding judge, stated a number of principles that applied to the case. He emphasized that abusive language by an employee towards his or her employer may amount to a repudiatory breach of contract depending on the circumstances and drew the same parallels in this case. However, words spoken in haste and “in the heat of the moment” may not always lead to the inevitable end of that relationship. Judge Brown stated that a heartfelt and sincere apology may mean that the conduct is not repudiatory.

Mr Gledhill was under an express duty in the agency agreement “to act towards the principal conscientiously and in good faith”. Any serious breach of this duty would entitle Bentley Designs to terminate the agreement “with immediate effect”.

A key part of an agency relationship is that neither agent nor principal should, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between them.

Given that the voicemail message left by Mr Gledhill was personal abuse of the worst kind, this had led to an irrevocable breakdown of the relationship of trust required. The alleged apology was not, in fact, an apology but rather his attempt at explaining and justifying his bad behaviour and abusive use of language. The judge stated that it was “...a course of conduct calculated, or at the very least likely, to destroy or seriously damage the relationship of confidence and trust between principal...and agent”.

So what can be learnt from this case? It is worth noting the following:

- express terms in an agency agreement requiring agent and principal to act in good faith towards each other will be strictly enforced by any court
- the relationship of confidence and trust between agent and principal is paramount - any behaviour likely to destroy this will count against the offending party
- you should always be aware of the grounds upon which the agency agreement may be terminated as this can now include abusive behaviour not followed by a genuine apology

If you would like to talk to us about the issues raised by this note, please contact:

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