

To: the line manager
From: consumer advice centre

Bob V Tidy skips

Bob ordered tidy skips to come and drop off a skip which he wanted to use at his address. Whilst delivering the skip the employee of tidy skips (Sid) negligently drove the delivery vehicle into the wall of Bob's house causing it to collapse and in the process damaged bobs new car. A cost of £1000 was incurred to rebuild the wall and a further £800 was spent on repairs for repairs on the car.

Bob has hired skips from tidy skips before on a regular basis. On the past five occasions the invoice that he received afterwards had the following printed on the reverse:

“Tidy skips shall not be liable for any loss or damage howsoever caused to a customers premises and if notwithstanding the foregoing, should any liability for damage to a customers property arise, that liability shall be limited to £100”

Task

As an assistant at the consumer advice centre I will make arguments for bobs case and state relevant cases of contract law which affect it, I will also offer a most likely result of this dispute with a reasoned answer.

Assumptions

A contract is when two or more people reach an agreement this can be done orally through speech or a countersigned document. The contract in this case was made orally as Bob had made the reservation over the telephone with Tidy skips who were to deliver the skip the following day. The case involving Bob V Tidy Skips comes under contract law and there is definitely a contract there as he was provided the service he ordered.

There was an exemption clause which was printed on the reverse side of the invoice which he received afterwards. This means that he did not see the exemption clause before he received the invoice after the contract was made. Information regarding the clause was printed on the reverse side where you are supposed to find account information. Bob had knowledge of the exemption clause as he had already seen it printed on his past five invoices as a result of past dealings (contracts). Bob and tidy skips have contracted before with the same stipulations. Bob should know what his agreement (contract) involves and includes and should be aware of the clause as previous dealing were made on the same basis and as the service provided is consistent there is a breach. As seen in the case of *McCutcheon V David McBrayne LTD* 1964. The clause has been incorporated into the original contract and as incorporation is part of the exclusion clause, which is divided into parts of signature, notice or of previous dealings.

Meaning of the clause is contra proferentem, as it cannot exclude third party damages- Sid's Liability, because he is not part of the contract. The Clause clearly does not mention Sid's or any driver's liability, Authority New Zealand Shipping co. Ltd V A. M. Satterthwaite & Co Ltd (1975). As there is no mention of the driver, it is in the interest of Bob to take legal action against Tidy Skips.

In Bob's case the clause on the invoice must be carefully reviewed to identify whether the clause excluded or limits any claims to be made. On the first part of the clause it quotes that Tidy Skips shall not be liable for any loss or damages to customer's premises. On the second part of the clause it quotes a limitation for liability of property £100. Liability in this case concerns with negligence, this covered through the clause for the premises. It does not mention vehicles, Bob can also claim for the damages made to his car. If the clause had a limitation in the second part, it will be given a less strict interpretation to the first part of the clause exempting all liability.

Unfair Contract Terms Act 1977 affects exemptions clauses and applies in Bob's case. It acts upon Business Liability'. Arising from the things done or to be done by a person in the course of a business.

- Negligence liability is covered by section 2. No one acting in the course of a business can, either contractual terms or by notice given or displayed, exclude his liability in contracts. He can exclude or limit liability for financial loss or loss of property due to negligence; this is only if the defendant proves that the exemption is reasonable.
- Liability under a contract may be affected by two further rules in section 3. Where a business contracts on its own written standard terms. It cannot exclude or vary its liability for breach of contract unless it can show that the exemption is reasonable.

Negligence applies in Bob's case as Sid drove the delivery vehicle negligently into Bob's garden wall causing it to collapse onto Bob's new car.

It arises when damages caused to property of another by failure to take such care, as the law requires in the circumstances of the case. To succeed in any action negligence, the claimant must prove:

- The defendant owed him a legal duty of care
- The duty was broken
- Damages were suffered in consequence.

Liability for negligence could extend to careless words as well as to deeds; the damages could sometimes be awarded for purely financial loss as well as physical injury to property or persons.

In Bob's case there is a Breach of Duty – standard of care. Negligence will be present if the defendant did not act in a reasonable manner in the circumstances of the situation. Reasonable manner would be measured through risk involved and the greater care needed. In this case greater care is needed when the skips are to be delivered safely where it has been ordered.

Proof of the breach is made as the damages suffered by claimant caused by negligence cost at a total of £ 1800.

Conclusion

After reviewing the case of Bob's vs Tidy Skips I have come to the conclusions for the likely outcome of the dispute at common law that Tidy skip may have effectively limited their liability to only £100 for any damages if occurred to customer property. Whether Bob's claim will be successful depends on whether the limitation clause in particular is regarded under the UCTA act 1977. Bob may be able to recover damage costs as the employee of Tidy Skip- Sid is not mentioned as part of the contract and third party damages is not included. There is also no mention of vehicle damages.

Bibliography

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