

Listen - It's The Law

By

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"PRINCIPALS MAY BE ABLE TO REDUCE THE TERRITORY AND MARKET OF FAILING AGENCIES"

A recent case¹ concerning an agency in "Town & Country" goods² has clarified that principals may reserve the right to reduce the territory and market of their agents, and may then act on that right in appropriate cases.

The Contract

The contract provided (amongst other things) as follows:

"7.1 If in the reasonable discretion of the Principal the Agent is failing to maximise sales opportunities within the Territory the Principal may by one month's written notice to the Agent amend the Territory.

7.2 The Principal may by one month's written notice to the Agent amend the Market by adding or deleting specific customers or categories of customers."

The Dispute

The Agent worked for the Principal for 8 years until 2004, initially as an employee but from 1999 onwards as a self-employed agent. The Principal had increasingly criticised the performance of the Agent particularly in

the months leading to termination. The Principal both wrote to, and sought to meetings with, the Agent to discuss the position but those overtures were largely ignored by the Agent who considered the Principal's criticisms were unjustified.

As a result, the Principal, relying on clauses 7.1 and 7.2 (above) felt compelled to reduce the Agent's territory and market. It wrote to the Agent to that effect. In response, the Agent indicated the agency was now "*untenable and unworkable*" and wrote that he intended to take action, "*for the whole of the loss of the agency*".

The Outcome

Essentially, the Judge found the Principal's criticisms were justified in that it was in an increasingly invidious position, deriving from the poor performance of the Agent, which the Agent would not assist it to resolve. Thus, the Principal was entitled to take the steps it did to reduce the Agent's territory and market. Those steps, taken in accordance with the terms of the contract, did not constitute a breach of contract entitling the Agent to treat his Agency as terminated by the Principal. By way of contrast, the letter written by the Agent did wrongfully terminate the contract. The Agent was not entitled to compensation.

Post-termination Commissions

There is a further sting in the tail of the Judgment. Regulation 8 of the Commercial Agents Regulations³ provides that an agent is entitled to be paid post-termination commissions for a reasonable period following termination in cases where transactions are, "*mainly attributable to [the efforts of the agent] during the period covered by the agency contract*". As a result, and whilst all cases depend on their facts, agents often claim and receive post-termination commissions for periods between 3 and 6 months.

However in this case the agreement provided that

the agent should be paid post-termination commission for one month only following termination. The Judge accepted that the Regulations did not prohibit the parties from agreeing what should constitute a reasonable period. Accordingly, in the Judge's view, the agent was entitled to just one month's post-termination commissions.

COMMENT

Variations of Territory

Principals will no doubt wish to ensure that clauses such similar to those set out above are present in all their agency agreements. Agents will no doubt be wary as to their inclusion, but where they are included, should appreciate that in appropriate cases they may lawfully be acted upon. Both sides must understand that not every case will be an appropriate case. The Judge accepted that exercise of the right to vary was subject to obligations on the part of the Principal to do so dutifully and in good faith, but in the present case, the failings on the part of the Agent were so egregious that the Principal's actions were wholly justified.

Post-termination Commissions

There may be a rush on the part of principals to exclude claims for post-termination commissions or to provide that they are to subsist for a short period only in all their agency agreements. Again, agents will no doubt be wary of such provisions. However, there is nothing in the judgment

here to indicate why the Judge was prepared to give effect to the parties' agreement as to one month, and it may well be that it was simply because one month was reasonable on the facts of the case. Thus it is possible that in another case where the lead in period between the order and the supply product is much longer an agreement for one month's post termination commissions only might not be upheld.

STOP PRESS

The Lonsdale decision which I wrote about in the March 2006 "*Listen it's the Law*" column is being appealed to the House of Lords.

Readers will recall that the decision made clear that compensation is to be assessed by reference to the value of the goodwill in the agency.

The hearing is likely to take place next year.

Watch this space...

¹ Tony Vick v Vogel-Gapes Limited (Judgment 30 June 2006 – His Honour Judge Seymour QC)

² Tool belts and gloves for the hardware industry and gloves and footwear for gardeners

³ Commercial Agents (Council Directive) Regulations 1993

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