

Commercial Agents Write News

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When can a principal avoid paying compensation?

The recent case of *Gledhill –v– Bentley Designs* examined the relationship between the Principal (Bentley) and the Agent (Stephen Gledhill) and considered the circumstances in which a principal could validly terminate a commercial agency without paying compensation.

Bentley is a company that manufactures and supplies dining and bedroom furniture. It trades with over 800 retail stores and contracts 10 national agents. Stephen Gledhill was one of their agents and had been working for Bentley Designs since 1991 servicing Yorkshire and the North East of England .

In 2006, Bentley decided to move to a “paperless environment”. All of the agents, including Stephen Gledhill, were told to use electronic communications such as e-mail rather than paper, i.e. fax or post. By January 2007, all of the agents had complied with this requirement with the exception of Stephen Gledhill. Bentley repeatedly asked him to comply with this requirement but he continued to correspond by fax or post.

In May 2008, Bentley told Stephen Gledhill that he would be charged an administration fee if he continued to use fax and post, rather than e-mails. He was told that the fee would be £100 per month. Despite being told that an administration fee would be payable, Stephen Gledhill did not correspond in a paperless way and Bentley Designs started to charge him the administration fee.

On 5 August 2008 Stephen Gledhill faxed a letter to Bentley stating that he would not pay the administration fee. Bentley replied stating that they would continue to charge Stephen Gledhill until he corresponded in a paperless way.

On 12 September 2008, Stephen Gledhill left an abusive telephone message on Bentley’s Managing Director’s mobile telephone. The message said “*I see you have taken the money out of my account which I have asked you and told you not to do. I just can’t believe you. You are at your happiest when you are always causing grief for people and just try to sort of upset people, people that support you, and I just think you are a despicable, horrible little excuse for a human being...*”. There was a further conversation between Stephen Gledhill and the Managing Director later in the day in which Stephen Gledhill was again abusive towards the Managing Director.

The Managing Director allowed Stephen Gledhill an opportunity to apologise for his comments. On 18 September 2008, Stephen Gledhill sent a letter in which he failed to apologise but instead proceeded to try and justify his actions. On 25 September 2008, Bentley terminated Stephen Gledhill’s agency and refused to pay compensation. Stephen Gledhill subsequently brought a claim for compensation pursuant to the Commercial Agents (Council Directive) Regulations 1993 (“the Regulations”) .

Under the Regulations, if the Agency Agreement has been terminated because of the Agent’s default, then the Agent will not be entitled to compensation. If the Principal is unable to demonstrate that the Agent has defaulted, then the Agency Agreement will have been unlawfully terminated and the Agent will have a valid claim against the Principal.

In this case, given the protection afforded to agents is akin to that afforded to employees, the court made reference to employment law and it was held that, as a matter of law, abusive language by an employee towards his or her employer may amount to a fundamental breach of contract. The Court acknowledged that words can be uttered in the heat of the moment and therefore may not always amount to a fundamental breach of contract and that each case should be assessed on its own facts and with reference to the context in which the words were said. Furthermore, the Court held that an apology may be able to rectify the situation. Pursuant to the Regulations, the Agent is under a duty to act towards the Principal conscientiously and in good faith and any serious breach of this requirement would entitle the Principal to terminate the Agreement with immediate effect and avoid paying compensation.

The Court held that Stephen Gledhill's conduct was likely to destroy or seriously damage the relationship of confidence and trust between Bentley and Stephen Gledhill. Therefore, it was held that in terminating the agency relationship, Bentley was able to rely on Stephen Gledhill's behaviour as justification for not paying compensation.

This case provides useful guidance as to the circumstances in which a court will hold an agent's poor behaviour as justification for the principal avoiding compensation and it highlights the weight a court will apply to an agent's duty to act in good faith.

Where should a principal be sued?

In a world of increasing globalised trade, it is often the case that a commercial agent operates in a number of different European Union countries.

This can give rise to difficult questions concerning the correct national court for an agent to bring a compensation claim against a principal. The recent case of *Wood Floor Solutions Andreas Domberger GmbH -v- Silva Trade SA*, examined this issue and provided guidance to help determine which country's national court has jurisdiction to hear a commercial agency dispute, especially in circumstances where an agent operates in a number of different countries.

The basic rule is that a defendant must be sued in their local court. If the defendant is an individual this is the place where they are domiciled and if they are a corporate body it is the place where it has its registered office. There are various exceptions to the basic rule and proceedings can be brought in a different country to the defendant's place of domicile if one of the exceptions applies. For example, if there is a breach of contract, the defendant can be sued in the country where the contractual obligations are performed.

Wood Floor was a commercial agent based in Austria and wished to pursue its principal, Silva Trade, for compensation following the termination of the commercial agency contract. Although Silva Trade is a company incorporated in Luxembourg, Wood Floor brought proceedings in Austria because it argued that it carried on its business of signing up and acquiring clients in Austria and Austria was therefore, the place where the contractual obligations were performed. Silva Trade argued that the case should not be heard in the Austrian Courts because more than three-quarters of Wood Floor's turnover was generated in countries other than Austria and that the place of performance of the contractual obligation could not be established. Silva Trade argued that jurisdiction had to be determined in accordance with the basic rule and that Wood Floor should have sued Silva Trade in its place of domicile, being Luxembourg.

Wood Floor was successful in the lower court and Silva Trade appealed. The Austrian Court of Appeal referred the matter to the European Court of Justice for clarification of the issues.

The European Court of Justice held that where services were provided by an agent in several countries, the exception to the basic rule did still apply and the Court that had jurisdiction to hear and determine all the claims arising from the contract was the Court in whose jurisdiction the place of the main provision of services was located. The Court held that for a commercial agency contract that place was either:

- 1) the place of the main provision of services by the agent as stated in the contract;
- 2) in the absence of such provisions in the contract, it is the place where the agent had carried out the activities in performance of the contract; and
- 3) where it could not be established on that basis, the place where the agent was domiciled.

The case provides useful guidance as to the correct jurisdiction for an agent to bring a claim for compensation pursuant to the commercial agents regulations. It has established that in most cases an agent should be able to bring proceedings in its home court rather than the local court of the defendant. This potentially will have the effect of increasing costs for a principal in defending claims for compensation from foreign based agents.

Key Contacts



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Adam is a senior solicitor in our commercial litigation department and has many years experience in advising and acting for both commercial agents and principals. He regularly acts in disputes over compensation pursuant to termination of an agency agreement and has particular expertise acting in disputes where one of the parties is based in a foreign country.

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Carla is a solicitor in our corporate commercial department, specialising in commercial law, IT and intellectual property. She has particular expertise in drafting agency, distribution and franchise agreements and is experienced in advising on reseller arrangements, the commercial agents regulations and UK and EU competition law.

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