
June 2010

Review

Commercial & Dispute Resolution



Franchisors owe a duty of care to their franchisees

A recent decision in the High Court has provided useful confirmation that franchisors owe a duty of care in negligence to their franchisees and potential franchisees.

Background

Kall Kwik (UK) ('K'), the defendant, granted a printing services franchise to MGB Printing and Design ('M') in October 2007. Before M purchased the franchise, K told M that it would need to refit the premises to K's minimum standards and that the cost of this would be no more than £15,000. After M acquired the franchise, an estimate for the refitting works by K's preferred supplier indicated that the true cost of refitting would be between £30,000 and £45,000.

M commenced proceedings against K for damages, arguing that had it known the true cost of the refitting works, it would have negotiated a reduction in the purchase price. M claimed that it had relied on K's statement to purchase the franchise and that K failed to exercise reasonable care and skill in advising M of the cost of the refitting works which led to M's loss.

It is relevant that the forecast document which K provided to M which set out the refitting costs contained a clause excluding all liability except in relation to fraud and the franchise agreement contained an exclusion of liability for non-fraudulent misrepresentation.

The court was asked whether franchisors owed a duty of care to their franchisees and, if so, whether K had breached that duty of care by giving negligent advice to M.

Judgment

The High Court found that K owed a duty of care to M and that, in breach of this duty of care, K provided negligent advice to M which resulted in M suffering loss.

In establishing whether K owed a duty of care to M the court found that K had assumed responsibility for advising M and had created a situation in which K was M's only source of such advice. K's advice was relevant to and had an impact on the

“it is fair and reasonable that [the franchisor] should owe a duty of care to [the franchisee]”

The Honourable
Mr Justice
Penry-Davey

negotiation of the purchase price and it was therefore foreseeable that negligent advice would cause damage.

In finding that K had breached its duty of care to M, the court found that K had provided the refitting cost without seeking the expertise of its preferred supplier and without taking into account its own property standards. As such, the advice was given without proper consideration and was negligent.

The exclusions of liability in the forecast document did not operate to exclude K's liability for its advice as it was not the document itself that M relied on but the discussions around the refitting costs. Furthermore, the exclusions in the franchise agreement were not relevant as M's claim was not for misrepresentation.

Comment

This case was decided on existing law and is specific to its facts however franchisors should still take note. Franchisors usually have greater bargaining strength than their franchisees and this decision will act as a warning to franchisors that when they provide advice to prospective franchisees, they must do so with due care and skill.

FURTHER INFORMATION

For further information please contact:



Tom Bridgford

Partner, Manchester

T: +44 (0)161 830 5368

E: tom.bridgford@hammonds.com



Hayley Rouse

Lawyer, Manchester

T: +44 (0)161 830 5245

E: hayley.rouse@hammonds.com

WWW.HAMMONDS.COM

If you do not wish to receive further legal updates or information about our products and services, please write to: Richard Green, Hammonds LLP, Freepost, 2 Park Lane, Leeds, LS3 2YY or email richard.green@hammonds.com.

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