Once More Unto the Breach

Breach of contract is a common issue experienced by those involved in international trade. Where a party fails to perform his obligations under a contract, what action can be taken by the injured party to secure fair compensation and how are these damages calculated? Alan Ma finds the answer to these questions with reference to two recent High Court cases.

When entering into a commercial contract, you have a lot riding on the other party fulfilling their half of the bargain. Should they repudiate your contract before fully performing their obligations, they are said to have performed an anticipatory breach. In such an event, the consequences for your business could be disastrous. As such, those "left in the lurch" in this way have the immediate right to sue for compensatory damages. The following cases exemplify the Court's attitude to the calculation of damages in the event of a breach of contract.

Anticipatory Breach

When Nichols PLC wrongly terminated their agreement with Gul Bottlers to manufacture and distribute Vimto Double Strength Cordial in Pakistan, the latter party was quick to file a claim for breach of contract against them. The product's great popularity in the Middle East as well as Pakistan's growing middle class market persuaded the High Court that Gul had been denied a significant opportunity by Nichol's repudiation. Nichols were consequently ordered to pay Gul damages of PKR 1.36 billion (£8.0 million) plus costs, an amount with which Nichols stated it "fundamentally disagreed". The calculation of the sum followed the principle that damages should restore the injured party to the same financial position he would have been in had the contract been properly performed.

Another case, DURHAM TEES VALLEY AIRPORT LTD v BMIBABY LTD provides an example of repudiation occurring on more uncertain terms. In 2004, bmibaby entered into a 10-year contract with the airport, agreeing to base two of its aircraft there in return for substantial funding. However, after finding the agreement to be unprofitable, the airline repudiated, triggering the airport to claim against them for loss of income. In March 2009, the High Court ruled the contract too uncertain to justify an award of damages to the airport, as it did not include specific details regarding flight times or destinations. However, the airport's consequent appeal was later accepted at the Court of Appeal, who ruled that, nonwithstanding any uncertainty regarding flights, a breach of contract had clearly occurred by bmibaby for which compensatory damages should be awarded to the injured party. The Court ruled that the measure of damages would be the funds the airport would have received had the airline carried out its services for the remaining 8 years of the contract.

Dr Ma's Remarks

The rulings in both cases are significant because they confirm the award of damages as the most

common remedy for breach of contract at common law. They also support the principle that the primary purpose of such awards is to compensate the injured party, rather than punish the offending one. The ruling in DURHAM TEES VALLEY AIRPORT, highlights the way in which the courts will, whenever possible, try to ensure that commercial contracts are enforced.

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