



Business NEWSLETTER

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Debt Collecting

In today's difficult economic climate maintaining good credit control can be essential to business survival. One of a credit controller's key weapons is the right to charge interest on late payment. Two recent cases have reinforced that right.

- Ruttle Plant Hire supplied plant to DEFRA and submitted invoices which were calculated using the wrong hire rates. DEFRA sought to rely on this error to avoid statutory interest, charged at 8% over bank base rate, on late payments. Their defence failed and they were ordered to pay interest on the true amounts that should have been invoiced had the hire rates been correct. This places the onus firmly on the customer to check invoices and, even if incorrect, to pay promptly the amount they know is due.
- In 2001 Taiwan Scott entered into an agreement with Master of Golf to supply them with golf clubs manufactured in China. The agreement charged interest on late payment at a rate of 15% per annum. Master of Golf failed to pay on time, but argued that this rate was exorbitant and so unenforceable. Once again the defence failed. Although rates had since dropped sharply, 15% had not been exorbitant at the time that it had been agreed and it had been negotiated by parties of equal bargaining strength.

One Man Bands

In recent years many people carrying on small businesses have chosen to incorporate them and effectively become their own employers. Sadly some of these are now going bust. The employees of companies that go into liquidation can normally claim certain benefits including arrears of pay, notice pay, accrued holiday pay and statutory redundancy pay from the Government. Are the owners of these small companies entitled to the same benefits? In the absence of a sham, it seems that they are, even if they control the company, so long as they have worked and been paid in accordance with genuine employment contracts.

Partnership Liability

Normally, one partner in a firm can look to the others to share payments made and liabilities incurred in the ordinary course of business, and also in preserving the business and assets of the firm. There are, however, certain exceptions to this rule. Certainly, those who act fraudulently or in bad faith cannot expect support from their partners. To his cost, Mr Herrington found that the exception is rather wider. When his firm was threatened with a claim for professional negligence he failed to report it to insurers, and as a result, the insurers declined cover. Mr Herrington looked to his partner Mr Tann to share the cost of the claim, but without success, as he had not acted with reasonable care and skill, nor to the standard that he would apply in looking after his own affairs.

Polluter Pays

Businesses face stiffer penalties for causing serious environmental damage which threatens sites of special scientific interest, endangers protected species, pollutes surface water or groundwater, or contaminates land - even if there is no evidence that they have been at fault. They are responsible for identifying and responding to imminent threats or actual damage to the environment. In addition to remedying any damage they have caused, they may also have to pay for work on alternative sites if full restoration is not possible, and for the loss of natural resources while the damage is being restored.

This Newsletter is intended for the use of Clients of Gross & Co. It provides a summary of recent developments in business law but not specific advice on individual cases. We would, of course, be pleased to provide more detailed advice on these or any other business related matters.

Taking a Tumble

If an employee is injured by work equipment provided for use or used by the employee at work, then whatever the circumstances the employer is deemed to be at fault. The extent of this strict liability has recently been reassessed. Mrs Smith was employed by Northamptonshire County Council as a driver and carer who collected people from their homes and took them to a day centre. One of those she looked after, Mrs Cotter, was a wheelchair user who had been provided by the NHS with a wooden ramp to her patio door. Mrs Smith used this ramp regularly to wheel Mrs Cotter to and from her car, until one sad day it collapsed under her, causing her injury. Her claim against the Council for compensation failed. The Council had not provided the ramp, nor did they own or possess it, and, although they had inspected it, they were not responsible for its repair. Accordingly, although the ramp could be regarded as work equipment, it had not been provided or used in circumstances in which it had been incorporated into, and adopted as part of, the Council's operations.

Noise Problems

Employers must provide a safe place of work for their employees and, if any of them are injured, must show that it would not have been reasonably practicable to have eliminated or reduced the risk of harm, and that the burden of doing so would have substantially outweighed the amount of risk. Mrs Baker was employed in a noisy knitting workshop and as a result suffered hearing loss and tinnitus. She recovered compensation from her employer even though only a minority of her fellow employees had been affected, and the noise did not exceed the level generally considered acceptable at the time. Her employer could easily have provided her with ear protectors.

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Employers must make reasonable adjustments to accommodate disabled employees. Disability means a physical or mental impairment which has a substantial and long term adverse affect on a person's ability to carry out day to day activities. This includes an impairment which is likely to have such an effect but for treatment taken to control or correct it. Mrs Boyle had once suffered from throat nodules which had been surgically removed, and, on medical advice, had since carefully managed her voice. She was employed in an office next to a noisy stock room and, when her employer removed a dividing screen, she had to shout to be heard. Her employer insisted that the earlier operation had cured her problem and refused to help. Consequently, she recovered compensation for disability discrimination. Albeit not certain, the fact that her shouting could well cause a relapse was enough to make her disabled.

Break Clauses

Tenants often want to escape from onerous leases and some have wisely negotiated break clauses, allowing them to terminate the lease before the expiry of its normal term. The provisions of a break clause must, however, be carefully observed if it is to work. In the past the courts have had to decide whether the necessary pre-conditions for exercising the break, such as the rent being up to date and the property being in good repair, have been satisfied, and also whether the notice exercising the break has been correctly drafted. Most recently they have considered whether a break notice was properly served by the tenant on the landlord. In 2001 Reuters took, from Orchard Developments, a 15 year lease of property in Nottingham which allowed them to exercise a break in 2006. The break clause stipulated that the notice had to be served by hand, registered post, or recorded delivery. It went on to say that, even if served in some other way, the notice would be valid, but only if the landlord acknowledged receipt. Reuters employed someone to serve the break notice by hand, but he posted it through the wrong letterbox. They also served the notice by fax, but, although this safely arrived, it was not acknowledged until long after the break date. As a result Reuter's break notice was invalid and the unwanted lease continued.

Lease Renewals

Tenants who hold business leases that are protected under the Landlord and Tenant Act 1954 can ask their landlord for a new lease when the existing one expires, and the landlord can only refuse for certain specified reasons. One of these reasons relates to 'the tenant's use or management' of the premises. So, if a tenant uses the premises for an unlawful purpose, such as carrying on a business which infringes planning law, then, even if this does not breach the terms of the lease itself, the right of renewal may be lost without any right to compensation.

'Because You're Worth It'

Bellure marketed and sold, in the UK, fragrances similar to those produced by L'Oreal, and, in doing so, used similar bottles and packaging and provided their retailers with comparison lists. Not surprisingly, L'Oreal objected and alleged that Bellure were infringing their trade mark. The use of a mark similar to another business's trade mark, and even the use of an identical mark in comparative advertising, can both be lawful, provided that they do not take unfair advantage of the trade mark. Bellure were, however, taking unfair advantage of the power of attraction of L'Oreal's trade mark, and of the reputation and prestige built up by L'Oreal's marketing effort, by hitching a free ride on their coat-tails – even though there was little risk of confusing the public, or of Bellure's marketing harming L'Oreal. Accordingly, they were ordered to desist.

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