Does all mean all, or does it mean something less?

Gateley Plc

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It goes without saying that conditional sale contracts need to be very carefully drafted. In the run up to the sale being triggered the terms will come under very close scrutiny, particularly if one party decides it wants to extricate itself from the contract. It may sound far-fetched, but the meaning of a single word can sometimes be critical.

This is precisely what happened in a recent High Court case [1], in which a right to terminate a conditional sale contract depended on the interpretation of one word: 'all'.

The termination provision in question ran as follows: If all of the Conditions have not been discharged in accordance with this Schedule by the Longstop Date, then either Asda or Dooba may rescind this Agreement.

At first glance, this may seem straightforward enough. But look more closely, and you will see that it can be read in either of two ways:

1. The parties can rescind (i.e. terminate) the Agreement on or after the Longstop Date only if all of the Conditions have not been discharged; or
2. The parties can terminate the Agreement on or after the Longstop Date if one or more of the Conditions have not been discharged.

In other words, does 'all' mean 'all', or does it mean 'any'? From a legal point of view, it is not an easy question to answer, and the High Court had considerable difficulty in reaching a conclusion.

The clause in question was part of a conditional sale agreement whereby Dooba was to purchase a property and build a superstore and petrol station and road for Asda. The headline price was £12 million.

Completion of the Agreement was conditional on satisfaction of four Conditions:

1. The Planning Condition (essentially, granting of a satisfactory planning permission);
2. The Planning Agreement Condition (i.e. entering into of a Section 106 Agreement);
3. The Highways Condition; and
4. The Pre-Start Condition.

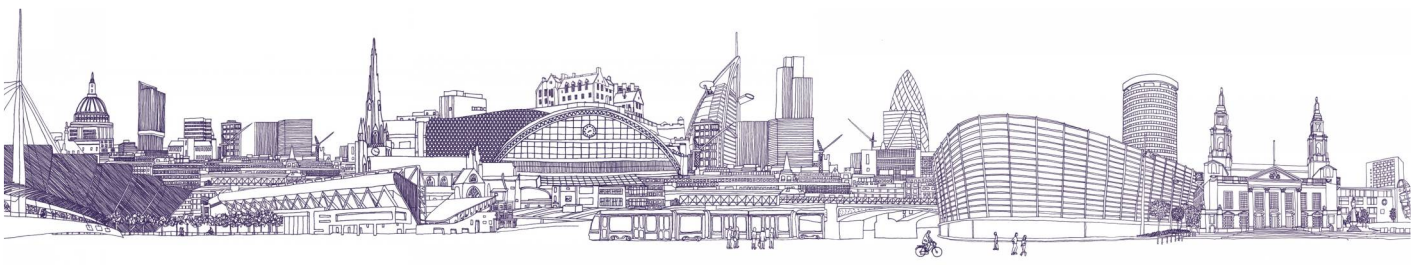
There were three separate provisions that dealt with termination in the event of the Conditions not being satisfied. These were:

1. If any of the Conditions were not discharged by the satisfaction dates set out in the Agreement, then either party could terminate the Agreement (paragraph 2.2);
2. If all of the Conditions had not been discharged by the Longstop Date, then either party could terminate the Agreement (paragraph 2.3) (this is the provision in question); and
3. If the Planning Condition had not been discharged by the Longstop Date, then the Agreement could be terminated as per paragraph 2.3 (paragraph 3.3)

As it happened, the Highways Condition was not discharged by the Longstop Date (23 July 2014). Asda considered that the property was useless unless all the Conditions had been fulfilled and therefore tried to terminate the Agreement under paragraph 2.3.

In terminating under paragraph 2.3, Asda assumed that 'all' should mean 'any'. In other words, if one or more of the Conditions remained undischarged at the Longstop Date, then it was entitled to terminate the Agreement. Dooba, who did not want Asda to be able to wriggle out of the Agreement, argued for the literal meaning of paragraph 2.3 i.e. that Asda could only terminate the Agreement if none of the Conditions had been discharged by the Longstop Date.

The Judge found that the arguments on either side were finely balanced. He acknowledged that, according to commercial common sense, the property would be useless to Asda unless all of the Conditions had been



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fulfilled. However, he refused to interpret the word ‘all’ to mean ‘any’. His main reasons for doing so were:

(a) The paragraph immediately before clause 2.3, clause 2.2, uses the word ‘any’ in relation to the discharging of Conditions, and the Judge took the view that the drafter would have used this word in clause 2.3 if that was what he or she meant;

(b) There is no reason why ‘all’ should not be given its literal meaning in this context; and

(c) Paragraphs 2.3 and 3.3 still allow for termination when one or more of the Conditions had not been satisfied.

Since the Supreme Court decision in *Arnold -v- Britton* [2], the courts appear to be favouring a literal, as opposed to a commercial, approach when interpreting contracts. So when drafting contracts, it is important to look at each word to make sure it says what you really mean.

Footnotes

[1] Dooba Developments Limited v McLagan Investments Limited (2016) EWHC 2944 (CH)

[2] (2015) AC 1619

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