



# The City Lawyer

## TABLE OF CONTENTS

- [February 2014](#)
- [3 Hare Court in Practice: Liability under tripartite contracts and whether restitution can be used to fill the gaps](#)
- [Assessing the market value for damages under the Sale of Goods Act](#)
- [Can parties claim for damage to business reputation from the public conversion of an asset](#)
- [Get in touch](#)

## THIS MONTH'S CONTRIBUTOR

Richard Campbell



[Click here to view Richard's profile.](#)

## Contact Richard

Please [click here to email](#) or call 020 7415 7800.

## February 2014

Welcome to the latest edition of the City Lawyer - the business law update from 3 Hare Court.

This month we look at: -

- liability under tripartite contracts and whether restitution can be used to fill the gaps;
- assessing the market value for damages under the Sale of Goods Act;
- a dispute over a Lamborghini brought by Tamara Ecclestone and whether parties can claim for damage to business reputation from the public conversion of an asset.

## 3 Hare Court in Practice: Liability under tripartite contracts and whether restitution can be used to fill the gaps

**Aster Healthcare Limited v The Estate of Mr Mohammed Shafi (by its representative Mrs Batool Shafi [2014] EWHC 77 (QB))**

**Peter Knox QC** and **Asela Wijeyaratne** successfully appeared in an appeal raising issues of tripartite contracts, restitution and mental incapacity.

Mohammed Shafi suffered from dementia and was suspected to lack capacity. He was placed in one of the Claimant's care homes in January 2010 through arrangements made by Brent Borough Council. The Council assessed Mr Shafi as having sufficient means to fund his own care.

The Claimant alleged that from February 2010 it had told Mr Shafi and his wife that they would be funding his care, not the Council. The Claimant drafted an agreement to provide care to Mr Shafi, intending that its fees would be met by Mrs Shafi as his 'representative'.

However, Mrs Shafi did not sign this agreement and there was no provision that Mr Shafi would be liable if she did not pay. Mr Shafi passed away in March 2012 leaving behind large bills for unpaid fees.

## Seminars and Workshops

3 Hare Court members regularly provide seminars and workshops to individual firms or groups of practitioners. If you have a request for a seminar or lecture, or would like further information then please do not hesitate to contact our marketing manager, [Carolyn Harris](#).

## Conferences

We are often invited to speak at conferences in the UK and abroad. If you have a query concerning a conference then please get in touch with our marketing manager, [Carolyn Harris](#).

## Clerks

We have an experienced and approachable clerking team who will be happy to assist with recommendations, fees, our service protocol or general enquiries. Please contact the clerks on 0207 415 7800. Alternatively please contact our Senior Clerk, [James Donovan](#)

## About us

The general editors of this bulletin are [Helen Pugh](#), [Asela Wijeyaratne](#) and [Alexander Halban](#). Please feel free to email them any comments, ideas or questions you might have about the City Lawyer.

For further information about chambers, please see our [website](#).

The Claimant brought a claim against Mr Shafi's estate in contract and by the restitutionary claim under section 7 of the Mental Capacity Act 2007, which provides that if necessary services are supplied to an individual lacking capacity to contract for the supply, he must pay a reasonable price for them.

The judge at first instance granted summary judgment for the Claimant, holding that, first there was no prospect of establishing that the local authority had primary responsibility to pay under the statutory scheme, and secondly that the Defendant was liable to pay as there was an unanswerable claim under section 7 of the Mental Capacity Act.

On the Defendant's appeal to the High Court, Andrews J found that Mrs Shafi was not contractually bound to pay his fees as she had not signed the agreement. There was no contract between the Claimant and either Mr or Mrs Shafi, and accordingly no basis for a claim in contract against them. Section 7 of the Mental Capacity Act (or an equivalent claim in restitution) could not impose a liability where none existed under the contract.

The court held that the Council was likely to be liable to pay the fees under the relevant statutes, with a right to recoup some of these against Mr Shafi's estate. The court overturned the summary judgment, allowed the Claimant to amend its claim to bring in the Council and remitted the matter for trial,

This case provides important reminders of the principles of liability in tripartite contracts. As the court explained:

*'It is well established that if A contracts with B to provide services to C on the express basis that B will pay A for those services, and B fails to do so, A has no cause of action against C. The rules of unjust enrichment are not engaged in those circumstances.'*

Moreover, a claimant cannot use restitution, or an equivalent statutory claim, like section 7 of the Mental Capacity Act to 'fill the gaps' in a contract where there is no contractual liability in the first place.

## Assessing the market value for damages under the Sale of Goods Act

### ***Glencore Energy UK Ltd v Cirrus Oil Services Ltd [2014] EWHC 87 (Comm)***

In this case the Commercial Court tackled the issue of whether loss awarded under sections 50(2) and (3) of the Sale of Goods Act 1979 was loss for loss of profits, and if so whether it was excluded by a contractual exclusion clause.



The Claimant seller entered into a contract for the sale of crude oil to the Defendant. A term in the contract provided: 'Except as specifically

## Subscribe or unsubscribe

If you wish to subscribe to or unsubscribe from this update, please email our marketing manager, [Carolyn Harris](#) or click on the 'Unsubscribe' link below.

provided ... in no event... shall either party be liable to the other... in respect of any indirect or consequential losses or expenses...'

The Defendant rejected the oil and the Claimant brought an action for damages under ss. 50(2) and (3) of the Act. The Defendant denied liability. Relying on the exclusion clause, it argued that the Claimant's loss was a claim for loss of profits and that this loss was excluded by the phrase 'indirect or consequential loss' in the exclusion clause. It also argued that a claim under ss. 50(2) and (3) was a claim for loss of profits.

The Court rejected the Defendant's arguments and gave judgment for the Claimant for over \$2.5 million. Cooke J emphasised that ss. 50(2) and (3) do not equate to a loss of profits claim. They are statutory constructs which are based on the assumption that the seller will mitigate his loss by selling the rejected goods on the market to a substitute buyer. In any event, the exclusion clause would be insufficient to oust those provisions, which could only be done by extremely clear words.

The case is a useful reminder of the proper approach to the assessment of damages under ss. 50, 51 and 53 of the Sale of Goods Act (which all rely on an assessment of the market value). It also acts as a warning that any exclusion clause needs to be drafted clearly and should specify the types of loss which are intended to be excluded.

## Can parties claim for damage to business reputation from the public conversion of an asset

### *Tamara Ecclestone v Omar Khyami* [2014] EWHC 29 (QB)

With a passion for cars in the Ecclestone blood, it was perhaps unsurprising when Tamara Ecclestone attempted to secure the return of a

£400,000 Lamborghini from two car companies which she alleged she had bought for her ex-boyfriend, Omar Khyami.



Miss Ecclestone brought her claim against Mr Khyami and the car companies Elite Performance Cars Ltd and Ansol Trading Ltd for delivery up of the Lamborghini and damages for conversion by Mr Khyami, in selling it to the other Defendants

During the proceedings, Miss Ecclestone obtained a without-notice worldwide freezing order against the Defendants by alleging the vehicle had only been given to Mr Khyami for as long as their relationship lasted. It was later conceded however that this was untrue and that the car had indeed been a gift.

Elite alleged that Mr Khyami had owed it money and had used the car as security and counterclaimed for damages for conversion and for the

loss of business reputation from the negative press generated by the case.

The High Court waved the chequered flag on Miss Ecclestone's claim in January, finding that Mr Khyami had been the true owner of the car, it and ordering Miss Ecclestone to pay damages to the Defendant car companies. Dingemans J said that the dispute had 'caused everyone far more trouble than it is worth'.

The judgment confirms that, in principle at least, damages for loss of business reputation stemming from a public conversion of an asset are available. This had appears from *Owen & Smith v Reo Motors* [1934] All ER 734. However, the party claiming such damages must prove that the adverse publicity resulted in any substantial losses, which may not be an easy task. The court ruled Elite had failed to prove such losses and was therefore only entitled to £7,500 for the lost opportunity to earn commission.

Readers will be relieved to hear that Miss Ecclestone was spotted in a Lamborghini showroom the day after the judgment was released.

## Get in touch

We hope you have enjoyed this issue of the City Lawyer. If you are dealing with a similar case or wish to discuss any area of commercial law, please **get in touch** to arrange a short informal discussion.

The next edition of the City Lawyer is due in March. Until then!

Chambers of Peter Knox QC

You're receiving this email because you have previously expressed an interest in our services. Should you no longer wish to receive emails from us, please use the 'unsubscribe' link below.

[Edit your subscription](#) | [Unsubscribe](#)

3 Hare Court  
Temple  
London EC4Y 7BJ  
Tel: 020 7415 7800  
Fax: 020 7415 7811

Email: [clerks@3harecourt.com](mailto:clerks@3harecourt.com)  
DX: 212