

Do your exclusion clauses work?

Chau Kei Man Rayman v Chaters Auction Limited (formerly known as Chaters Auction Limited)
[2018] HKCFI 662
Judge Patrick Fung
Judgment date

In this case, the High Court of Hong Kong ruled that an auction house could not rely on an exemption clause which purported to exclude liability for negligence "under any circumstances".

Facts

Chau, the Plaintiff, was a private collector of Chinese teapots. He had discussions with Chaters Auction Limited, the Defendant, about 5 Chinese teapots which he wanted to sell by way of auction.

In December 2012, Chau handed over the 5 teapots to the auction house and signed an Agent Contract which set out the contractual obligations between the two parties. Chau paid the auction house HK\$22,500 for the preparation of a catalogue for the auction. The auction was held in July 2013. However, Chau's teapots were not sold.

After the auction, Chau sought to retrieve his teapots but was told he needed to make an appointment to retrieve them.

On 16 July 2013, Chau telephoned the auction house to ask for the return of his teapots. He was told that there were some Mainland Chinese buyers that were interested in buying them but a price had not yet been agreed. Chau agreed to the auction house retaining the teapots until the 25 July 2013.

On 25 July 2013, Chau went to the office of the auction house to retrieve his goods. The staff member he met asked if he wanted to take back "the broken teapots". Chau found that 4 of his 5 teapots have been broken or damaged allegedly by potential customers who had handled and dropped the teapots.

Chau requested the auction house to return his teapots to him and to compensate him for his loss. The auction house refused and sought to rely on an exemption clause in the Agent Contract to avoid liability.

Matters in dispute

During the trial, the auction house did not dispute that the damage to the four teapots occurred whilst the goods were in their possession. The Court found that the auction house was negligent in not having taken reasonable care to avoid damage to four of the five teapots and to return them to Chau intact.

The Court considered the exemption clause contained in the Agent Contract and ruled that the wording used in the clause was not sufficient to enable the auction house to exclude liability for the damage caused to the.

The exemption clause in the Agent Contract provided that:

"The seller can opt not to insure his auction item, but its risk will be borne by the seller. Our company will not be liable for any loss or damage caused to the auction item under any circumstances".

To be enforceable, exemption clauses must be clear and unambiguous. Although the exemption clause purported to exclude liability for any loss or damage caused to the auction item "under any circumstances", the Court considered that the clause was not clear enough.

The court took the view that in order to exempt the auction house from liability for negligence, the clause should have expressly stated that this was the intended effect and purpose of the clause.

The Court also considered that the auction house failed to prove that the exemption clause was fair and reasonable in all the circumstances in accordance with the Control of Exemption Clauses Ordinance (Cap 71). The court considered that in circumstances where Chau handed over his delicate teapots to the custody of the auction house, it would be unreasonable for Chau not to have any recourse against the auction house, no matter how it conducted itself in relation to the teapots.

The Court awarded damages to Chau in the sum of HK\$1,340,000 plus costs.

Take home message

To effectively exclude liability for negligence, the party seeking to rely on the exemption clause needs to expressly state, what acts are excluded. The words used should be sufficiently clear to indicate what the parties intended.

In drafting exemption clauses, consideration should also be given to the application of the Control of Exemption Clauses Ordinance (Cap 71). An exemption clause which is too wide may fall afoul of the "reasonableness" test in section 3(2) of CECO.