

## **COURT OF APPEAL OVERTURNS INJUNCTION DECISION**

*AB v CD* [2014] EWCA Civ 229

### **Introduction**

In a decision released on 6 March 2014 in *AB v CD* [2014] EWCA Civ 229, the Court of Appeal overturned the decision of the High Court and granted an injunction in support of arbitration proceedings, holding that the existence of a contractual clause which limited recoverable damages did not prevent a party from obtaining an injunction on the grounds that the damages would be inadequate.

This decision will be of comfort to those who had raised concerns in light of the High Court's decision in the same case on 3 January 2014, and in particular those who both provided for arbitration in their contractual arrangements and also included a clause which limits recoverable damages arising either from those arrangements generally (or the termination provisions specifically). It also clearly demonstrates how quickly the Court of Appeal can act to remedy what it sees as incorrect decisions of the lower courts.

### **Background**

For a decision of the High Court decision in this case, please see our previous alert [here](#).

On 1 October 2005, the Claimant and Defendant entered into a Licensing Agreement which was to continue to 31 December 2010 and then automatically to renew annually subject to the Defendant's entitlement to terminate pursuant to the terms of the agreement. The Licensing Agreement was subject to English law and contained an arbitration clause. The Agreement also contained a clause which restricted the recovery of "lost profits, ... or any ... indirect, special, consequential or incidental damages" arising from the contract.

In June 2013, the Defendant gave notice that it would terminate the Licensing Agreement at midnight on 31 December 2013, claiming that the requirements under the Licensing Agreement for termination had been met. The Claimant rejected this, but in a further letter the Defendant repeated its intention to terminate. No other correspondence occurred until December 2013, when the Defendant reminded the Claimant that the agreement would terminate on 31 December 2013.

On 20 December 2013, the Claimant commenced arbitration against the Defendant. In support of that arbitration, the Claimant sought an injunction under section 44 of the Arbitration Act 1996 restraining the Defendant from terminating the Licensing Agreement between the parties on 31 December 2013, pending the resolution of the arbitration.

In a decision handed down on 3 January 2014, Mr Justice Stuart-Smith (sitting in the High Court) gave his reasons for refusing the application, those being that the Claimant was unable to show that damages would not be an adequate remedy (despite the clause which limited the damages recoverable under the contract).

The Claimant appealed.

### **Decision**

The Court of Appeal reversed the decision of the High Court, and granted the injunction.

Giving the lead decision of the Court of Appeal, Lord Justice Underhill noted that while it was trite law that an injunction would not be granted if damages would be an adequate remedy, the question for the Court of Appeal was how that rule applied where the contract contained a provision limiting the recoverable damages?

Lord Justice Underhill agreed with the Claimant's position that an applicant for an injunction was entitled to argue that damages would not be an adequate remedy because the recoverable damages were limited by a clause excluding or limiting liability for the kind of loss which was likely to be caused by the breach, both on the basis of existing authority and as a matter of principle.

Lord Justice Laws went further, holding that where a party to a contract stipulates that if he breaches his obligations his liability will be limited or the damages he must pay will be capped, that is a circumstance which in justice tends to favour the grant of an injunction to prohibit the breach in the first place.

15<sup>th</sup> April 2014