

BRIEF DETAILS OF CLAIM

Breach of contract claim. The Claimant is an online retailer. The Defendant is a delivery company. The Claimant seeks damages for breach of contract: damage to goods while in the care and control of the Defendant. The claim is for £384.72 plus interest and costs.

INTRODUCTION

1. The claim is for breach of a contract for delivery of goods. The claimant seeks compensation for damage to goods owned by the Claimant which occurred while they were in the care and control of the Defendant.
2. The Claimant, Urban Cottage Industries Ltd, manufactures and sells lighting products. Company registered in England & Wales number 07211785. Registered office: Old Trouser Factory, Greenhill Industrial Estate, Mytholmroyd, Hebden Bridge, HX7 5QF
3. The Defendant, GeoPost UK Limited, delivers parcels. The trading name is DPD. Company registered in England & Wales number 732993. Registered office: PO Box 6979, Roebuck Lane, Smethwick, West Midlands, B66 1BN.

PARTICULARS OF CLAIM

Facts

4. The Claimant has paid the Defendant approximately £67,000 in delivery charges in the 12 months immediately prior to the issue of this claim.
5. On 23 October 2014 a customer placed an order with the Claimant for four bespoke complete assembled pendant lights with enamelled steel shades. The total retail price of the goods was £689.64 inc VAT.
6. The goods were packed by the Claimant on 24 October 2014 in a new clean undamaged cardboard box with FillPak, a widely used environmentally friendly high volume void fill system which protects products and prevents them from shifting in their box. Two red "FRAGILE GLASS" stickers were placed on the outside of the box, one of which was on the same side as the address labels.
7. When the Defendant collected the goods on 24 October 2014 the goods and packing were in a clean and undamaged state.
8. On 27 October 2014, the Defendant attempted to deliver the goods to the Claimant's customer. When one of the customer's employees went to sign for the goods, she saw the Defendant's employee kicking the box across the floor. The customer's employee refused to sign for the goods.
9. The Defendant attempted to deliver the goods on 28 and 29 October 2014 but the Claimant's customer made no effort to allow delivery.
10. The Defendant returned the goods to the Claimant on or around 3 November 2014. The box was unopened, but split and extremely scuffed. On opening the box, the Claimant discovered that three of the enamelled steel shades were chipped or

cracked. The damage is entirely consistent with the box having being kicked across the floor.

11. Images of the damage have been provided to the Claimant and will be provided to the Court in due course.
12. The Claimant disassembled the pendant lights, replaced the three enamelled steel shades and re-shipped them to the customer using the UPS delivery service. The goods were packed identically, though using fresh packaging. They arrived in a clean and undamaged condition and the Claimant's customer was happy to accept delivery.
13. The Claimant's losses are £384.72 made up of: £343.20 for the enamelled steel shades (two x Industrial @ £133.20 and one x Coolicon @ £76.80); plus £35.40 for labour costs to cover rebuilding and repacking the pendants; plus the £6.12 delivery charge.

Applicable principles

14. The Defendant is liable for the acts and omission of its employees and agents acting in the course of the Defendant's business.
15. The Defendant was supplying the Claimant with a service. Section 13 of the Supply of Goods and Services Act 1982 (SOGSA 1982) states:

13. Implied term about care and skill.

In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.

16. It was an implied term of the contract for delivery of the Claimant's goods that the Defendant would carry out the service with reasonable care and skill.
17. If, as the Claimant alleges, the damage to the goods was caused by the Defendant's employee kicking the box, this amounts to a failure to exercise reasonable skill and care and the Defendant is liable for the damage to the goods.
18. It is anticipated that the Defendant will allege that the damage to the goods was not caused by the Defendant's employee kicking the box but by some other unknown mysterious cause. In the event that this is the case, the Claimant maintains there has been a failure to exercise reasonable care and skill and the Defendant is liable for the damage to the goods.
19. The Claimant invites the Defendant to identify in its defence its procedures for handling fragile goods and further identify how the damage to the Claimant's goods could have been caused other than by a lack of care and skill.
20. It is anticipated that the Defendant will seek to rely on its standard terms and which purport to limit liability. The Claimant relies on section 3 of the Unfair Contract Terms Act 1977 (UCTA 1977):

3. Liability Arising in Contract.

- (1) This section applies as between contracting parties where one of them deals as consumer or on the other's written standard terms of business.
- (2) As against that party, the other cannot by reference to any contract term—
 - (a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or
 - (b) claim to be entitled—
 - (i) to render a contractual performance substantially different from that which was reasonably expected of him, or
 - (ii) in respect of the whole or any part of his contractual obligation, to render no performance at all,except in so far as (in any of the cases mentioned above in this subsection) the contract term satisfies the requirement of reasonableness.

21. The Claimant submits that the Defendant cannot restrict its liability or claim to render contractual performance substantially different from what was reasonable expected (i.e. to exercise reasonable care and skill) except insofar that the contract satisfies the requirements of reasonableness.
22. By section 11(5) UCTA 1977 it is for the Defendant to show that the term which restricts liability meets the requirements of reasonableness. The Defendant is invited to address the reasonableness point in its defence to the claim. To assist the Defendant, the Claimant observes as follows.
23. In relation to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made: the Claimant had no knowledge or contemplation that the Defendant would handle goods so as to caused the damage caused in this claim. The Defendant gave no indication that goods would be handled in such a way. Had the Defendant given such information, the Claimant would have sought an alternative carrier or secured insurance.
24. In relation to restricting liability to a specified sum of money: the Claimant notes that it has paid the Defendant approx £67,000 in the last 12 months and the claim is for a small amount in the context of the total payments.
25. In relation to whether the Claimant received an inducement to agree to the term, no inducement was received from the Defendant.

The Claimant therefore claims:

- (1) £384.72; and
- (2) interest under section 69 of the County Courts Act 1984 accrued from 3 November 2014 to the date of the issue of the claim and continuing at the rate of 8% until judgment; and
- (3) costs.