

THE “COMMERCIAL” REALITIES OF LIFE

How to avoid contractual disputes arising and the potential for litigation.

Whether you are an Individual, or engaged in business, either as a sole trader, Partnership or Limited Company, the last thing you want, having entered into an agreement or contract with another party, is to end up having a contractual dispute which arises because the initial contractual terms are either unclear, vague or open to different interpretations, or a combination of these factors.

Experience has dictated that becoming involved in a contractual dispute, can become very costly, in a number of different ways:-

- in terms of the potential “**legal costs**” involved.
- In terms of the potential “**lost management time**” involved
- In terms of the “**anxiety and stress**” factor involved.

Think ahead

It is inevitably the case, and human nature, that parties, when entering into an initial agreement, enter into such agreements in good faith, believing that nothing will go wrong and therefore give little, if any, thought of how they may be protected if matters turn sour.

No matter how rosy things may seem at the initial point in time when entering into a contract, you should realise from day one, that all such contracts have the potential to lead to disputes, and you should be prepared to cater for such an eventuality, no matter how small the risk may at first appear.

Reduce any agreement to writing

A contract or agreement can be verbal, in writing, or a combination of both.

Some people do not realise that a verbal contract is as valid and as enforceable as a written contract.

However, if a contract is purely verbal, and a dispute subsequently arises as to whether a contract has been formed in the first place, and if so, as to its terms, then, in the absence of any independent witnesses to verify one way or the other, it is simply one person’s word against the other, and this is a recipe for potential disaster.

The golden rule is to ensure that, in the first place, any contract or agreement is reduced into writing. This will avoid any subsequent dispute that may arise between the parties over whether any contract had been entered into at all.

Whether a formal contractual document needs to be entered into will depend upon the wishes of the parties and the nature of the contract entered into.

Formal contractual documentation is more likely in the more substantial cases. However, simply entering into an exchange of correspondence, agreeing to the contract, will suffice, or indeed, a single sheet of paper, reflecting the agreement, which is signed by the parties.

This way, the potential for disputing the very existence of a contract or agreement can be avoided.

Make sure the contractual terms agreed are recorded in writing and signed

Entering into a contract is one thing, but many contracts entered into do not accurately or clearly set out or reflect the terms agreed.

Whilst there may be no dispute that a contract has been entered into, a dispute very often arises over the actual terms of the contract.

Common areas of disputes involve the date that the contract was made, the correct identity of the parties to the contract, the duration of the contract, pricings, terms of payment etc.

Accurately recording in writing the specific terms agreed will again assist in avoiding any subsequent dispute arising as to the precise terms of a contract.

Although it seems an obvious point, make sure that the contract or agreement is signed by the parties concerned. Too often, parties, whilst going to great lengths to agree a contract document, forget to sign the document. In the absence of such signature, in the event of a subsequent dispute, there is no evidence that one party agreed to enter into a contract or its terms.

The main key to resolving contractual disputes

In any contractual dispute, the starting point must be to look at how the contract or agreement was formulated or made, and then to look at the terms of what was agreed.

No matter how acrimonious such disputes can become, very often, experience has shown that the key to resolving any contractual dispute lies in a consideration of what was agreed at day one.

If there is a written contract, containing agreed terms of the contract, signed by the relevant parties, then this will avoid the potential for any subsequent dispute as to the existence of a contract or its terms.

If you would like further information please contact Paul Trincas on 01635 521212 or paul.trincas@clmlaw.co.uk