A wake-up call to merchants : The cost of “illegible” consumer contracts

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Recently, the Court of Québec reminded merchants of their responsibility to ensure that consumers are cognizant of important contractual clauses at the time a contract is entered into. In the case of *159191 Canada inc. (Discount Location d’autos et camions)* c. *Waddell*[1], the Court had to decide whether a clause in a two-page vehicle rental contract which excluded insurance coverage in a specific situation was valid under Québec law.

FACTS

The facts of the case are as follows. The Defendant, Mr. Patrick Waddell, rented a van from the Plaintiff, Discount Location d’autos et camions (“Discount”) and opted to pay for additional damage insurance. That same day, while attempting to park the van, Waddell collided with a balcony and damaged the van significantly. The parking space was large enough for a standard car but too small for the van. Upon returning the van to Discount, Waddell was told that the rental contract expressly excluded insurance coverage for damage resulting from insufficient height or width clearances. Waddell contested the application of the exclusionary clause and refused to pay for the damages. Consequently, Discount instituted proceedings against him to recover the amount of $14,906, representing the difference in the value of the van before and after the accident.

At trial, Discount argued that, in accordance with relevant case law, it had intentionally printed the clause on the reverse-side of the contract, in the same section as the client’s acceptance and signature. Therefore, Waddell should have been aware of it. In response, Waddell argued that Discount’s representative failed to bring the clause to his attention, and that, on its own, the font, size and quality of print rendered it illegible.

FINDING

Relying on several legislative provisions, the Court found in favour of Waddell and dismissed Discount’s claim.

ANALYSIS

First, the Court explained that based on Article 1436 of the *Civil Code of Quebec*[2] (“*CCQ*”), any clause in a consumer contract which is illegible or incomprehensible to a reasonable person is **null** if a consumer suffers injury therefrom. The Court found that two of the conditions for the application of this provision were satisfied. The Court determined that the contract in question was a consumer contract within the meanings of Article 1379 *CCQ* and Section 2 of Quebec’s *Consumer Protection Act*[3] (“*CPA*”). It was also clear that Waddell would suffer injury from the application of the clause, since he alone would be responsible for paying to repair the vehicle. The principle issue, therefore, was whether the clause was illegible.

Second, before addressing the issue of legibility, the Court explained that because a merchant has more knowledge and power than a consumer, it has the obligation to inform the latter of important terms stipulated in consumer contracts. This obligation stems from the duty to act in good faith imposed by Articles 6, 7, and 1375 CCQ.

Third, the Court examined whether Waddell had truly consented to the application of the clause. In accordance with Section 9 *CPA*, the Court analyzed the circumstances in which the contract was entered into and explained that the fact that Waddell had signed the contract was not sufficient proof of his consent. The Court explained that Discount had to prove that Mr. Waddell had in fact read and understood its terms. In referring to the Supreme Court of Canada decision Dell Computer, the Court explained that "a clause that is buried among a large number of other clauses because of its location in the contract is characterized as illegible".[4]

Fourth, the Court explained that the size, font, spacing, and colour contrast of the text may also render it illegible. The Court further noted that the merchant must use reasonable efforts to make the text accessible, especially when a clause affects the rights of a consumer. In fact, the clause at issue failed to meet the requirements of Section 28 of the *Regulation respecting the application of the Consumer Protection Act*[5], namely, that it be "set in typeface equivalent to HELVETICA LIGHT of at least 8 points with 10-point leading". It was typed in a 7 point font without sufficient spacing, and did not require initialing, in contrast with other less important clauses for the consumer (such as clauses notifying the consumer that he had to return the vehicle with a full tank of gas, or asking the consumer to confirm he is insured) in the contract. Other cases cited in this decision deem to be illegible light grey letters printed on poor quality white paper.

Lastly, the Court referred to Section 17 *CPA* which stipulates that, "in case of doubt or ambiguity, the contract must be interpreted in favour of the consumer".

Based on the foregoing, the Court held that Waddell's consent had been vitiated and found the clause to be null. It explained that any reasonable person presented with the contract would not have understood the extent of its application nor been aware of the existence of the clause. The fact that Discount printed the clause on the back-side of the contract, near the consumer's signature, did not render it legible. It was also of no consequence that Waddell's own personal car insurance included a similar clause.

CONCLUSION

This case reminds merchants of their burden to inform consumers, at the time a contract is entered into, of any material clauses which they may seek to enforce later on. In addition, merchants have the obligation to draft contracts that respect the requirements of the *CPA* and related regulations, most notably, with respect to font, size and spacing. Lastly, merchants can only benefit from the Court's requirement that consumers be asked to initial clauses that render their obligations more onerous. By doing so, merchants can better protect their interests and ensure that their contracts will be enforceable against consumers in the context of a legal dispute.

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[1] 2013 QCCQ 3560.

[2] c. C-1991.

[3] c. P-40.1.

[4] *Dell Computer Corp*. v. *Union des consommateurs*, [2007] 2 S.C.R. 801, 2007 SCC 34, para.90. 5 c.

[5] c. P-40.1, r. 3.