

(a) it would cause a significant imbalance in the parties' rights and obligations under the contract;

1 MARCH 2018

UNFAIR CONTRACT TERMS – ACCC v J RICHARDSON & SONS

INTRODUCTION

The recent decision from the Federal Court of Australia in *ACCC v JJ Richards & Sons Pty Ltd* [2017] FCA 1224 reinforced the Court's position of protecting the interests of consumers who may be subject to unfair contract terms in small business contracts.

RELEVANT LEGISLATIVE PROVISIONS

On 12 November 2016, the *Treasury Amendment (Small Business and Unfair Contract Terms) Act 2015* (Cth) commenced so as to amend the *Australian Consumer Law* ('the ACL'). Subsequently, section 23(1) of the ACL states that a term of a small business contract is void if the term is unfair and the contract is a standard form contract. A term is unfair under section 24(1) of the ACL if:

- (b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
- (c) it would cause detriment to a party if it were applied or relied on.

DECISION

After the Court determined that standard form contracts within the meaning of section 27 of the ACL were entered into, or renewed, after 12 November 2016 between JJ Richards & Sons (JJRS) and its customers, the issue of unfair contract terms arose. The Court ultimately held that there was a total of eight unfair contract terms which were deemed to be void in virtue of the operation of section 23.

The clauses related to the automatic renewal of the agreement, unilateral price variation by JJRS, no acceptance of liability by JJRS for delayed performance, JJRS' entitlement to payment for attempted services which cannot

be executed for some reason, JJRS' exclusive right to remove waste, 7 day credit terms, full indemnity and no right to termination until full payment of outstanding monies is made by customers. JJRS were excluded from incorporating any of the above terms in any small business contracts entered into over the next five years.

CONCLUSION

Evidently, the Courts have no tolerance for unfair contract terms and perpetrators will be penalised accordingly. This primarily involves voiding the offending clauses and preventing the inclusion of these terms in a standard form, small business contract for a designated period. Such legal developments are both promising and encouraging for consumers.

For more information

For more information on unfair contract terms contact one of our Principal Solicitors:

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