

Entire agreements clauses and misrepresentation claims

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The High Court has confirmed that an entire agreements clause can defeat a claim for misrepresentation.

Shortly after a share sale had taken place, the buyer brought a claim alleging that the seller had misrepresented the company's liabilities. The share purchase agreement had contained a standard entire agreement clause, saying the agreement replaced any previous discussions and set out the entire agreement between the parties. The High Court held that

the parties had intended to exclude misrepresentation claims given how wide the entire agreement clause was (it included contractual matters such as 'agreements', 'warranties' and 'promises', and less contractual matters such as 'assurances' and 'negotiations'). There was also provision for the seller to indemnify the buyer for misrepresentations of the company's liabilities, so there was already a contractual mechanism by which a matter like this would be resolved.

This decision does not sit well with others on entire agreement clauses and misrepresentation, and it is only a first instance judgment. Moreover, employment contracts do not provide for compensation for misrepresentation and so are arguably not analogous. Nevertheless, whilst this case cannot be relied on as a cast-iron rule, it does act as another reason why employers are well-advised to include entire agreement clauses in their contracts of employment.

NF Football Investments Ltd and another v NFCC Group Holdings Ltd and another [2018] EWHC 1346

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