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A bitter taste in the mouth of travel providers? The Court of Appeal's Decision in Wood v TUI Travel plc T.A. First Choice 2017 EWCA Civ 11

The Court of Appeal was recently asked whether a couple could recover damages pursuant to the implied condition in section 4(2) of the Supply of Goods and Services Act 1982, ("the 1982 Act"), for harm suffered whilst on an all-inclusive holiday.

In April 2011, Mr and Mrs Wood travelled to the Dominican Republic on holiday. Whilst there Mr Wood suffered acute gastroenteritis and had to be hospitalised for four days. It was accepted by His Honour Judge Worster that the couple only consumed food provided by the hotel during their stay. He concluded that the provision of food and drink to Mr and Mrs Wood constituted the supply of good and services under the 1982 Act and awarded them £24,000 in total compensation.

First Choice appeal this decision arguing that His Honour Judge Worster should have concluded that:

1. The contract in question was a contract for services and it could not simultaneously be a contract for goods.
2. No property in goods was transferred to Mr and Mrs Wood and they held no property in the food they consumed.
3. By virtue of either of the above there was no implied condition under Section 4(2) of the 1982 and that the correct implied term was one of "reasonable care and skill" under Section 13 of the Sale of Goods and Services Act.

First Choice focused on the second point submitting that a licence was granted to all-inclusive customers to consume food or drink. First Choice relied on *PST Energy 7 Shipping LLC and another v OW Bunker Malta Ltd and another [2016] AC 1034; [2016] UKSC 23.* This case

involved the sale of ship fuel. There was a clause stating that title in the fuel would not pass to the ship owners until it had been paid for in full and another clause stating that the ship owner could use the fuel from the moment of delivery. This was deemed not a contract for sale due to the retention of title clause which demonstrated there was no intention to transfer the property in the fuel.

On behalf of Mr and Mrs Wood, it was argued that a contract could be both a contract for goods and services simultaneously. First Choice could fulfil their obligations through others and whilst the Woods would have to show agreement to transfer of property in the food and drink they received, this would not have to be direct. Furthermore, the submission that the hotel maintained possession of the food until it was eaten (at which point it was destroyed) was unrealistic.

Lord Justice Burnett dismissed the appeal stating that he could not find *PST Energy* to be applicable citing the retention of title clause as a distinguishing factor. He reasoned that property in a meal, once ordered, transfers when the meal is served. Being in buffet form should not change this, i.e when the customer helps themselves to a portion property transfers. He also disagreed that this could make package tour operators the *de facto* guarantors for food they are contracted to provide all over the world. any potential claimants would still have to prove fault on the part of the holiday provider to be successful.

Lord Justice McFarlane and Sir Brian Leveson, agreed with the conclusions reached by Lord Justice Burnett.

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