



## LEGAL BRIEFING

### *Striking a balance*

#### *Gordon Russell (UK) Ltd v Peter Warwick*

Court of Appeal, LJ Hooper, LJ Moses, [2006] EWCA 1851

##### ***The Facts***

This was an appeal against a decision incorporating a term into a contract between Gordon Russell (UK) Ltd (“Gordon Russell”) and Peter Warwick (“Warwick”). Warwick had bought bespoke furniture from Gordon Russell. Gordon Russell had provided three quotations to Warwick. The third quotation included the term that the balance was due “on completion/sign-off by client” although the earlier two quotations had been accompanied by the standard conditions of sale. These standard conditions contained a provision that payment should be made at the end of the calendar month following the month of Gordon Russell’s invoice.

Warwick “accepted” the third quotation by signing the quotation. This was acknowledged on 25 October 2002, which referred to payment terms in the terms of the standard conditions. Gordon Russell subsequently claimed against Warwick for sums due following the installation of the furniture.

##### ***The Issue***

Which payment term applied to the contract between the parties? In other words, was the third quotation an invitation to treat or an offer that was capable of acceptance?

##### ***The Decision***

At first instance the judge had decided that the third quotation was an invitation to treat which, by Warwick signing, became an offer. This was then accepted by Gordon Russell by the acknowledgement in October. Therefore Warwick’s argument that the term providing that the balance of payment would not fall due until completion/sign-off was rejected. The Court of Appeal decided that this issue was a question of fact and the judge was entitled to reach the conclusion that he had. As there was no error of law in the judge’s decision, Warwick’s appeal was dismissed.

##### ***Comment***

Generally the submission of a tender/quotation is considered to be, in legal terms, an invitation to treat. That is, it does not by itself create a legally binding contract between the parties. Another example of documents generally considered to be invitations to treat are advertisements.

The Court of Appeal emphasised in their judgment that Gordon Russell should not allow ambiguities, such as what “completion/sign-off” meant, to appear in their contracts as it would “lay up a whole store of trouble for itself in the future”. In order to avoid disputes arising between parties, the contract terms should be clear and unambiguous.

***Charlene Linneman***  
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