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The Importance of having a **choice of law clause** in agency contracts

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A recent Court of Appeal decision has highlighted the importance of parties to an agency contract choosing which countries' law will govern the contract.

Timothy Lawler v Sandvik Mining and Construction Mobile Crushers and Screens Limited was originally heard by the High Court in 2012. Mr Lawlor was an Irish citizen who had operated as a sales agent for Sandvik in Spain.

In 2009 his agency contract was terminated and he claimed compensation in the English High Court under the Commercial Agents (Council Directive) Regulations 1993.

At the time Mr Lawlor became a sales agent in around 1994, Sandvik was a much smaller company. He had no written agency agreement, and no written employment contract in respect of his previous employment with the company either. As there was no agency contract containing an express choice of law, the first question to be determined by the court was which law was applicable to his agency contract: English law or Spanish law?

Where the parties have not included a written clause in their contract stating which law shall apply, it is possible for the court to find that they have, nevertheless, made an implied choice by looking at the contract as a whole.

Mr Lawlor argued that the parties had made an implied choice of English law. In order to establish this, he had to demonstrate with reasonable certainty that the parties had chosen English law to apply, but the High Court found that he had failed to do so. The court therefore went on to consider with which country the agreement was most closely connected, and found that this was Spain. Mr Lawlor appealed the decision on the basis that he had demonstrated with reasonable certainty that the parties had made an implied choice of English law. The Court of Appeal found that the evidence put forward by Mr Lawlor as to what the parties' intentions were at the time the contract was made was vague.

The arrangement was a casual and informal one and the parties had probably not really considered the choice of law at all. At the time the contract was made, Mr Lawlor was living in Spain and Spain was to be the centre of his activities. Accordingly, the Court upheld the High Court's decision that Mr Lawlor had not demonstrated with sufficient certainty that the parties had intended the contract to be governed by English law. Spanish law was to be applied.

Due to the differences in the way in which EU Member States calculate compensation under the Regulations or their equivalent legislation, Mr Lawlor would have received significantly more under English law than if Spanish law had been applied. The case was interesting because it was accepted by Sandvik that as a general rule, the company would seek to have its contracts governed by English law, and that it would be usual for an English principal to impose English law on its agency contracts.

The Court also found that Mr Lawlor's previous employment contract had probably been governed by English law, and that had the parties made a choice, it would in all likelihood have been English law. However, it was in Sandvik's interests for Spanish law to apply so as to lessen their liability to Mr Lawlor for compensation.

This decision underlines the need for parties entering into an agency contract to put proper written agreements into place, which include a choice of law clause, to give them the best protection in the event of a future dispute.

It is also very important for any parties whose agencies have started off on a causal basis, like Mr Lawlor's, to periodically review their arrangements and ensure that they have agreements in place which give effect to their intentions.

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