Lonham Group Ltd v. Scotbeef Ltd [2025] EWCA Civ 203

Ten years after the implementation of the Insurance Act 2015, the Court of Appeal ("CoA") addresses the fundamental issue of how warranties and representations should be characterised under the Act.

In *Lonham Group Ltd v. Scotbeef Ltd [2025] EWCA Civ 203* (see the judgment here), the CoA considered issues of representations and warranties of information provided by the insured to the insurer. The distinction between these has become pertinent under the "new" Insurance Act 2015 ("the 2015 Act").

The case provides guidance as to what constitutes a warranty for the purpose of Section 9 of the 2015 Act. This is important, because Section 9(2) stipulates that a representation may not be converted into a warranty by means of any provision of the insurance contract. Although the 2015 Act has been in force for almost a decade, the amount of authorities decided under it remains scarce. For that reason, the CoA gave great consideration to the historical context.

Background

The claim arose under a Marine Liability Policy between the insurer, Lonham Group Limited ("Lonham") and the warehouse operator, D&S Storage Limited ("D&S"), which provided liability cover. D&S first took out the insurance with Lonham in 2016, which was then renewed annually. The policy included cover for the warehousekeeper's legal liability.

At the time of inception, D&S was a member of the UK Warehousing Association ("the UKWA") and in the insurance application it declared that it was trading under the UKWA Terms and Conditions. Later, in 2017, D&S changed to become a member of a different trade association, namely the Food Storage and Distribution Federation ("the FSDF") and started trading under their standard Terms and Conditions instead. They did not notify Lonham of this change.

In 2017, D&S entered an agreement with Scotbeef Limited ("Scotbeef"). The agreement (which was brokered by a third party) was not recorded in a formal contract and there was no pre-contract correspondence directly between the contract parties. The first invoice issued to Scotbeef in February 2017 stated that the UKWA Terms and Conditions applied. D&S continued to issue invoices weekly, each time stating that the UKWA terms applied, until May 2017. At this point, they had become members of FSDF. Thereafter, the weekly invoices issued were amended to state that the FSDF Terms and Conditions applied.

In October 2019, Scotbeef discovered that some of their products had been contaminated by mould and following further inspections in April the following year, it transpired that 102,355 kgs of meat was damaged to the extent it was unsuitable for consumption. Consequently, Scotbeef issued proceedings against D&S seeking to recover their loss. D&S sought to rely on a time-bar contained within the FSDF Terms and Conditions, stipulating that claims had to be brought within 9 months.

This was tried as a preliminary issue, but the Judge found that the FSDF Terms and Conditions had not been properly incorporated. Shortly after the trial, D&S went into liquidation and was wound up.

Lonham was then added to the proceedings as a second Defendant pursuant to the Third Parties (Rights against Insurers) Act 2010. In its defence, Lonham pleaded that D&S had been in breach of warranty and that the insurance had, therefore, been invalidated.

The Policy

The insurance policy provided indemnity cover for the insured's *"legal liability for physical loss or damage to goods and/or merchandise and/or equipment in accordance with the National Association of Warehousekeepers Trading Conditions (N.A.W.K.) and/or the United Kingdom Warehousekeepers Association Conditions (U.K.W.A.) and/or Road Haulage Association Conditions and/or under the Assured's own trading conditions and/or other conditions as may be approved by Underwriters in writing."*

The main condition upon which insurers based their defence featured under the heading "*DUTY OF ASSURED CLAUSE".* This listed a number of conditions, including:

"It is a condition precedent to the liability of Underwriters hereunder:-

(i) that the Assured makes a full declaration of all current trading conditions at inception of the policy period;

(ii) that during the currency of this policy the Assured continuously trades under the conditions declared and approved by Underwriters in writing;

(iii) that the Assured shall take all reasonable and practicable steps to ensure that their trading conditions are incorporated in all contracts entered into by the Assured. Reasonable steps are considered by Underwriters to be the following, but not limited to same"

At the heart of the dispute was the interpretation of these policy terms. Lonham argued that D&S' failure to incorporate the trading conditions into its contract with Scotbeef breached the condition precedent, which would allow the insurer to avoid liability. On the other hand, Scotbeef argued that the terms provided to Lonham were representations, and not warranties, meaning that the insurer's liability could only be avoided if D&S had failed to make a fair presentation of the risk, rather than for a breach of warranty.

The High Court Judgment

At first instance, the High Court agreed with Scotbeef's interpretation. HHJ Kelly accepted that the three sub-clauses (i), (ii) and (iii) had to be read together, rather than as separate clauses.

The Court determined that the terms in question, including the declaration of trading conditions, constituted representations, rather than warranties. As representations, these terms were subject to the duty of fair presentation under Part 2 of the Insurance Act 2015. This meant that the insurer

could not avoid liability unless it could prove that D&S had failed to present the risk fairly in a deliberate or reckless manner.

The High Court also ruled that since D&S had not acted deliberately or recklessly in failing to incorporate the standard terms, the insurer could not avoid liability under the policy. Moreover, the Court found that Lonham had not met the transparency requirements laid out in Section 17 of the Insurance Act 2015. As a result, the claim could proceed, and the insurer was liable to indemnify Scotbeef.

The CoA Judgment

LJ Fraser gave leading judgment in the CoA. Given the lack of decided case law under the 2015 Act, much reliance was placed on the historical context of the Act and the background against which it had been implemented.

Prior to the 2015 Act, the Marine Insurance Act 1906 (the "1906 Act") governed insurance contracts. The 1906 Act was implemented at a time when insurers were much less sophisticated than today, and would not have significant knowledge of the risk being insured. The insured, on the other hand, would typically have intimate knowledge of the object being insured. This put the policyholder at an advantage and meant the insurer had to be able to rely on the information provided by the policyholder. In this environment, insurers came to rely on so-called "basis of contracts" terms, which would contain wording to the effect that the contract had been entered into on the basis of all the information provided by the policyholder. Thereby, insurers managed to turn each piece of information provided into a warranty with the effect that even trivial misinformation or misinformation that was subsequently remedied, could render the policyholder in breach of warranty with the catastrophic effect that the policy was void.

Therefore, the 2015 Act, inter alia, introduced provisions precluding insurers from incorporating terms which convert representations to warranties. It also prevents insurers from relying on breach of warranties in circumstances where the breach has been rectified before the occurrence of the insured peril.

As indicated by LJ Fraser, however, the change did not seek to eliminate the use of warranties in insurance contracts altogether. This remains an important tool for insurers to define the risk they accept to take on, as well as determining the appropriate price point for doing so.

With this in mind, the CoA found that HHJ Kelly had erred in construing the three sub-clauses together, as though the three of them had to be either warranties or representations. Whilst there was overlap in the sense that the three sub-sections each dealt with different permutations upon which D&S had traded and would trade in the future, there were also clear differences.

The CoA concluded that while sub-clause (i) was a representation, sub-clauses (ii) and (iii) were warranties and conditions precedent. These future warranties meant that D&S had to comply with specific conditions going forward, and their failure to do so constituted a breach of those warranties. The Court found that because D&S had not adhered to the conditions outlined in the policy, Lonham was entitled to avoid liability.

The Court also rejected Scotbeef's argument that the inclusion of warranties was an attempt to contract out of the provisions of the Insurance Act 2015. The Court stated that there was no attempt to subvert the Act's requirements regarding fair presentation of the risk. In this instance, the terms were clear, and Lonham's reliance on warranties did not violate the Act's provisions. As the insurer was not relying upon representations which it said had somehow become warranties, but rather clauses that had at all times been future warranties, the case fell to be determined pursuant to Section 10 of the Act, rather than Section 3.

CPB Comment

The judgment provides a very useful contribution to the post 2015 Act landscape. It emphasises that context is key when interpreting insurance contracts.

While the 2015 Act has introduced important reforms to insurance law, it has not completely eliminated the risks associated with warranties. Insurers and policyholders must carefully examine their contracts and understand the implications of the terms they agree to. This judgment serves as an important reminder of the continuing relevance of warranties in insurance law, and the need for careful review of terms at both the outset of the policy and at renewal.

The CoA's judgment also highlights the enduring need for clear, transparent contract terms that adhere to the principles set out in the 2015 Act. As insurers and policyholders continue to navigate the evolving landscape of insurance law, the case offers valuable guidance for both parties on how to approach the critical issue of warranties in future disputes.

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Any questions

If you have any questions regarding the issues raised in this article, please get in touch with Dean or Lisbeth.

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