



IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

BETWEEN:

- (1) Corbin & King Limited
- (2) Corbin & King Restaurant Group Limited
- (3) The Wolseley Restaurant Limited
- (4) The Wolseley Restaurant Property Limited
- (5) The Delaunay Restaurant Limited
- (6) The Delaunay Property Limited
- (7) The Colbert Restaurant Limited
- (8) Brasserie Zedel Property Limited
- (9) Brasserie Zedel Limited
- (10) Fischer's Restaurant Limited
- (11) The Bellanger Restaurant Limited

Claimants

and

Axa Insurance UK PLC

Defendant

Particulars of Claim



Policy of Insurance Number LC CMB 6978981

1. At all material times:

(1) The Claimants were and are the owners and operators of the restaurants, cafes and other establishments specified as Premises 1 to Premises 18 inclusive (*“the Premises”*) in the schedule to the policy of insurance number LC CMB 6978981 issued on 7 February 2020 and referred to in detail in paragraphs 2 to 6 below (*“the Policy of Insurance”*).

(2) The Defendant is an insurer and insured each of the Claimants on the terms of, and pursuant to, the Policy of Insurance.

2. By the Policy of Insurance, the Defendant insured each of the Claimants in respect of (inter alia) Business Interruption (*“BI”*). The period of the said insurance was from 12 November 2019 to 11 November 2020 inclusive.

3. The limits of the BI cover were as follows:

(1) Gross Profit was insured on an all risks basis for £67,643,191 with an uplifted sum of £90,188,666 with an indemnity period of 24 months.

(2) Additional Increased Costs of Working was insured on an all risks basis for £514,000 an uplifted sum of £685,316 with an indemnity period of 24 months.



(3) Tronc was insured on all risks basis for £5,951,627 with an uplifted sum of £7,935,304 with an indemnity period of 12 months.

(4) The total sum insured was £98,809,286.

(5) Rather than each of the Premises insured having a separate sum insured for gross profit, additional costs of working etc., the sums insured referred to in subparagraphs (1) to (4) above were “floating” annual aggregate limits in respect of BI, without a maximum sum insured per establishment,.

4. One of the coverages provided by the Defendant for BI was in respect of Denial of Access (Non Damage) (“NDDA”). This cover provided insurance for loss resulting from *“interruption or interference with the business where access to your premises is restricted or hindered for more than the franchise period shown in your schedule arising directly from:*

1 the actions taken by police or any other statutory body in response to a danger or disturbance at your premises or within a 1 mile radius of your premises.

2 the unlawful occupation of your premises by third parties

Provided that

1 the insurance provided by this cover shall only apply for the period starting with the restriction or hindrance and ending after 12 weeks during which time the results of the business are affected

2 our liability for any one claim will not exceed the limit shown in your schedule”

5. The cover limit for the NDDA cover was 100% of the sum insured or £250,000 whichever is less, with a franchise period of 2 hours, in respect of each case where access to any of the Premises was restricted.

Restriction and/or Hindrance of Access to the Claimants’ Premises



6. From 20 March 2020 to November 12, 2020 access to the each of Claimants' Premises was restricted and/or hindered as follows:

(1) The Claimants' Premises were forced to close on 20 March 2020 until they were permitted to reopen on July 4, 2020 (*"The March 2020 Closure"*)

(2) An enforced closing time of 10.00 pm was introduced in late September 2020. The consequence of this was that last orders had to be taken at 8.30 pm. Substantial trading time in the evening was lost (*"The September 2020 restriction"*)

(3) The Claimants' Premises were forced to close again on 5 November 2020 until they were permitted to reopen on December 2, 2020 (*The November 2020 Closure*).

7. The effect of the matters referred to in paragraph 6 above was to restrict access the Claimants' Premises either completely, or in the case of the 10 pm closure, for part of the normal opening hours.

The March 2020 Closure

8. The events leading up to the enforced closure of the restaurants from 20 March 2020 are set out in detail in the first instance judgment in FCA v Arch [2020] EWHC 2448, paragraphs 17 to 60. Events of particular significance are:

(1) The PM's instructions to restaurants and cafes to close on 20 March 2020 (paragraph 32 of the judgment);



(2) The Regulations of the 21 March 2020 made by the Secretary of State for Health pursuant to powers under the Public Health (Control of Disease) Act 1984 (paragraph 35 of the judgment) which provided for closure of restaurants and cafes:

- i. Regulation 3 of these Regulations provided that contravention without a reasonable excuse was an offence, punishable on summary conviction by a fine.
- ii. Regulation 4(1) provided that a person designated by the Secretary of State may take action as necessary to enforce a closure or restriction imposed by the Regulation.

(3) On 26 March 2020, the 21 March 2020 Regulations were replaced by the 26 March Regulations (paragraph 44 et seq of the judgment):

- i. Regulation 4 again legislated for the closure of restaurants and cafes (specifically referred to in part 1 of Schedule 2 of the 26 March Regulations).
- ii. Regulation 8(1) provided “relevant persons” with the power to take such action as necessary to enforce any requirements imposed by (inter alia) Regulation 4.
- iii. “Relevant person” was defined in Regulation 8(12)(a) to include a constable, a police community support officer or a person designated by a local authority or the Secretary of State.
- iv. Regulation 9(1) provided that a contravention of (inter alia) Regulation 4 without reasonable excuse was an offence. Such offences were punishable on summary conviction by a fine (Regulation 9(4)).
- v. Regulation 10(1) provided “authorised persons” with powers to issue fixed penalty notices.



- vi. “Authorised person” was defined to include a constable, a police community support officer or a person designated by the Secretary of State.
- vii. Regulation 11 provided that the Crown Prosecution Service, and any person designated by the relevant local authority or Secretary of State, could bring proceedings for an offence under the regulations.

(4) As the judgment records at paragraph 54, on 4 April 2020, the Secretary of State for Health and Social Care designated local councils, including district councils, county councils and London borough councils, as “relevant persons” and “authorised persons” under the enforcement provisions in the 26 March Regulations. Specifically, local councils were empowered to take action and issue fixed penalty notices under Regulations 8 and 10 for the enforcement of Regulations 4 and 5 . They were also empowered under Regulation 11 to bring proceedings for an offence under Regulations 4 and 5 .

The September 2020 Restriction

9. The Claimants’ premises reopened on 4 July 2020. However, on 24 September 2020, the Health Protection (Coronavirus, Restrictions)(No. 2) (England) (Amendment) (No. 5) Regulations 2020 provided that:

“4A.—(1) A person responsible for carrying on a restricted business or providing a restricted service (“P”) must not carry on that business or provide that service during the emergency period between the hours of 22:00 and 05:00.....”

The consequence was that each of the Claimants’ premises had to close by 10.00 pm. In practice, last orders were at 8.30 pm.

The November 2020 Closure



10. On 31 October 2020, the PM announced a national lockdown to take effect from 5 November 2020. The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 came into force on 5 November 2020. Regulations 15 and 16 provided for the closure of restaurants and cafes. The enforcement of the Regulations was dealt with in Regulation 19:

“(1) A relevant person may take such action as is necessary to enforce any restrictions imposed by these Regulations.

(2) A relevant person may give a prohibition notice to a person if the relevant person reasonably believes that—

(a) the person is contravening a restriction or requirement imposed by regulation 15, 16 or 18, and

(b) it is necessary and proportionate to give the prohibition notice for the purpose of preventing that person from continuing to contravene the restriction or requirement. “

A “relevant person” was defined:

““relevant person” means—

(12) a constable,

(ii) a police community support officer,

(iii) subject to paragraph(12), a person designated by a local authority for the purposes of this regulation, or

(iv) a person designated by the Secretary of State for the purposes of this regulation.

(12) A local authority may designate a person for the purposes of this regulation only in relation to a restriction or requirement imposed by Part 4¹.

Actions Taken by the Police or any other Statutory Body

11. The restriction of access to each of the Claimants’ premises arose directly from actions taken “*any other statutory body*” as set out in the NDDA cover since it was imposed by Regulations laid before Parliament by the Secretary of State pursuant to statutory powers granted to him by the Public Health (Control of Disease) Act 1984 in circumstances where the Secretary of State was of the opinion that, by reason of urgency, it was necessary to make the instrument without a draft having been laid before, and approved by a resolution of, each House of Parliament.

¹ Regulations 15 and 16 are in Part 4



12. Further or alternatively, the restriction of access to each of the Claimants' premises arose directly from actions taken "*police or any other statutory authority*" as set out in the NDDA cover since the restrictions set out in the Regulations were enforceable and enforced by the police and the local authority (which was also "*any other statutory body*" as set out in the NDDA cover). As the PM said in his statement of 23 March 2020:

"If you don't follow the rules the police will have the powers to enforce them, including through fines and dispersing gatherings."

"Danger" within a 1 mile radius of the Premises.

13. The restrictions set out in the Regulations were imposed in response to a danger at each of the Claimants' premises or within a 1 mile radius of each of them, for the following reasons:

- (1) Covid-19 is a danger to life and health. The Regulations which mandated the closure of the Claimants' premises were passed in response to the dangers posed by Covid 19 by seeking to prevent or, at the least minimise, indoor contact between different households.
- (2) At all material times from at least early March 2020, there were actual or threatened cases of Covid-19 which constituted dangers to life and health at each of the Claimants' premises insured by the Policy or within a 1 mile radius of each of them.
- (3) The "*danger*" has to be present at, or within a 1 mile radius of, each of the Claimants' premises, but it is not a requirement of the NDDA clause that it should be exclusively present within that area.



(4) The passing of the Regulations which led to the restriction of access to each of the Claimants' premises, and the consequent business interruption, was caused by the danger to life and health posed by Covid-19, which was constituted by every single actual or threatened case of Covid-19 at each of the Claimants' premises and/or within one mile of the each of them, as well as other actual or threatened cases of Covid-19 elsewhere in the UK, each of which was of equal causal potency and a separate and effective cause.

Individual "dangers" taken together constituted the emergency which forced the government to act:

- i. Between March 20-21, 2020 to July 4, 2020, each of the Claimants' premises was closed because of a severe and dangerous actual and anticipated escalation of the number of cases of Covid-19 and the deaths and serious illness caused by it.
- ii. The danger posed by an increase in cases caused by Covid-19 led to an order on 24 September 2020 that each of the Claimants' premises should close by 10.00 pm.
- iii. On 31 October 2020, the PM announced a national lockdown to take effect from 5 November 2020, which caused each of the Claimants' premises to close. This was prompted by the danger posed by a further upsurge in cases. This lockdown lasted until 2 December 2020.

Liability of the Defendant

14. As stated in paragraph 4(5) above, rather than each premises having a separate sum insured for gross profit, additional costs of working etc., the sums insured referred to in paragraphs 4(1) to 4(4) above, were aggregate limits, with no



maximum sum insured per establishment. Accordingly each of the insured premises was insured for BI subject to the aggregate floating limits referred to in paragraphs 4(1) to 4(4) above, and subject to the particular limit of £250,000 for NDDA cover, in respect of each case where access to any of the Premises was restricted as set out in paragraph 5 hereof.

15. Further NDDA coverage was in respect of:

“interruption or interference with the business where access to your premises is restricted or hindered for more than the franchise period shown in your schedule.”

Each premises was separately insured and the interruption or interference with the business in each of Premises, caused by the restriction of access to each of those individual Premises, founded a separate claim.

16. The BI cover provided that the *“indemnity period”* in respect of each claim was:

“the period during which the business is affected starting on the date the incident occurred and ending not later than the maximum indemnity period.”

17. The NDDA cover expressly provided:

“the insurance provided by this cover shall only apply for the period starting with the restriction or hindrance and ending after 12 weeks during which time the results of the business are affected”

18. The restriction of access to the each of Premises constituted a different

“incident”. Cover depended on the presence of a *“danger”* at each Premises or within a radius of one mile of each Premises. Each of the Premises and the relevant one mile radius was different in each case. Accordingly, the restriction of access to each of the Premises founded separate claims on a per premises basis, each with its own limit of £250,000.



19. The March 2020 closure, the September 2020 restriction and the November 2020 closure, each constituted separate restrictions of access to each of the Premises and/or incidents, each with its own limit of £250,000 per premises affected.

20. In breach of the policy of insurance referred to in paragraph 2 hereof, the Defendant has refused to provide the indemnity to which the Claimants are entitled, and by letter dated 20 November 2020 has wrongfully rejected the Claimants' claims.

AND THE CLAIMANTS' CLAIM

- (1) A declaration that the Defendant is bound to indemnify each Claimant in respect of each of the Claimants' premises up to a maximum amount of £250,000 in respect of each of the March 2020 closure, the September 2020 restriction and the November 2020 closure; alternatively
- (2) A declaration that the Defendant is bound to pay damages in respect of its wrongful failure to indemnify each Claimant in respect of each of the Claimants' premises up to a maximum amount of £250,000 in respect of each of the March 2020 closure, the September 2020 restriction and the November 2020 closure.
- (3) Costs.

Jeffrey Gruder QC



Statement of Truth

21. The Claimants believe that the facts stated in these Particulars of Claim are true.

The Claimants understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

22. I am duly authorised to sign these Particulars of Claim on the Claimants' behalf.

Signed: _____

Name: Roger Franklin

Position: Partner, Edwin Coe LLP

Date: 22 April 2021