# Takdata Interconnections Ltd v Amphenol Ltd [2009] All ER (D) 208 (Nov)

[2009] EWCA Civ 1209

Court of Appeal, Civil Division

EnglandandWales

Pill, Dyson and Longmore LJJ

19 November 2009

**Contract – Offer and acceptance – Counter-offer – Terms and conditions on which contract made – Defendant selling equipment to claimant – Claimant giving purchase order stating that order to be on claimant's own terms and conditions – Defendant giving acknowledgement with its own terms and conditions on it – Whether contract concluded on claimant or defendant's terms.**

**Abstract**

*Contract – Offer and acceptance. The Court of Appeal, Civil Division, held that there would be cases when one had to glean from the documents passing between the parties and from their conduct whether an agreement had been reached. However, the traditional offer and acceptance analysis had to be adopted unless the documents passing between the parties and their conduct showed that their common intention was that some other terms had been intended to prevail.*

**Digest**

The judgment is available at: [2009] EWCA Civ 1209

The parties were part of a chain of suppliers to Rolls Royce as ultimate purchasers. Rolls Royce needed engine control systems for installation in their aero engines. They bought such systems from G (a company), which bought cable assembly items such as cable harnesses for internal wiring from the claimant company. In order to manufacture those harnesses, the claimant acquired connectors from the defendant. The contractual obligations in relation to any particular equipment bought from the defendant company began with a purchase order generated by the claimant. That stated that the purchase was to be on the claimant's own terms and conditions. It contained a delivery date which was 26 weeks from the date of the order. The claimant brought proceedings against the defendant alleging that certain connectors had been delivered late and were not fit for the purpose or of merchantable quality. It claimed that the contract of purchase was on the terms of their purchase orders. The defendant disputed that by saying that the

contracts were on the terms of its acknowledgement of the purchase orders and that those terms excluded or limited their liability for any breaches of contract. A preliminary issue fell to be determined as to whose terms applied. The judge found that the defendant had acknowledged the purchase orders by sending an acknowledgement to the claimant. The acknowledgement, however, stated that the defendant's terms and conditions were to apply and so the judge found that on the traditional offer and acceptance analysis, if no further documentation had passed between the parties and if the claimant had taken delivery of the connectors, the contract would have been on the terms of the defendant's acknowledgement. The judge state that the context of the parties' relationship was important. However, the judge held, finding for the claimant, that it had never been intended that the defendant's terms should apply because the parties had always intended that the claimant's terms were to apply. The defendant appealed against that decision.

The issue arose as to whether the judge had correctly analysed the overall contractual relationship between the parties and whether he had been right to come to the conclusion that he had.

The appeal would be allowed.

(1) There would be cases when one had to glean from the documents passing between the parties and from their conduct whether an agreement had been reached. However, the traditional offer and acceptance analysis had to be adopted unless the documents passing between the parties and their conduct showed that their common intention was that some other terms had been intended to prevail (see [11], [22] and [39] of the judgment).

(2) The question of whose conditions were intended to apply had to be determined objectively on the basis of the proper interpretation of the documents which comprised the contract viewed objectively in their context. The focus had to always be on what the parties had to be taken objectively, to have intended at the time when the contract was made (see [30], [34] and [39] of the judgment).

The judge's reasoning was not satisfactory. The use of the word 'would' no less than four times showed that the judge had concentrated more on what he thought ought to have happened between the parties rather than (as he ought to have done) on what had happened. It was only by ascertaining what had happened between the parties, that it was possible to ascertain their objective intention. However, the fact that the judge's reasoning was open to criticism did not mean that his ultimate conclusion was wrong and the question remained whether the factors on which he had relied were individually or cumulatively able to displace the traditional offer and acceptance analysis. Although the judge had been right to say that the context of the parties' relationship had been very important, the factors on which he had relied had not justified his conclusion. Accordingly, the circumstances of the case were not sufficiently strong enough to displace the result which a traditional offer and acceptance analysis would dictate, namely that the parties had contracted on the terms of defendant's acknowledgement (see [12], [16], [21]-[22] and [39] of the judgment).

*Butler Machine Tool Co Ltd v Ex-Cell-O Corpn (England) Ltd* [1979] 1 All ER 965 explained.

Alastair Tomson (instructed by Howell-Jones) for the claimant.

Malcolm Chapple (instructed by Nelsons) for the defendant.
Marie-Therese Groarke Barrister.

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