In the Court of Appeal (Civil Division)

Hathaway Technology Limited

-v-

Picard Industries Limited

Hathaway Technology are a relatively new manufacturer in the fiercely competitive field of Internet technology. In May 1999, their Research and Development department prototyped a new device called "The Whizzkid" designed to increase the speed and sophistication of Internet access by over one hundred times. Hathaway Technology had high hopes that their new invention would boost their flagging market position and enable them to internationalise their marketing strategy.

Having previewed their innovation at a trade fair, Hathaway Technology were approached by Picard Industries with an offer to help manufacture key components in the design of "The Whizzkid".

After a period of discussions and negotiation, Picard Industries faxed Hathaway Technology on Monday the 8th July 1999:

"Following on from our last meeting on 4th July 1999, we would like to formalise our offer to manufacture Components 5X, 6C and 8Z for "The Whizzkid" for a period of three years, starting immediately. As stated in the terms discussed at our final meeting, we will produce four thousand component parts for the first three months, to be delivered at the end of this period, and thereafter, to produce five thousand component parts a month until the end of the contract term. As an exciting new project for both ourselves and Hathaway Technology, we would like to have your agreement to the terms discussed by the end of this working week."

On Friday afternoon, Hathaway Technology decided to accept Picard Industries' offer. Unfortunately, the office fax machine was broken, so the Managing Director phoned Picard Industries. While there was no answer, there was an answering machine. Therefore, at 5.30 p.m. on Friday afternoon, Hathaway Technology purported to accept Picard Industries' offer on the following terms:

"Hathaway Technology is delighted to accept your offer to manufacture Components 5X, 6C and 8Z of "The Whizzkid" on the terms discussed at our last meeting. As all the relevant papers are already with you, we trust that work will commence immediately."

On Monday 15th July 1999, Hathway Technology entered into an exclusive distribution contract for "The Whizzkid" with Parrish Distributors plc.

After the three months specified, Hathaway Technology contacted Picard Industries to complain about the failure to deliver the twelve thousand components specified in their agreement. Picard Industries denied the existence of any agreement.

Hathaway Technology has experienced difficulty in finding an alternative components manufacturer in such a short time and Parrish Distributors plc are threatening to sue for breach of contract

Hathaway Technology commenced proceedings against Picard Industries for breach of contract, and in his judgement, Ryker J. made the following findings:

(I) Both the decision in *Brinkibon Ltd. -v- Stahag Stahl und Stahlwarenhandels GmbH* [1983] 2 AC 34 and academic argument lead me to conclude that the circumstances of the negotiations and of the parties were such that Hathaway Technology had done all they could to accept the offer, and that their acceptance was binding upon the answering machine's receipt of the message; but that

(II) While proof of breach by Picard Industries entitles Hathaway Technology to damages for the value of the contract, the question of consequential loss is more problematic. After reviewing the somewhat conflicting line of authorities cited to me by counsel, it seems to me that the respected authority of *Victoria Laundry (Windsor) Ltd. -v- Newman Industries Ltd.* [1949] 2 KB 528 precludes the plaintiff from recovering for the loss suffered from being unable to fully fulfil their contractual obligations to Parrish Distributors plc.

Both the plaintiff and the defendant have been given leave to appeal to the Court of Appeal. They appeal on the following points of law:

The first appellants, Picard Industries Ltd., appeal on the basis that:

1. The answering machine message left by Hathaway Technology Ltd. did not constitute a valid acceptance of the contract.

The second appellants, Hathaway Technology Ltd., appeal on the basis that:

2. The contract being a valid one, that Ryker J. erred in law by concluding that the consequential loss suffered by Hathaway Technology Ltd. as a result of Picard Industries Ltd.'s breach were of a type too remote in law to be recoverable.