**Arnold v. Britton and Others [2015] UKSC 36**

**Case Brief**

I. Facts

Arnold (Respondent) is the lessor of the Oxwich Leisure Park, a caravan park in South Wales. Britton and others (Appellants) are some of the lessees of holiday chalets at the Park. Each lease had a term of 99 years.

The dispute regards the covenants of Clause 3 (2) of the contracts, which provided that the lessor would provide services to the Park (such as the maintenance of the roads and removal of garbage) and in exchange the lessees would have to pay a fixed annual service charge of £90 + 10% increase on the previous year. However, other leases had a different writing/version of the same clause. For example, one group of leases established that the increase should occur “every subsequent three-year period” and that the payment should be “a proportionate part of the expenses”.

Consequently, the lessees were paying very different sums for the service provided by the lessor. According to them, not only was the amount paid higher than that paid by other lessees, but it was also substantially more than the actual worth of the services provided. In this sense, they argued that the clause should be interpreted as requiring a charge proportional to the costs of the services provided. Moreover, they contained/contended that the clause implicitly established a cap of $90 in the first year of the term with an increase every year of 10% on a compound basis.

On the other hand, the Respondent understood that the clause obliged the lessees to pay a fixed yearly sum that would increase 10% every year and that no consideration should be taken to the proportionality between the amount paid and the actual costs of the services.

II. Procedural History

The lessor filed a lawsuit at the Swansea County Court in order to have the clause interpreted in its/his favor, but this Court ruled in favor of the lessees. The lessor appealed to the Cardiff District Registry and its appeal was granted. The lessees then appealed the decision to the Court of Appeals and once again the Court ruled in favour of the lessor. The lessees then appealed to the Supreme Court of the UK.

III. Issue

The issue is whether Clause 3 (2) should be interpreted in favor of the Respondent, which would mean that the clause obliged the lessees to pay a fixed yearly sum that would increase 10% every year, with no respect to proportionality to the service’s worth.

IV. Judgment

The Supreme Court ruled in favor of the Respondent. The winning judgment was delivered by Lord Neuberger, with whom Lord Sumption and Lord Hughes agreed. Lord Hodge gave a concurring judgment and Lord Carnwath, a dissenting one.

V. Reasoning

The Court understood that the interpretation of the contracts requires the identification of the parties’ intention, which would be done by the reasonable third person test. Commercial common sense should also be considered, but it does not prevail over the language of the provision. Namely, the disastrous consequences that the agreement could have brought to one of the parties does not change the meaning of the contract, since a fact that happened after the contract was made cannot change its language. Regarding clause 3 (2), the Court stated that its natural meaning is clear – the clause’s meaning is that the lessee should pay an annual charge that consists in a fixed sum with a fixed annual increase.

As for the other judgments, Lord Hodge gave a concurring judgment, arguing that the interpretation of contract should not be an exclusively literal exercise; external factors should also be considered. In this case, however, all approaches lead to the dismissal of the case. Lord Carnwath delivered a dissenting judgment, which was based on the argument that there is an ambiguity in the clause.

**Personal remarks**

My work regarding the presentation was focused on the substantial aspects of the case (the decisions). I concentrated on Lord Neuberger’s and Lord Carnwath’s judgments. Firstly, I read and summarized their judgments in order to fully comprehend their arguments. Then, I compiled the main points of the opinions into bullet points to present them to the class.

I was also responsible for making the Power Point presentation. With my colleagues’ help, I put together all the information summarized by us. Finally, I inserted the information in the Power Point. Together with them I also reviewed the presentation after it was finished.

During this work, I could observe a few points. First, as the content of the matter being discussed was very difficult, I had to do some research in different websites to confirm that what I understood was correct. Not only was the wording used by the Lords challenging, but also the subject of the case was quite hard to understand, as it involved the interpretation of a strangely drafted clause and circumstances that were unfamiliar to me (for example, before reading the clause I did not know what a caravan park was).

Additionally, another observation that came to my mind was that this case would have been decided in a very different way in my country, Brazil. As I live in a protectionist country, in which the Judiciary focuses on deciding in ways to protect the parties deemed more vulnerable, I believe that the Court would have decided in favour of the appellants. Namely, when interpreting the contract, they would have considered the consequences of deciding in one way or another. As the final decision reached by the UK Supreme Court (in favor of the Respondent) could be burdensome to the appellants, I believe that the Brazilian Court would have based their judgment on that fact.   
 With that being said, some points regarding the material aspects of the case also caught my attention. I believe that this case could be seen in a few years as a landmark case when it comes to the interpretation of commercial contracts. Besides stating an important argument, which is that subsequent developments of a contract – even disastrous ones – could not change the meaning of its language, the Court also established that the exercise of interpretation requires attention not only to the literal language, but also to the other factors such as commercial common sense and the intention of the parties.