

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PASHA S. ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendant.

Master File No. 09-cv-118 (VM)

This Document Relates To: All Actions

Affidavit of Mark A C Diel

Tab 18

SUPPLY OF SERVICES (IMPLIED TERMS) ACT 2003



**BERMUDA
2003 : 9**

SUPPLY OF SERVICES (IMPLIED TERMS) ACT 2003

[Date of Assent: 2 June 2003]

[Operative Date: 8 September 2003]

WHEREAS it is expedient to provide for implied terms to be imported into contracts for the supply of services:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Citation

1 This Act may be cited as the Supply of Services (Implied Terms) Act 2003.

Interpretation

2 (1) In this Act —

"contract for the supply of a service" means a contract under which a person ("the supplier") agrees to carry out a service, but does not include a contract of service or apprenticeship;

"the Minister" means the Minister responsible for consumer affairs.

(2) A contract is a contract for the supply of a service for the purposes of this Act whether or not goods are also —

(a) transferred or to be transferred; or

(b) bailed or to be bailed by way of hire,

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under the contract, and whatever the nature of the consideration for which the service is to be carried out.

Implied term about care and skill

3 In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.

Implied term about time for performance

4 (1) Where, under a contract for the supply of a service by a supplier acting in the course of a business, the time for the service to be carried out is not —

- (a) fixed by the contract;
- (b) left to be fixed in a manner agreed by the contract; or
- (c) determined by the course of dealing between the parties;

there is an implied term that the supplier will carry out the service within a reasonable time.

- (2) What is a reasonable time is a question of fact.

Implied term about consideration

5 (1) Where, under a contract for the supply of a service, the consideration for the service is not —

- (a) determined by the contract;
- (b) left to be determined in a manner agreed by the contract; or
- (c) determined by the course of dealing between the parties;

there is an implied term that the party contracting with the supplier will pay a reasonable charge.

- (2) What is a reasonable charge is a question of fact.

Contracting out

6 The terms implied by this Act in a contract for the supply of a service shall have effect notwithstanding any agreement, course of dealing between the parties or usage.

Exemption

7 (1) The Minister, may by order published in the Gazette, provide that one or more of sections 3 to 5 shall not apply to services of a description specified in the order.

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(2) An order under subsection (1) shall be subject to the negative resolution procedure.

Commencement

8 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette