

THE HIGH COURT

COMMERCIAL

[2024] IEHC 359

RECORD NUMBER 2023/5909P

BETWEEN

MICHAEL FLATLEY

PLAINTIFFS

AND

AUSTIN NEWPORT GROUP LIMITED

FIRST NAMED DEFENDANT

AND

DAVID CUSHION

SECOND NAMED DEFENDANT

AND

MS AMLIN UNDERWRITING LIMITED

THIRD NAMED DEFENDANT

AND

AXA XL UNDERWRITING AGENCIES LIMITED

FOURTH NAMED DEFENDANT

AND

HAMILTON MANAGING AGENCY LIMITED

FIFTH NAMED DEFENDANT

AND

HISCOX SOCIETE ANONYME

SIXTH NAMED DEFENDANT

JUDGMENT OF Mr Justice Twomey delivered on the 14th day of June, 2024

INTRODUCTION

1. A businessman engages a specialist insurance broker to negotiate an insurance policy for his home, which he spent over €30 million renovating. Under the terms of the insurance policy, the businessman agreed to pay an annual premium of €69,285 for the insurance cover. He also agreed that, if he had a dispute over the terms of the policy, then any such dispute would be resolved by arbitration. He now has a dispute with the insurance company regarding a claim he wants to make under the policy.

2. The question in this case is whether the businessman can litigate that dispute, even though he agreed to arbitration. The plaintiff (“**Mr. Flatley**”) believes that he can. He does so by claiming that he was a consumer when agreeing the terms of his home insurance policy and that referring disputes to arbitration, as distinct from litigation, amounts to an unfair term in a consumer contract and so is not binding on him. Accordingly, he believes that he should be

entitled to *litigate* his dispute with the provider of insurance cover, the sixth defendant (“**Hiscox**”), despite his agreement to arbitrate.

3. For this reason, Mr. Flatley does not see this as a case where *he* is seeking to avoid honouring his agreement with Hiscox. Rather, Mr. Flatley makes a sworn statement that *Hiscox* is seeking to ‘*avoid their responsibility to [him]*’ in the courts, by insisting that Mr. Flatley honour his agreement to refer the dispute to arbitration.

4. The key issue for this Court therefore is whether an agreement to arbitrate, as distinct from an agreement to litigate, is an unfair term in a consumer contract, such as to entitle Mr. Flatley avoid the consequences of his agreeing to arbitrate under the terms of his policy with Hiscox.

BACKGROUND

5. Mr. Flatley is a very successful businessman, as is clear from the fact that he describes himself as a professional dancer, choreographer, creator and producer with an address in Monte Carlo, who has filled some of the largest venues worldwide, who has launched a whiskey brand and who has spent €29 million on renovating his home in Ireland at Castlehyde in County Cork (“**Castlehyde**”).

6. Although a very successful businessman, Mr. Flatley relies, as he is entitled to, on the fact that in obtaining insurance cover for his home in Ireland, he was acting as a ‘*consumer*’ in his dealings with Hiscox. In particular he claims that the arbitration clause (“**Arbitration Clause**”), which he agreed to, in his policy of insurance 5187180 (“**Policy**”) with Hiscox, is an unfair term. Accordingly, he relies on s. 129(1) the Consumer Rights Act 2022 (“**2022 Act**”), which provides that consumers are not bound by unfair terms in consumer contracts.

7. The underlying dispute between the parties, which has to be resolved by arbitration or litigation, concerns allegedly defective work done to Castlehyde which gave rise to a claim by Mr. Flatley in the sum of €30 million against his insurer, Hiscox.

8. As this insurance claim is being disputed by Hiscox, Mr. Flatley issued proceedings against Hiscox in the Commercial Court. However, this judgment concerns Hiscox's application to have the court proceedings issued by Mr. Flatley stayed, and the dispute instead referred to arbitration, in light of the Arbitration Clause in the Policy.

Negotiation of the Policy

9. Mr. Flatley engaged an insurance broker, AON plc ("AON") to find insurance for his house at Castlehyde. Indeed, it is not surprising that Mr. Flatley would engage specialist insurance brokers, such as AON, to negotiate his insurance policy. This is because even though one is dealing with a 'home insurance' policy, it is no ordinary home insurance policy. This is clear from the fact that Mr. Flatley gave sworn evidence that he spent €29 million renovating his home at Castlehyde and also the fact the annual premium for this policy is €69,285.

10. However, despite the fact that entering a policy for this amount of money would be a significant financial transaction for the average person, and the fact that Mr. Flatley engaged a specialist insurance brokerage to negotiate the insurance policy for him, Hiscox are not disputing that Mr. Flatley was acting '*as a consumer*', when he entered that policy, for the purposes of the 2022 Act. This is because when negotiating the insurance policy for his home in Ireland, *albeit* through his agent AON, Mr. Flatley was acting '*for purposes that are wholly or mainly outside that individual's trade, business, craft or profession*' (s. 2(1) of the 2022 Act). As already noted, the business of Mr. Flatley is not negotiating insurance policies, but it is that of dancer, choreographer etc.

11. AON, on behalf of Mr. Flatley, sought the insurance terms from Hiscox in October 2019 and on 14 November 2019, some four weeks after receiving those terms, which included the

Arbitration Clause, Mr. Flatley entered into the Policy with Hiscox. Mr. Flatley does not dispute that he agreed to the terms of the Policy. However, he disputes that he has to honour his agreement to arbitrate his dispute with Hiscox, under the terms of the Arbitration Clause, as he maintains that it is an unfair term.

The core claim of unfairness made by Mr. Flatley

12. The primary reason Mr. Flatley claims, through his counsel, that the Arbitration Clause is unfair and so not binding on him is because the clause does not make it clear that Mr. Flatley would not have to *'bear his [...]own costs of any arbitration'*. In making this novel argument, he relies on s. 132(1)(e) of the 2022 Act, in which this expression is used (and which is set out in full below).

13. Mr. Flatley is interpreting s. 132(1)(e) to claim that to be *'fair'*, an arbitration clause should make it clear that the arbitration would be *at no cost to him*, i.e. if he loses the arbitration, he would not be liable for Hiscox's legal costs *and* Hiscox would have to pay Mr. Flatley's lawyers (for bringing an unmeritorious claim against Hiscox).

14. It is also relevant to note that Mr. Flatley's interpretation of s. 132(1)(e) would have far-reaching consequences for every consumer arbitration in Ireland. This is because, on Mr. Flatley's interpretation of s 132(1)(e), traders who are pursued by consumers in arbitration would have to pay the consumer's lawyers their legal fees, even where the arbitrator determines that the consumer's claims were completely without merit. Therefore, his interpretation of s. 132(1)(e) requires one to take the view that the Oireachtas, when passing the 2022 Act, decided, as a matter of policy, that in consumer arbitration, lawyers should, in effect, be incentivised to bring unmeritorious claims against traders.

15. If Mr. Flatley's interpretation is correct, it would mean that a clause providing for the arbitration of disputes between consumers and traders is *only* valid if it provides that the traders

are obliged to pay the lawyers, acting for consumers, for bringing unmeritorious claims - a reversal of the situation when such claims are brought through litigation.

ANALYSIS

16. On 17 January 2024, Mr. Flatley issued a motion to join Hiscox to his proceedings against the first to fifth defendants, and on 28 February 2024, Hiscox issued this motion to stay the proceedings in light of the Arbitration Clause, which it has with Mr. Flatley.

17. Hiscox is applying to this Court to refer the dispute to arbitration under Article 8(1) of the UNCITRAL Model on International Commercial Arbitration (which has the force of law in Ireland under s. 6 of the Arbitration Act 2010). Article 8(1) states:

“A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed”.

18. As previously noted, Mr. Flatley argues that the Arbitration Clause is an ‘*unfair*’ term in a ‘*consumer contract*’, pursuant to the 2022 Act, and so is not binding upon him as a consumer. The Policy was first taken out in 2019 and renewed each year since 2019 until its most recent renewal on 14 November 2023, when the policy was entered into from that date to 13 November 2024 (“**2023/2024 Renewal**”).

19. The Arbitration Clause, which has remained the same in all renewals of the Policy, states:

“This insurance is governed by the laws of Ireland. Any dispute arising out of or relating to this insurance, including over its construction and validity, will be referred to a single arbitrator in Dublin in accordance with the Arbitration Act then in force. The arbitrator

will be an experienced member of the Irish Bar. If agreement cannot be reached on a suitable arbitrator, one will be chosen by the Chairman of the Bar Council of Ireland.”

20. In resisting this application to refer the dispute to arbitration, Mr Flatley relies on s. 129(1) of the 2022 Act which states:

“An unfair term of a consumer contract is not binding on the consumer”

Hiscox does not dispute that Mr. Flatley is a consumer and that the Policy is a consumer contract. In claiming that the Arbitration Clause in the Policy is an unfair term, Mr. Flatley relies on s. 132(1)(d) but particularly s. 132(1)(e) of the 2022 Act, which this Court was told has not been subject to court interpretation to date.

Section 132(1) of the 2022 Act

21. This section, insofar as relevant, states that:

“Subject to *subsections (2) and (3)*, a term of the consumer contract shall always be unfair if its object or effect is- [...]

(d) exclude or hinder a consumer’s right to take legal action or exercise a legal remedy, including by requiring the consumer to take a dispute to an arbitration procedure that is not governed by law,

(e) to require a consumer to pay his or her own costs in respect of any arbitration”

A consumer must never pay the legal costs of an arbitration even if he loses?

22. The thrust of Mr. Flatley’s claim is that the reference to paying ‘his own costs’ in s. 132(1)(e) means that for an arbitration clause in a consumer contract to be fair, the arbitration must *never* be at a cost to a consumer, such as Mr Flatley. Thus Mr. Flatley is claiming that he

should never be liable for his own legal costs, and/or Hiscox's legal costs, even if he were to lose the arbitration.

23. Mr. Flatley makes this claim, even though if he were to pursue his claim against Hiscox in litigation, which he clearly wants to do instead (since he has issued these proceedings), he will almost certainly be liable for Hiscox's legal costs and his own legal costs *if* he loses (on the basis of the 'loser pays' principle applicable in litigation).

24. Mr. Flatley's counsel argued that, once the 2022 Act came into force, Hiscox should have amended the Arbitration Clause to make it clear to Mr. Flatley that he would not have to 'bear his own costs'. It is important to point out the real-life effects of the interpretation which Mr. Flatley is proposing. It would mean that a consumer could decide to institute baseless or groundless arbitration proceedings against a trader, and the trader would have to discharge the trader's own legal costs for winning the arbitration, but also pay the consumer's legal costs for bringing the baseless/groundless claim.

25. If this was what the Oireachtas intended by s. 132(1)(e), this would appear to amount to encouragement for lawyers to take groundless and baseless arbitration claims on behalf of consumers, for the simple reason that they *would always be paid for doing so*, since their legal fees would be covered by the trader, regardless of how unmeritorious the claims were.

26. In view of the important role which the threat of legal costs plays in discouraging unmeritorious claims in a litigation context, it would mean that the Oireachtas, when enacting s. 132(1)(e) of the 2022 Act, decided to create a very significant difference between how costs are dealt with in consumer litigation, on the one hand, and in consumer arbitration, on the other hand. This is because legal costs (i.e. the threat of an award of legal costs *against* the losing consumer) operate as a *disincentive* to bringing unmeritorious claims, in consumer litigation. Yet, on Mr. Flatley's interpretation, legal costs (i.e. an award of legal costs *for* the losing

consumer) would operate as an *incentive* to bringing unmeritorious claims in consumer arbitration.

27. However, this Court does not need to consider the intention of the Oireachtas, since it seems clear to this Court on the plain and literal meaning of s. 132(1)(e), that this is not what is meant by that section. More importantly, when one looks at what the section actually states, it is clear that the section has no application to the terms agreed by Mr. Flatley regarding arbitration in the Policy.

28. This is because s. 132(1)(e) provides in very clear language that a term in a consumer contract in relation to arbitration is unfair *if* that term provides that the consumer is required to pay his own costs. Thus, for example, if the Arbitration Clause stated that Mr. Flatley had to pay his own costs of the arbitration, this would be an unfair term. It would be unfair for the simple reason that it would mean that, even if the consumer won the arbitration, he would have to pay his own costs.

29. However, the arbitration clause in this case makes no such reference to Mr. Flatley having to pay his own legal costs of the arbitration. Indeed, it makes no reference to costs at all. Accordingly, applying the express language of s. 132(1) to the facts of this case, there is no term in the Arbitration Clause which ‘*requires a consumer to bear his or her own costs*’. Thus, there is no term that is unfair in the Arbitration Clause because it contravenes s. 132(1)(e). Thus, s. 132(1)(e) has no application to this case and so is not a basis for Mr. Flatley being able to avoid his agreement to arbitrate his disputes with Hiscox.

30. Furthermore, one cannot extrapolate from the wording of s. 132(1)(e), as Mr. Flatley’s counsel has sought to do, a right of lawyers, to, in effect, be paid their legal costs for bringing unmeritorious arbitration claims, on behalf of consumers, against traders, who might be unfortunate enough to be wrongly pursued by those consumers.

31. Therefore, the fact that the Arbitration Clause does not state that Mr. Flatley will never be liable for legal costs, is not a basis for Mr. Flatley claiming that the clause is unfair and so it is not a basis for him to avoid the consequences of his agreeing to that Arbitration Clause.

32. While this ground took up most of the hearing, there were a number of other grounds relied upon by Mr. Flatley in his attempt to avoid the consequences of his agreeing to the Arbitration Clause. These will be briefly considered next.

The arbitration is not ‘governed by law’?

33. While he did not place particular reliance on this point, Mr. Flatley also seemed to be arguing that the Arbitration Clause was an unfair term because it fell within s. 132(1)(d) of the 2022 Act. However, for the Arbitration Clause to fall within this section, the arbitration in question would have to be one which was ‘*not governed by law*’.

34. There was no evidence to suggest that the arbitration in this case, which is to be held under the ‘*Arbitration Act then in force*’, i.e. the Arbitration Act 2010, would not be an arbitration governed by law.

35. Indeed it is clear from *Marshall v Capital Holdings Ltd t/a Sunworld* [2006] IEHC 27 that arbitrations in Ireland, which are held pursuant to the Arbitration Act, 2010, are governed by law. That case concerned an arbitration which was subject to the predecessor of the Arbitration Act 2010 (the Arbitration Act 1954). However, there can be no doubt that the principles, stated by Murphy J., are also applicable to arbitrations held pursuant to the Arbitration Act 2010. At para at para 7.10, he stated:

“the parties submitting to arbitration have the same rights of assistance of the court with regard to interlocutory matters as if they had initiated the matter in court by way of litigation rather than arbitration [...]

It is clear that an arbitrator must act on the basis of the evidence given at the hearing.
[...]

The arbitrator has no power to disregard the law. While he or she has a wide measure of discretion to decide how a dispute is to be resolved **such decision must be according to the law** unless the parties agree to an arbitrator acting as *amiable compositeur*, **the arbitrator must conduct the case according to rules of law**. An arbitrator cannot, of course, take sides nor, indeed, incline in relation to a consumer, unrepresentative party or, indeed an unsuccessful party. The duty of an arbitrator is to decide the question submitted according to the legal rights of the parties and not according to what he may consider fair and reasonable in the circumstances.” (Emphasis added)

It seems clear therefore that there can be no issue that the arbitration to be conducted in this case under the Arbitration Clause is one governed by law and so the Arbitration Clause is not therefore an unfair term for this reason.

The Arbitration Clause is not transparent?

36. Mr. Flatley also relied on the alleged lack of transparency of the Arbitration Clause. To support this claim, he relied on a number of sections of the 2022 Act, which will, insofar as relevant, be set out. Section 130(1) states:

“A term of a consumer contract is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer.”

Section 130(2)(b) states that:

“In assessing whether a term of a consumer contract is unfair, the following matters shall in particular be taken into account-

(b) whether the term of the consumer contract complies with the requirements referred to in 134(2).”

Section 131(2) states:

“a term of a consumer contract is excluded from assessment for unfairness under section 130 only if it is transparent in accordance with section 134.

Section 134(2) states:

“(2) A term of a consumer contract is transparent if –

[...]

(c) the term is made available to the consumer in a manner that gives the consumer a reasonable opportunity to become acquainted with it before the conclusion of the contract, irrespective of whether or not such an opportunity is availed of,

(d) in the case of a term that is novel or onerous, the term has specifically been brought to the consumer’s attention in such a way that the average consumer would be aware of the term,

(e) any costs or other financial consequences deriving from the term would be comprehensible to the average consumer.”

In relying on these sections, Mr. Flatley claimed that the Arbitration Clause was unfair as it was not transparent, since it did not state that the costs of arbitration would be nil (which, on *his* interpretation of s. 132(1)(e), it should have stated).

37. It is crucial to note that this claim by Mr. Flatley, that the Arbitration Clause is not transparent, is based on *his* interpretation of s. 132(1)(e), *i.e.* that the arbitration should be at no cost to Mr. Flatley and that his lawyers’ fees should be paid, even if he loses.

38. However, this Court has rejected this interpretation of s. 132(1)(e). Logically it must follow that a clause does not lack transparency if it fails to contain wording, which has been found to be based on a misinterpretation of the relevant legislation. Hence a claim of a lack of transparency on this basis cannot be sustained.

The Arbitration Clause is not clear?

39. In addition to the legal costs issue, Mr. Flatley appears to be claiming that the Arbitration Clause is, in a general sense, not sufficiently clear and so is lacking in ‘transparency’. This is because in his first affidavit, he states that:

“I was unaware the arbitration clause was contained in my insurance policy[...] I say the arbitration clause is not transparent and does not even identify the relevant arbitration act or the costs issue.”

In his second affidavit, he states that:

“my Solicitor explained the arbitration clause to me. This occurred in late January 2024.”

40. Firstly, it is to be noted that Mr. Flatley appears to be making an issue out of his level of awareness of the existence of the Arbitration Clause. This is because according to these averments, Mr. Flatley appears to be claiming that he was not aware of the Arbitration Clause when he agreed to the Policy in November 2023. It seems therefore that Mr. Flatley signed up to the Arbitration Clause, presumably in reliance on the advice of insurance experts, AON, rather than after reading the Policy himself. This is because if he had read the Policy, he would have been *aware* that there was an arbitration clause. It appears from these averments that Mr. Flatley only became aware of the Arbitration Clause in January 2024 and so it must be presumed that his agent, AON, who received the Policy on his behalf, did not bring it to his attention. However, there is no evidence that Mr. Flatley’s agent, AON, was not aware of the

Arbitration Clause before Mr. Flatley agreed to the Policy. Mr. Flatley must be deemed to be aware of that which his agent is aware. Accordingly, Mr. Flatley's claim that he was personally not aware of the Arbitration Clause does not, in this Court's view, get him anywhere.

41. As regards Mr. Flatley's claim that the clause is not 'transparent' as it is not sufficiently clear, this is simply an assertion on the part of Mr. Flatley. This is because there is no explanation by Mr. Flatley of which of the words or phrases in the clause were difficult for him to understand (if he had read it) or indeed which words or phrasing would prevent a person of normal intelligence from concluding that they had agreed to refer their disputes to arbitration.

42. The most he can point to is the fact that there is a reference to the '*relevant arbitration act*', rather than, presumably, a reference to the Arbitration Act 2010. However, this does not in any way detract from the clear and obvious meaning of this clause, which is to refer disputes to arbitration. In this Court's view, this is because there is nothing about the words in the Arbitration Clause, which are difficult to understand, either individually or collectively. Therefore, insofar as Mr. Flatley is claiming that the Arbitration Clause is unfair because it is not clear/transparent, this Court rejects this claim.

The Arbitration Clause is unfair due to the absence of good faith?

43. Mr Flatley also relies on s. 130(1) of the 2022 Act, which states:

“A term of a consumer contract is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties rights and obligations under the contract to the detriment of the consumer”

To support this claim, he alleged that the decision by Hiscox to terminate the Policy before its expiry date, which Mr. Flatley unsuccessfully sought to prevent in his injunction proceedings before Roberts J., amounted to bad faith, such as to render the Arbitration Clause unfair. However, the termination of a contract does not impact on whether a consumer contract contains an unfair term or not. The Arbitration Clause is either an unfair term or it is not an

unfair term, and a decision by Hiscox to terminate the Policy has no impact on whether it is unfair. Hence this alleged lack of good faith on the part of Hiscox in terminating the Policy, has no bearing on whether the terms of the Policy are unfair, and so gets Mr. Flatley nowhere in his claim that he is not bound by the terms of his agreement.

Hiscox’s Notice of Motion refers to the 2023/2024 Renewal of the Policy

44. The Plenary Summons served by Mr. Flatley on Hiscox on 17 January 2024 seeks a declaration that he is entitled to be indemnified for the cost of alternative accommodation and property damage:

“as set or contained or included in Certificate No 5187180(99), Insurance Policy 5187180, wording version 537408/17.”

45. It is not disputed that the reference in the Plenary Summons to Certificate No 5187180(99) is a reference to the renewal of the Policy in 2023/2024. It is also not disputed that Certificate No. 5187180(88) is a reference to the renewal of the policy for the previous 12 month period, i.e.2022/2023 (“**2022/2023 Renewal**”).

46. When, a few weeks later, Hiscox issued its Notice of Motion on 14 February 2024 to refer the dispute to arbitration, unsurprisingly, it used the same reference, to the 2023/2024 Renewal, as had been used by Mr. Flatley in the Plenary Summons, i.e.

“disputes and differences between the parties hereto to be referred to arbitration pursuant to the Home Insurance Policy of insurance 5187180(99).”

47. It is also relevant to note that on 28 February 2024, Roberts J. refused Mr. Flatley’s application for an interlocutory injunction seeking to prevent Hiscox from ‘*ceasing insurance cover pursuant to Insurance Policy No. 5187810*’. In refusing that relief, Roberts J. also permitted amendments to be made by Mr. Flatley to the pleadings and she ordered that ‘*those amendments are made without prejudice to the possible referral of those issues to arbitration*

under the terms of the insurance policy'. In Mr. Flatley's first affidavit in the application before this Court, he avers as follows:

"I say the Court [Roberts J.] was advised during the course of that hearing as to the division of my claims herein against [Hiscox] – namely (i) property damage made pursuant to my 2022-2023 insurance policy; and (ii) alternative accommodation pursuant to my 2023-2024 insurance policy[...]"

Thus, *after* Hiscox issued this motion to refer the dispute to arbitration, there was an amendment to the pleadings to account for the fact that Mr. Flatley decided to divide his claims between the 2023/2024 Renewal (which was referred to in the original pleadings) and the 2022/2023 Renewal (which had not been referred to in the original pleadings).

48. Against this background, this Court has to decide whether to refer the dispute, which is the subject of these proceedings, to arbitration. While it is not the role of this Court to decide which renewal of the Policy might be the relevant one for the purpose of the claims being made, it is clear that the '*substance of the dispute*', in the words of Article 8, is whether Mr. Flatley's claim regarding alternative accommodation and damage to Castlehyde is covered by the Policy. For this reason, this Court does not believe that it is relevant to its decision to refer to arbitration, that Mr. Flatley might be making claims for accommodation under the 2023/2024 Renewal, and claims for property damage under the 2022/2023 Renewal of the same Policy, while on the other hand, the Notice of Motion issued by Hiscox only refers to one of those renewals (the 2023/2024 Renewal) of the Policy. This is particularly so, since that reference by Hiscox to the 2023/2024 Renewal alone in its Notice of Motion, is, in any event, understandable since the pleadings, as they existed at the date of that Notice of Motion, only referred to that Renewal. It is also to be noted that Roberts J. had ordered that any amendments to the pleadings were made without prejudice to their referral to arbitration.

49. Against this background, it is clear to this Court that the ‘*substance of the dispute*’ between the parties is whether certain matters are, or are not, covered by the Policy and so whether they are/are not a liability of Hiscox’s. A technical aspect of this dispute is that the claims may fall under one or both Renewals. However, it seems clear to this Court that the substance of the dispute, i.e. whether Hiscox is liable for these claims under the Policy to Mr. Flatley, falls within the terms of the Arbitration Clause since it is a ‘*dispute arising out of or relating to this insurance*’ between the parties. Thus, the fact that Hiscox referred in their Notice of Motion to the 2023/2024 Renewal, rather than the 2023/2024 Renewal *and* the 2022/2023 Renewal, as was done by Mr. Flatley in amending the pleadings (after the Notice of Motion issued), is not something which prevents this Court from referring this dispute to arbitration.

50. This is because this is just one aspect of the dispute, namely whether the claim is one made under (i) the 2023/2024 Renewal or (ii) the 2023/2024 Renewal *and* the 2022/2023 Renewal. As that question relates very much to the substance, or merits, of the dispute, it is a matter to be determined by arbitrator and is not a matter, which prevents the dispute, or some of the dispute (i.e. the part which is *allegedly* covered by the 2022/2023 Renewal), being referred to arbitration.

51. To put the matter another way, the fact that Hiscox’s motion only refers to the 2023/2024 Renewal is not a basis for not referring to arbitration those claims, which Mr. Flatley *alleges* fall to be dealt with under the 2022/2023 Renewal i.e. the property damage claims. The key issue between the parties is whether Hiscox is liable for the claims made by Mr. Flatley under the Policy and it will be for the arbitrator to decide if the claims fall under the 2023/2023 Renewal and/or the 2023/2024 Renewal.

CONCLUSION

52. This Court rejects Mr. Flatley's claim that Hiscox, in trying to get Mr. Flatley to arbitrate, rather than litigate, its dispute with him, is seeking to '*avoid their responsibility to [him]*'. On the contrary, it seems to this Court that it is Mr. Flatley who is seeking to avoid his responsibility to Hiscox. This is because, in the plain English terms of the Arbitration Clause, he agreed to arbitrate any dispute he had with Hiscox. However, he is seeking to avoid his responsibility to Hiscox, by now seeking to litigate his dispute with Hiscox. For this reason, this Court has little hesitation in referring this dispute to arbitration, particularly as there is nothing 'unfair' in the possibility of Mr. Flatley having to pay his own legal costs and those of Hiscox, if an arbitrator finds against him in his claim against Hiscox.

53. This case will be provisionally put in for mention, at 10.30 a.m. a week from its delivery, to deal with any final orders and costs. However, on the assumption that it should not be necessary to expend costs on a further court sitting, and in order to facilitate the parties agreeing all outstanding matters, the parties have liberty to notify the Registrar if such a listing proves to be unnecessary.