

What is reasonable detail in a buyer's notice of claim under a share purchase agreement? Court of Appeal decision

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The Court of Appeal has overruled a decision of the High Court as to what constituted "reasonable detail" in a buyer's notice of claim under a share purchase agreement, in circumstances where the sellers were aware of the relevant facts but they were not specifically set out in the notice.

Facts

The case arose from an application for summary judgment by sellers who were seeking the release of a portion of the purchase price that, under the terms of the share purchase agreement, had been held in escrow to give the buyer security for warranty or covenant claims.

Shortly before the due date for the release of the second tranche of the escrow amount, the buyer gave notice of a claim under the tax covenant. Under the terms of the agreement, a valid notice would result in that tranche remaining in escrow until the claim had been determined.

The buyer's claim related to an investigation by the Slovenian tax authority of a company in the target group. The notice of claim stated that the claim related to an investigation by the Slovenian tax authority into the transfer pricing practices of the company and provided a chronology of the key stages of the investigation, but did not provide detail of the underlying circumstances.

High Court decision

The High Court granted the sellers' application for summary judgment on the basis that the notice of claim did not satisfy the contractual requirements of the share purchase agreement which required the notice to state "in reasonable detail the matter which give[s] rise to such Claim...". (See [here](#) for our summary of the High Court's decision.) The buyer appealed this decision.

Court of Appeal decision

The Court of Appeal decision focused on two points. First, what was the matter giving rise to the buyer's claim and, secondly, whether that matter had been set out in reasonable detail in the notice.

The Court of Appeal agreed with the High Court that it was the underlying events, facts and circumstances that constituted the "matter" giving rise to the claim, rather than the fact of the tax investigation.

However, the Court of Appeal disagreed with the High Court's conclusion that the sellers' knowledge could not be

taken into account in determining whether reasonable detail had been given in the notice.

In reaching its decision, the Court of Appeal referenced the well-known House of Lords decision in *Mannai Investment Co Ltd v. Eagle Star Life Assurance Co Ltd* [1997] AC 749. This is authority for the proposition that, if a contract prescribes that certain information must be included, a notice which fails to include that information will be invalid. The fact that the recipient may already know the information is not relevant.

However, the Court of Appeal rejected the sellers' argument that knowledge is always irrelevant to the question of whether a notice complies with the underlying contract. Nugee LJ gave the example of a contract which entitled one party to give a notice in relation to one of several properties. If such a contract required the notice to specify the address and postcode of the property concerned, a failure to give the address and postcode in the notice would no doubt mean that the notice was not compliant, however much the recipient knew the address and postcode already.

However, if the contract did not require this, but merely required the notice to identify which property the notice related to, then it might well be sufficient for it to refer to the property by name or description. On the authority of *Mannai* these would be sufficient to identify the property concerned if the reasonable recipient, in the circumstance of the actual parties, could be left in no doubt as to which property was being referred to.

In this case, the share purchase agreement did not specify precisely what information the notice needed to contain. It simply required the notice to state things "in reasonable detail". What was reasonable depended on all the circumstances, including what was already known to the recipients.

The Court of Appeal concluded that, on the facts, the notice of claim served by the buyer did include reasonable detail and it therefore dismissed the application for summary judgment.

Popplewell LJ noted that the level of further detail available at the time the notice was served, although greater than that contained in the notice, was still at a high level of generality and was already known to the sellers. It would therefore not have advanced the commercial purpose of the clause to include that information.

"What is reasonable takes its colour from the commercial purpose of the clause, and what businessmen in the position of the parties would treat as reasonable. Businessmen would not expect or require further detail which served no commercial purpose. That would be the antithesis of what was reasonable."

What is the significance of the decision?

Although every agreement must be considered by reference to its particular language, the formulation in the underlying contract which the Court of Appeal was considering was not unusual.

The Court of Appeal decision reinforces the High Court decision that, when the underlying contract requires the notice to set out the matter giving rise to the claim, it is not sufficient simply to mention the event, in this case the tax investigation, that prompted the buyer to bring the claim. The buyer must include the details of the underlying factual basis for the claim, as that is what gives rise to the liability under the underlying agreement.

On the question of what constitutes "reasonable detail", while the Court of Appeal's decision makes commercial common sense, it is fact-specific and dependent on the sellers' having full knowledge of the relevant facts. It remains the case that a claimant buyer should generally give as much information as possible in its notice about the underlying factual basis of its claim and not be economical with relevant information on the basis that the sellers may be aware of it.

Obviously, while this case focuses on one particular aspect of a notice of claim and its relationship with the underlying contract, any notice must comply with all the relevant requirements of that contract. A claimant should always allow

sufficient time for a full notice of claim to be drafted and not regard it as something which can be dealt with in haste at the last minute.

Dodika Ltd v. United Luck Group Holdings Ltd [2021] EWCA Civ 638

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