

"Tell me something I don't know!"

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High Court finds that solicitors gave appropriate advice to a sophisticated client during his intended purchase of a superyacht.

To what extent is a solicitor obliged to explain the meaning and effect of contract terms to a sophisticated client? That question has been examined in the High Court decision of 14 July 2016 in *Healey & another v Shoosmiths* [2016], in which DAC Beachcroft LLP acted for the successful Defendant solicitors. The decision will be of interest to legal practitioners and their insurers.

Background

The First Claimant, Mr Healey, was a high-net-worth individual. He was the chairman and major shareholder of the GSE Group, which provides services to the civil engineering and construction sectors.

Mr Healey had, in the past, bought and sold a number of superyachts. He had engaged the Defendant solicitors, Shoosmiths, to advise him in most of those transactions and the same yacht broker ("the Broker") was also involved throughout.

Mr Healey's largest acquisition was to be a 60-metre superyacht priced at €38,000,000, which would be built by Azimut-Benetti ("Benetti"), a shipyard in Italy. The Broker appointed Shoosmiths to advise the buying entity, which was a special-purpose-vehicle company ("the SPV") owned and controlled by Mr Healey, in respect of the purchase. The SPV was to contract for the construction of the yacht (the "build contract").

After a year of contractual and commercial negotiations, the SPV signed the build contract and Mr Healey signed a personal guarantee in respect of the SPV's obligations. The contracts were signed on 25 September 2008 - days after Lehman Brothers filed for bankruptcy and at the dawn of the global financial crisis.

Upon the collapse of the construction and engineering markets in which his businesses operated, Mr Healey was unable to pay (or obtain bank finance for) the first instalment of the purchase price of the yacht, and the SPV defaulted on the scheduled payment of €3,800,000. In the event of such default, under the build contract, Benetti was entitled to terminate the contract and claim a total of 20% of the purchase price from the SPV as liquidated damages. Since Mr Healey had guaranteed the SPV's obligations, the sum of €7,600,000, less a €500,000 deposit already paid, could be claimed from Mr Healey personally.

Benetti obtained summary judgment against Mr Healey in the sum of €7,100,000 (decision reported at [2010] EWHC 2234 (Comm)). Mr Healey obtained permission to appeal, before reaching a settlement with Benetti in the sum of €2,250,000.

Claim against Shoosmiths

Some years later, Mr Healey and the SPV issued proceedings against Shoosmiths. Mr Healey claimed that he had not been made aware of the extent of his potential liability when entering the build contract. The key allegations were that:

Shoosmiths negligently failed to bring the liquidated damages provision, which differed from the default provisions in earlier contracts, to Mr Healey's attention and failed to explain the extent of his potential liability under the personal guarantee before the build contract was signed, and;

- had they done so, Mr Healey would not have authorised the SPV to sign the build contract, nor would he have given the personal guarantee, and the transaction would not have proceeded.
- Mr Healey sought to recover the €2,250,000 settlement sum together with his costs of defending the claim brought by Benetti.

In their defence, Shoosmiths accepted that they had given no direct advice to Mr Healey explaining the various contractual provisions, but asserted that they had nevertheless taken sufficient steps to draw the liquidated damages provision to his attention, via the Broker. On causation, Shoosmiths asserted that even if Mr Healey had been advised differently, he would have proceeded with the transaction anyway. Shoosmiths contended that Mr Healey had no expectation of default at the time of entering into the build contract and the personal guarantee and, further, intended to sell the vessel at a considerable profit before or soon after completion.

Decision

The Court found in Shoosmiths' favour in respect of both breach of duty and causation.

In considering the scope of Shoosmiths' duty to advise Mr Healey, Her Honour Judge Moulder concluded that, in light of Mr Healey's sophistication and experience as a businessman, and his past superyacht transactions, Shoosmiths did not have a duty to go further than highlighting and commenting on the liquidated damages provision in a draft copy of the contract, which had been provided to Mr Healey via the Broker.

Shoosmiths did not need to provide any particular advice on the potential liability arising under the personal guarantee in respect of the liquidated damages provision. The Judge found as a matter of fact that Mr Healey was likely to have read or looked at the draft contract as marked-up by Shoosmiths. Mr Healey's evidence that he had not read the relevant sections was rejected.

Applying *Football League v Edge Ellison* [2006] EWHC 1462, the Judge held: "This was not a case where unless it was explained, Mr Healey might miss or misunderstand the default clause. In cross-examination Mr Healey accepted that "simply reading" [the liquidated damages provision] he understood it and once read, it did not require any further explanation."

Of the personal guarantee, the Judge found: "*In the context of this particular client there was no duty on [Shoosmiths] to advise Mr Healey that by signing the guarantee he would be liable for the obligations under the contract. The guarantee said so on its face. The inference from his commercial background, his familiarity with contracts both generally and in the context of yachts and his experience in buying yachts in the past must be that Mr Healey could understand that by signing the guarantee he was so bound...*"

On this basis, the Judge stated: "*In these circumstances [Shoosmiths] did not have to enquire further of Mr Healey to ensure that he had understood [the liquidated damages provision] and the guarantee. In these circumstances there was no legal obligation on [Shoosmiths] to question Mr Healey as to whether he understood what he was doing either generally or in relation to the payment obligations under the guarantee. There was nothing in [the liquidated damages provision] which was so unusual that [Shoosmiths] should have been put on enquiry.*"

The Judge also decided that in respect of causation, Mr Healey had failed to show that he would not have proceeded with the transaction in any event.

Issues as to whether the Broker was Mr Healey's agent for the purposes of receiving legal advice, and as to the measure of loss under SAAMCo principles, did not need to be addressed by the Court given its findings on breach of duty and causation.

Comment

This case turned largely on its facts and the Judge's view of the credibility of the evidence of Mr Healey. The Judge found that his claim that he had not read and/or understood the relevant parts of the contract was unpersuasive.

What may be of wider relevance is the finding that, with a sophisticated client such as this, a solicitor will not always be required to explain in detail the effect of contractual provisions. The Judge acknowledged that such advice would, in some circumstances, be unwelcome. This is another interesting illustration of the principle set out in *Football League Ltd v Edge Ellison*, to which the Judge referred.

An analysis of the level of advice which needs to be provided to any given client will always be a difficult exercise. Should a dispute arise down the line, the outcome will likely hinge (as this case did) on the parties' conflicting witness evidence as to what the client knew, what he ought to have known, and/or what his lawyers should reasonably have expected him to know.

Best practice for practitioners will of course be to provide detailed advice when in any doubt as to whether it is required, but solicitors and their insurers will be encouraged by this decision: it suggests once again that in addition to issues on matters such as causation and the measure of loss, the courts will consider the scope of the solicitor's duty on a case-by-case basis.

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