

# Plain Sailing - Advising sophisticated clients revisited

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Solicitors will welcome a recent case - *Healey & another v Shoosmiths* [2016] EWHC 1723 (QB) - which involved the scope of a solicitor's duty to a sophisticated businessman client.

## Background

The Claimant, Mr Healey, wished to buy a 60-metre 'superyacht' which would be built by a shipyard, Benetti. Shoosmiths were instructed, via Mr Healey's yacht broker, to advise Mr Healey.

Mr Healey signed the build contract, but defaulted on the first scheduled payment. Benetti terminated the contract and obtained summary judgment against Mr Healey in the sum of €7,100,000, enforcing the contract's liquidated damages provisions. Mr Healey obtained permission to appeal, before settling with Benetti in the sum of €2,250,000.

Mr Healey later issued proceedings against Shoosmiths. He claimed that he had not been made aware of the extent of his potential liability under the liquidated damages provisions, which differed from earlier yacht transactions in which he had been involved.

Mr Healey sought to recover the €2,250,000 settlement sum together with his costs of defending the claim brought by Benetti.

Shoosmiths 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 provisions to his attention, via the yacht broker.

In the alternative, Shoosmiths claimed that Mr Healey would have proceeded regardless, as he had not expected to default and anticipated making a significant profit through subsequent re-sale of the vessel.

## Decision

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

HHJ Moulder concluded that, in light of Mr Healey's sophistication and experience as a businessman and his previous 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 by the broker.

Shoosmiths did not need to provide any particular advice as to Mr Healey's potential liability in the event of default, and did not need to question Mr Healey as to whether he knew what he was doing.

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.

The Judge also found that Mr Healey had failed to show that he would not have proceeded with the transaction in any event.

## Comment

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

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.

Prevention, as the old adage says, is better than cure; best practice for practitioners will of course be to provide detailed

advice when in any doubt as to whether it is required. That said, solicitors should be encouraged by this decision: it suggests once again that, as well as issues such as causation and the measure of loss, the courts are prepared to consider the scope of the solicitor's duty on a case-by-case basis.

Phil Murrin (partner) and Mark Healing (solicitor) of DAC Beachcroft LLP acted for the Defendant, Shoosmiths.

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