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ENGLISH COURT CLARIFIES THAT INADEQUATE DISCLOSURE DOES NOT, WITHOUT MORE, ESTABLISH FRAUD

In *Veranova Bidco LP v Johnson Matthey plc & Ors [2026] EWHC 1021 (Comm)*, the English Commercial Court considered a claim for breach of warranties under a share purchase agreement (**SPA**). The Court found that the sellers had breached one of their warranties under the SPA but that the buyer could not establish the fraud or wilful misconduct as required under the SPA for the sellers to be liable.

The judgment is significant because it draws a clear distinction between breach of warranty, inadequate disclosure and fraud. It confirms that a false warranty and deficient disclosure do not, without more, establish a dishonest or reckless corporate state of mind. In the absence of an express contractual provision, a claimant cannot construct fraud by combining one individual's knowledge of the underlying facts with another individual's knowledge of the truthfulness of the warranties.

The judgment deals with a number of points and lessons relevant to M&A agreements governed by English law, including that: a breach of warranty claim will be difficult where it requires proof of dishonest or reckless conduct, so buyers should try to avoid making warranty claims subject to fraud or wilful misconduct; the level of disclosure required by a seller in the context key warranties should be sufficiently detailed to allow a reasonable buyer to make an informed assessment of the nature and scope of the risk; and disclosure for the purposes of warranties will be limited to what is identified in the terms of the SPA, so parties are unlikely to be able to rely on other statements made that fall outside those terms.

I. FACTS

The claim arose out of the sale of the defendants' health business to the claimant. The SPA for the sale of the health business included (i) a warranty that the business had been carried on in the ordinary and usual course consistent with past practice without material alteration (the **"Ordinary Course Warranty"**), and (ii) a key contracts warranty that no material term of any key contract was currently being renegotiated in a way that would have an adverse or detrimental effect on the business (the **"Key Contracts Warranty"**). However, by virtue of contractual limitations in the SPA, the claimant could bring a claim for breach of that warranty against the sellers only by proving that the claim arose directly from, or was in respect of, fraud or wilful misconduct by the defendants.

Two months prior to the signing of the SPA, the health business's largest customer for buprenorphine hydrochloride (**"BHCL"**), Alvogen, had invoked a price match clause in the supply agreement. Alvogen had received an offer to supply BHCL at roughly half the price charged by the health business and had requested that the health business match that offer.

While the claimant had been made aware of these discussions, it contended that it was given a misleading picture of the scale and likely effect of those negotiations. In particular, the defendants had not disclosed the specific competing offer, its price, the fact that it had been verified as bona fide or the intention to retain Alvogen's business by matching or substantially matching the offer. On discovering this discrepancy, the claimant brought a claim for breach of the Key Contracts Warranty.

II. THE COMMERCIAL COURT'S DECISION

The Court held that the Ordinary Course Warranty was not false – price negotiations following invocation of a contractual price match clause were entirely within the ordinary and usual course of the business, particularly where price erosion was a recurring feature of the market and the clause had previously been invoked.

However, the Court found a breach of the Key Contracts Warranty. The Court held that the invocation by Alvogen of the price match clause triggered renegotiations within the meaning of the same clause. It rejected the defendants' argument that renegotiations had not commenced by the date of the SPA.

The Court also found that the concluded renegotiation would have had an adverse or detrimental effect on the business as the proposed price reduction would have left the business barely covering its production costs and threatened the viability of one of its manufacturing sites.

Addressing the issue of whether there had been fair disclosure, the Court held that general references to increased competition and ongoing pricing discussions were insufficient and that the sellers were required to disclose the specific circumstances, giving rise to the anticipated price reduction. The disclosure had to contain sufficient detail to allow a reasonable buyer to make an informed assessment of the nature and scope of the risk.

The Court further held that statements allegedly made during due diligence discussions could not be used to supplement or interpret the disclosures. The SPA identified the Disclosure Letter, data room and other specified materials as the relevant disclosure sources.

The Court, however, rejected the claimant's attempt to establish fraud through an aggregation of knowledge across different individuals within the sellers. It held that, on the terms of this SPA and in the absence of an express contractual provision permitting the aggregation of knowledge, the claimant could not combine the knowledge of different individuals to construct a fraudulent corporate state of mind.

Rather, the claimant had to prove that a single executive possessed knowledge of the facts rendering the warranty false, understood the nature and terms of the warranty in sufficient detail to appreciate the relevance of those facts (or was recklessly indifferent to the warranties being given), and knew that the warranty, as qualified by the disclosure which that executive honestly believed had been made, was false or was recklessly indifferent as to its truth or lacked an honest belief that it was true.

Therefore, unless the contract provides otherwise, dishonesty under English law is not established where one person knows the relevant facts but does not know that those facts render the warranty untrue and another person knows the terms of the warranty but not the facts that render it false. The Court, however, made it clear that this position of law was different from the "orthodox" situation where the person with the dishonest state of mind effectively adopts or authorises the statement made by another.

The Court found that none of the defendants' executives individually possessed all of the requisite knowledge and dishonest or reckless state of mind. In reaching that conclusion, the Court noted that the executives were entitled to rely on the proper operation of the disclosure process conducted by the parties' legal advisors and on information provided by those best placed to provide it, unless they had reason to suspect that the information was untrue or incomplete.

There was no evidence that the sellers had sought to conceal other adverse information about the business, and none of the executives appeared to have any personal motive to act dishonestly. Although motive is not a legal requirement for fraud, the Court considered it relevant in assessing whether a person's conduct had been dishonest.

III. KEY TAKEAWAYS

The key takeaways from this judgment are as follows.

1) Buyers should avoid limiting breaches of warranty to circumstances involving fraud or wilful misconduct. In practice, a breach of warranty claim will be difficult to establish where such limitations apply, requiring proof of dishonesty or recklessness.

2) Fraud in the context of warranty claims requires proof that the requisite knowledge and dishonest or reckless state of mind are attributable to a relevant individual. Under English law, in the absence of an express contractual provision, knowledge held by different individuals cannot simply be aggregated to construct corporate fraud. Wilful misconduct similarly requires the relevant conduct and culpable state of mind ordinarily to coexist in the same person. The person should know and intend that they are committing a breach of duty, or be reckless as to that breach. This may include a person who knows that another is carrying out the relevant conduct and adopts or endorses it.

3) A false warranty and inadequate disclosure do not, without more, establish fraud. Where SPA permits recovery against the sellers only in cases of fraud or wilful misconduct, the claimant will have to separately prove the contractually required state of mind.

4) Under English law governed M&A contracts, the parties can explore including in their M&A contracts a provision deeming the actual knowledge of certain individuals to be that of the company or allowing their aggregation and being treated as the knowledge of the company. This may be particularly useful in organisations where knowledge of the commercial facts is dispersed among personnel in many departments, while knowledge of the transaction documents and warranties sits with a separate deal team or senior management.

5) Disclosure obligations are determined within the contractual framework. General or vague references to commercial risks will not suffice where specific and material facts require disclosure. Statements made outside the contractually identified disclosure sources may not cure an inadequate disclosure.

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