



CORPORATE AND COMMERCIAL

Recovering Interest and Costs as part of a Warranty Claim

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A recent judgment of the High Court of England and Wales found that wording in a Share Purchase Agreement (SPA) designed to limit the liability of the Sellers, in the event of a warranty claim by the Buyer, did not apply to liabilities arising from court orders relating to matters such as interest or costs.

This judgment highlights the importance of precise drafting of limitations of liability in a share purchase agreement.

Equitix EEEF Biomass 2 Ltd v Fox (Consequential Matters) [2021] EWHC 2781 (TCC)

This case dealt with the consequential matters arising from the Court's finding that the Sellers were liable for damages due to a breach of various warranties in the SPA in relation to the target company, Gaia Heat Limited. The issues ultimately led to the termination of Gaia Heat Limited's contract with its sole customer. This led to the Buyer commencing proceedings against the Sellers in October 2018.

The Court dealt with the issue of the liability cap and the interpretation of the wording in the SPA. The SPA in question used very typical wording for the definition of a Claim and for the monetary limitation. A Claim was defined as "any claim under this Agreement for breach of the Warranties." The limitation applied "in respect of" a claim.

The Sellers argued that this cap encompassed all ancillary orders that could be made by a Court in relation to any claim such as interest and legal costs. This reasoning was rejected by the Court and stated that an ancillary order to pay interest or costs would not be a liability in respect of a claim "under" the SPA as it fell outside the remit of the terms of the Agreement between the parties.

It was acknowledged by the Court that the Buyer's contention that the phrase "in respect of" was not as wide reaching as "arising out of or in connection with" and suggested that for the liability cap to apply to ancillary orders, express terms to this effect would have to be included in the SPA.

The Court outlined that a claim for interest or costs is not a claim made "under" the SPA itself but that it is made pursuant to the Court's jurisdiction to make ancillary orders when determining such claims. The Court signalled that additional wording in the SPA specifically providing that ancillary orders arising from litigation proceedings would fall within the liability cap, would ensure that a seller would not be liable for such amounts in the event of a warranty claim.

Interpretation

This judgment may be persuasive in an action before the Irish Courts. The interpretation of what fell within the parameters of the liability cap was focussed on the wording used in the SPA, highlighting the importance of clear drafting, and the need for such clauses to specifically address interest and costs associated with a court order, as opposed to the breach of warranty itself. As the SPA in question used very typical wording,

this judgment may have an impact on the drafting and interpretation of similar provisions.

Limitations of Liability

When negotiating share purchase agreements, consideration should be given to whether a monetary cap on liability should capture interest and costs associated with any court order. It would be in the best interest of the sellers to ensure that the limitation will extend to any such interest and costs arising as a result of a breach of a warranty.

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