

# Legal Update

## Notice the details: Court of Appeal decision highlights the importance of strict compliance with contractual notice provisions

The Court of Appeal has handed down judgment in the case of *Stobart Group Limited and another v William Stobart and another*<sup>1</sup>, concerning whether or not a letter written by the appellants amounted to notice that the appellants intended to pursue a claim against the respondents, in accordance with a notice provision contained in a sale and purchase agreement.

### Background to the appeal

The first appellant (Stobart Group Limited ("**SGL**")) entered into a sale and purchase agreement ("**SPA**") with the respondents (the "**Vendors**") in March 2008, pursuant to which SGL purchased the entire share capital in Stobart Rail Limited (the second appellant) (the "**Company**", together with SGL, "**Stobart**").

The SPA contained a covenant setting out the circumstances in which the Vendors would be responsible for the Company's tax liability incurred prior to the sale completing but recognised after the sale ("**Tax Claim**"). The relevant SPA notice provisions with respect to any Tax Claim were as follows:

- Schedule 4, paragraph 7.1 – SGL was required to notify the Vendors of any potential claim against the Company by HMRC ("**Paragraph 7 Notice**"); and

- Schedule 4, paragraph 6.3 – the Vendors had no liability with respect to any Tax Claim unless SGL had, by 4 April 2015 (being the seventh anniversary of completion (the "**Tax Claim Limitation Period**")) given written notice that it was bringing a Tax Claim against the Vendors in respect of the Company's tax liability ("**Paragraph 6.3 Notice**").

Shortly before the Tax Claim Limitation Period expired, SGL wrote to the Vendors indicating the Company's potential liability to a Tax Claim and asked whether the Vendors wished to have "*conduct of discussions with HMRC in relation to the claim*" (the "**March 2015 Letter**").

Stobart argued at first instance that the March 2015 Letter was a valid Paragraph 6.3 Notice and issued proceedings against the Vendors for a sum equal to the Company's tax liability. The Vendors contended that the March 2015 Letter was not a valid Paragraph 6.3 Notice and that because no notice had been served before the Tax Claim Limitation Period expired, Stobart's claim was time-barred.

At first instance, the judge agreed with the Vendors and awarded the Vendors summary judgment. Stobart sought (and was granted) permission to appeal to the Court of Appeal.

<sup>1</sup> [2019] EWCA Civ 1376

## Court of Appeal's decision

The Court of Appeal unanimously rejected Stobart's appeal.

In its judgment (delivered by Lord Justice Simon), the Court of Appeal held that whether considering a contract or a unilateral notice, it was the court's task to ascertain the objective meaning of the language used, and it did not matter whether it conducted its analysis by considering first the strict wording of the document or the context in which the document came into existence.

During the appeal, Stobart had argued that the notice-giver's intention had to be construed in accordance with any agreement between the parties as to what the notice was intended to convey. In particular, Stobart submitted that given it had already served a Paragraph 7 Notice on 9 April 2008, the Vendors would have understood that the March 2015 Letter was not a further notice pursuant to that provision and, therefore, must have been a Paragraph 6.3 Notice.

However, the Court of Appeal rejected Stobart's arguments and, finding that the March 2015 Letter did not constitute a valid Paragraph 6.3 Notice, noted the following points:

- the March 2015 Letter had been drafted by a lawyer and expressly adopted the definitions set out in the SPA. It made no reference to a Tax Claim, nor did it refer to a claim being made (pursuant to Schedule 4, paragraph 6.3 or otherwise) against the Vendors. Instead, it only gave notice in terms of a contingency, by referring to "a potential Liability to Taxation" and a "potential claim";
- Schedule 4 of the SPA had envisaged two possible but distinct forms of notice: (i) the notice of a Tax Claim against the Vendors (i.e., a Paragraph 6.3 Notice); and (ii) a notice of a claim by HMRC against SRL (i.e., a Paragraph 7 Notice). The Court of Appeal held that the express reference to confirming whether the Vendors wished to have continued discussions with HMRC "pursuant to paragraph 7" made it "quite clear" that it was the latter form of notice and not the former;

- the March 2015 Letter concluded by setting out "the likely estimate" of the quantum of claim and attached a detailed schedule which was headed "Summary of company exposure" – which was, in other words, a summary of SRL's exposure to HMRC.

Consequently, the Court of Appeal held that, taking into account the relevant contextual background, a person receiving the March 2015 Letter with knowledge of the terms of the SPA would have understood the notice to be a Paragraph 7 Notice (rather than a Paragraph 6.3 Notice) and, therefore, the claim against the Vendors fell outside the Tax Claim Limitation Period and was time-barred.

## Comment

This judgment serves as a useful reminder of the importance of strict compliance with contractual notice provisions and the significant consequences that may arise when parties fail to draft notices correctly – particularly if serving a notice of a claim immediately prior to a limitation period expiring.

This decision also illustrates the fact that courts will, when interpreting contractual notices, adopt the same approach as they do when interpreting contracts more generally. Consequently, courts will focus on giving effect to the objective meaning of the contract, having regard to the express wording of the notice and (where appropriate) the admissible background.

More broadly, when drafting contractual notices, one should always have regard for the various "logistical" requirements which may be expressly stipulated in an agreement's notice clause in order to avoid any potential arguments that service of the notice was in any way defective. Such requirements which are commonly stipulated include (but are not limited to):

- permitted methods for service;
- the designated address for service;
- specific individual(s) on whom the notice should be served.

It is therefore important that any party giving notice in accordance with a contractual notice provision ensures that their notice is drafted as clearly as possible, by reference to (and in accordance with) the relevant contractual provisions pursuant to which notice is given and is compliant with any expressly stated notice formalities.

If you have any questions about the issues raised in this legal update, please get in touch with your usual Mayer Brown contact or:

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