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SETTLEMENT SHOWDOWN – HAVE YOU REALLY SETTLED YOUR CLAIM?

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SUMMARY

In Bin Obaid v Al-Hezaimi [2024] EWCA Civ 612, the Court of Appeal upheld a High Court decision in finding that subsequent claims did not fall within the scope of claims which were released under an earlier settlement deed. It is a timely reminder of the need to pay careful attention to the drafting of release clauses and the way in which the "Claims" being settled are defined. This judgment suggests that the Courts will be slow to give a release clause an unduly wide interpretation, even when on its face, the release appears typically all-encompassing.

THE PROCEEDINGS

In 2017, Mr Bin Obaid commenced proceedings, claiming that funds had been transferred by him to be invested in the English property market through a corporate vehicle, Oh-Na, pursuant to an oral agreement. He claimed that, in breach of that agreement, properties bought with these funds were either acquired by the defendant companies which were beneficially owned and controlled by Dr Al-Hezaimi or acquired by Oh-Na but later sold by Dr Al-Hezaimi who appropriated the proceeds of sale. Mr Bin Obaid subsequently amended his claim. Of the 24 transfers originally pleaded, he deleted 15. The claim was later settled by way of a Settlement Deed.

SETTLEMENT

The recitals of the Settlement Deed provided that the parties wished to resolve their dispute "*in relation to the beneficial ownership of the real property and money*" which was set out in a schedule to the Settlement Deed.

Clause 4 of the Settlement Deed provided for the "*full and final settlement of all Claims against each of the other Parties and their respective Affiliates*". "*Claims*" was defined in what appears on its face to be a typically wide and all-encompassing fashion:

> *"all and any claim or cause of action (other than arising out of a breach of this Deed) of any kind (including without limitation by way of correspondence, allegation, defence, counterclaim or set off and/or for any fees, costs or expenses) in any jurisdiction whether under English or foreign law, whether civil or criminal in nature, arising out of or in connection with (i) the English Proceedings (including for the avoidance of doubt any counterclaims in those proceedings and any orders for the payment of costs)… For the avoidance of doubt, this clause shall not prevent the Parties from pursuing the litigation in other jurisdictions currently pending between them, except to the extent that there is an overlap with the claims in the English Proceedings".*

However, Mr Bin Obaid subsequently issued claims against Dr Al-Hezaimi in the Riyadh General Court, alleging that payments he had made to Dr Al-Hezaimi were loans. Seven of those payments had been pleaded in the original Particulars of Claim in the English proceedings but subsequently deleted in the Amended Particulars of Claim. In his defence, Dr Al-Hezaimi argued that any such claims had been released by the Settlement Deed.

DECLARATION PROCEEDINGS

Mr Bin Obaid brought proceedings in the High Court in England, successfully seeking a declaration that on its true construction, the Settlement Deed did not operate to release any claim in respect of the deleted payments. Dr Al-Hezaimi appealed to the Court of Appeal, contending that the Settlement Deed should be interpreted as settling "*any claim … of any kind … arising out of or in connection with* ***the issues that were disputed*** *in the English proceedings*". He failed again.

The Court of Appeal carried out a detailed analysis of the Settlement Deed, noting that the relevant clauses were to be interpreted using the ordinary principles applicable to contractual construction. Notably, the recitals of the Settlement Deed were given some significance when carrying out this exercise. The recitals referred to the parties' wish to resolve the disputes relating to "*the beneficial ownership of the real property and money described below…*". While the definition of "Claims" was, of course central, the Court of Appeal noted that "*[i]t would be slightly surprising to find that the settlement extended to claims relating to other matters which have neither been mentioned in the recitals nor have anything to do with the ownership of the Identified Assets*".

Turning to the definition of "*Claims*" itself, the Court of Appeal adopted an interpretation which essentially read the definition as referring to: "*any claim… of any kind… arising out of or in connection with* ***the claims made in*** *the English Proceedings*". Once the deleted payments were removed from the Particulars of Claim, there was no claim which depended on or referred to them at all, nor did the true purpose of those payments form part of the claims (or counterclaims).

The words "*out of or in connection with*" were intended to prevent issues from being relitigated by devising a claim which related to but was not identical to claims already litigated. However, this was

not the same, nor did it capture, seeking recovery of payments – which had been pleaded but were later removed - in a new claim which characterised the payments entirely differently, as loans.

The Court of Appeal accordingly concluded that:

> *"A claim is within the definition, and hence fully and finally settled by the Settlement Deed, if it is a claim arising out of or connected with the matters litigated in the 2017 proceedings, those matters being identified by reference to the claims made (including counterclaims) and defences advanced in the 2017 proceedings".*

In coming to its conclusion, the Court of Appeal rejected the wider reading put forward by Dr Al-Hezaimi. It was not sufficient that the payments had been originally pleaded. The relevance of the payments to the parties' wider business dealings did not render them one of the issues in the case, nor did the potential relevance of those payments to the credibility of the witnesses make those payments an issue in dispute.

TAKEAWAYS

Whilst this decision naturally turned on the particular wording of the clauses in issue, the wording of those clauses was fairly typical. The Court of Appeal's reasoning is therefore likely to be indicative of how the Courts will interpret settlement deeds which use similar wording.

The Court of Appeal adopted a notably narrow interpretation, notwithstanding the inclusion of words commonly seen in settlement deeds ("*any claim… of any kind… arising out of or in connection with*") which might appear, at first blush, to be very broad in scope. Parties should therefore be careful not to assume that using this kind of broad language is sufficient to capture tangential claims.

Parties should also not assume that the recitals to a settlement deed are simply innocuous scene-setting. The Court of Appeal's contractual interpretation exercise shows that the recitals are important in informing the scope of the dispute to be settled.

If the parties have continuing commercial dealings outside of the litigation, the Courts will likely be hesitant to adopt an interpretation of a release clause which captures some other aspects of that commercial relationship. If a party wishes a settlement deed to capture something broader than the claims pleaded in the *most recent* iteration of the pleadings, then this should be explicitly set out. This is particularly important in the case of long-running litigation, where certain points in dispute may have come in and out of focus. Take the time to consider whether any issues which arose over the course of the dispute need to be expressly acknowledged in the settlement deed.

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