

Kate Livesey

Healey & GSE Investments Ltd v Shoosmiths

On 14 July 2016, HHJ Moulder (sitting as a judge of the High Court) handed down judgment in Healey & GSE Investments Ltd v Shoosmiths 2016 EWHC 1723 (QB) following a 6-day trial in which Nigel Tozzi QC and Kate Livesey represented the successful Defendant, Shoosmiths. The Judge dismissed the Claimants' claims for damages for professional negligence, finding in favour of Shoosmiths on all issues.

The case concerned the acquisition by Mr Healey's company of a new-build 60m superyacht from the Benetti yard at a price of €38,000,000 pursuant to a ship purchase and construction contract signed by Mr Healey in September 2008. Mr Healey guaranteed the payment obligations of his company. Shoosmiths acted for Mr Healey and his company on the transaction.

The financial crisis began to take hold. Mr Healey's company failed to pay the balance of the first instalment payment of €3.3 million (10% of the contract price) that fell due in October 2008. This resulted in Benetti terminating the contract for buyer's default and obtaining judgment against Mr Healey under his personal guarantee for liquidated damages of 20% of the purchase price which were payable under the contract in the event of the buyer's default (a liability of €7.6 million that Mr Healey succeeded in reducing in negotiations with Benetti to €2.25 million).

Mr Healey complained that Shoosmiths had failed to advise him of the extent of his company's liability for liquidated damages in the event of a payment default and, consequently, of his own liability under the personal guarantee. He contended that had he understood that he would be liable for liquidated damages of 20% of the purchase price in the event of a payment default, he would not have entered into the transaction and would not have suffered losses in the sum of his liability to Benetti and legal costs.

Finding that Mr Healey "*had a greater understanding of the legal framework than 'the average layman' or even the 'average businessman'*", the Judge accepted Shoosmiths' case that Mr Healey was a sophisticated client who understood the nature of the liabilities he had entered into. She held that Mr Healey had in fact read the contract and emailed comments in which Shoosmiths drew attention to the 20% liquidated damages provision and would have understood these: further explanation by Shoosmiths was not required. Mr Healey was a client who accepted that he was familiar with the concept of a personal guarantee and did not need its effect explained to him. Rejecting Mr Healey's 'no transaction' case, the Judge found that Mr Healey had entered into the contract on the understanding that he was buying the vessel at a good price: he expected to be able to sell it at a profit; he was not anticipating a payment default; and, if given the additional advice he contended that he should have received, this would not have affected his decision to proceed with the transaction.



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The case therefore provides yet another example of the courts' reluctance to uphold claims against solicitors by 'sophisticated' clients, applying the principles as to scope of duty set out in cases such as Pickersgill v Riley [2004] 1 Lloyds Rep 795 and Football League Ltd v Edge Ellison (a firm) [2007] 2 PNLR 38.

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