

Effective notices under contracts

Hoe International Limited v Anderson and Aykroyd [2017] CSIH 9.

The facts of this case relate to the share purchase of a distillery company. However, the opinion of the Court may be instructive in relation to contracts arising in the property sphere as it relates generally to validity of notices served under provisions contained within the contract itself.

Hoe International entered into a share purchase agreement with the defenders which, as is normal, contained various warranty provisions. At the time of the sale, the seller was in dispute with a third party which was therefore covered by one of the warranties in the contract. Following sale, Hoe International was forced to settle a litigation with the third party which resulted in a loss of over £1m. They then sought to send notice of their claim under the relevant warranty to the seller.

There were two main provisions regarding notices which required to be complied with. The first of these required notification to be made within 18 months of the completion date and as soon as the purchasers were reasonably aware of a relevant claim. The second of these required notification to be made to a specific person then employed by the seller's agents, by personal delivery, first class post or airmail. Notification was duly made a few months after settlement, but it was not addressed to the specific individual named within the share purchase agreement and was sent via DX. The sellers therefore contended that the notification had not been validly made because the notice was not addressed to the correct person and had not been sent by one of the methods prescribed in the contract. Since more than 18 months had passed from the completion date, the purchasers were barred from claiming under the warranty they said. This contention was upheld at first instance before a single judge in the Outer House.

On appeal, however, the Inner House overturned that decision and held that the notice had indeed been validly served. In general terms, where a contract sets out a specific mechanism for notification, this must be strictly followed in order for that notification to be valid. This rule had its high point in the House of Lords case of *Mannai Investments v Eagle Star Insurance* [1997] AC 749 decided twenty years ago. However, the Court noted that recent case law discloses a reluctance to adopt an overly formal attitude, provided that the notice is clear and is actually received by a responsible person with authority to act for the recipient.

The Court thereby adopted a purposive and contextual approach to interpretation of the contract employing a significant degree of commercial common sense. In

summary it stated ‘if there is no prejudice [to the recipient of the notice], insisting on strict compliance for its own sake serves no useful purpose.’

For parties seeking to send notices under a contract, this perhaps provides a welcome degree of flexibility. However, knowing how far that flexibility goes and how far one may deviate from the strict terms of the contractual provisions is perhaps hard to gauge. Casual deviation from clearly stipulated contractual notice provisions is therefore still not worth the risk. For recipients, a danger lies in seeking to ignore notices where they are not in strict conformity with the contract, lest they prove to be valid after all, following an expensive court process. Ultimately, applying the general principles of contractual interpretation which I have discussed in earlier articles may be of assistance in answering the question. One must always bear in mind the intention behind the clause in question and its place within the contract as a whole. Better still, follows the terms rigidly and leave no room for doubt.

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