

Drax #2 – Court of appeal gives Drax the power to pursue claim



One year on from the High Court decision, the Court of Appeal has come to the rescue of Drax, overturning the previous ruling that its notice of claim did not comply with the requirements of the SPA. Departing from the earlier decision the Court of Appeal agreed the notice did not specify the sums claimed, but was prepared to take a more commercial approach when interpreting the requirements of the SPA. So, where does this case leave us and how should the notice requirements of a SPA be interpreted?

Drax – A recap

The claimant, Drax Smart Generation Holdco Limited (Drax) claims that the defendant, Scottish Power Retail Holdings Limited (the seller) breached warranties contained in a share purchase agreement (SPA). The seller denies liability and avers the notice of claim given by the Drax did not comply with the requirements of the SPA, which stated:

“... the seller shall not be liable for a claim unless the buyer has notified the seller of the claim, stating in reasonable detail the nature of the claim and the amount claimed (detailing the buyer’s calculation of the loss thereby alleged to have been suffered)...”

Drax’s notice of claim asserted a breach of warranty, but claimed the loss suffered by the target company, not the reduction in value of the shares (which it now claims). The High Court held that Drax did not comply with the



notice requirements, and was prohibited from bringing a claim under the terms of the SPA, because the loss claimed was not included in the notice.

Drax #2 – what did the Court of Appeal say?

The Court of Appeal disagreed with the judge's decision at first instance, advocating a more purposive approach to the interpretation of notice of claim clauses. The points raised in this judgment are as follows:

- Commercial parties are free to impose whatever requirements they wish, but where broad and general terms are used, such as 'the nature of the claim' and 'reasonable detail', these details should be interpreted in light of the commercial purpose.
- In this respect the court cited *Dodika Ltd v United Luck Group Holdings Ltd* [2021] EWCA Civ 638 where the judge held that the purpose of a notice of claim clause was to enable the recipient to make enquiries, with a view to gathering and preserving evidence.
- Notice of claim clauses are essentially exclusion clauses and as such should be construed narrowly and a court should not interpret a notice of claim clause as imposing requirements which serve no real commercial purpose unless compelled to do so by the language used.
- The court held that nothing in the SPA required Drax to spell out that the damages claimed would be based on the difference in value of the shares and to impose such a requirement did not serve any commercial purpose, merely introducing a trap to defeat what may otherwise be a valid claim.

Where does this leave us?

On the face of it, the Court of Appeal in Drax provides some helpful guidance on how the notice provisions in SPA's can be interpreted; adopting a business common sense approach. However, it is not easily reconcilable with some earlier decisions. In particular, the earlier Court of Appeal decision in *Decision Inc Holdings Proprietary Ltd v Garbett* [2023] EWCA Civ 1284 (Garbett) where the court held a similar provision required a party to quantify the losses claimed for each of the breaches that were alleged, rather than a global amount that was set out in the notice of claim. The approach taken in Garbett is consistent with the recent trend in commercial cases to uphold the strict wording of the contractual terms and only time will tell whether courts will continue to follow Drax and adopt a more purposive / commercial common sense approach, or if it will be appealed / distinguished on its facts.

So how should notice of claim clauses be interpreted? Should the strict language be used, or can a more commercial be taken? Drax indicates the courts are prepared to take a more commercial approach, however, it is likely that there will be further developments in this area of law and until further guidance is provided (e.g. from the Supreme Court) a prudent approach would be to adopt a cautious approach, consistent with Garbett.

How we can help

If you would like advice in negotiating, bringing or responding to a breach of warranty claim then please do not hesitate to contact our corporate or [commercial dispute resolution](#) teams who are happy to help.



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