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Fraud, Disclosure & the SPA – Misrepresentation Claim to Proceed The Commercial Court’s decision in Veranova Bidco LP v Johnson Matthey PLC & Ors [2025] EWHC 707 (Comm)

[Veranova Bidco LP v Johnson Matthey PLC & Ors \[2025\] EWHC 707 \(Comm\)](#)

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Key Words:

Misrepresentation, Deceit, Fraudulent Misrepresentation, Disclosure Letter, Draft Disclosure Letter, Representations, Warranties, Share Purchase Agreement (SPA), Summary Judgment, Strike Out, Alvogen, Price Review, Non-disclosure, Real Prospect of Success, Trial, No Reliance Clause, Exclusion of Representations, Fraud

Summary

This case concerns the Defendants’ (Johnson Matthey PLC and affiliates) application to strike out or obtain summary judgment on part of the Claimant’s (Veranova Bidco LP) misrepresentation claim [1]. The dispute centres on non-disclosure of a price review triggered by key customer Alvogen before Veranova’s acquisition of the Defendants’ Health Business [3]. At issue is whether alleged representations in a draft Disclosure Letter circulated before signing the SPA amounted to deceit [12–14]. Deputy High Court Judge Sean O’Sullivan KC dismissed the Defendants’ application, finding the misrepresentation claim has real prospects of success and should go to trial [1, 72, 92, 93].

Key Themes:

1. **Representations vs. warranties:** The judgment explores whether warranties or disclosures in contractual contexts can also constitute actionable representations [23–32].
2. **Disclosure Letters' role:** It considers whether a Disclosure Letter, usually qualifying warranties, can also contain factual representations on which a buyer may rely [12–21, 45–46, 53–59, 73–74].
3. **Misrepresentation in contractual documents:** The court reviews case law on whether statements in draft or final documents (including Disclosure Letters) can found misrepresentation claims [25–47, 49–52, 59, 74–75].
4. **Fraudulent misrepresentation:** The Claimant alleges knowingly false statements were made to induce reliance, potentially invalidating exclusion clauses [9, 21, 22(72i–iii), 52, 66–68, 71, 79, 81–82].

5. **Summary judgment and strike out:** *The court restates that such applications should not involve mini-trials and should only succeed where there is no real prospect of success [22-28].*

Background

On 16 December 2021, the parties signed a SPA and Disclosure Letter for the sale of the Defendants' Health Business [3]; completion followed on 31 May 2022 [2]. The Claimant alleges it was not informed pre-sale that Alvogen had activated a price review for Buprenorphine HCl (BHCL) [3], allowing it to source from alternative suppliers if the Health Business couldn't match a lower offer [4]. A third-party offer was received and verified on 10 December 2021, days before signing [5]. The Defendants later matched the price [7], but the Claimant says it was never told about the trigger or competing offer, leading to a misleading valuation of the business [6-8]. Claims followed for breach of warranty and deceit [10], though earlier oral misrepresentation allegations were dropped [10]. The remaining deceit claim focuses on representations in a draft Disclosure Letter sent on 15 December 2021 [11].

Legal Issues and Analysis

The key question was whether the draft Disclosure Letter amounted to actionable factual representations, particularly about the Alvogen price negotiations and competing offer [12, 13, 20, 21]. The Defendants argued no such representations arose under the SPA and Disclosure Letter [25, 30, 31, 61-63], citing authorities such as Sycamore Bidco, Parallel Media, Idemitsu, and Arani to argue that disclosures qualify warranties but don't constitute representations without explicit language [26-32, 36-38]. They stressed that treating disclosures as representations would undermine the contractual scheme [62-66] and relied on SPA clauses like "no reliance" and express disclaimers of representation [61-62].

The Claimant responded that no legal rule bars a draft Disclosure Letter from containing representations [52]. Disclosures are statements of fact and can be relied upon [53, 69]. They cited Eurovideo and MDW Holdings to show that draft documents and due diligence materials can amount to representations depending on context [49-52, 70]. They argued that stating disclosures are not representations paradoxically acknowledges they might be [71].

The Judge agreed with the Claimant [72]. He found no rule preventing disclosure letters from serving both to qualify warranties and convey factual representations [56, 73]. He distinguished Idemitsu—which involved warranties—from the present case, which involves disclosures [73, 74]. A disclosure may plausibly purport to impart information [80]. Allegations of fraud are especially significant, as liability for fraud cannot be excluded [79, 81, 82]. Whether the Disclosure Letter contained misrepresentations is a fact-based issue requiring full trial [77, 78, 82, 83]. The Judge also noted the overlap with the breach of warranty claim and the inefficiency of deciding a single issue summarily [84-86].

Conclusion

Deputy Judge Sean O'Sullivan KC dismissed the Defendants' application for summary judgment and strike out [71, 72, 92, 93], holding the deceit claim has real prospects of success and must proceed to trial [71, 72, 92, 93].

Key Takeaway:

Disclosure Letters, though intended to qualify warranties in SPAs, may also contain actionable representations, particularly where fraud is alleged [56-59, 62-63, 80-81]. There's no blanket rule against such representations being relied on [73, 75, 76]. The factual context and negotiation

background are key in determining whether misrepresentation occurred [59, 60–61ii, 77, 78, 82, 83]. This highlights that statements made in M&A documents may carry liability beyond breach of warranty, especially in fraud cases [62, 81, 82].

Parting Thoughts

This case reinforces that in M&A negotiations, factual statements—even within documents intended to qualify warranties—may amount to representations. Legal form alone won't shield parties from liability for misrepresentation where fraud is alleged. The courts will examine the substance of the communications. Thus, transparency and accuracy are critical, as attempts to exclude liability for fraud are unlikely to succeed. Ultimately, the distinction between warranties and representations matters but truthfulness in all statements is paramount.

**#Misrepresentation #FraudulentMisrepresentation #DisclosureLetter #SPALaw
#SummaryJudgment #StrikeOutApplication #BusinessSale #MergersAndAcquisitions
#ContractLaw #CommercialLitigation #VeranovaBidcoVJohnsonMatthey #JohnsonMatthey
#AlvogenPriceReview #NoRelianceClause #ExclusionClause #RepresentationVsWarranty
#PreContractualStatements #TrialAhead #UKLaw #EWHC #MaterialDisclosure**

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CIArb Adjudication Panel Member since 2006

CIArb Arbitration Panel Member since 2006

CIC Adjudication Panel Member since 2010

Law Society Panel Arbitrator

RIBA Adjudication Panel Member since 2018

RICS Adjudication Panel Member since 2006

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