

Set fraud detection goggles to “High”! at your own peril - Establishing fraud in breach of warranty claims

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Introduction

In *Veranova Bidco LP v Johnson Matthey Plc* [2026] EWHC 1021, the Court considered a claim for fraud in the context of corporate acquisition under a sale and purchase agreement (“SPA”). The buyers alleged that the sellers had dishonestly failed to disclose an important development affecting the business they were selling, and had proceeded to give warranties in the SPA which they knew were untrue. The key question before the Court was how the buyers had to go about proving fraud on the part of the sellers: could they impute a dishonest state of mind into the corporate seller by relying on what individual officers of that company knew, i.e. effectively combining the state of mind or knowledge of more than one individual to satisfy the test for fraud against the company, on an amalgamated basis?

Breach of warranty claims and disclosure mechanisms in SPAs

In high-value acquisitions, SPAs usually contain extensive warranties given by the sellers as to the condition of the business. These warranties will be stated as true at the time of the SPA and are usually deemed to be repeated on completion of the transaction. Generally, the sellers may then make disclosures against the warranties, including after the SPA has been signed, by providing a formal disclosure letter. Any matters properly disclosed qualify the warranties, and relieve the sellers of any liability to the buyers.

In *Triumph Controls - UK Ltd v Primus International Holding Company* [2019] EWHC 565, O’Farrell J emphasised that the commercial purpose of disclosure clauses was to exonerate the sellers by “... *fairly disclosing the matters giving rise to the breach* ...”. The precise meaning and effect of a disclosure provision in a given SPA falls to be construed by reference to the ordinary principles of contractual interpretation, namely the meaning of the words used in the contract in light of the background facts known to the parties. However, the purpose of such a disclosure regime has to be borne in mind:

“... The adequacy of disclosure must be considered by careful analysis of the contents of the disclosure letter, including any references in the disclosure letter to other sources of information, against the contractual requirements.

A disclosure letter which purports to disclose specific matters merely by referring to other documents as a source of information will generally not be adequate to fairly disclose with sufficient detail the nature and scope of those matters. For that reason, disclosure by omission will rarely be adequate. ...”

That being said, it is always open to the parties to agree in their SPA that disclosure can be made by reference to other documents or sources of information, including the contents of a ‘data room’ which may well contain thousands of documents about the target company. In line with the general

principle of ‘buyer beware’ (*caveat emptor*), the sellers might attempt to keep any disclosures that fall to be made against their warranties in general terms, leaving the buyer to look for the detail in the data room. Whether such an approach will work to avoid liability for the sellers will depend on the circumstances of the case, and on how the SPA has been specifically drafted.

The SPA may also contain provisions that are relevant to the issue that arose in *Veranova* (the state of mind or knowledge of a corporate seller) through clauses that identify corporate officers whose knowledge and state of mind will be deemed to be that of the company. SPAs frequently set a cap on the liability of the sellers for breach of warranty which applies unless the buyer can establish fraud or willful misconduct. Limitations of liability are of great importance for the sellers, because their liability to the buyers for breach of warranty can be greater than one might initially anticipate.

Damages for breach of warranty – ‘diminution in value’

The measure of damages for breach of warranty under an SPA is the ‘diminution in value’. This is the difference between the value of the business as warranted and the actual value: the test is described as ‘warranty true’ vs ‘warranty false’. The value on the ‘warranty true’ basis is the market value of the business as warranted. Sometimes, because there is only one company like the one being sold, the market value will be the SPA purchase price (see *Equitix EEEF Biomass 2 Ltd v Fox* [2021] EWHC 2531). The ‘warranty false’ valuation generally requires an objective approach. In *Millbrook Healthcare Bidco Ltd v Croll* [2023] EWHC 290, the Court held that:

“... The Warranty False analysis requires me to consider what the hypothetical reasonable willing buyer and hypothetical reasonable willing seller would have agreed – or how a reasonable objective valuer would have valued the business – knowing the true position”

The aim of the valuation exercise (which almost always requires expert evidence) is to arrive at (*The Hut Group Ltd v Nobahar-Cookson* [2014] EWHC 3842):

“... the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in arm’s length transaction, after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion”.

The general rule is that damages are assessed at the date of the breach. This will be the date of the SPA or completion, when the warranties were first given or repeated. It is not unusual, however, for the full effect of whatever undisclosed problem affecting the business only to become apparent later, when the business has been trading under the ownership of the buyers. For instance, the sellers may have wrongly warranted that there were no defects in a product, but the full extent of customer claims, or the cost of remedying the defects (or a product recall) may transpire long after completion.

Hindsight is not 20/20 – the sellers’ risk of substantial damages

Because damages are assessed as at the date of the SPA or on completion, it is not generally permissible to do so with the benefit of hindsight. In our example, if the defect in the product seems serious at first, but it later transpires that there is an easy fix, or there turn out to be fewer customer claims than feared, then the buyers’ damages are not necessarily reduced because, by the time of the trial, it has become clear that the losses were mitigated. The *prima facie* rule, from which a departure must be justified, is that damages are assessed at the date of the breach without the benefit of hindsight. Hindsight cannot be used to alter the parties’ contractual allocation of risk. It is

inappropriate to deprive a buyer of the benefit of a contingency from which under the contract he is intended or entitled to benefit. A sale is a 'once and for all' transaction. The buyer of the business assumes the risks, or the rewards, of the business' subsequent performance or failure to perform.

Ageas (UK) Ltd v Kwik-Fit (GB) Ltd [2014] EWHC 2178 illustrates this. The buyers acquired an insurance business from the sellers. To value the business the buyers used a discounted cash flow (“DCF”) model. The buyers' DCF model relied on the sellers' accounts for the target company. The sellers warranted that the accounts were prepared in accordance with GAAP and gave a true and fair view of the assets, liabilities and financial position of the target company. However, the accounts misallocated a provision for bad debts.

The target company sold insurance policies on behalf of underwriters to individual customers. The insurance policies attracted an annual premium. To make the policies more attractive to the customers, the target company paid the annual premium to the underwriters, and then recovered it from the customers through instalments over the course of the year. Not all customers kept up their instalments. The target company's accounts wrongly allocated the risk of customers defaulting on their monthly payments to a bank who had provided a financing arrangement to assist the target with its cashflow.

The buyers claimed damages based on re-running their DCF model from the time of the breach with new assumptions as to the target's likely exposure to bad debts. The sellers argued that since bad debts had subsequently turned out to be much less than anticipated, damages should be based on the actual level of bad debts, which was known at trial. The sellers argued that otherwise the buyers would receive a windfall.

Popplewell J found for the buyers: damages stood to be assessed at the time of the breach. The risk of what level of bad debts the company would in fact suffer was transferred to the buyer on completion. The buyer was entitled to the benefit if the company did well in managing this risk, and be subject to all the loss if it did badly. The compensatory principle was not offended and there was no windfall:

“50. The SPA was for a fixed price based on what Ageas was prepared to pay, and KFGB to accept, for a business which was thereafter Ageas' to do what it wanted with. There was no provision, as there sometimes is in such agreements, for any post-acquisition adjustment of the price based on subsequent trading performance. Each party would have to determine an acceptable price based on forecasts reached prior to completion in what was a fast moving and competitive market facing new challenges in the grip of a major recession whose effect on customers remained uncertain. Upon completion, the contract was fully executed. The outcome of all the contingencies inherent in the forecasts were risks conferred on Ageas. If the business did better than the parties projected when calculating a price, that was for Ageas' benefit. If it did worse, that was its loss. The bargain embodied in the SPA was the allocation of risk to Ageas of any benefit or loss arising either as a result of the way Ageas chose to run the business or as a result of external influences on the success of the business.”

The buyers' valuation expert (whose evidence was accepted) calculated the diminution in value based on “... an assumption about future incidence ...” of the bad debts which “... the parties would reasonably have made at the time of acquisition if they had known ...” that the risk had been wrongly allocated in the accounts. An assumption like this will almost certainly be conservative because the law assumes that the 'hypothetical buyer' acts prudently.

In *MDW Holdings Ltd v Norvill* [2022] EWCA Civ 883, the Court of Appeal confirmed that events subsequent to completion of a share sale are not generally relevant to the assessment of damages:

“... Supposing the position to be that the true value of some shares is depressed by a contingency, someone buying them at a higher figure will have paid more than they were worth even if the contingency never happens. Events subsequent to the purchase cannot affect the value at the time of the transaction. The price of a share could typically be said to be a product of a number of contingencies. If a particular risk does, or does not, occur, the price may rise or fall, but that will not retrospectively change the value of the share at an earlier date.”

MDW Holdings concerned the acquisition by the buyers of a business which had failed to comply with environmental regulations. These regulatory failures had not been disclosed to the buyers in breach of warranty. The Court of Appeal held that potential or contingent reputational damage to the business due to misconduct prior to completion already depressed the goodwill on completion, at the time of the assessment of damages, even though such reputational damage had not happened at completion, and it turned out, then never eventuated. A reasonable purchaser would have taken the view that a non-compliant business was worth less, even though the compliance issues might be managed and mitigated after completion. This was not a case of the buyer getting a windfall – in the sense of recovering damages for loss that was then subsequently avoided.

The Court of Appeal held it would go against the contractual allocation of risk to say that steps taken by the buyer post-breach, post-assessment created any such windfall. Similar reasoning has been applied where a claim against the target company had not been disclosed in breach of warranty. At the time of the breach, it was unknown whether that claim would succeed. The Court held that when assessing damages for breach of warranty, it was necessary to take a view on whether the claim would succeed and for how much: see *Arani v Cordic Group Limited* [2023] EWHC 95.

The exposure may be multiplied

Companies are often valued, and the purchase price in the SPA is set, based on a multiple of earnings. The ‘warranty false’ valuation may well proceed on that same basis because that is what the parties agreed, and may also be the foundation of the ‘warranty true’ valuation (with the actual purchase price under the SPA serving as the market value). Where damages are awarded on the basis of predicting the future impact on earnings of whatever defect, claim or other issue has not been disclosed, this may lead to a larger than expected award of damages.

Suppose, for example, that in breach of warranty, a product is defective and this has led to the first customer claims at the time of the SPA, when damages are assessed. Customers have so far claimed £1 million. An estimate of the total of all (future) claims is £5 million. The purchase price is set at a multiple of 5x of the company’s earnings. If valuation experts concluded that the defect required a provision in the accounts to reflect the company’s future liability, thus reducing relevant earnings, the sellers (in this example) might be liable for £25 million in damages for diminution in value. It would not matter if the buyers subsequently managed to settle customers claims for much less than that.

Limitation or liability clauses in SPAs mitigate that kind of risk on the part of the sellers. However, it is impossible as a matter of English law for a party to exclude liability for its own fraud, and so sellers will face the full exposure to damages for dishonest breaches of warranties.

The standard of proof for fraud – the ‘balance of probabilities’

Under English law, the burden of proof in civil litigation is the ‘balance of probabilities’. The question is: on all the evidence which the parties have shown the Court (recall the adversarial nature of English proceedings), is the event in question more likely than not to have occurred? There is no special or higher standard of proof when it comes to establishing fraud. However, English law does accept that “... *in practice more convincing evidence will often be required to establish fraud*” as opposed to other matters or allegation (*Kazakhstan Kagazy Plc v. Zhunus* [2017] EWHC 3374. This is because, generally speaking, people are more likely to have acted carelessly rather than having been fraudulent, and so the party alleging fraud must “... *overcome the inherent improbability that people act dishonestly ...*” (*Foodco UK LLP v Henry Boot Developments Ltd* [2010] EWHC 358).

In the first instance, allegations of dishonesty must be properly pleaded so that those accused of fraud have a fair and proper chance to defend themselves. The English Courts will not allow an accusation of fraud to be sprung on a witness for the first time in cross-examination. Instead, all the supporting facts on which the accusing party relies must be set out in a statement of case, and those facts must then be established at trial on the balance of probabilities. Those pleaded facts must also be sufficient to support the accusation. In *Three Rivers District Council v Bank of England (No 3)*, [2003] 2 AC 1, the House of Lords held:

“... is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved.”

Does motive matter?

What about motive? Strictly speaking, there is no requirement under English law to prove motive in order to establish fraud. In a breach of warranty claim, fraud or willful misconduct require that the defendant either (i) knew that the warranties breached were false; or (ii) gave the warranties without belief in their truth; or (iii) was reckless as to whether they were true or false (*Arani v Cordic Group Ltd*, [2023] EWHC 95). This is very similar to the test that applies in the tort of deceit or fraudulent misrepresentation. In practice, this means that the sellers must know of the terms of the warranty, and of the facts that make the warranty untrue. It is not necessary to prove that any individual for sellers knew of the precise terms of the warranty in question (which might be complex). Instead, as Dias J noted in *Veranova*:

“... *the individual must know the nature and terms of the warranty in sufficient detail to be able reasonably to appreciate that the knowledge which s/he has is relevant to the warranty. Alternatively, s/he must be reckless as to the terms of the warranty in the sense of not caring what warranties are given.*”

The Courts have given some further guidance as to the mental element required for fraud. It is necessary to prove that the defendant (i) “*knew he was making the statement which he was found to have made*”, so he was actually aware of what he was saying and did not have some other understanding of the meaning that his statement would convey, and (ii) “*had conscious knowledge of the facts alleged to render the statement false, in other words, knew that he was not telling the truth.*” (*Raffaissen Zentralbank Österreich AG v The Royal Bank of Scotland* [2010] EWHC 1392).

Some older case law makes reference to the defendant having been guilty of “*wickedness and dishonesty*”, which might sound more serious or require the defendant’s conduct to fall below some

moral standard that most people would describe as ‘wicked’. In *Veranova*, Dias J expressed the view that there was no need to show that the defendant was dishonest by the standards of ordinary reasonable people equipped with the same knowledge. Instead, the Judge noted that it can safely be assumed that someone who understands what they are saying, and actually knows that what they are saying is not true (or are being reckless as to whether it is true) is dishonest in the sense in which reasonable people understand that concept.

However, English law recognises that motive, while not part of the legal test of dishonesty, is a factor in assessing whether someone has been dishonest. In *Mortgage Agency Services Number One Ltd v Cripps Harries LLP* [2016] EWHC 2483, the Court held:

“Of particular relevance to a case of fraud such as the present is the question of motive. By and large dishonest people are dishonest for a reason. They tend not to be dishonest wilfully or just for fun. Establishing a motive for deceit, or conspiracy, is not a legal requirement, but if a motive cannot be detected or plausibly suggested then wrongful intention (to tell a deliberate lie in order to deceive) is less likely. The less likely the motive, the less likely the intention to deceive, or to conspire unlawfully.”

This requires not only asking ‘Why could that person have been dishonest?’, but also recognising that dishonesty is generally not embarked on lightly since the consequences can be severe. In *Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Gida Sanayi Ve Pazarlama AS* [2009] EWHC 1276, Briggs J noted that:

“... motivation in relation to dishonest conduct necessarily requires an assessment not merely of the incentives, but also of the disincentives to embarking upon the course of conduct alleged. The supposed incentives need to be balanced against the disincentives, which in the case of participating in a fraud include not merely a disinclination to do that which is immoral, but also the risk of incurring long-term damage to the commercial reputation of a business enterprise, and the personal risks to the careers and even liberty of the individuals concerned, if found out and brought to justice.”

Judges are conscious of the fact that witnesses who give evidence about past events (sometimes events in the distant past) will invariably have to reconstruct their memory, and they may also try to defend themselves when their behaviour is scrutinised in open court. Per Dias J, it is “... *natural human instinct for a witness, when their past behaviour is subjected to critical scrutiny, to reconstruct events in such a way as to put themselves in the most favourable light possible, especially when they have a stake in the outcome of the proceedings through a concern for their own reputation.*”. The most reliable evidence will, therefore, be found in the documentary record.

What happened in *Veranova v Johnson Matthey*

With those principles in mind, the facts in *Veranova Bidco LP v Johnson Matthey Plc* were as follows. By an SPA signed on 16 December 2021, Veranova (the “**Buyers**”) acquired the health business of Johnson Matthey plc from that parent company (the “**Sellers**”). The Buyers are a subsidiary of Altaris Capital who exclusively invests in the healthcare industry. The transaction under the SPA completed on 31 May 2022.

The business that the Buyers acquired produces active pharmaceutical ingredients for both branded and generic drugs. According to a due diligence report prepared by KPMG for the acquisition, the business had generated a total revenue of £257.3 million in 2021. £157.3 million came from the ‘generics’ division, which accounted for 61.1% of total revenue. A major product of

the ‘generics’ division was buprenorphine hydrochloride (“**BHCL**”). BHCL is used in medications that help with acute pain management and treat opioid dependency.

The largest customer of BHCL was a company called Alvogen. The supply contract with Alvogen required that company to buy at least 75% of its BHCL requirements from the Sellers’ business. The Alvogen supply agreement had a so-called ‘price match clause’ which entitled Alvogen to renegotiate the price, but no more than once year, if Alvogen received a genuine offer from a third party manufacturer for the supply of BHCL at a price that was at least 8% below of what the Sellers’ business was then charging. If the Sellers did not match the third party’s offer, Alvogen would be released from its commitment to buy from them.

When the SPA was signed, the Sellers had received a ‘price match’ notice from Alvogen. Olesen Synthesis, a Danish manufacturer, had offered to sell BHCL to Alvogen at US\$8/g, much cheaper than the US\$16/g that Alvogen was paying to the Sellers under the existing supply agreement. The Buyers conceded that during the negotiations for the sale of the business, the Sellers did mention the Olesen offer and disclosed that they were in discussions with Alvogen. The Buyers’ complaint was that the Sellers had failed to inform them of the considerable difference between the existing supply price and the price under the Olesen offer. The Buyers said they had been led to believe by the Sellers (through then-Johnson Matthey executives) that the Olesen offer was somewhere in the region of US\$12 – 13/g. They argued that the Sellers had breached their warranties.

The warranties in issue

The SPA contained limitation of liability provisions which meant that the Buyers’ claim for breach of warranty could only succeed if the Buyers could show fraud or willful misconduct by the Sellers – so a dishonest or deliberate failure to disclose the true terms of the Olesen offer and the state of the negotiations with Alvogen. The Buyers identified four executives who they said had been guilty of fraud or willful misconduct: the group CEO, CFO, and two members of Johnson Matthey’s ‘corporate development’ team (both corporate finance professionals with internal responsibility for the transaction with the Buyers – codenamed ‘Project Hermes’). The Sellers maintained that none of their officers had been dishonest, alternatively that there had been adequate disclosures made against the warranties.

The SPA contained two relevant “Business Warranties”, the first being what the Judge called the “*Usual Course Warranty*”:

“Business Warranty 1.4.2: Since the applicable Accounts Date ... the Businesses have been carried on in the ordinary and usual course consistent with past practice and so as to maintain the Businesses as going concerns, without any ... material alteration to the nature, scope or manner of the Businesses.”

The second was the “Key Contracts” warranty:

“Business Warranty 8.1.2: None of the Companies ... is currently renegotiating any material term of any Key Contract, which upon conclusion, would have an adverse or detrimental effect on the Businesses.”

The Buyers alleged that the Sellers were in breach of both warranties because the impact of the Olesen offer, which had to be matched, was such that the health business would not be able to continue “... *in the usual course consistent with past practice* ...”, and the business was in fact

renegotiating the Alvogen supply agreement as “*Key Contract*” in a manner that would have an “*adverse or detrimental effect*”.

The Sellers provided a disclosure letter, which ran to some 303 pages. The Sellers made an identical disclosure against both the “*Usual Course*” and the “*Key Contracts*”. It read:

“Since the applicable Accounts Date, increased competition in the market for the Businesses' buprenorphine products has adversely impacted, and continues to adversely impact, the Businesses' market share in that market and the prices that the Businesses are able to charge their customers for these products. Pricing discussions in relation to this issue are ongoing with Alvogen. The projected financial impact of this issue cannot be quantified as at the date of this letter but the impact of this issue on the financial performance of the Businesses during the relevant periods is reflected in the Q1 Accounts and the September 2021 Accounts.”

The Judge considered that this rather general wording was sufficient to avoid the Sellers from being in breach of the “*Usual Course*” warranty, because that warranty was concerned with how the business had been operating over the course of a particular period, from the “*Accounts Date*” in September 2021 to the time of the SPA, 16 December 2021. It was not a forward looking warranty, and it could not be said that the state or likely outcome of ongoing discussions with Alvogen came within it.

However, Dias J found that the Sellers had breached the second “*Key Contracts*” warranty. As the general disclosure quoted above confirmed, the Sellers were (admittedly) renegotiating a key term of the Key Contract with Alvogen (“*Pricing discussions in relation to this issue are ongoing ...*”). The Judge went to assess whether these renegotiations would upon their conclusion have a material adverse impact. Although the Alvogen's price matching notice had been received on 18 October 2021, the Sellers had for some time been doubtful or even incredulous that the such a low offer had been received. There was doubt whether the Olesen offer was genuine as was required to trigger the price matching clause. A few days before the SPA was signed, executives of the Sellers had visited Alvogen to discuss the Olesen offer, and had thereafter concluded that the offer was indeed genuine. It followed that the Sellers believed the offer would have to be matched, and that was sufficient to satisfy the requirement for a material detrimental impact.

Insufficient disclosure to avoid liability for breach of warranty

The Sellers argued that they had made an effective disclosure and thus avoided any liability. They pointed to the disclosure letter and also to a pre-SPA telephone call with the Buyers when some additional information had been provided. During this disclosure call, the Sellers had told the Buyers that they expected to the discussions with Alvogen to conclude with a new price in the region of US\$ 12 – 13g. That didn't help the Sellers in Court. The Judge found that what should fairly have been disclosed was (i) the price of the Olesen offer; (ii) that it was bona fide; and (iii) the fact that the Sellers' continuing business depended on matching it, which they intended to do. The Sellers had failed to disclose that: the quite general paragraph in the disclosure letter was not sufficient. Dias J further held that on the wording of the disclosure provisions in this SPA, the test was whether the disclosure had been in sufficient detail to allow a reasonable buyer to make an informed assessment of the nature and scope of the matter concerned. Because the SPA referred to a ‘reasonable buyer’, this required an objective assessment and it was not open to the Sellers to rely on extraneous matters, not expressly referred to in the disclosure letter, as counting towards or improving the disclosure.

Can fraud be established by amalgamation?

Dias J confirmed that fraud in the context of a claim for breach of warranty under the SPA required conscious dishonesty. The Sellers had to know the facts that made the warranty untrue, and also the terms of the warranty themselves. It was accepted that the state of mind of each of the Sellers' executive could be imputed into the company. However, was it open to the Buyers to say that Individual 1 had clear knowledge of the warranty and the representations it contained, and Individual 2 was fully aware of the facts that made them false, and so create an amalgamated state of mind that could be imputed into the company in order to satisfy the test for fraud?

The Sellers objected, noting that one should not be able to add two innocent states of mind together to create a dishonest state of mind. The Buyers, however, were able to point to some passages in the authorities which suggested that this could be done. In *Armstrong v Strain* [1951] 1 TLR 856, the Court had noted:

“Difficulties may arise in a claim against a company which can only speak or act through its agents or officers, but if an officer of a company writes and represents that which is untrue when many other officers of the company know the true facts, it may well be found that he made the representation without belief in its truth, or that he made it recklessly, careless whether it was true or false. That must depend on the evidence.”

That argument, ingenious as it was, did not find favour with Dias J. The correct position was that English law did not recognise any concept of “*composite fraud*” – for instance, where an agent makes a statement which he or she honestly believes to be true, but which the principal knows is false, then (without more) there is no fraud. The key point in the above passage from *Armstrong v Strain* is that, where one corporate officer makes a statement which many of their colleagues know to be false, it will still “*depend on the evidence*” whether the company was in fact fraudulent. This is because dishonesty can be established by so-called ‘blind eye knowledge’, where a corporate officer deliberately fails to prevent a false statement from being made, or fails to correct a false statement that has been made, or decides not to ask questions that would have led to the discovery of matters that rendered the statement false. It was the state of mind of that other culpable individual (as opposed to the innocent maker of the statement), imputed into the company, that could still satisfy the test for fraud.

The correct approach to be adopted in the case of corporate defendants being accused of fraud was described by the Court in *MAN Nutzfahrzeuge AG v Freightliner Ltd* [2005] EWHC 2347:

“In a case where it is said that a company has made a fraudulent misrepresentation the first step must be to see whether a false statement has been made by someone who is authorised to speak on the company's behalf. Once that has been established the starting point in deciding whether the company acted dishonestly must be to enquire into the state of mind of the person who made the statement. However, if that person was unaware that the statement was false, it may be necessary to enquire into the state of mind of other persons who directed him to make it or who allowed it to be made.”

The fact that it might be necessary to look beyond the person who made the statement does not, however, erode the need to identify a single individual whose state of mind met all the requirements for fraud.

General principles vs the agreement of the parties

The Buyers also relied on the decision in *Synthos Spolka Akcyjna v Ineos Industries Holdings Limited* [2026] EWHC 83 in which, they said, the Judge had allowed precisely the amalgamation of a state of mind of a corporate defendant that they were arguing for. In that case, the SPA contained the following material provision (Clause 9.5):

“If any Warranty is qualified by the expression “so far as the Seller is aware” or “to the best of the knowledge, information and belief of the Seller” or words to such effect, such expression shall mean the actual knowledge of the Seller (including, for the avoidance of doubt, the actual knowledge of the Seller’s directors and officers), after making reasonable enquiry of Louise Calviou, Ashley Reed, Juliet Lewis, Andrew Brown and of such other persons within the Business as are relevant to the subject matter of the particular Warranty.”

As a matter of construction, Pelling J had found that this clause fixed the Sellers in that case with deemed actual knowledge of everything that could have been discovered had they made reasonable enquiries of the listed individuals. This was an objective test. Pelling J found that the authorities which stated that there was, as a matter of general principle not composite fraud, did not prevent the parties from agreeing that the corporate Sellers should be treated as having all the knowledge that could have been obtained from the specified sources.

In *Veranova*, Dias J noted that Pelling J’s decision in *Synthos* entirely depended on the existence of a contractual provision, not found in the SPA before her. Another crucial distinction was that the warranty in issue in Pelling J’s case was that, as far as the Sellers were aware, the company was not engaged in any legal proceedings and there were no circumstances likely to give rise to any such proceedings. If the Sellers in fact had knowledge of ongoing proceedings or such circumstances, then the warranty was automatically false, and the Sellers were automatically dishonest.

However, the “*Key Contract*” warranty in *Veranova* was not as straightforward. The Sellers had warranted that the company was not “...*currently renegotiating any material term of any Key Contract, which upon conclusion, would have an adverse or detrimental effect on the Businesses*”. That was a positive statement made by the company, not a warranty as to the company’s awareness. It was therefore necessary to show that an individual whose state of mind could be attributed to the company had sufficient knowledge of this statement / warranty and of the facts that made it false. On the facts, the Judge found that none of the executives who had been accused of fraud had the relevant state of mind, and so the Buyers’ claim failed.

Dias J recognised that the Buyer would be left aggrieved because insufficient details of the Olesen offer had been disclosed. However, they had agreed to the terms of the SPA, and thus given up any right to claim damages for breach of warranty based on a simple breach of contract or negligence. They were to be held to their bargain. Instead, the Buyers had chosen to pursue a “... *a high-stakes claim in fraud, specifically targeting four very senior executives of a major global company.*” Having chosen those “... *improbable targets for a fraud of the nature alleged ...*”, the Buyers had doubled down and made multiple allegations of dishonesty against those individuals, pursuing them with great zeal but ultimately to no avail. The Judge criticised the sweeping accusations as “*implausible, improbable and wholly unsupported by the evidence*”, agreeing with counsel for the Sellers that this was a case where “... *the claimant [had] donned its fraud detection goggles, turned the sensitivity up to High and attributed a dishonest motive to every interesting feature in the landscape.*”

Conclusion

Parties should think carefully before they pursue a claim which can only succeed if allegations of dishonesty are made out. While the burden of proof remains the balance of probabilities, English judges will consider fraud claims carefully, and claimants will face an uphill struggle due to the inherent improbability of any dishonesty. Clear evidence of fraud is needed. A party who has long since concluded that the other side simply must have been fraudulent and is wearing their 'fraud detection goggles' may well be reading much more into correspondence and communications than any impartial decision-maker properly would.

It is worth bearing in mind that a fraud case which is not supported by documentary evidence of dishonesty, and rests on witnesses' recollections, faces even greater hurdles. In *Veranova*, Dias J cited with approval a well-known dictum Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560:

"... the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

Overenthusiastic claimants may therefore find that their witness statements are not worth the paper they are written on.