Neutral Citation Number: [2019] EWCA (Civ) 1376

Case No: A4/2018/2953

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURT
COMMERCIAL COURT
The Hon. Mr Justice Phillips

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31.7.2019

Before:

THE MASTER OF THE ROLLS
(Sir Terence Etherton)
LORD JUSTICE SIMON
and
LORD JUSTICE HICKINBOTTOM

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Between:

(1) Stobart Group Limited **(2) Stobart Rail Limited** **(formerly W.A. Developments Limited)**	**Appellants**
and	
(1) William Stobart **(2) William Andrew Tinkler**	**Respondents**

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Stephen Cogley QC and **Oliver Assersohn** (instructed by **Rosenblatt Ltd**) for the Appellants
James Potts QC (instructed by **Gorvins Solicitors**) for the first Respondent
Michael Fealy QC (instructed by **K & L Gates LLP**) for the second Respondent

Hearing date: 4 July 2019

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Approved Judgment

Lord Justice Simon:

1. The primary issue raised on this appeal is whether a unilateral notice served by the appellants was a compliant notice for the purpose of giving notice of claims under a Share Purchase Agreement dated 7 March 2008 (the 'SPA').

2. The issue arose at the hearing of Part 24 applications by the respondents and a cross-application by the appellants heard before Phillips J ('the Judge') on 16 November 2018. He granted the respondents' applications and dismissed the appellants' cross-application.

Background

3. Mr Stobart and Mr Tinkler (the respondents) agreed to sell and Stobart Group Limited (the first appellant) agreed to purchase, the entire issued share capital in Stobart Rail Limited (the second appellant), then known as W.A. Developments Ltd. I shall refer to the two appellants respectively as SGL and SRL.

4. The SPA, as is usual, had provisions in relation to the tax liabilities of the acquired business, including a covenant covering the circumstances in which the respondents would pay SRL's tax liability incurred prior to the sale but recognised after the sale. The covenant expressly covered tax liabilities in respect of employee remuneration schemes in which Her Majesty's Revenue and Customs ('HMRC') had indicated an interest, see paragraph 3.1.2(c) of schedule 4.

5. The nature and structure of the tax covenants was set out in further provisions of schedule 4 of the SPA, which identified particular terms.

6. A 'Tax Claim' was defined in paragraph 1.1 of the SPA as 'any claim under the Tax Warranties or Tax Covenant'. A 'Claim' in the definition section of schedule 4 was defined (so far as material to this appeal) as a claim, notice or demand made by HMRC or other tax authority from which it appeared that SRL would be subject to tax and in respect of which the vendors (the respondents) would or might be liable under the tax covenants. The distinction is important in the context of the claim: a 'Tax Claim' was a claim by SGL as purchaser against the vendors; a 'Claim' was claim by HMRC or other tax authority against SRL.

7. Paragraph 3 of schedule 4 contained the material tax covenants; and paragraph 6 contained limitations on the vendors' liabilities under the tax warranties and covenants.

8. Materially, paragraph 6.3 provided:

> The Vendors shall not be liable in respect of a Tax Claim unless the Purchaser has given the Vendors written notice of such Tax Claim (stating in reasonable detail the nature of such Tax Claim and, if practicable, the amount claimed) on or before the seventh anniversary of Completion in respect of such Tax Claim unless a Tax Authority is [un]able to assess the Company in respect of the Liability to Taxation or other

> liability giving rise to the relevant Tax Claim because of fraudulent conduct.

9. In broad terms, the vendors were discharged from liability unless the SGL gave a written notice of a Tax Claim before 4 April 2015, the seventh anniversary of completion.

10. Paragraph 7 of Schedule 4 set out a 'claims procedure' in relation to Claims. Paragraph 7.1 was in the following terms:

> Upon the Purchaser or the Company becoming aware of any Claim, the Purchaser shall as soon as reasonably practicable, and in any event within 10 Business Days of the date thereof, give notice of such Claim to the Vendors' Representative stating how the liability arises under paragraph 3 or pursuant to the Tax Warranties and a reasonable estimate of the quantum of the Liability to Taxation or other liability, and upon the Purchaser or the Company becoming aware of any event, fact or circumstances which may give rise to such a Claim, the Purchaser shall give notice thereof and of the possible Claim to the Vendors' Representative provided that the giving of notice under this paragraph 7.1 shall not be a condition precedent to the liability of the Vendors under this schedule.

11. Again, in broad terms, paragraph 7.1 was designed to give the vendors as much notice as possible of a potential 'Claim' by tax authorities against SRL. In contrast to the obligation in paragraph 6.3, compliance was not a condition precedent and there was no time limit for giving a notice. Paragraph 7.2 provided a mechanism by which the purchaser (SGL) was obliged (a) to ensure that SRL provided information and assistance to the vendors in relation to disputing the claim and (b) to delegate the conduct of the defence of the claim to the vendors or their agents or professional advisers at the vendors' request.

The issue between the parties and the Judge's decision

12. SRL incurred a liability to taxation in relation to the conditional share schemes that it had concluded with employees in the sum of approximately £3.8 million; and the appellants issued proceedings claiming this amount under the SPA. Although they did not serve a defence, the respondents contended that the claim could not succeed because SGL had not given notice under paragraph 6.3 of schedule 4 by 4 April 2015, and for this reason SGL was not entitled to payment under the tax covenant in respect of the tax liability.

13. The material issue was whether a letter sent on 24 March 2015 (some 10 days before the 4 April deadline) was a compliant paragraph 6.3 notice. The appellants argued that it was, and that the construction of the letter was sufficiently clear to enable summary judgment to be entered in their favour for £3.8 million. The respondents argued that it was not a compliant notice and that there was therefore a failure of the condition precedent to their liability.

14. The Judge held that on its proper construction the 24 March letter was not an effective notice under paragraph 6.3; but was a notice under paragraph 7.1 in respect of a potential claim by HMRC against SRL.

15. Importantly for present purposes he rejected an argument raised by the appellants in respect of which permission to appeal has been refused. The appellants had argued that, whatever the proper construction of the 24 March 2015 letter, the respondents were estopped, either by acquiescence or by convention, from asserting that they did not receive a compliant paragraph 6.3 notice.

The material context of the 24 March 2015 letter

16. It is not in dispute that the respondents, and particularly Mr Tinkler (who remained a director of SRL), were involved in the tax affairs of SRL after the date of the SPA and were copied into correspondence.

17. For the purposes of the application it was accepted that a notice was sent on 9 April 2008 to the respondents by solicitors acting on behalf of SGL in the following terms.

> Agreement relating to the sale and purchase of the entire issued share capital of W.A. Developments International Limited – Tax Claim Notification.
>
> We act on behalf of the purchaser of W.A. Developments International Limited (the 'Company'), Stobart Group Limited.
>
> Pursuant to paragraph 7.1 of Part 4 of Schedule 4 to the Agreement relating to the sale and purchase of the entire issued share capital of the Company dated 7th March 2008 (the 'Agreement'), we hereby notify you of a Tax Claim against you as Vendors.
>
> Liability to Taxation
>
> The Commissioners for Her Majesty's Revenue and Customs DMU Tyneside (the 'Commissioners') have issued a Claim against the Company for arrears of Class 1 National Insurance Contributions (the 'Claim'). A copy of the Claim Form and Particulars of Claim issued on 13 March 2008 is enclosed for your information.
>
> As you will see, the Commissioners claim that the sum of £852,249.64 is due from the Company for unpaid National Insurance contributions pursuant to Section 6 of the Social Security Contributions & Benefits Act 1992. The sum claimed consists of contributions in the sum of £639,800 on sums paid to employees by way of 'Earnings', plus Interest thereon from 19 April 2002 to 10 March 2008 of £212,449.64. Further, the claim includes interest which continues to accrue at a daily rate of £131.10 until payment by the Company.
>
> Tax Covenant

> Liability arises under paragraph 3.1 of Part 3 of Schedule 4 of the Agreement wherein you covenanted with our client to pay an amount equal to the amount of:
>
> > any Liability to Taxation of the Company which has arisen or arises by reason of any Event occurring on or before Completion, whether or not in any such case any Taxation in question is chargeable against or attributable wholly or partly to or recoverable wholly or partly from any other person ...
>
> Please note that unless your representative, within 15 Business Days of the date of this notice, reasonably requests in writing that our client procures that the Company (at your expense etc) takes action and gives information and assistance with the dispute of the Claim pursuant to paragraph 7.2 of Part 4 of Schedule 4 of the Agreement, our client and the Company are entitled, if they so choose, pursuant to paragraph 7.6, to settle or pay the Claim on such terms as they shall in their discretion think fit.

18. This was plainly a notice under paragraph 7.1, relating to unpaid National Insurance contributions.

19. By February 2015, SGL's solicitors were aware of the 7-year limitation in relation to Tax Claims by SGL and that either notification would have to be given or an extension procured from the vendors. On 11 February 2015, they wrote to Mr Tinkler and to Mr Stobart with a draft letter in a form that included:

> …
> Pursuant to paragraph 6.2 of schedule 4 of the SPA a Tax Claim (as defined in the SPA) ought to be notified to you not later than the seventh anniversary of Completion (as defined in the SPA).
>
> It is available to [SGL] to make a formal notification of a Tax Claim against the Vendors … but whilst discussions continue with HM Revenue & Customs we believe it would be more sensible and cost effective for the time limit set out in paragraph 6.2 of schedule 7 of the SPA to be extended to avoid the cost of [SGL] engaging solicitors to lodge a formal notification of claim ultimately the cost which may well have to be borne by the Vendors …

20. The reference to paragraph 6.2 was plainly intended to be a reference to paragraph 6.3 and the suggestion was that the time limit for giving notice of Tax Claims be extended to the ninth anniversary of completion.

21. The draft letter invited signatures from the respondents under the words:

> We hereby acknowledge receipt of the above letter of which this is a duplicate and confirm acceptance of its terms and variation to the SPA.

The respondents did not sign under these words.

22. Mr Cogley QC submitted that this letter would clearly have put the respondents on notice that, if they did not agree to an extension, they could expect to receive a paragraph 6.3 notice before the seventh anniversary of completion; and that this throws light on the proper construction of, and the common understanding in relation to, the subsequent 24 March letter. He also sidled up to a submission that the draft letter was itself a notice under paragraph 6.3. The first argument was open to him. The second, in the light of the terms of the draft letter, was plainly not.

23. On 24 March 2015, SGL sent the letter to the respondents (copied to their solicitors) whose construction was at the centre of the dispute before the Judge.

> WA Developments Limited
>
> We refer to the agreement relating to the sale and purchase of the entire issued share capital of WA Developments Limited entered into on the 7 March 2008 (SPA).
>
> All definitions used in this letter shall bear the same meanings as contained in the SPA unless the context otherwise requires.
>
> We hereby give you formal notice pursuant to the SPA of a potential Liability to Taxation under the Tax Covenant contained in Schedule 4 of the SPA.
>
> In particular the potential claim is specifically set out in clause 3.1.2 of Part 3 of Schedule 4 of the SPA being in relation to:
>
> > 'The declaration of dividends and the payment of dividends to employees of the Company by Thornybolt (94), Ship Canal House, Alipes 12 and/or Tantra Services Limited on or before Completion, or otherwise as a result of a Company having entered into or been a party to any restricted securities or conditional securities scheme on or before Completion with an Event giving rise to any Liability to Taxation occurred on or before Completion.'
>
> We would be grateful if you would confirm pursuant to paragraph 7 of Part 4 of Schedule 4 as to whether you wish to have continued conduct of discussions with HMRC in relation to the Claim.
>
> We have recently sought from BDO an update of the likely estimate of the quantum of the Claim and they presently believe it is circa £3,267,092 (as per the attached sheet) inclusive of interest but exclusive of penalties.
>
> We would be grateful if you would acknowledge safe receipt of this letter.

24. The appellants contended that the letter constituted the notification of a claim under paragraph 6.3. The respondents contended that it was a further notification of a potential claim under paragraph 7. Before turning to this issue, it is right to note the appellants' argument that the respondents did not take the point that the letter was not a conforming paragraph 6.3 notice at the time. It is clear that Mr Tinkler continued to deal with HMRC in relation to its claim against SRL; and it was not until 16 August 2017 that the respondents took the point that the 24 March 2015 letter did not constitute notice of a claim under paragraph 6.3 of the SPA. It was these and other circumstances that followed the sending of the 24 March 2015 letter that gave rise to the appellants' arguments on estoppel, which did not find favour with the Judge.

The Court's approach to the construction of notices

25. The starting point for the construction of unilateral notices is the speech of Lord Steyn in *Mannai Investment Co Ltd v. Eagle Star Life Assurance Co Ltd* [1997] AC 749 (a case concerning a tenant's notice exercising a break clause in a lease) at 767G, in which he made clear a cardinal principle of construction:

> The question is not how the landlord understood the notices. The construction of the notices must be approached objectively. The issue is how a reasonable recipient would have understood the notices. And in considering this question the notices must be construed taking into account the relevant objective contextual scene.

26. At p.775E, Lord Hoffmann said this:

> When therefore, lawyers say that they are concerned, not with subjective meaning, but with the meaning of the language which the speaker has used, what they mean is that they are concerned with what he would objectively have been understood to mean.

27. In relation to what is admissible as the contextual scene or factual matrix, Lord Steyn added at 768B:

> The real question is what evidence of surrounding circumstances may ultimately be allowed to influence the question of interpretation. That depends on what meanings the language read against the objective contextual scene will let in.

28. Lord Hodge's more recent synthesis of the proper approach to the construction of contracts in *Wood v. Capita Insurance Services Ltd* [2017] UKSC 24; [2017] AC 1173 at [10], with which the other members of the Supreme Court agreed, is to like effect:

> The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement.

29. The reference to 'the parties' in this passage highlights a difference between a contract and a unilateral notice: in the latter case the court is not construing agreed words, it is construing words used by one party. Nevertheless, the approach to ascertaining meaning is similar: the words used in the 24 March 2015 letter and the context in which it was written are both relevant.

30. In the present case the Judge considered first the wording of the notice and then the factual context. Mr Cogley was critical of this approach, submitting that the context should have been considered first. That criticism is unfounded. It is clear from Lord Hodge's judgment in *Wood v. Capita* (above) at [12] that the order in which the analysis is carried out is immaterial:

> To my mind once one has read the language in dispute and the relevant parts of the contract that provide the context, it does not matter whether the more detailed analysis commences with the factual background and the implication of the rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each.

31. Another of the issues which arose in the course of Mr Cogley's submissions was the extent to which the subjective intent of the parties may still be material. He accepted that a party's intention when giving a notice must be viewed objectively; but he submitted that where the parties were agreed as to what was intended to be conveyed by a notice, it must be construed in accordance with that common intent.

32. The question of the subjective intent or the common assumption of parties to a notice was considered by Lord Steyn in *Mannai Investments* (above) in terms of estoppel, see p.768D; and Lord Clyde in the same case expressed the point at p.783D:

> The test is an objective one. In circumstances where an estoppel might arise the actual understanding of the recipient may be relevant, but in general the actual understanding of the parties is beside the point.

33. I would accept that, if it is clear that the parties have a common understanding as to the effect of a contractual term, the court should construe the contract in accordance with that understanding. In other words, without the need for rectification: see for example Lord Hoffmann's discussion of what is meant by 'correction of mistakes by construction' in *Chartbrook Ltd v. Persimmon Homes* [2009] 1 AC 1101 at [23]. An example would be where a party has misnamed a property when giving a contractual notice in relation to it, or in a nearer example to the present case, where a party has simply misstated the relevant contractual provision by one numeral (paragraph 6.2 for 6.3) but where otherwise the intent is clear.

34. Mr Cogley relied on two cases in support of his broad submission that an objective approach to construction should not be adopted where a common subjective intent can clearly be demonstrated: *HSBC Bank Plc v. 5th Avenue Partners Ltd and another* [2007] EWHC 2819 (Comm) and *MW Trustees Ltd and others v. Telular Corporation* [2011] EWHC 104 (Ch). Neither provides substantial support for his submission. The former case was not about contractual interpretation and Walker J's observations

related to different circumstances; and the observations of Peter Smith J in the latter case cannot affect a well-established approach to the construction of this type of notice.

35. Quite apart from the absence of authority in favour of Mr Cogley's broad submission, there is a practical difficulty. The appellants' case relies on what is said to be the understanding of the respondents when they received the letter: namely, that it was a compliant notice under paragraph 6.3 regardless of its terms. It is unclear how evidence of subjective evidence may be secured other than by admission or subsequent conduct. In the present case the Judge found 'no evidence which demonstrates what Mr Tinkler's subjective intention and understanding was in relation to the notice', see [45], adding that there was 'no basis upon which one could ascribe to Mr Tinkler, let alone Mr Stobart, as of the date of receipt of the notice, a subjective understanding that it was a notice under paragraph 6.3' [46]. So far as subsequent conduct was concerned, it could not provide relevant contractual context for the interpretation of the notice nor assist in its construction, see above, and also the cases cited in *Lewison, 'The Interpretation of Contracts'* 6th ed. P.179-182. The Judge rejected the appellants' case on estoppel.

36. The final principle which emerges from the cases is that, although every notification provision is likely to turn on its own wording, see for example *Ipsos SA v. Dentsu Aegis Network Ltd* [2015] EWHC 1171 (Comm) and the cases referred to at [16], the purpose of notification in this type of contract is to make clear in sufficiently formal terms that a claim is being made against the vendors, see also *Senate Electrical Wholesalers Ltd v. Alcatel Submarine Networks Ltd (formerly STC Submarine Systems Ltd)* [1999] 2 Lloyds L.R 423, at [90].

37. At [91] Stuart-Smith LJ went on to say:

> It does not stop there. Certainty is a crucial foundation for commercial activity. Certainty is only achieved when the vendor is left in no reasonable doubt not only that a claim may be brought but of the particulars of the ground upon which the claim is to be based. The clause contemplates that the notice will be couched in terms which are sufficiently clear and unambiguous as to leave no such doubt and to leave no room for argument about the particulars of the complaint. Notice in writing is required in order to constitute the record which dispels the need for further argument and creates the certainty. Thus, there is merit in certainty and accordingly, in our judgment the point taken by the appellants is not a matter of mere technicality and it is not without merit.

38. Furthermore, as Cooke J observed in *Laminates Acquisition Co v. BTR Australia Limited* [2003] EWHC 2540 (Comm) at [29] having referred to the speech of Lord Steyn in *Mannai Investments* (above) and the judgment of Stuart-Smith LJ in *Senate Electrical*:

> Notice clauses of this kind are usually inserted for a purpose, to give some certainty to the party to be notified and a failure to observe their terms can rarely be dismissed as a technicality.

The present case

39. Before turning to the construction of the 24 March 2015 letter, it is convenient to add a few preliminary points.

40. As noted above schedule 4 of the SPA draws a distinction between claims that are made by HMRC against SRL and claims that are made by SGL against the vendors. The former may lead to the latter, but they are treated differently in the SPA. Thus, the giving of a paragraph 7.1 notice may give rise to a paragraph 6.3 claim, but it does not necessarily mean that a paragraph 6.3 claim will be made, see for a similar distinction in the nature of the contractual obligations those identified by Cooke J in the *Laminates* case (above) at [32] and [33].

41. Mr Cogley complained that the Judge did not pay sufficient regard to the 'contextual landscape' of the 24 March 2015 notice. He submitted that even if the subjective intent of the parties is immaterial, the court must still look to see what purpose the letter was intended to achieve, viewed objectively.

42. The much earlier 9 April 2008 letter was very plainly the notification by SGL of a claim by HMRC against SRL under paragraph 7.1 in relation to unpaid National Insurance contributions.

43. It was accepted, for the purposes of the Part 24 proceedings that the vendors might have expected a paragraph 6.3 claim in view of the draft letter of 11 February 2015 and the prior email exchanges. However, that does not throw decisive light on whether the 24 March letter is properly to be construed as a paragraph 6.3 notice of claim. This is because there would still have been 10 days in which to serve a conforming paragraph 6.3 notice before the seventh anniversary of the completion date on 4 April 2015. A similar point was made in relation to the notice that was served in the *Laminates* case (above) where the notice was within 3 days of the deadline for giving a compliant notice. The argument was rejected by Cooke J, see [34], with the observation that the recipient in these circumstances might have expected a compliant notice to have been served immediately following the non-compliant one.

44. As the Judge put it in the present case at [36] of his judgment:

> Whilst no doubt fully expecting a notice under paragraph 6.3, it was not inconsistent with that expectation to receive a notice or a further notice under paragraph 7.1. The agreement plainly anticipates that there might be first one and then the other type of notice. The fact that a paragraph 7 notice was served on 24 March 2015 in no way ruled out or in any way suggested that there would not be a further notice under paragraph 6.3 in the ensuing days. Indeed, receiving the paragraph 7.1 notice might only increase the anticipation that a paragraph 6.3 notice would be received soon thereafter.

45. The Judge added, at [37], that the only point at which the respondents would have known that they would not receive a paragraph 6.3 notice was at the end of 4 April 2015, at which point it would be too late to serve one. However, although this

observation has a certain logical purity, it was plainly not the way in which the respondents viewed the notice at the time.

46. Turning then to the terms of the 24 March 2015 letter, the following points may be noted.

47. First, the letter was plainly drafted by a lawyer and expressly adopted the definitions set out in the SPA. As the Judge noted at [25], the starting point was the consideration of the language of the notice: it made no reference to a Tax Claim, nor does it refer to a claim being made by SGL under paragraph 6.3 or against the vendors.

48. On the contrary, second, it gave notice in terms of a contingency: 'a potential Liability to Taxation', and a 'potential claim' by reference to paragraph 3.1.2(c). The distinction is important, see for example the *Laminates* case (above) at [33]:

> [A compliant notice] must make clear that such a claim is being pursued whatever the wording is used, rather than indicating the possibility that a claim may yet be made (emphasis added).

49. Third, as already noted, schedule 4 of the SPA envisages two possible but distinct forms of notice (the notice of a Tax Claim by SGL against the vendors, and a notice of a claim by HMRC against SRL). The express reference to confirming whether the respondents wished to have continued discussions with HMRC 'pursuant to paragraph 7 …' makes it quite clear that it is the latter form of notice and not the former.

50. Fourth, the letter concluded by setting out 'the likely estimate' of the quantum of the claim and the attached detailed schedule was headed: 'Summary of company exposure.' In other words, a summary of SRL's exposure to HMRC.

51. In my view, a person receiving the 24 March letter with knowledge of the terms of the SPA would have understood it to be a notice under paragraph 7. As Mr Fealy QC put it: it was not a defective paragraph 6.3 notice, it was a compliant paragraph 7 notice. The question then arises: does the factual background change that?

52. Mr Cogley submitted that having served a paragraph 7 notice on 9 April 2008 in relation to the same potential liability, it would have been nonsense to have served another paragraph 7 notice on 24 March 2015, and the respondents would have been aware of this absurdity. However, as the Judge noted at [32] it is striking how similar the 9 April 2008 notice is to the 24 March 2015 notice. The notices are structured in a similar way and both refer to the tax covenant and to a Claim.

53. Furthermore, there is an express reference to confirmation 'pursuant to paragraph 7' as to whether the vendors wished 'to have continued conduct of discussions with HMRC in relation to the claim.' Again, on an ordinary reading of the words, this was a further reference to a claim for tax by HMRC against SRL and the trigger for a further action under paragraph 7.

54. In addition, the 9 April 2008 notice was expressed to relate to claims for National Insurance contributions, whereas the 24 March 2015 notice was expressed to relate to the declaration and payment of dividends to employees. Both were notices reflecting an obligation of the purchaser to give notice of such claims under paragraph 7.

55. The Judge acknowledged a further point raised by Mr Cogley: namely, that the 24 March 2015 notice was addressed not only to the respondents but also to their legal representative as required by paragraph 6.3, whereas a paragraph 7 notice had only to be served on the respondents' representatives. The Judge concluded that the form of address was consistent with a paragraph 6.3 notice, but this 'minor aspect' of the form of notice did not affect his overall conclusion. He might have added that the 9 April 2008 letter, which was plainly a paragraph 7 notice, was also copied to the respondents' legal representative.

Conclusion

56. In my view the Judge was right in his view that the letter of 24 March 2015, both in its own terms and viewed against the admissible background, was not a compliant notice of claim under paragraph 6.3 of the SPA, that no notice of a Tax Claim had been made within 7 years of the completion date, that such a claim was therefore barred and that the respondents were entitled to summary judgment on the issue.

57. Accordingly, I would dismiss the appeal.

Lord Justice Hickinbottom:

58. I agree.

The Master of the Rolls:

59. I also agree.