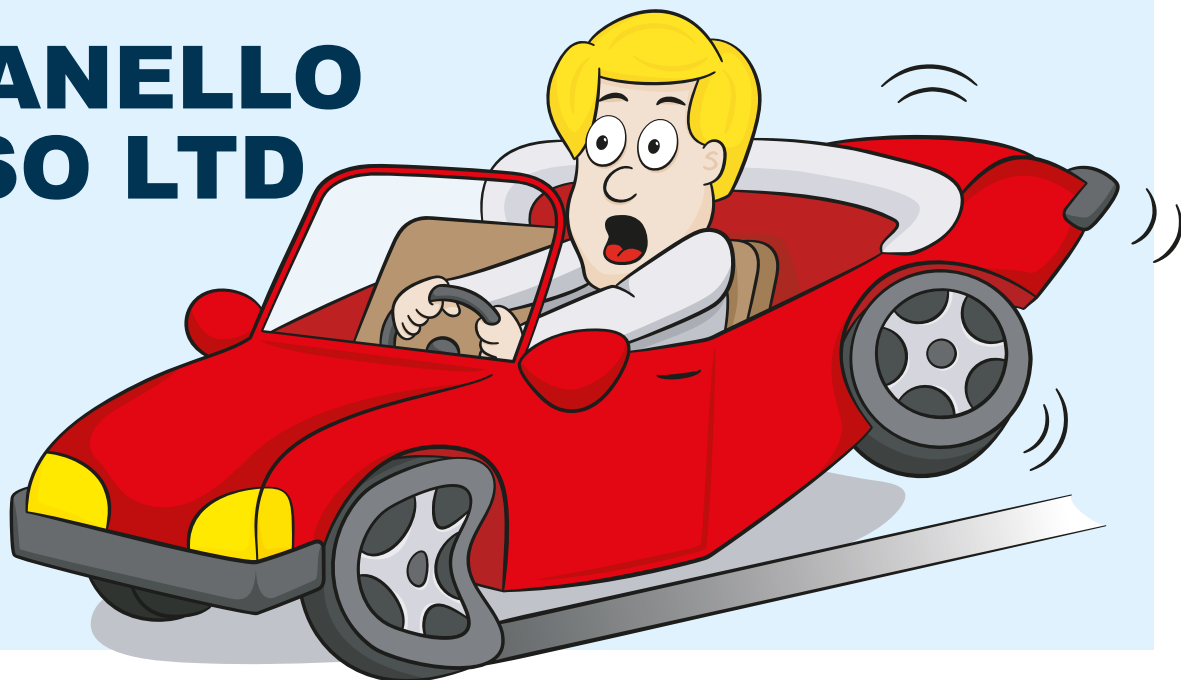


SLAMMING THE BRAKES ON RELEASE CLAUSES:

MARANELLO ROSSO LTD



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Summary

The Court of Appeal has recently handed down its judgment in *Maranello Rosso Ltd v Lohomij BV and Ors* [2022] EWHC Civ 1667. The judgment addresses the interpretation of settlement agreements - in particular, whether a general release in a settlement agreement can release claims arising from fraud, dishonesty, and conspiracy, despite not expressly referring to such claims.

The Court of Appeal dismissed an appeal brought by Maranello Rosso Ltd ("MRL") against the decision of HH Judge Keyser QC ("the Judge") who dismissed MRL's claims in fraud, dishonesty and conspiracy brought against the six respondents. He held that in the context and circumstances of this case, the settlement agreement ("Settlement Agreement") the parties had entered into precluded these claims from being brought.



Facts

MRL was incorporated for the purpose of purchasing Stalabar SpA, a company that owned a collection of very valuable classic cars ("Collection") for €90m. MRL intended to onsell the cars at auction for as much as €150m. To do so, MRL negotiated with Bonhams, a well-known auction house in the UK. Bonhams suggested that MRL raise finance to purchase the Collection from the Louwman Group. MRL entered into a Facility Agreement directly with Lohomij, a company in the Louwman Group. This was repayable in full within seven months. Soon after, Bonhams and Lohomij entered into a separate agreement regarding the manner of the sale of the Collection at auction in the US.

However, the car sales did not go as well as anticipated. The repayment date on the Facility Agreement was

extended for a further five months. Shortly before the (extended) Facility Agreement fell due, MRL sent a letter before action to Bonhams. The letter intimated claims for "negligence and breach of contractual and common law duties" for Bonham's conduct of its auctions and the sales process of the rest of the cars. Additionally, the letter made broader assertions of duress, bad faith, illegality, and self-interest.

Following negotiation, the parties entered the Settlement Agreement, in which the parties agreed that the Settlement Agreement "constitute[d] full and final settlement, and irrevocable and unconditional waiver and release, for all and any Claims". "Claims" was defined extremely broadly in the Settlement Agreement.¹ However, the definition did not refer specifically to claims in fraud or conspiracy. MRL and Lohomij subsequently amended the Facility Agreement pursuant to which Lohomij advanced further funds, extended the repayment date, and waived the facility fee.

¹ ement, and whether arising in contract, tort, under statute or otherwise), in any jurisdiction... which relate to, arise from, or are otherwise connected with, the initial acquisition of the Collection and its financing, the sale of the Collection... including all claims alleged in [the letter before action] and which in each case relate to the existence or occurrence of facts, matters or circumstances at or prior to the date of [the Settlement Agreement]".



High Court proceedings

MRL commenced proceedings against Lohomij, Bonham and others, alleging that they were party to a conspiracy to injure MRL by unlawful means.

The defendants brought summary judgment and strike out applications.

The Judge granted the summary judgment application in large part, finding that the Settlement Agreement effected a release of all of the claims brought by MRL, except for those based on freestanding causes of action arising after the Settlement Agreement.


The article focuses on the finding that all of MRL's claims in existence at the time of the Settlement Agreement were released by that Agreement.




Court of Appeal

MRL's appeal against the Judge's decision was dismissed by the Court of Appeal. Phillips LJ gave judgment for the Court.

After addressing the facts, his Lordship set out the relevant authorities addressing the scope of releases contained in settlement agreements. The primary authority is *Bank of Credit and Commerce SA (In Liquidation) v Ali (No. 1)*², in which the House of Lords considered the correct approach to the construction of contractual releases. The following two points are of particular importance:

 First, the normal principles of contractual construction apply when interpreting general releases. There are no special rules of interpretation.

 Second, the "cautionary principle", which is that in the absence of express words, the court will not readily conclude that the release will refer to fraud or dishonesty. In doing so, the Court will still apply normal principles of contractual construction.

MRL's argument was that, in the absence of express words releasing claims based on fraud or dishonesty, the release should not be taken to extend to any such claims. This argument was developed on appeal, namely that the Judge had taken an overly-literalist interpretation of the general release and had failed to apply the "cautionary principle".

The Court of Appeal disagreed and dismissed MRL's appeal. MRL did not have recourse outside of the Settlement Agreement for its claims against Lohomij, because it had signed the Settlement Agreement which released Lohomij from MRL bringing a claim against them in the context of the sale of the Collection.

His Lordship, on behalf of the Court, commented that:



The Judge had undertaken a detailed and careful consideration of the wording of the general release and the factual matrix. The Judge correctly had regard to the wording of the release in the Settlement Agreement which was clear, precise, wide-ranging, and comprehensive. The Judge had not been overly-literalist.



There is no rule of law requiring that express words referring to claims based on fraud or dishonesty be used in a release.



In the factual matrix including the letter before action, the Judge was correct to find that all the claims MRL was seeking to advance clearly fell within the scope of the general release contained in the Settlement Agreement.



Comments

The judgment serves as a reminder of a number of salient points.

First, the importance of precision in pre-action correspondence.

The letter before action sent here did not set out explicitly MRL's claims of fraud or conspiracy. However it did make claims in negligence, breach of

duty, duress and bad faith. The letter before action acknowledged that the Facility Agreement entered into between MRL and Lohomij was entered into in good faith. These two factors served to detract from MRL's case before the High Court and Court of Appeal, as it looked as if MRL's case was continually changing.

Second, when entering a Settlement Agreement, parties should have regard to the context in which an agreement is being entered into.

If it is following a letter before action, then that letter may serve to inform the Court's interpretation of what the general release was intended to cover. Here, the letter before action demonstrated that the types of claims that MRL later brought were in contemplation at the time of entering the Settlement Agreement and therefore that the Settlement Agreement must have covered them.

Last, parties should carefully consider what claims they want to release and if possible, specify those in a release clause.

Express language may be used to deal with claims of fraud or dishonesty, and whether those can be included or excluded.



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