

Would I lie to you? The dangers of making false statements in negotiations

The recent case of *Wilson v Dodd and others* serves as a reminder of the need for honesty and clarity in negotiations, especially when making statements that are intended to induce another party to enter into an agreement. If the party that relies on a statement later finds out it was false or misleading, the other party may be liable for damages under the law of misrepresentation.

The Facts

Mr Wilson is an American businessman who invests in British business ventures. Mr Dodd is managing director of three British companies which operate in the hair and beauty industry.

In 1997 Mr Dodd set up a joint venture with an American company to market and distribute in the UK a light-based skin treatment used to remove hair and tattoos. In May 1998 Mr Dodd invited Mr Wilson to invest in the business, and, following discussions, Mr Wilson provided \$250,000 in return for a 10% stake. He had invested in the belief that he was entering into a partnership between himself, Mr Dodd and a Mr Richman, who had purportedly invested \$500,000.

Mr Wilson produced to the court a letter from Mr Dodd dated 21 May 1998 which stated, “*the deal I have done with [Mr Richman] is that he has taken 20% of [the business] for \$500,000*”. Mr Wilson further claimed that prior to making his own investment, Mr Richman stated orally that he too had invested or that he was going to invest.

In 2009 Mr Wilson discovered that Mr Richman had not made the investment described in the letter he received from Mr Dodd and in the oral representations made to him by Mr Richman himself. Indeed, Mr Richman had made no investment in the business at any time. Mr Wilson brought a claim for fraudulent misrepresentation on the basis that his decision to invest was guided by false information provided to him by Mr Dodd and Mr Richman. He claimed for the amount of his original investment plus interest.

Consequences

Mr Dodd, the first defendant, contended that he had not represented that Mr Richman *had invested*, only that he *had agreed to invest*, which he maintained was factually correct. Mr Richman, the second defendant, admitted telling Mr Wilson that he had intended to invest, but he was let down on funding so it never transpired. Further, he was under no duty subsequently to tell Mr Wilson that he had not invested. In short, the defendants argued that they did not know that the representations they made to Mr Wilson were false at the time, and so they could not be deemed fraudulent misrepresentations.

The judge explained that the meaning of the words in the letter written by Mr Dodd to Mr Wilson would be determined by asking what a reasonable person would have understood from them in the context in which they were used. It was held that the words used (“*[Mr Richman] has taken*

20%...”) indicated that a firm or binding arrangement had been concluded to secure the investment.

If Mr Dodd was merely stating that the investment was agreed in principle, the letter would have read, *“the deal I have done is that [Mr Richman] will take (or has agreed to take) 20% of [the business] for \$500,000”*. Mr Dodd was willing for Mr Wilson to understand his words to mean that Mr Richman had invested or had made a binding commitment to invest, and this deceit amounted to a fraudulent misrepresentation.

Mr Wilson was not successful, however, in his claim against Mr Richman in respect of the latter’s oral representations. The judge found that Mr Richman had probably not told Mr Wilson anything more than that he had agreed to invest. Given that no evidence was adduced to show that an agreement to invest was not in place (notwithstanding that it came to nothing), this statement did not amount to a misrepresentation.

Mr Wilson was awarded damages in the amount that would put him in the position he would have been in had the misrepresentation not been made (i.e. \$250,000 plus interest with an unspecified amount deducted for certain payments he received from the business).

The Lesson

Mr Dodd is a successful businessman who had every intention of pursuing a legitimate venture with the funds he secured from investors. However, in his desire to “seal the deal” with Mr Wilson he made deliberately false statements which resulted in him being found liable for fraudulent misrepresentation and facing a substantial bill for damages.

It is possible to try and minimise or exclude liability for certain types of misrepresentation through contractual drafting, and this may afford a degree of protection to those who make false statements innocently, or even those who carelessly mislead a contracting party.

However, the courts will give no leeway to a party that has deliberately made misleading statements to induce another party to contract. A term which seeks to exclude liability for fraudulent misrepresentation will be unenforceable. Anyone contemplating stretching the truth during contractual negotiations should be aware that the consequences can be severe.

For more information please contact:

David Webster

Partner

+44 (0)20 7440 4825

David.Webster@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice.

No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.

© Russell-Cooke LLP. January 2013.