

## Mandate letters – a strict interpretation

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*Mandate letters, or commitment letters, are sent by an arranging bank (an 'arranger') to a borrower in syndicated transactions. The letters document the terms under which an arranger will arrange a facility for a borrower. They usually include break fees or exclusivity fees to cover the arranger's costs of arranging the facility even if it does not complete, so the arranger is not out of pocket. Borrowers sign and return the letters to indicate their agreement to the terms.*

Mandate letters are legally binding documents, and their terms *can* be negotiated. Borrowers should keep this in mind, in light of the recent case of *Astra Asset Management UK Limited v Odin Automotive S.à r.l.* This judgment shows that the Court will interpret a mandate letter strictly to give effect to the contractually agreed position. A timely reminder to borrowers to check the terms of any mandate letters carefully before signing and to be aware of any financial obligations they are agreeing to!

### Background

Odin Automotive S.à r.l. (the borrower and Defendant) entered into a mandate letter with Astra Asset Management UK Limited (the arranger and Claimant), under which the Claimant agreed to use 'best efforts' to arrange a proposed facility which was to be in 'form and substance satisfactory to the Arranger'.

Under the mandate letter, if the Defendant breached any of the undertakings in it, or failed 'to close the transaction for any reason' they were liable to pay a break fee of \$2m. The letter also provided that 'whether or not the Facility Documents are signed' the borrower will, 'within three Business Days of demand indemnify' the Claimant for costs and expenses.

The Claimant produced a facility agreement, which the Defendant did not sign. The Defendant did however proceed with the acquisition, having obtained alternative sources of funding. The Claimant consequently demanded the break fee and indemnity costs of £220,000.

The Defendant rejected the claim on the basis that the Claimant had failed 'to provide a facility that satisfied the requirements of the Mandate Agreement'.

The Claimant applied for summary judgement against the Defendant.

## **Break Fee**

The Claimant claimed the break fee from the Defendant on the basis that they had (i) failed to close the transaction and (ii) breached the undertaking relating to an exclusivity period.

The Defendant argued that the Claimant had failed to use best efforts to arrange the facility on the basis that they had put 'undue pressure' on the Defendant and the proposed facility agreement contained 'onerous, unusual and unreasonable and unacceptable' terms.

The Court found that both allegations were unsubstantiated – for example, the 'tone and content of communication between the parties' was 'completely inconsistent' with the allegation of undue pressure. Further, the Court strictly interpreted the definition of 'Facility' and noted that the mandate letter clearly stated that the facility had to be 'satisfactory' to the Arranger, not the Borrower.

The Court also consistently noted that the borrower referred to the break fee in cross-party correspondence and was therefore alive to its obligations under the letter. The implication was that the Defendant knew of the risk it ran by agreeing to the terms of the mandate letter and now had to live with the consequences of that risk.

Separately, the Court did not address whether the undertaking had been broken in this instance, as it was a moot point given that the Claimant had clearly used its best efforts to arrange the facility, and the break fee was therefore payable. In addition, the Court noted that it was not appropriate to examine this issue in the context of summary judgment.

## **Indemnity**

The Court's response to the indemnity claim further emphasised their uncompromising approach. The Defendant contested the indemnity on the basis that it had not been 'properly particularised', but the Court promptly dismissed this argument, noting that the demand was 'sufficiently precise and clear' pursuant to the terms of the mandate letter.

The judgment again seems to imply that, having signed up to the letter, the borrower should have been alive to the nature of its obligations under the indemnity it had given to the arranger. However, the Court did note that there was nothing to prevent the Defendant from requesting a breakdown of the figures once they had paid the sum 'on demand', as per the mandate letter, to the Claimant.

## **Summary**

The Court needs to satisfy itself that the Claimant has a 'realistic as opposed to fanciful prospect of success' before granting a summary judgment – a high bar to reach. This case should therefore stand as a particular red flag for borrowers given the Court's strong judgment and the way in which it dismissed the Defendant's arguments.

The lesson here: borrowers must check the terms of any mandate letters and give them the same consideration they would to any other legally binding documents, as without compelling evidence to the contrary, the Courts are unlikely to deviate from a strict contractual interpretation of the terms agreed.