

Levicom International-v-Linklaters (11/05/2010)

The Message: Solicitors' advice of a 70% chance of success is strong advice which a client is entitled to rely on as being correct.

The Case: The Court of Appeal has found Linklaters liable in damages for giving too strong advice to a client on a litigation matter

Levicom had interests in the telecommunications business throughout the Baltic States. In 1999, it sold 90% of its shares in its Estonian cellular telephone business to 2 Swedish Companies and entered into a Shareholders Agreement whereby the other parties agreed not to carry on any similar cellular network business. These other parties then proceeded in 2000 to acquire a Latvian mobile telephone company and Levicom considered this to be a competing business and, therefore, thought it had a claim for breach of the Agreement.

Levicom consulted Linklaters who not only agreed that there was a breach but considered that Levicom could claim substantial damages based on the value of the other business that had been acquired. They gave Levicom bullish advice which rated Levicom's chances at not less than 70% and Levicom claimed this advice led it to not seeking to agree any settlement but pursuing substantial arbitration proceedings against the Swedish companies seeking very considerable damages.

The Swedish companies defended the proceedings on the basis there was no breach as the Latvian company carried on business in a different country and was not the same and did not compete with the Estonian company. They also claimed no loss was suffered because there was no competition between the companies so the value of Levicom's 10% shareholding in the Estonian company remained unaffected.

By the time the arbitration proceeding hearing commenced in 2004, it had become apparent to Levicom and Linklaters that the case was not as strong as first thought both as to breach and damages and Levicom reached a settlement on terms that were more disadvantageous than those it was offered in 2000. Levicom sued Linklaters for all losses suffered and costs incurred in the arbitration proceedings but the claim failed at first instance because the Judge thought that Levicom would have pursued the claim even if given more pessimistic advice by Linklaters.

The Court of Appeal disagreed with the Judge. It thought that Linklaters had given much too strong advice based on inadequate analysis of the issues and the amount of recoverable damages. Unlike the Judge, it considered that the quantification of the prospects of success at not less than 70% was strong advice even though it implied a 30% chance of failure. It represented a better than 2:1 chance and the Court held that lawyers do not ordinarily advise that the prospects are that high unless they are very confident indeed.

The Court considered that the advice given was negligent both as to breach and damages and that Levicom was perfectly entitled to believe it had a very strong case and to act accordingly. It had constantly sought reassurance from Linklaters as to the merits of its claim and the Court made the point that one would not expect a company to seek expensive advice from a firm like Linklaters and not act upon it.

Where a solicitor advises a client that its position is so strong it should litigate rather than settle, the inference can be drawn that it was this advice that resulted in this course being followed and that the client would have acted differently if otherwise advised. The onus will be on the solicitors to prove otherwise.

The Court therefore held that, correctly advised, Levicom would have settled to begin with and avoided all the costs of the proceedings and it could, therefore, recover all the losses it had suffered from being incorrectly led down the litigation path.

The result of this case is that solicitors will now be wary about giving strong advice and in giving percentage chances of success at the level of 70% or above.