

Commercial Court finds renowned Michelin Star Chef liable for Fraud

Stewart Chirnside and Robert Ward

13 December 2021

***MAD Atelier International B.V. v Axel Manes* [2021] EWHC 3335 (Comm)**

On 9 December 2021, Sir Michael Burton GBE gave judgment awarding damages of €11,383,359 to MAD Atelier International B.V. (“**MAD International**”) on its claim for fraud and breach of contract against Axel Manes (“**Mr Manes**”).

MAD International is ultimately, majority owned by the Dogus Group, a Turkish group of companies with interests in the hotel and restaurant industries. Mr Manes is a renowned French chef, one of the youngest chefs to obtain a Michelin star, and is and was the executive chef at the “L’Atelier de Joel Robuchon” restaurant in Paris (“**Paris Restaurant**”).

In 2015, MAD International and Mr Manes (and others) entered into a joint venture to develop an international franchise of restaurants under the “L’Atelier de Joel Robuchon” brand. As part of the joint venture, the shares of MAD Atelier S.A.S. (“**Paris Restaurant Shares**”), the company which owned the Paris Restaurant, were transferred to MAD International. On 3 August 2016, one of MAD International’s directors, Mr Padberg, signed share transfer documents at a meeting with Mr Manes at the Paris Restaurant by which MAD International sold the Paris Restaurant Shares to MA Developpement S.A.S., which was owned by Mr Manes, for €3,086,698. This sale of the Paris Restaurant Shares terminated the joint venture.

MAD International claimed damages for fraud and breaches of the joint venture agreement primarily on the ground that Mr Padberg did not know he was executing a share transfer and his signature on the share transfer documents was induced by Mr Manes’ deceit. MAD International also claimed damages for loss of profits as a result of unlawful and premature termination of the joint venture as a result of the sale of the Paris Restaurant Shares.

MAD International submitted that the share transfer was the result of Mr Manes’ fraud, and was not agreed by it, for essentially four reasons. First, there was no indication that the parties’ relationship had broken down, nor was there any reason for MAD International to agree to terminate the joint venture or allow Mr Manes to buy back the Paris Restaurant Shares. The joint venture had only been going for just over a year and, so far as MAD International was concerned, was a success. Secondly, in circumstances where MAD International retained a large team of professionals to negotiate and agree the terms of the initial acquisition of the Paris Restaurant and that acquisition was approved by the senior management of the Dogus Group, there was no prospect that the share transfer would have been agreed without the involvement of these advisers and the approval of the Dogus Group. Thirdly, there was no documentary evidence which supported Mr Manes’ case and, in fact, Mr Manes had destroyed documents which were bound to be relevant despite being aware of legal proceedings against him. Fourthly, Mr Manes kept quiet about the share transfer, and acted as if it did not exist and the joint venture was still in force, until 29 September 2016.

After a 4-week trial, including 3 days’ cross-examination of Mr Manes, the Judge accepted MAD International’s submissions on liability and the evidence of its main witnesses, and concluded that Mr Manes had given dishonest evidence and was lying when he said that the transfer of the shares in the Paris Restaurant had been orally agreed between the parties in a series of telephone conversations. The Judge concluded that Mr Manes had set up a scheme, with the help of his lawyer, to persuade Mr Padberg to come to Paris on the pretext of approving the Paris Restaurant’s accounts in order to deceive him into signing the share transfer documents, in French, which he knew that Mr Padberg would have great difficulty in understanding.

At paragraph 30 of the judgment, the Judge sets out a summary of legal principles relating to the recoverability of damages in deceit. This includes Lord Steyn’s explanation in **Smith New Court Securities Ltd v Citibank N.A.** [1997] AC 254 that the law imposes wider liability on an intentional wrongdoer because “...it serves a deterrent purpose in discouraging fraud...” and “moral considerations militate in favour of requiring the fraudster to bear the risk of misfortunes directly caused by his fraud”.

The Judge also adopted the “fair wind” principle described by Leggatt J (as he then was) in **Yam Seng PTE v Int’l Trade Corp Ltd** [2013] 1 Lloyd’s Rep 526 at [188] as being the principle that “...the court will attempt so far as it reasonably can to assess the Claimant’s loss even where precise calculation is impossible”. The court is to be aided by reasonable

assumptions, namely “that it is fair to resolve uncertainties about what would have happened but for the defendant’s wrongdoing by making reasonable assumptions which err if anything on the side of generosity to the claimant where it is the defendant’s wrongdoing which has created those uncertainties”.

The Judge concluded that the proper application of these principles is that they are to be applied only to a loss whose existence has been proved. It is not the existence of a loss which is to be assumed.

The Court awarded MAD International damages as a result of the fraud under 2 heads of loss: (1) €8,383,359 representing the undervalue of the shares as between the amount paid pursuant to the 3 August 2016 share transfer and the true value of the shares at that time; and (2) €3,000,000 representing the loss of a chance to make profits had the joint venture continued.

Stewart Chirnside and Robert Ward acted for MAD International, instructed by Andrew Rimmington, Simon Style, Shona Coffey and Sian Harding at Mishcon de Reya LLP.

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Stewart Chirnside

“He has nerves of steel, and the ear of the court, which is a winning combination. A go-to for the tough cases.” (Legal 500, 2022)

Stewart specialises in commercial litigation, including banking and finance, commercial fraud, professional negligence, property damage and product liability. Stewart is recommended in Legal 500 as a leading junior in the fields of Banking and Finance, Financial Services and Professional Negligence and in Chambers & Partners UK Bar as a leading junior for Commercial Dispute Resolution.

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Robert Ward

Rob has developed a busy practice spanning the breadth of Chambers’ practice areas including commercial disputes, international arbitration, shipping and aviation.

He has appeared as sole counsel in the High Court and County Court and as a junior in several high value matters.

Prior to joining Chambers, Rob was a judicial assistant to Lord Justice Longmore in the Court of Appeal and worked on a number of large commercial disputes such as *Banco Santander Totta SA v Companhia de Carris de Ferro de Lisboa SA* [2016] EWCA Civ 1267, in which the Court addressed the proper interpretation of Article 3 of the Rome Convention.

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