Hello,

I'd like you to help me with a client referred to us by corporate.

The client is the J Marsden Group. The holding company is J Marsden Group Plc ('JMG'). The group operates through three divisions: (1) home improvement, which over time has developed to offer vehicle servicing, motor accessories and cycling products, largely from the same sites as the home improvement stores (2) discount stores and (3) financial services.  We are concerned with the first of these, and in particular the vehicle servicing aspects.

The vehicle servicing part of the Group is headed up by J Marsden Autocentre Ltd ('JMA'). This company and its subsidiaries own and run approximately 450 autocentres around the country.

This part of the Group has grown partly organically and partly by purchasing autocentres from other companies.

18 months ago, JMA bought a company which runs a number of autocentres in Yorkshire. That company was called Hastings (Yorkshire) Limited (incorporated in England and Wales), and was owned by a company called Hastings Incorporated ('Hastings') (incorporated in the US). Prior to the purchase, the stores traded under the Hastings brand. After JMA bought Hastings (Yorkshire) Limited, that company name changed to J Marsden Autocentre (Yorkshire) Limited ('JMAY') and the autocentres adopted the J Marsden brand.

The sale and purchase of JMAY took place by way of a share purchase.

A dispute has now arisen between JMA (purchaser) and Hastings (seller) in relation to JMAY.

The first aspect of that dispute concerns alleged breaches of warranties**,**contained in the share purchase agreement (‘SPA’)**,** by Hastings:

·         Warranty: the disclosure letter contains full particulars of all loans outstanding to JMAY

Breach: JMAY had borrowing that had not been fully disclosed;

·         Warranty: the accounts gave a true and fair view of the state of the affairs of JMAY

Breach: Due largely to the loan not being properly reflected in the accounts, JMAY's business was in fact substantially less profitable than would have been suggested by those accounts;

We / JMA have not fully quantified this claim yet, but the value is over £6million.

The second aspect revolves around an indemnity that Hastings had given to JMA in relation to liabilities that might arise in connection with a separate dispute between JMAY and an online competitor offering similar services. The online competitor, Carlfords, alleges that JMAY is infringing its trademarks in relation to these services. JMA’s claim against Hastings is concerning the loss they will suffer as a result of the dispute with Carlfords and their recuperation of those loses under the indemnity in the SPA.

I attach an extract from the share purchase agreement which relates to dispute resolution.

Our client has received very unhelpful communications from Hastings having tried to raise these issues in correspondence. Hastings has indicated that it will reply on these points, and in particular maintains that there has been no breach of warranty and that our client has misunderstood the accounts – but Hastings has not provided any detailed explanation of that position, and appears to be stalling. In relation to the indemnity, Hastings has indicated that it will of course honour the indemnity, but that it is not too concerned about the litigation, as it is confident that JMAY has not infringed any trademarks.

As a result of Hastings' vagueness and delaying tactics, our client has indicated to me that it does not want to mediate, or even negotiate. It considers that negotiation / a mediation is pointless if Hastings is not prepared to explain its position, and our client does not want to incur the £20,000-£30,000 that would need to be spent on a mediation (if preparing for it properly). Hastings, on the other hand, wants to mediate, and says our client is required to mediate by the provisions of the share purchase agreement. The client wants to do the minimum necessary to comply with the court rules relating to pre-action conduct, and then wishes to issue proceedings.

Please can you drop me a note of your advice as to the implications of the dispute resolution provision in the SPA (attached) for our client's position, in light of our client's current preferred way of proceeding?

Separately, we will need to consider what other advice we should give to our client about why it might wish to engage in ADR, but we can pick that up when we speak.

Thanks

Laura