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Legal Briefing

Ted Lowery looks at a case concerning a disputed settlement agreement that was said to have produced an absurd outcome

Visa Inc and others v Luxottica Retail UK Ltd [2026] EWHC 312 (TCC)

In the Commercial Court

Before: Paul Stanley KC (sitting as a Deputy High Court Judge)

Judgment delivered 17 March 2026

The facts

During 2017, Luxottica issued a claim form in the High Court seeking some £750,000 in damages against various Visa group companies. Luxottica, an eyewear retailer, was one of many companies in the UK, Europe and the USA that brought claims against Visa on grounds that the bank fees generated when a retailer accepted a Visa card payment from a customer – known as a multilateral interchange fee (MIF) – were set at artificially high prices in breach of competition law. The other companies bringing claims against Visa included another eyewear boutique vendor, GrandVision NV, which issued proceedings against Visa in 2018.

During October 2020, Luxottica and Visa agreed on a settlement figure of £200,000 and subsequently entered into a written settlement agreement on 20 January 2021. The terms of the settlement agreement included:

- Associated Company was defined as having the same meaning as in section 256 of the Companies Act 2006 to include past, present or future Associated Companies without geographical limitation.
- MIF-Related Claims were defined as including any claims whether past, present or future, whether known or unknown, contemplated or foreseen.
- Recital D recorded the parties' intention to compromise any and all MIF-Related Claims that Luxottica and any Associated Companies had or might have against Visa.
- Clause 7 obliged Luxottica to ensure that any Associated Companies did not bring MIF-Related Claims against Visa and to indemnify Visa for any losses suffered in breach of this obligation.

In July 2021, Luxottica's parent company acquired a controlling interest in GrandVision NV. In consequence of this development, Visa notified Luxottica that the January 2021 settlement also settled GrandVision's claim and that the indemnity obligation was triggered. During 2023, Visa commenced proceedings seeking declarations to this effect, damages and specific performance. Luxottica rejected Visa's claims, contending that Visa's position amounted to an absurd interpretation of the settlement agreement, alternatively, that any such outcome had been obtained by means of "*sharp practice*" on Visa's part.

The issue

Did the January 2021 settlement agreement embrace GrandVision's claim against Visa so that the indemnity obligation in clause 7 was triggered?

The decision

Having reviewed the background to the settlement and scrutinised the wording in considerable detail, the judge's preliminary view was that the settlement agreement was so widely drafted as to encompass MIF-Related Claims brought against Visa by companies that, like GrandVision, became Associated Companies of Luxottica after January 2021, so that the obligations in clause 7 applied. The judge tested this preliminary view against three submissions raised by Luxottica but concluded that none of these points disturbed his interpretation:

- The submission that the settlement excluded claims by Associated Companies that were unrelated to Luxottica UK's business failed given the conspicuous lack of any such limitation – which would have been straightforward to include – within the settlement agreement.
- Luxottica's contention that the settlement excluded MIF-Related Claims by companies that were not, and had not previously been, Associated

Companies of Luxottica in January 2021 was, as a matter of language, too rarefied, and as a matter of an overall construction, contrary to the other provisions and general tenor of the settlement agreement.

- As to the submission that the settlement excluded MIF-Related Claims that in January 2021 the parties would have known were pending in the courts, the judge could see no justification for treating general words as implicitly excluding particular known claims: "*any and all*" MIF-Related Claims included the known, foreseen, and contemplated.

The judge considered there had been no sharp practice. Luxottica was professionally advised and the settlement negotiations were at arm's length. The risk that Luxottica might be wrong about the consequences of the settlement agreement was one that Visa was, in objective good conscience, allowed to leave for Luxottica to assess.

The judge therefore concluded that the settlement agreement did oblige Luxottica to ensure that GrandVision's claim was withdrawn and to indemnify Visa. However, he declined to exercise his discretion to award specific performance on grounds that an obligation in general terms to "*ensure*" that a third party did something made it difficult to spell out those actions that the court could order to be performed.

Commentary

Whilst the case has nothing to do with construction, this informative, erudite and at times entertaining judgment should be essential reading for anyone involved in drafting settlement agreements. Ultimately, the judge found that an outcome that might at first blush appear surprising should not be allowed to trump the language that the parties and their professional advisers had agreed to.

Ted Lowery
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