Harper James Solicitors video transcript: Warranty Claims When Buying A Company

I’m Michael Key, senior dispute resolution lawyer, Harper James Solicitors.

When buying a company, whether or not it’s an acquisition of share capital or assets, the position that a purchaser finds themselves in is caveat emptor, which means buyer beware. As a consequence of this, a purchaser of a company will want the comfort of knowing they’ve got what they thought they were buying, which is where warranties come in.

In simple terms, a warranty is simply a contractual statement in respect of certain assets of the company. Generally speaking, there will be lots of warranties given in respect of account issues, employment issues, environmental matters and lots of other matters.

So why do warranty claims arise? Well, I suppose in very simple terms the purchaser hasn’t got what they thought they were buying, which means that ultimately they look at the warranty claims to see whether or not they have got any right to either unravel the purchase or have a claim for damages.

What ways are there to avoid warranty claims? Well, in the first instance, I suppose the most fundamental way to avoiding warranty claims is by making sure that the purchaser gives sufficient time and credence to the due diligence process, making sure that they have properly gone through all the warranty claims if acting on behalf of the vendor, making sure they’ve disclosed against everything possible in the disclosure letter. Something that both parties, both purchaser and vendor, need to give consideration to is the vendor protection provisions in the agreement. The vendor protection provisions, generally speaking, will govern how any claim in respect of a warranty is submitted. Quite often, there will be specific procedures. There’ll be specific time limits and, more often than not, there may be specific monetary limits in respect of a particular head of warranty claim or composite limits in respect of warranty claims in general. Often you’ll find what we call deminimis limits, that’s minimum limits as to an ability to bring a warranty claim, say, for example, £5,000 or £10,000 for each head of claim, otherwise, it might not be economically worthwhile bringing those claims.

I think a big issue in terms of considering potential warranty claims and avoiding warranty claims, and it is something which is very often overlooked, is right at the outset when the sale or purchase of shares or assets is being negotiated, is actually considering the dispute resolution clause. Now, it is often a time when people are purchasing assets that they don’t actually think they’re ever going to be involved in a dispute, but often dependent on how the transaction is structured, you can almost anticipate where the disputes are likely to come from and consequently you should be looking at tailoring the dispute resolution clause to make sure that it best suits your purposes, whether you be acting either as a purchaser or vendor. For example, in respect of warranty claims in respect of accounts, you may be deciding to build a procedure whereby that is dealt with by expert determination through an accountant and you might want to give some thought to that kind of procedure because giving thought to the ultimate dispute can very often help save time and heartache in the long run.