

Buyer beware (*caveat emptor*) is a fundamental principle in corporate acquisitions and other purchase agreements under English law. In the recent decision of *Jinxin v. Aser and others* [2026] EWHC 75 (Comm), the English Commercial Court has dismissed wide-ranging claims for deceit and unlawful means conspiracy arising out of alleged representations made in the course of the acquisition by Jinxin of the MPS Group. In doing so, the court has provided useful guidance on reliance on statements made in preacquisition due diligence materials.

Although any case alleging deceit will depend on the precise factual circumstances, in the corporate acquisition context, *Jinxin v. Aser* is helpful in clarifying:

- That representations in the preacquisition context will not be interpreted overly broadly to go beyond the statements actually made.
- Where statements are designed to be made to the ultimate buyer, the fact that they may be made to a representative will not prevent the buyer from relying on the representation. Nor will it matter that the buyer is a newco yet to be established when the representation was made.
- Deceit claims remain available in appropriate situations, but the first port of call where an acquisition does not turn out as envisaged will continue to be the protections contained within the transaction documents.

Jinxin's Claim

In 2016, Jinxin acquired the MPS Group, a sports broadcast and media rights group that included, among other media properties, broadcast rights for the Italian Serie A football league and FIFA World Cup.

In preparation for the transaction, MPS engaged advisers who provided various due diligence documents providing detail of the financial and legal position of the group. These documents included legal and financial due diligence reports, and Q&A documents.

The acquisition completed in mid-2016; by 2018, the MPS Group had failed, and Jinxin had lost its investment.

Jinxin issued proceedings against the sellers of MPS Group and several others. Jinxin relied at trial on seven express representations contained in the due diligence documents – which Jinxin contended were false and known by the representors to be false – as well as nine implied representations.

In deceit claim, whether the representations were, as a matter of fact, made, false and known by the representor to be false, is critical. The court considered the representations in detail, addressing the business practices of the MPS Group (and particularly whether there was anticompetitive behaviour/bribery/corruption); the reason for the MPS Group's success in retaining the Serie A rights; the status of a criminal investigation into one of the defendants; and the accuracy of EBITDA forecasts prepared for the acquisition.

Having done so, the court concluded that while certain aspects of the MPS Group business may not have been run according to what might be expected in modern business practices and in other industries, the representations were either not made in the form alleged, or if they were, the representations were not false or known by the representors to be false. Jinxin's claim was therefore dismissed.

Claims in Deceit

A claim in the tort of deceit (sometimes referred to as fraudulent misrepresentation) will arise where:

- Person A makes a representation:
 - That is false
 - That Person A either knows to be false or makes without any genuine belief that it is true
- The representation is intended to be believed by Person B.
- Person B is caused to believe that the representation is true and suffers loss as a result.

Representations can be either expressly made, or take the form of actions. However, mere nondisclosure is not enough (save in certain limited situations where there is a duty to disclose material facts), Person A must have actively done something to cause Person B to hold the false belief.

In this case, Jinxin alleged a mix of express representations made in the diligence documents prepared by or on behalf of the sellers/MPS, and implied representations based on that diligence information provided. The court found that, on the facts, no false representations had been made (the representations were either not found to be false, or were found not to have been made).

Recipients of Representations

As part of a claim in deceit, the representation must reach the representee so as to cause them to believe it. This is logical – if a representee does not know a representation has been made, it cannot then affect their belief/behaviour. This has been likened in the case law to the damage caused by an arrow missing its target.

Jinxin was only incorporated a short time before the transaction. Representations had therefore been made not to Jinxin, but to representatives of Jinxin's would-be shareholders. The court concluded that, for Jinxin to have received any of the alleged representations, it was sufficient that the representations reached the representative, where what the representative had received was intended for the company that eventually became the buyer.

It is common in corporate transactions for a newco to be established for the purpose of acquiring the shares in the target business; and so it will often be the case that representations will be made not to the buyer that ends up relying on any statement made, but a representative. The court's conclusion is therefore a welcome clarification that the incorporation of a newco will not prevent reliance on preincorporation representations in an appropriate case.

The Interplay Between Deceit/ Misrepresentation and Warranty/ Indemnity Claims

In *Jinxin v. Aser*, as is typical in acquisition agreements, certain of the defendant sellers gave contractual warranties as to the position of the MPS Group to Jinxin. Warranties in this context will typically cover everything from the status of the shares being transferred, the financial and trading position of the group, employees, assets, disputes and other matters relating to the group's business. The claims advanced by Jinxin at trial were not claims under these warranties. These contractual warranties will be subject to various limitations, including caps on the quantum of claims, notification requirements, and time limits for bringing claims.

Typically, the acquisition documents will include entire agreement and nonreliance clauses, which provide that the acquisition documents contain the entire deal between the parties, and, further, that the parties have not relied on any representations or statements not contained within the agreement. There will then be a carve-out for fraud (as liability for fraud cannot be excluded or limited under English law).

That was the case in *Jinxin v. Aser*. Accordingly, for Jinxin to seek to rely on representations alleged to have been made that were not contained within the share purchase agreement, it was required to allege that those representations had been made fraudulently. That case could, on the facts, not be established.

Jinxin v. Aser in Practice

For sellers, the court's conclusions will be welcomed in that they make clear that statements made during an acquisition process will not be interpreted overly broadly, where such a meaning goes beyond the statement actually made; and such broad representations will not generally be implied. As said at Paragraph 260 of the judgment, "Absent the clearest words, in a business of this scale, range and complexity I cannot accept that a representation in those sweeping and comprehensive terms, admitting of no exception, was made" As the Court acknowledged, relaxing the requirements for claims of this type would introduce significant uncertainty for commercial life.

In circumstances where an acquisition has not turned out as expected, a buyer's first recourse will usually be to the acquisition documents, and in particular any warranties and indemnities captured within the transaction documents. Deceit claims will typically only be pursued where contractual exclusions and limitations prevent warranty claims being made. *Jinxin v. Aser* indicates the difficulty for buyers in trying to rely on representations that are not captured within the acquisition documents. As such, ensuring a robust due diligence exercise preacquisition, so that issues are identified precompletion, as well as obtaining appropriate warranty, indemnity and other protections, are critical.

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