



Neutral Citation Number: [2019] EWHC 2744 (Ch)

Case No: BL-2018-000281; CR-2018-003995

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST AND INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: 17/10/2019

Before :

MR JUSTICE FANCOURT

Between :

UTB LLC

Claimant

- and -

SHEFFIELD UNITED LIMITED

Defendant

- and -

**HRH PRINCE ABDULLAH BIN MOSAAD BIN
ABDULAZIZ AL SAUD**

- and -

YUSUF GIAN SIRACUSA

AND IN THE MATTER OF BLADES LEISURE LIMITED

**AND IN THE MATTER OF S.994 OF THE COMPANIES
ACT 2006**

SHEFFIELD UNITED LIMITED

Petitioner

- and -

- (1) UTB LLC
(2) UTB 2018 LLC

- (3) **HRH PRINCE ABDULLAH BIN MOSAAD BIN
ABDULLAH BIN ABDULAZIZ AL SAUD**
- (4) **YUSUF GIAN SIRACUSA**
- (5) **HRH PRINCE MUSA'AD BIN KHALID M BIN
ABDULRAHMAN AL SAUD**
- (6) **BLADES LEISURE LIMITED**

Respondents

Mr Andreas Gledhill QC and Mr Tom Mountford (instructed by **Jones Day**) for the
Claimant, Third Party, Fourth Party and the First to Fourth Respondents
Mr Paul Downes QC and Miss Emily Saunderson (instructed by **Shepherd and
Wedderburn LLP**) for the **Defendant/Petitioner**

Hearing date: 14 October 2019

Approved Judgment

Mr Justice Fancourt:

1. On 16 September 2019, I handed down judgment in these proceedings and adjourned all consequential matters to be heard on 14 October 2019.
2. There will be an order for specific performance of the contract of sale and purchase, under which SUL must transfer its shares in Blades to UTB in consideration of £5 million to be paid by UTB.
3. Although I have refused permission to appeal, SUL is entitled to apply to the Court of Appeal for permission to appeal. If permission is granted, it is possible that SUL will succeed in at least reversing the transfer of its shares, with the consequence that it will again become a 50-50 owner of Blades. SUL seeks protection against the risk of its shares having been rendered less valuable by inappropriate conduct of UTB as sole shareholder of Blades in the meantime. In the circumstances, the relief that SUL now seeks is pending any application to and the decision of the Court of Appeal whether to grant permission to appeal.
4. SUL has adduced very lengthy evidence in the form of a 15th witness statement of Philip Andrew Sewell directed to uncertainty about the ability of Prince Abdullah and the directors of UTB to manage the affairs of Blades and SUFC prudently and without risk of insolvency. Much of the material on which it relies is inferential and disputed, though some arises from the terms of my judgment and public pronouncements of Prince Abdullah.
5. Mr Bettis has produced cash flow forecasts, one dated June 2019 and one dated August 2019, which project a cash flow surplus as at June 2020 of £28,906,758 and £22,877,938 respectively. However, SUL points out that the August cash flow includes no provision for payments for new players, whereas the June cash flow included £15 million, and that further unbudgeted expenditure of up to £55 million exists in June and July 2020. SUL has also pointed out that Prince Abdullah has made commitments to other spending, which he is likely to seek to honour for public relations reasons. In the circumstances, SUL argues that any substantial item of unbudgeted expenditure, such as £10 million spent on a new player in the January transfer window, could render Blades cash flow insolvent.
6. It is clear from the relief that SUL seeks that its primary concern is insolvency. However, UTB pointed out that Blades is and has for some time been balance sheet insolvent, and so the relevant risk is Blades (and SUFC) being unable to pay their debts as they fall due.
7. SUL recognises that, in the circumstances in which an expedited trial was ordered, so that there would be certainty about ownership of Blades by the end of 2019, the court is unlikely to grant a general stay of its order for specific performance, thereby perpetuating for probably more than a year the current instability in management and problems with finance. Instead, it seeks an order (if no undertaking is given) that UTB must notify it at least 14 days prior to any item of exceptional expenditure not covered by the August cash flow, and which gives rise to a material risk of insolvency. As the assumption must be that Blades could not properly expend substantial sums in those circumstances, SUL admits that the purpose of the order or undertaking is to cause UTB to consider very carefully whether expenditure can properly be justified and not

to make unjustified expenditure; though it added that in a proper case it could agree to the proposed expenditure even if it did carry a material risk.

8. UTB has declined to offer such an undertaking for the following reasons. First, it is entitled to enjoy the fruits of its success at trial and should not be fettered in its management of Blades and SUFC. Second, cash flows constantly change with events that occur and it should not be fettered by reference to the August cash flow. Third, the requirement to give at least 14 days' notice of a transaction is an unreasonable fetter on powers of management in a fast-moving business world, particularly during and leading up to the January 2020 transfer window. Fourth, the Club is effectively managed in financial terms by Mr Bettis, whom the court has seen and can conclude to be unlikely to mismanage Blades or SUFC to the point of cash flow insolvency. Fifth, the terms of the undertaking (or order) are too vague: whether or not an expensive player transfer is "exceptional" or "outside the ordinary course of business" is inherently uncertain, where the business of a Premier League football club is in part concerned with expensive transfers of players. Further, whether there is a "material risk" of cash flow insolvency is inherently uncertain. It submits that the effect of such an undertaking would be to compel Mr Bettis to be very defensive about financial reporting, preclude the Club from undertaking urgent business and put it at risk of further satellite litigation.
9. Mr Downes QC for SUL submits that the proposed terms of the undertaking or order are sufficiently certain and carry with them little or no prejudice to UTB, given that UTB should not be making transactions of an exceptional nature that create a material risk of cash flow insolvency unless there were very good reasons, in which case SUL could agree to the expenditure.
10. I prefer the arguments of UTB. Although Prince Abdullah went through a period of financial embarrassment in 2016, I am persuaded that he is now a man who acts on the basis of high quality professional advice. Further, Mr Bettis has proved himself to be a reliable and competent financial executive and has the respect of the Prince. Even if Prince Abdullah wishes to spend substantial sums on better players and better facilities, I am confident that his advisers will provide any necessary constraint on inappropriate expenditure. The Club is in a difficult position this year. It is imperative for it to survive in the Premier League at the end of this season. To ensure its survival, it may need to spend in January in order to improve its first-team squad. But excessive spending would increase to some extent - if not create a material risk of - cash flow insolvency. The directors and executives of Blades have something of a tightrope to tread, which requires careful business judgment.
11. The court is in no position to provide better business judgment than the directors and executives of Blades. Although Mr Downes says that the order sought will be likely to prevent any notice being given, there remains a risk that, out of an abundance of caution, such a notice will be given, or alternatively that SUL would argue that such a notice should have been given. That would bring the matter back to the court, as Mr Downes recognises: back to the Business and Property Courts even though a final order has been made in these proceedings. If Blades were to exercise caution in a different way, by avoiding any transaction that could arguably be said to be "exceptional", or to give rise to a material risk of insolvency or to require the consent of SUL, the order would unfairly fetter the ability of the directors to take brave but correct decisions in the best interests of the Club.

12. Recognising the possible difficulties to which his proposal gave rise, Mr Downes in reply suggested that instead the court could instead require notice in the case of a transaction over a certain financial limit, or require a new cash flow forecast to be produced running to August 2020, in order to give SUL more comfort about how UTB would meet its further liabilities. However, neither of these on its own would give SUL a proper basis for seeking to intervene in the management of the Club.
13. I was left with the impression that SUL simply wants to continue to be provided with information about management of the Club, so that - if it thought appropriate - it could seek to intervene. In the light of all that has gone before, that would be an undesirable outcome. I recognise that it is a difficult time for the McCabes, who may believe that they will succeed on an appeal and do not want to see the Club damaged irreparably before any appeal can be heard. The McCabes will also be aware that the period to May 2020 is critical for the future success of the Club and wish to be involved at such an important time. But their lack of involvement is the consequence of SUL's losing the trial and there is no good reason to think that UTB will do a worse job of trying to strike the delicate financial balance that I have identified during the current season than SUL would do if it were in control. There is in my judgment a serious risk of satellite litigation if an order is made in the terms sought by SUL.
14. For these reasons, I decline to make any order that UTB must notify SUL of specified transactions. I do not do so on the basis that SUL can have no arguable case on appeal, even though I have refused permission to appeal. I do so on the basis that damage to Blades' best interests appears to be more likely to be done in the short term if an undertaking or order in the terms sought is made rather than refused, and because there is no compelling evidence that UTB will mismanage the Club.
15. Since I do not consider an order in those terms to be appropriate, it would clearly be inappropriate to order a general stay of the order for specific performance as a means of extracting such an undertaking from UTB. A general stay for other reasons would be inappropriate, given the importance of ending the period of divided ownership and control of Blades.
16. The alternative argument advanced by Mr Downes was that, in order to preserve for SUL the ability to complain about any unfairly prejudicial conduct between today and the (assumed) successful appeal, SUL should be entitled to retain one share in Blades, to give it locus standi to pursue its appeal and bring a further claim for unfairly prejudicial conduct after the appeal has succeeded. SUL was prepared to give an assurance not to seek to exercise any voting rights or attend any meetings, or otherwise exercise rights associated with share ownership other than the right to complain about unfairly prejudicial conduct. Mr Downes did not explain how I could properly bring about the retention by SUL of one share, though presumably this would be by exercising a discretion not (at least for the time being) to require specific performance of the contract of sale and purchase in relation to that single share, or by staying the order for specific performance in relation to one share.
17. I am doubtful whether I could properly exercise any such power, but in any event I am satisfied that no such retention of a share is necessary or justified.
18. Mr Downes first suggested that, in the absence of ownership of one share, SUL would be bound to lose on technical grounds any appeal for which it was given permission

(or permission to appeal would be refused for that reason), even if it would otherwise succeed in substance on its ground of appeal. The reason, he submitted, was that by then SUL would not be a shareholder and so could not be given relief. That is clearly wrong. SUL has locus standi in the Court of Appeal by virtue of being the unsuccessful party at trial in the High Court. Section 994(1) of the Companies Act only requires a petitioner to be a shareholder at the time of the application by petition. On appeal, the Court of Appeal can make any order that the High Court could have made. There is no separate requirement that the appellant be a member of the company at the time of the hearing of the appeal.

19. Next, Mr Downes submitted that if SUL were successful on appeal it would be at risk of being held unable to apply by petition in respect of any unfairly prejudicial conduct of UTB between the date on which UTB becomes registered as owner of SUL's shares in Blades and the date on which SUL is once again registered as owner of those shares. That is because, he submitted, the re-registration of SUL would not be retrospective. He relied on Re Starlight Developers Ltd [2007] EWHC 1660 (Ch); [2007] BCC 929, in which Briggs J stayed a section 459 petition pending a decision on a shareholder's claim to retrospective rectification of the share register that, if successful, would mean that he was a shareholder when the petition was presented. It is implicit in that decision that the petition would stand to be struck out if the petitioner did not achieve retrospective rectification because he would not then have been a shareholder on that date.
20. In my judgment that case says nothing about the question of whether someone who was a shareholder, and who ceased to be a shareholder only by reason of the order of a court that was subsequently overturned on appeal, was entitled to complain about unfairly prejudicial conduct during the time after the court order and the order on appeal. Under section 994(1), the question is, first, whether a petitioner is a shareholder at the date on which the application by petition is made. SUL would be if, by order of the Court of Appeal, UTB had to re-transfer its shares in Blades. It would then once again be the owner of the shares whose value had been affected by any unfairly prejudicial conduct affecting Blades's members, or some part of its members including SUL. SUL would have locus standi and would have suffered loss to the extent that its shares had been reduced in value. That is quite different from a case in which a putative petitioner had never been a member of the company in issue.
21. It is therefore very difficult to see how any argument that in those circumstances SUL could not complain could succeed. Such an argument would be both unmeritorious and unattractive, as well as running contrary to the language of the Companies Act. For those reasons, no doubt, far from keeping such an argument up its corporate sleeve, UTB openly gave the court in its submissions the above reasons why Mr Downes' argument was wrong.
22. The undoubted effect of not retaining one share will be that SUL will be unable during the period before its appeal succeeds to apply to the court for relief under section 994(1), but as Mr Downes accepted that is as it should be if the court has ordered transfer of SUL's shares in Blades and declines to grant a general stay of its order.
23. UTB has offered to give an undertaking pending any appeal not to dispose of or deal in the shares of Blades or to issue new shares or alter Blades' articles of association in

a way that would diminish the value of SUL's shares in Blades. That undertaking will be provided in the terms of the final order. For the reasons given above, there will be no stay of the order that I have made and no order that UTB give advance notice of any other transactions that Blades or SUFC effects before the appeal is heard.