

Darius Khakshouri v (1) Tony Jimenez and (2) Kevin Cash

NOTE: This Note does not form part of the judgment and is for information only.

Mr Justice Green: 20th December 2017

1. In this action the Claimant, Mr Darius Khakshouri, a property developer from Los Angeles, has sued Mr Tony Jimenez and Mr Kevin Cash for damages. Both Defendants were directors of Charlton Athletic Football Club. The claim is made upon the basis that Mr Jimenez is guilty of “deceit” (ie fraud) and Mr Cash is liable because Mr Jimenez was acting as his agent when the fraud was perpetrated.
2. The claim arises in the following way. By Autumn 2013 the Club was in dire financial straits, its debts had been mounting, it was losing millions each year and it had more or less exhausted its normal lines of credit. The risk of administration was real. The directors concluded that a sale of the Club was necessary. But in its then financial state it was not an attractive proposition.
3. The stadium owned by the Club, “the Valley”, is however situated very close to the Greenwich Peninsula in London’s docklands. At this time, Royal Greenwich Borough Council, was considering a large-scale development of the area and as part of its overall plan it favoured the idea of constructing a new sporting and/or entertainment stadium within the development area.
4. For Mr Jimenez and Mr Cash, as directors of the Club, this opened up the possibility that they could use the Valley stadium as leverage to obtain a seat at the future Greenwich Peninsula development negotiating table. One possibility was that as part of the Council’s desire to see a major sporting or entertainment venue located on the site the Club would relocate its stadium into the development area and the Valley would then be redeveloped as housing, possibly including social housing. The involvement of the Club could, it was hoped, add positively to the pool of options open to the developers.
5. The Greenwich Peninsula development was a long-term scheme and could take 8 or 9 years or longer to come to fruition. But such was the state of the Club’s finances that the directors did not have the luxury of time. So, they conceived of an idea whereby

they would sell the Club but with a linked deal whereby they would retain an interest in the stadium following the sale. This linked deal became known as the “Land Deal”. The Defendants would achieve this by ensuring that the Club was not sold unless the new owner also concluded a Land Deal which enabled the Defendants to retain some sort of an interest post-sale. A Land Deal was by no means a promise of imminent riches. Nonetheless, *if* the Club’s directors could pull off the deal they would remain potential players in the development with “*skin in the game*”.

6. However, all these plans would collapse if the Club went into administration. A short term financial fix was needed.
7. Throughout 2013 prospective buyers of the Club came and went and the Club’s financial position remained precarious. In September 2013 the First Defendant, Mr Tony Jimenez, went to Los Angeles and spoke to an old friend, Mr Darius Khakshouri. During meetings held between 15th-17th September he tried to persuade Mr Khakshouri to advance a short-term loan to the Club. Mr Khakshouri was at first unenthusiastic. He is a property developer and he had tied up his spare capital in a project in West Los Angeles (“the LA Deal”) in which he had a 55% share. He did not have spare cash to advance to the Club as a loan. Mr Jimenez shared with Mr Khakshouri internal analysis prepared by the Club of the Greenwich Peninsula development and its potential (which was said to potentially very large indeed) and he offered to bring Mr Khakshouri into the Land Deal, if he advanced short-term funds to the Club.
8. In this litigation Mr Khakshouri claims that to induce him to make the loan Mr Jimenez, on behalf of himself and Mr Cash, made two fraudulent representations to him: First, that he and Mr Cash, were the majority shareholders and controllers of the Club; and second, that in their capacity as such they would ensure that the Club was not sold without a Land Deal being in place. If Mr Khakshouri advanced the loan he would be given a 30% interest in the Land Deal.
9. Mr Khakshouri was persuaded. To raise finance for the loan he had to free up capital by diluting his 55% interest in the LA Deal. He did this in part by selling 30% of his interest to his brother in law, thereby reducing his stake to 25%. With these released funds he made the loan to the Club. He did this upon a wholly undocumented basis

relying upon the fact that Messrs Jimenez and Cash were close personal friends. The documentation was drawn up later and was signed by the Defendants upon the express basis that they were the controlling majority shareholders in the Club.

10. By November 2013, after the loan had been made, all the prospective buyers for the Club had melted away. But then Mr Roland Duchatellet came onto the scene. He owned of a number of European football clubs and was prepared to do a quick deal, but completion had to occur before the transfer window closed, at the end of January 2014. He persuaded the directors to sell the Club *without* any Land Deal. Completion occurred on 2nd January 2014. Mr Khakshouri was not however told that there was no Land Deal and following the sale of the Club he continued to believe that he was now party to such an arrangement. He was not told the truth until the summer of 2014. When he discovered that in fact there was no Land Deal, and after the Defendants had refused to compensate him, he started proceedings to recover the profits he would have earned had he remained in the LA Deal.
11. Mr Khakshouri argues that the Defendants were not shareholders (majority or otherwise) in the Club and they never intended to condition sale of the Club upon a Land Deal. He was induced to withdraw from the LA Deal and to make the loan by two knowingly false representations and had they not been made he would have remained with a 55% stake in the LA Deal and he would have benefited from the substantial profits that in due course it generated.
12. On the evidence I find in favour of Mr Khakshouri. I find that Mr Jimenez did make the two representations referred to, and that he did so on his own behalf and that of Mr Cash. He made these representations knowing that they were untrue and to induce Mr Khakshouri to make the loan. Mr Jimenez is liable in fraud; Mr Cash is vicariously liable for the fraud of Mr Jimenez.
13. There is a second part of the Claim which is very minor. As to this I find for the Claimant against Mr Jimenez, but not against Mr Cash.
14. The full details are set out in the judgment that I now hand down.