

Neutral Citation Number: [2019] EWHC 530 (Ch)

Case No: CR-2015-006989

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 13 February 2019

Before :

The Honourable Mr Justice Marcus Smith

Between :

VB Football Assets (VBFA)

Petitioner

- and -

- (1) Blackpool Football Club (Properties) Limited**
(formerly Segesta Limited)
(2) Owen Oyston
(3) Karl Oyston
(4) Blackpool Football Club Limited (BFC)

Respondents

Barry Isaacs QC and Fraser Campbell (instructed by **Clifford Chance LLP**) for the
Petitioner

Matthew Collings QC and Gareth Darbyshire (instructed by **HHB Solicitors**) for the
Respondents

Hearing dates: 13 February 2019

JUDGMENT

Mr Justice Marcus Smith:

1. This is an application by the Petitioner for the appointment of a receiver by way of equitable execution over certain assets belonging to the First and Second Respondents. I shall refer to the First and Second Respondents as the “Respondents”. These assets are listed in an annex to the fifth statement of Mr Yates, a solicitor at Clifford Chance LLP, the solicitors acting for the Petitioner.
2. The history of these proceedings is a long one and I will not go through it in any great detail. The material facts are that, as a result of a judgment that I handed down on 6 November 2017 (Neutral Citation [2017] EWHC 2767 (Ch)), a considerable judgment debt is owed by the First and Second Respondents to the Petitioner. It is a sum in excess of £25 million. Although, relatively early after the handing down of my judgment in November 2017, some £10 million was paid by the Respondents, that is the last payment that has been received. As I say, in excess of £25 million remains outstanding.
3. The Petitioner has not been inactive in seeking to enforce the judgment and there have been a series of hearings before me at which the Petitioner has sought to obtain, and has obtained, various orders intended to enable the outstanding judgment debt to be met. These orders have involved the freezing of assets held by the Respondents, charging orders and orders for sale over various assets held by the Respondents.
4. There are two types of assets that the Petitioner has been seeking to enforce against. First, there is real property, which are owned by the Respondents, over which charging orders and then orders for sale have been obtained. Secondly, there are shares held by the Respondents, notably shares in the First Respondent (owned by the Second Respondent) and also shares in a company called Closelink. Again, charging orders and orders for sale have been obtained in respect of these shares.
5. The property that I particularly want to single out for mention are the shares in the First Respondent. The First Respondent owns the assets which are provided to enable the operation of Blackpool Football Club Limited – the Fourth Respondent. Blackpool Football Club was the subject matter of my November 2017 judgment. It continues to be operated by the Respondents and the objective of the Petitioner is to seek the sale of the club as a going concern. That is because the football club is, I am told, more valuable as a going concern than the sum total of its assets if sold on a bare asset sale basis.
6. Despite all this activity on the part of the Petitioner, very little has been achieved by way of satisfaction of even part of the outstanding judgment debt. It is on this basis that the Petitioner now comes to seek the appointment of a receiver by way of equitable execution. The appointment of a receiver by way of equitable execution is not a usual form of order. Essentially, the appointment of a receiver by way of equitable execution enables the getting in of assets which would not otherwise be susceptible to the ordinary processes of enforcement.
7. There was some debate before me as to precisely what test needed to be applied and satisfied in order for the court to appoint a receiver by way of equitable execution. I am satisfied that the test is correctly stated by Males J in *Cruz City I Mauritius Holdings v. Unitech Limited* [2014] EWHC 3131 (Comm) at [47]. In essence, Males J held that the overriding consideration in determining whether the court should exercise its jurisdiction to appoint a receiver by way of equitable execution was the demands of justice. The jurisdiction, however, is not unfettered and must be exercised in

accordance with established principles, although it is capable of being developed incrementally. It is not, however, limited to those situations where equity would have appointed a receiver before the fusion of law and equity pursuant to the Judicature Acts 1873. The jurisdiction will not be exercised unless there is some hindrance or difficulty in using the normal processes of execution, but there are no rigid rules as to the nature of the hindrance or difficulty required, which may be practical or legal. It is important to take account of all the circumstances of the case.

8. It will be just and convenient to appoint a receiver by way of equitable execution when it would be difficult for the claimant to enforce its judgment by other means and where the appointment of a receiver is the only realistic prospect available to the judgment creditor to enforce its judgment in the short term. A receiver will not be appointed if the court is satisfied that the appointment would be fruitless, for example because there is no property which can be reached either in law or equity. However, a receiver may be appointed if there is a reasonable prospect that the appointment will assist in the enforcement of a judgment or award.
9. It is, as it seems to me, the question of whether there is some hindrance or difficulty in using the normal processes of execution that is the critical question before me today. I remind myself that the practice direction in CPR 69 (CPR 69 PD) states in some detail (at §4.1) what the evidence in support of an application to appoint a receiver by way of equitable execution must address. In particular, the evidence must address why the judgment cannot be enforced by some other method (CPR 69 PD §4.1(3)(d)).
10. In the present case, it is certainly true that an attempt has been made to enforce the judgment by other methods. I refer to the charging orders and the orders for sale that have been obtained in this case. As is clear, these orders have not achieved the outcome that was intended: the judgment remains unsatisfied.
11. My concern about the evidence in support of the Petitioner's application is that it does not address -- it certainly does not address very fully -- why it is that the enforcement orders already made have not met with success. That is particularly the case in relation to the assets that are unrelated to the operation of Blackpool Football Club. I shall refer to these assets as the "non-footballing assets".
12. Mr Isaacs, QC, who appeared for the Petitioner, has sought to make good the lack of evidence in this regard by pointing to the expertise of the receiver in realising property and to the fact that some of the properties over which a receiver was sought to be appointed were tenanted. There were, it was suggested, income streams that the receiver could capture which are at the moment not being captured.
13. The concern that I have is that the need for the appointment of a receiver by way of equitable execution to secure these revenue streams is nowhere articulated in the substance of Mr Yates' evidence. One can see that the annexes to this evidence describe certain properties held by the Respondents as being tenanted, and one would infer from this that there is an income stream to be captured. But usefulness or otherwise of a receiver in capturing such revenue streams has not been articulated, save in submission by Mr Isaacs, QC, on the Petitioner's behalf. I am, therefore, troubled, as regards the non-footballing assets, as to whether the interests of justice are served in appointing a receiver by way of equitable execution in the case of these assets.
14. I say that because the question of justice in the appointment of a receiver by way of equitable execution needs to be properly supported by evidence. I am simply not satisfied in the case of the non-footballing assets that that is the case. The jurisdiction to appoint a receiver by way of equitable

execution needs to be carefully policed and the court, whilst it may have a strong suspicion that justice will be served in the appointment of a receiver, needs more than that. It needs evidence. In this case, there is insufficient evidence to demonstrate that the ordinary methods of enforcement are not sufficient to realise these assets in satisfaction of the judgment debt. Thus, as regards the non-footballing assets, I am not prepared to make the order that has been sought and I refuse the application to that extent.

15. I turn, then, to the assets that are related to Blackpool Football Club – what I shall refer to as the “footballing assets”. These are, in essence, the shares in the First Respondent and some (but not all) of the property held by the First Respondent. As regards these footballing assets, the case for the appointment of a receiver by way of equitable execution is much clearer and much stronger. It is true that orders for sale could be used in respect of the First Respondent’s shares and in respect of the property owned by the First Respondent. However, such orders would only be efficacious if the proposal was to break up the football club and sell the footballing assets simply as assets, ignoring the ongoing business. Were that the intention of the Petitioner and were that the most efficacious way to realise the outstanding judgment debt, then here too I would be minded to refuse the order to appoint a receiver.
16. But that is not the objective of the Petitioner and, in his sixth statement, Mr Yates explains the plans of the receivers in regard to Blackpool Football Club. Paragraph 11 of Mr Yates’ sixth statement says that if the application to appoint a receiver were to be successful, the Petitioner (via the receiver) would seek to reassure the English Football League board that the receiver’s management of the First Respondent’s assets would not adversely impact the Club’s ability to fulfil its obligations. Mr Yates emphasises that the Petitioner has sought to identify and propose a receiver with significant receivership experience in respect of football-related assets. Mr Yates then described the experience of the receivers the Petitioner was seeking to appoint.
17. Paragraph 12 of Mr Yates’ sixth statement then went on to stress that it was as much in the Petitioner’s interest as it was in the Respondents’ interests that the Club remained the most saleable and profitable asset possible. Mr Yates made clear his understanding that it was the intention of the proposed receivers, if appointed, to sell the shares in the First Respondent and the footballing assets owned by the First Respondent (notably the Club’s stadium) as a single package, rather than as separate assets, as this would realise their maximum possible value.
18. I asked Mr Isaacs, QC, as to precisely what was intended on the part of the receivers in relation to the Club. On instructions, he told me that the proposal was to replace the management of both the First Respondent and Blackpool Football Club and put in new and expert people who could run the Club *pro tem* pending a sale. That information I consider to be material, and Mr Isaacs, QC has undertaken to put the substance of what he told me on instructions into evidence and I treat it as such.
19. It is clear to me that the appointment of a receiver by way of equitable execution in the case of the footballing assets will achieve a real benefit and is plainly in the interests of justice. One asks oneself, how could the Petitioner, using simply an order for sale, successfully achieve the sale of the Blackpool Football Club as an ongoing asset? One would imagine that a buyer would ask all kinds of questions as to the operation of the Club, which the Petitioner would simply be unable to answer. Of course, the Petitioner could ask the Second Respondent what the answer was, but I am in little doubt that the answers that Mr Oyston would provide, given the history of this matter, would be slow, unsatisfactory and incomplete.

20. It therefore seems to me that if a sale as a going concern is contemplated, it is clearly in the interests of justice that a receiver be appointed because that order will make an enormous difference to the abilities to achieve a sale which other orders, for instance an order for sale, simply could not achieve. I am therefore satisfied that as regards the shares in the First Respondent and the assets of the First Respondent a receiver by way of equitable execution should be appointed because this is clearly in the interests of justice, particularly where such an order is to my mind the only way of realising these assets.
21. I appreciate, of course, that the First Respondent owns both footballing and non-footballing assets. The order that I am going to make extends to all of the assets of the First Respondent, as well as the shares in the First Respondent. Although, for the reasons I have given, I consider that a receiver is not necessary to realise the non-footballing assets, the manner in which the First Respondent has conducted its affairs means that it is actually very difficult to draw a bright line between footballing and non-footballing assets held by the First Respondent. Were I to seek to draw such a distinction, then I can see much room and opportunity for debate and dispute as to precisely what property the receivers can and cannot deal with. In order to make the work of the receivers clear, and in order to make the order that I am minded to make workable, it is clear to me that it must extend to all of the First Respondent's assets.
22. In reaching this conclusion, I have taken into account the potential disadvantages in appointing receivers. First, there is the question of cost. That, as it seems to me, is either a minor point or possibly even a point in favour of appointing receivers. The fact is that the costs of Petitioner in seeking to enforce its judgment debt have not only been fruitless, but very expensive. It is entirely possible that receivers can get the job done more quickly and more efficiently, including in terms of money spent.
23. Secondly, there is the risk that the appointment of receivers will cause Blackpool Football Club to suffer a points deduction in the league where it presently play. The receivers hope to avoid this outcome, which is not inevitable, but I can see that it is a possible risk and so an adverse consequence of the appointment of receivers. I consider, however, that the appointment of a receiver by way of equitable execution is so in the interests of justice, that even taking account of this adverse potential consequence, an order appointing a receiver by way of equitable execution should be made.
24. So far as the shares in Closelink are concerned, I have not been addressed with sufficient specificity on the evidence as to why a receiver appointed over these shares would make a difference and have an advantage over ordinary methods of enforcement. It may be that the answer to this question is exactly the same as it is in the case of the First Respondent but I am not, on the evidence that is before me, satisfied that that is the case. I am afraid I have not been addressed sufficiently by Mr Yates on that point. I therefore decline to appoint a receiver by way of equitable execution in respect of the Closelink shares.