



Neutral Citation Number: [2022] EWHC 322 (Ch)

Case No: CR-2019-001325

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

IN THE MATTER OF CARDIFF CITY FOOTBALL CLUB (HOLDINGS) LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

7 Rolls Buildings
Fetter lane, London
EC 4A 1NL

Date: 15/02/2022

Before :

MR JUSTICE ADAM JOHNSON

Between :

MICHAEL JOHN ISAAC

Petitioner

- and -

(1) TAN SRI DATO' SERI VINCENT TAN
(2) CARDIFF CITY FOOTBALL CLUB
(HOLDINGS) LIMITED

Respondents

David Reade QC and Grahame Anderson (instructed by **Carbon Law Partners**) for the
Petitioner

Emily Betts and Ryan Hocking (instructed by **Capital Law**) for the **Respondents**

Hearing dates: 14, 15 February 2022

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Adam Johnson:

1. I have to give directions as to the scope of the present trial. The context is the Petitioner's petition for relief from unfair prejudice under ss. 994 and 996 CA 2006. The Petitioner Mr Isaac is a minority shareholder in Cardiff City Football Club (Holdings) Limited ("*the Company*"), which is the holding company of Cardiff City Football Club Limited ("*the Club*").
2. The issue arises in the following way. The Petition originally set out what seems to me six broad grounds of unfair prejudice. I need not describe them in detail. Suffice it to say that they concerned allegations stretching back over a number of years. Particular points included:
 - (1) an allegation that the business of the Company was in fact controlled by the First Respondent, Mr Tan, who usurped the function of the Board;
 - (2) an allegation that Mr Tan mismanaged the Company's business and wasted legal costs by engaging in unnecessary and unjustified litigation with a third party, Langston Group Corporation, in the context of which he is alleged to have attempted to procure false evidence from the Petitioner;
 - (3) an allegation that the Club and the Company vindictively and without any justification pursued a defamation action against Mr Isaac, which was then abandoned very shortly before trial – resulting again in wasted costs; and
 - (4) an allegation that in May 2018 Mr Tan procured a Rights Issue by the Company, referred to as the 5:2 Rights Issue, which resulted in Mr Isaac's then 3.97% shareholding in the Company being reduced to some 1.18%.
3. The Relief sought in the Petition was an order that Mr Tan buy Mr Isaac's shares at a fair value, but with what was described as a premium to take account of various of the matters complained of, including the effect of the May 2018 dilution, and what were said to be the costs wasted by the Langston litigation and the defamation action against Mr Isaac.
4. Mr Tan's Defence in its original formulation dealt with these allegations in a series of detailed denials.
5. Against that background, an initial attempt was made by the Respondent to strike out the Petition, but that attempt largely failed and the majority of the allegations in the Petition remained intact. A Re-Amended Petition was duly served.
6. Mr Tan then amended his Defence in what seems to me at first blush a rather curious way. The gist of it was as follows. At para. 9A of the Defence, Mr Tan said that he would buy Mr Isaac's shares as requested in the Petition, "*subject only to the resolution of the allegation concerning the 5:2 Rights Issue and the correct valuation of the shares*", which was to include whether the two sets of litigation costs had in fact had any material impact on the valuation of Mr Isaac's shareholding.
7. The Amended para. 9A of the Defence then went on to say, "*Accordingly, no other matters in the Re-Amended Petition remain relevant and are now the subject of non-*

admissions.” In the Amended Defence, the paragraphs containing positive denials were then struck through, and in each case the relevant paragraphs in the Re-Amended Petition were met with the response that they were simply “*not admitted*”, and then paragraph 9A cross-referred to.

8. The Reply took issue with this approach. Para. 2C of the Reply took the position that Mr Tan’s failure to plead a positive case was a breach of CPR 16.5(1) and/or was an abuse of process and was liable to be struck out. CPR Rule 16.5 deals with the contents of a Defence, and requires a defendant either to admit or deny the allegations against him, save in those cases where he is unable to admit or deny the allegation, in which case he can put the claimant – or in this case the petitioner – to proof. Here, what has been said by Mr Reade QC in submissions is that Mr Tan does not fall within this intermediate third category, because he *is* in a position to admit or deny the allegations against him. Indeed, before the Defence was amended, he did deny them.
9. I will come back to that. To complete the picture, however, although suggested in the Reply, in fact no application to strike out the Amended Defence was made. Instead, the parties engaged with the process of disclosure. There was a contested hearing in September 2021 before ICCJ Mullen. I have been shown some of the correspondence prior to that hearing, and a note of the Judge’s rulings on disclosure. It seems that at some point either prior to the hearing or perhaps at the hearing itself, some further concessions were made. No disclosure was sought in relation to the broad question of control over the Company’s business by Mr Tan. As regards the costs of both the Langston litigation and the defamation action, the Respondents conceded that the amount of those costs, such as they were, could in principle be taken into account in valuing Mr Isaac’s shares, and a direction was therefore given for the amount of those costs to be ascertained, presumably so they could be provided to the parties’ experts. Otherwise, as to matters of substance, the only significant category of disclosure ordered was in connection with what was called Issue 7. That was the question of the 5:2 Rights Issue. Category C, i.e. search based disclosure, was ordered in connection with “[*t*]he motive, intentions and legality of the actions of the Company and/or Mr Tan as regards the allotment of shares in the Company”, the search to cover a date range of 2015 to 2018.
10. I understand from Mr Reade QC that an argument based on CPR 16.5 was relied on at the hearing in September. It is not mentioned in the brief note of the Judge’s reasoning, but it seems that whatever was submitted on that topic did not find favour, or at any rate the Judge proceeded on the basis that the only live allegation of unfair prejudice to be determined was effectively that in relation to the 5:2 Rights Issue, and that everything else went only to valuation.
11. There was no challenge by way of appeal to any of the determinations made by ICCJ Mullen, and thereafter the parties appeared to be preparing for a trial which would deal broadly with two topics, namely (1) the legitimacy of the 5:2 Rights Issue, and (2) valuation of the Company. As to valuation, further directions were given by the Court in December 2021. Expert reports were prepared conducting valuation exercises at 2 dates, i.e. a 2018 value prior to the May 2018 Rights Issue, and a current value. That would suggest that the focus of Mr Isaac’s case is on the May 2018 Rights Issue. The principal form of relief he now seeks is an order for the acquisition of his shareholding as it stood prior to what he says was the dilutive Rights Issue.

12. Now comes the problem. After his solicitors wrote a letter on 3 January 2022 in which they proposed a reduction in the anticipated length of trial, from 12 days to 7 days, in light of the way the case had developed, Mr Isaac then served a Witness Statement on 7 January 2022. This was a short statement in a form which appears compliant with the new Practice Direction 57AC, but it also cross-referred to, and purported to incorporate by reference, the contents of a further, lengthy witness statement made by Mr Isaac in the discontinued defamation proceedings, dealing with the whole history of Mr Isaac's dealings with the Company and the Club and thus many of the allegations of unfair prejudice as originally pleaded in the Petition.
13. Most unfortunately, and for reasons which are still not entirely clear to me, there was no PTR in this case. Thus, the issues which this procedural background gives rise to crystallised only on the first day of the trial before me. The upshot was that the whole of the first day of trial was taken up hearing submissions on those issues and on their practical implications. Such matters plainly should have been dealt with at an earlier stage, ideally at a PTR. I hope and expect that in future cases, the importance of the PTR as a forum for dealing with procedural issues before trial will not be overlooked.
14. At any rate, the issues are as follows. Broadly speaking, the Respondents, and Mr Tan in particular, say that the scope of the present trial should be limited, as ICCJ Mullen thought they should be and as the parties on the face of it appear to have assumed, so that they are focused on the question of the 5:2 Rights Issue and the question of valuation. Mr Tan says there is no justification for the Court going wider than that, essentially because none of the other original allegations of unfair prejudice could possibly have any impact on the value of the Company. For example, the Respondents having already conceded that the Langston costs and the defamation action costs can be brought into account in valuing the Company, there is no utility in the Court investigating more broadly whether the allegations of unfair prejudice in relation to those actions are properly made out. In any event, says Mr Tan, the Court cannot do so because there has been no disclosure in relation to such issues and he has not filed any evidence dealing with them.
15. Mr Isaac however relies again on his CPR Rule 16.5 argument, and makes the point that the "*non-admissions*" advanced by Mr Tan are effectively inadmissible and improper, and he says the sanction should be for the Court to proceed on the basis that all the underlying allegations of unfair prejudice in the Petition should be taken to have been admitted, or alternatively that the Court should accept his (i.e. Mr Isaac's) evidence, including in particular his Witness Statement served in the defamation action, and proceed on the basis that the allegations are all made out. He also makes the more fundamental point that the Court has no jurisdiction to order relief under s.996 CA unless it is satisfied that there is in fact unfair prejudice, and so that issue has to be grappled with head on. In other words, there is no ducking the question whether there was unfair prejudice, and the Court must come to a view about it. That can best be done by treating unfair prejudice as having been admitted. Only then will the Court be able to exercise its wide remedial discretion effectively. The Court should avoid being sucked into the types of problem which arose in Profinance v. Gladtsone [2001] EWCA Civ. 1031, where the Court of Appeal said that the concessions made at first instance provided only the most meagre basis for the Court to exercise its remedial discretion, in particular as to valuation date.

16. Against this background, how best to proceed? I will state a number of conclusions and then indicate how I think the trial should unfold.
17. To begin with, I am entirely unpersuaded that I should proceed on the basis that all the broad allegations in the Petition are admitted, or made out on the evidence. I agree with the general proposition that Mr Tan's approach of not admitting the allegations he had previously denied was unsatisfactory and likely impermissible, but I am unpersuaded that, as matters have developed, the appropriate response at this stage should be for the allegations to be treated as having been admitted for the purposes of the present trial. That is largely because of what happened in relation to disclosure. During submissions Mr Reade QC drew attention to a case on CPR 16.5, SPI North v. Swiss Post International [2019] EWCA Civ 2865. In that case, the Court emphasised at [53] that CPR 16.5 must be looked at in context, such context being that the pleading phase of a case is merely the first step in a much longer process, which involves the court in the later stages of an action having "*ample tools in its armoury to review and refine the issues, and to require the provision of relevant information or documents by a reluctant or obstructive defendant.*" The difficulty here for Mr Isaac is that the Court has made use of at least some of those tools, and has made orders for disclosure which have helped define the issues for this trial, and there has been no appeal against any of those disclosure decisions. On the contrary, the parties appear to have proceeded on the joint basis that the issues between them were accordingly narrowed.
18. My second point however is this. It is plainly correct, as Mr Reade QC points out, that the Court's jurisdiction to order relief is engaged only where unfair prejudice is made out. The structure in Mr Tan's Amended Defence at para. 9A makes no obvious concession of unfair prejudice. On the contrary, the structure he adopts appears to involve him saying that will buy Mr Isaac's shareholding but only if he makes good his case on the 5:2 Rights Issue, and otherwise he will agree to certain matters being taken into account in the valuation exercise, but without admitting any unfair prejudice. I think that unfortunately does mean that the scope for the Court to exercise its remedial discretion may be rather limited in this case. In the absence of either admissions or findings in relation to the broader grounds of unfair prejudice, those are not matters that can have any bearing on the exercise of that discretion. I have been anxious about this point, but ultimately have come to the view that a pragmatic response is the best one. It is true that the discretion may have to be exercised within a fairly narrow compass, but that may not matter much on the case as it has developed, because the exercise of the broad residual discretion is most likely to be material when it comes to selecting the appropriate valuation date, and the only alternative to a present day valuation advanced by Mr Isaac is a valuation in May 2018, before the 5:2 Rights Issue. It seems to me likely that, if the allegation of unfair prejudice in relation to the Rights Issue is upheld, that will provide in and of itself sufficient raw material for the Court to be able to exercise its discretion in favour of ordering a 2018 valuation date, if that is what it is persuaded is the correct course.
19. My third point is this. I do not think it is permissible for Mr Isaac to rely, as his trial witness statement in this action, on the witness statement served he served in connection with the earlier defamation proceedings. It was obviously not prepared in accordance with PD 57AC. It contains evidence on matters which on any view are beyond the scope of the present trial. Having regard to para 5(2) of PD57AC, I refuse permission for Mr Isaac to rely on it. That will leave in the record of course his short

witness statement served on 7 January this year. I will consider any application Mr Isaac may choose to make to have permission to serve a replacement witness statement or, perhaps more realistically at this stage, for part of his evidence in chief to be given orally.

20. Drawing the threads together, it seems to me that the issues for this trial should therefore be, broadly, (1) the specific allegation of unfair prejudice relating to the 5:2 Rights Issue, and (2) the question of valuation.
21. To be clear as to Issue (1), that includes all sub-issues presently pleaded in paras 27 and 28 of the Petition. That therefore includes the question whether Mr Tan exercised control over the Company's Board in relation to the Rights issue, and whether it was vindictively motivated following discontinuation of the defamation proceedings. The defamation proceedings therefore have some limited relevance to the present issues, but really only as background. The key question is whether the Board properly exercised its decision making powers in relation to the RI, or whether they were improperly influenced in some way by Mr Tan and therefore failed to act independently or otherwise in proper discharge of their duties.
22. As to point (2), valuation, I have already noted my concern that the experts reports served include valuations of the Company only, and not valuations of Mr Isaac's shareholding as such. I will consider that further with the parties, but my provisional view is that the court would be assisted by having the experts' views on the value of the shareholding, either by way of supplementary reports or evidence given in chief. I will hear further submissions on this at some appropriate point.
23. Finally, there is the question of the allegations in the Petition which have not been admitted by the Respondents, and which as I have now said, are not to be taken as having been admitted and are not otherwise for determination at this trial. What should become of them? I propose to say no more about them for now. The reason is that, whatever their status, it may be that in practical terms they are an irrelevance. If the Petitioner succeeds in relation to the 5:2 Rights Issue, that is likely to give him all he needs by way of relief. If he does not succeed, it seems to me the Court may have to consider further what to do with those remaining allegations, if anything. Mr Isaac may at that stage not want to pursue them, and may be well advised not to incur the cost and emotional burden of doing so, serious though they are. If he does, there may be questions about whether he is at liberty to do so. The proper analysis may be that, in light of the way the present proceedings have developed, it would be an abuse of process for him to seek to revitalise them and pursue them in an ongoing claim against Mr Tan. I have not heard submissions on that point, however, which is hypothetical only at this stage, and so I will say no more about it.