THE HIGH COURT

1982 No. 4274

BETWEEN/

OLIVER BYRNE

Plaintiff

-and-

THE SHELBOURNE FOOTBALL CLUB LIMITED

Defendant

AND: 1982 No. 9471P

BETWEEN/ OLIVER BYRNE

Plaintiff

-and-

SHELBOURNE FOOTBALL CLUB LIMITED
ANTHONY BYRNE, JOHN NOLAN, FREDERICK
STRAHAN, JOSEPH WILSON AND REDS LIMITED

Defendants

Judgment delivered by O'Hanlon J., the 8th day of February, 1984.

These two actions were heard together, and this judgment deals with both sets of proceedings. In the first action, commenced by Summary Summons, the Plaintiff claims a sum of £21,929 as money lent by him to Shelbourne Football Club Limited between the 31st July, 1981, and the 30th June 1982,

or alternatively, as money paid by him for and at the request of the said Defendant between the said dates. In the second action, commenced by Plenary Summons dated the 10th September, 1982, the Plaintiff, suing in his capacity as creditor of the Shelbourne Football Club Limited, claims that the said Defendant has entered into an arrangement to defraud its creditors, and he seeks an injunction to restrain the disposal of the assets of the said Defendant in favour of Reds Limited, the last-named Defendant, and other ancillary relief.

The Plaintiff and his family have been life-long supporters of Shelbourne Football Club, one of the oldest Association Football Clubs in Ireland, or indeed, anywhere in the world, which has now been fielding soccer teams for the best part of a century, and in the process has built up a distinguished record of successes in senior football. For many years past, however, the Club has been in the doldrums. They lost possession of a very fine football stadium at Ringsend, which was their traditional home, and

have had to play at different pitches in the Dublin City area, with no fixity of tenure at any time. They have been waiting a long time for a successful run in the League or the Cup, and, inevitably, their financial situation has waned in line with the decline in their fortunes on the field of play. The Club might by now have gone out of existence were it not for the dedicated support of the Plaintiff and others like him, who rallied round when the going was hard and dipped into their own pockets to keep the team in professional football.

Matters came to a head in the last few years. At the beginning of the 1980-81 season the Club was in dire straits. It had accumulated heavy losses over the previous ten years and owed debts to the Revenue Authorities and to other creditors which it was quite unable to meet. It had no longer a bank account, and hence, no overdraft facilities. It was propping up the League from a position at or near the bottom of the ladder, and when the gate money was insufficient to meet the wages of the players the deficiency had to be met

by temporary loans from individual Directors, and by other similar expedients.

During the course of that season, the Plaintiff came to the rescue. He had a business of his own, and sold some property in the City which brought him a substantial, but undisclosed, figure from the proceeds of sale. He approached the Directors, knowing full well the difficulties they had been facing from week to week, and volunteered to finance the Club for the remainder of the season. This offer was gratefully accepted, and the crisis was over for the time being, although the Club still finished in its accustomed position near the bottom of the League and had to apply for re-election at the end of the season.

With the approach of the new playing season, 1981/82 the perennial crisis loomed up again for the Club. The Plaintiff had not a bottomless purse, and the Directors thought the time had come to look elsewhere for financial support. Approaches were made to two other businessmen who, it was felt, might be interested in taking over control of

the Club and putting up the necessary funds to keep it in football. One of these was the second-named Defendant in the second set of proceedings - Anthony Byrne. The other was Mr. Michael Kelly, who has not featured in the proceedings as a party or as a witness, but who played quite a significant part in the conflict which developed between the other contesting parties.

At this time the vast preponderance of the shares in the Limited Company which ran the Football Club were in the hands of two men - Gerard Doyle and Tony Rowan - and they were also Directors and the people who conducted most of the negotiations with the Plaintiff and other possible sources of finance for the Club. The Plaintiff was, at one time, a Director of Shelbourne for a short period, but during the period under review he was living under a cloud as far as the Governing Body of Irish Association Football was concerned. An excess of enthusiasm for the fortunes of the team had, apparently, led him, as a supporter, into a confrontation with a referee, with whose decisions he disagreed, and the League of Ireland took so serious a view

of the incident that he was banned from football for a period of five years. This did not prevent him continuing his support of the Club from the side-lines but it did create difficulties in giving him any share in the control of the Club in return for the financial help which he was willing and able to provide.

In these circumstances, a rather vague arrangement was made which envisaged that when his suspension by the League of Ireland was lifted, Anthony Rowan and Gerard Doyle would transfer their shares to him, in return for money which he was to put in to the Club to keep it financially viable. The suspension was eventually lifted by the Disciplinary Committee of the League of Ireland, in or about the month of May, 1982, but by then the shares deal had been over-taken by other events, and the Plaintiff was no longer pressing for the transfer to him of the majority shareholding in the Company.

As a result of the approaches made to them, both Anthony Byrne and Michael Kelly had expressed an interest in taking over control of the Club and financing it for the

future. The first on the scene was Anthony Byrne and negotiations between him and the two controlling shareholders and Directors reached the point where they executed transfers of their shares to him and handed over the transfer documents. Later, they had second thoughts about the deal, when they felt that Anthony Byrne was not living up to what they expected from his side of the transaction, and this resulted in Court proceedings brought by him to enforce his rights under the agreement. That action was settled at the door of the Court, on terms that he was to be duly registered as owner of the shares in question. The settlement also involved payment by him to Gerard Doyle of £3,000 which Mr. Doyle had advanced to the Club, and he was also required to pay an agreed balance due to the Plaintiff in the present proceedings in respect of his (Oliver Byrne's) financial help to the Club during the season, 1980/81. This claim was dealt with by a payment being made by Anthony Byrne to Oliver Byrne of £3,500 in settlement of any claim Oliver Byrne might have in respect of payments for the benefit of

the Club in the season which ended in April 1981.

That settlement was not concluded until the month of July, 1982. Anthony Byrne's action to enforce his claim to the shares had commenced a year previously, and in July, 1981, an interlocutory application was brought to prevent the shares being transferred to Michael Kelly (or anyone else) pending the hearing of this action. This application was successful. As the status quo had to be maintained for the time being, the Club found itself plunged into a new crisis, with Anthony Byrne being excluded from control pro tem., the introduction of Michael Kelly being blocked, and no new source of finance being clearly visible. Once again the Plaintiff stepped into the breach - or claims to have done so, - although his claim in respect of this period is disputed by the Defendants.

What happened, as a matter of history, is that the Club continued to function during the 1981/82 season, although under considerable difficulties. The playing record of the team improved on the previous season, but there were no major successes. The gates continued to be small and were

quite inadequate to meet the players' wages and other liabilities which arose from week to week. Some person or persons made up the deficiency, to the extent necessary for survival. The Plaintiff claims to have volunteered to find the money and to have done so. Clearly his own resources were dwindling at this stage, and he says that he was dependent to a considerable extent on borrowings from Michael Kelly, from members of his family, and from friends generally.

No one else appears to have made any claim to have paid the wages and other outgoings during that playing season, although the evidence strongly suggests that the real source of finance was Michael Kelly, whether directly, or indirectly by means of loans made to the Plaintiff.

I am prepared to accept that the Plaintiff did provide fairly substantial financial help for the Club during that playing season of 1981/82, although where the money came from is by no means clear. He admitted quite frankly that he was no longer in a position to draw cheques on his bank

account in favour of the Club at that time and that there was a substantial unsatisfied judgment against him by one of his business creditors which has never been discharged.

Secondly, I am prepared to regard the moneys thus paid over by the Plaintiff as a loan to the Club, although all these financial transactions on his part were conducted with a degree of informality which was bound to cause major problems if he ever sought repayment. Meetings of the Board of Directors were few and far between, and appear to have been virtually suspended between the month of July, 1981, and July, 1982. Thus, one looks in vain for any formal decision of the Board to seek for, or to accept, loans of money from the Plaintiff to finance the activities of the Club. The Plaintiff has to rely on an implication of law arising from the general course of conduct adopted by the Club, and I think the evidence of this character is just sufficient to support his claim to be entitled to repayment of whatever moneys he put into the Club. Individual Directors were putting up large sums of money around the same period

- notably a payment of £3,000 by Gerard Doyle, and £2,000 by Joseph Wilson. In those cases, the payments were treated as loans, and have, in fact been repaid. From all the evidence, I am of opinion that there was a recognised practice in the Club for Directors and other loyal supporters to put up sums of money, as required from time to time whenever a critical situation arose, and that there was a clear understanding that if the Club unexpectedly found itself in funds at a later stage, these payments would rank as debts which it should meet.

It is much more difficult to determine what amount may legitimately be claimed by the Plaintiff. In respect of the previous season he claimed to have paid out about £10,000 but when the settlement of that claim was being negotiated with Anthony Byrne in March 1981, the Plaintiff obviously had great difficulty in producing documentary evidence by way of paid cheques or otherwise to back up a claim of this magnitude, and he eventually accepted a compromise figure of £3,500. In spite of his experience on that occasion, he has come forward again with a very

badly-documented claim for the sum of £21,929 which he claims to have expended for the benefit of the Club during the season 1981/82 and he has to pay the penalty for being unable to vouch his claim properly.

The Plaintiff, in giving evidence in the case, produced a certain number of receipts for payments which had been made in the course of that year in discharge of liabilities of the Club, but they do not assist his case to any great extent - first, because they do not indicate where the money came from to pay these charges, and secondly, because they represent in total only a fraction of the full amount claimed by him in these proceedings. He also produced a copy of a statement of account prepared by Brian Cranwell, a former Director and Secretary of the Club, from information supplied to him by Gerard Doyle and the Plaintiff concerning income and expenditure of the Club for the relevant period in 1981/82. This statement of account gives a figure for total expenditure of £33,775.48; total income, £14,960-57; and excess of expenditure over income of £18,814.91. He also

gives a figure for income of the Club coming to the Plaintiff, Oliver Byrne, of £6,184.40; expenditure by him during the same period of £22,125.18; and excess of expenditure over income attributable to him of £15,940.78.

I propose to allow the Plaintiff's claim to the extent of £10,000 and there will be judgment in his favour for that amount against Shelbourne Football Club Limited. He has been unable to substantiate a claim to any greater amount by the evidence given by him and on his behalf in the present case, and I have come to the conclusion that the figure I have mentioned represents the maximum which he can claim for advances in respect of the season 1981/82.

What happened after the settlement of Anthony Byrne's action to enforce his claim to the majority shareholding in the Club may be stated briefly. Having secured effective control of the Club, he proceeded to implement a scheme to repair the fortunes of the Club which had been devised for him by John Nolan, who was a friend and adviser on company matters. An Extraordinary General Meeting of Shelbourne

Football Club Limited was convened on the 3rd September, 1982, to consider a number of proposals - one of them being a resolution that the Directors be authorised to sell and dispose of the assets of the Company for the purpose of achieving a number of objectives. These included the perpetuation of the name of Shelbourne Footb ll Club, and its continued survival as a football team, while also protecting the best interests of all proven creditors and members of the Company.

Having secured the necessary support for such of the Special Resolutions put to the Meeting as were acceptable to the majority shareholders, a Board Meeting was held, there and then, at which the Directors agreed to dispose of the name and goodwill, and all other assets of the Club to a new company, called Reds Limited (the last-named Defendant in the second set of proceedings), which was also owned and controlled by Anthony Byrne. As this is the agreement which the Plaintiff challanges as being in fraud of the creditors

of Shelbourne Football Club Limited, it is desirable to summarise its terms, which are as follows:

(1) Shelbourne Football Club Limited assigned to Reds Ltd., all its undertaking and assets, including goodwill, and the right to use the name "Shelbourne Football Club"; the the right to membership of the Football Association of Ireland and playing membership of the League of Ireland; any licences or tenancy agreements held under Bord na gCon for the use of Harold's Cross Stadium, and with Home Farm Football Club Limited in respect of Tolka Park Stadium.

(2) Shelbourne Football Club Limited further agreed to change its name to "Ollays Investments Limited" or such other name as might be agreed with Reds Ltd., whereupon Reds Ltd., was to change its name to Shelbourne Football Club Limited. The old company would then effectively go out of business and cease to have any active functions in the world of football.

(3) Reds Limited agreed to pay Shelbourne Football Club

Limited a lump sum of £500; to discharge four debts of the old company totalling £2,772.50 (including substantial arrears of rental due to Bord na gCon for the use of Harold's Cross Stadium during the season 1981/82); and to appropriate one-quarter of the net gate receipts of the Club for the 1982/83 season to a fund for the benefits of Shelbourne Football Club Limited and which would be available for the benefit of its creditors. That season has now come and gone, and I am informed that the net gate receipts were in the region of £10,000, and 25% of same, representing about £2,500 has been set aside to meet this liability of Reds Ltd., under the said agreement.

(4) Reds Limited further convenanted (inter alia) "to carry on the business of owning, operating, administering and managing a football club under the name "Shelbourne Football Club" and do its utmost to perpetuate the continual existence and promote the continual wellbeing of Shelbourne Football Club by the provision of sufficient finance, sponsorship and otherwise to achieve this object."

During the course of the Extraordinary General Meeting, when details of the proposed agreement with Reds Limited were being given to those present, the Plaintiff (who was there as a proxy-holder for Brian Cranwell) intervened to say that he would give £10,000 "for the Club". He was ruled out of order and the meeting proceeded without further reference being made to this offer.

As to the extent of the Club's liabilities at the time of that Extraordinary General Meeting, it is impossible to put an exact figure on them. All kinds of figures were tossed around during the course of the negotiations with Anthony Byrne, and with Michael Kelly, and again during the hearing of these proceedings. Over the past ten years no P.A.Y.E. payments have been made to the Revenue and there is an unresolved claim for many thousands of pounds under this heading alone. Thousands more are owed under the heading of the "Directors' Loan Account"; to the Company's Auditors; and to other creditors. The effect of the earlier part of the present judgment is to increase the total, whatever it

may be, by a further sum of £10,000.

With regard to the assets of the Company, it seems clear that these were to all intents and purposes non-existent, save only for one thing - the possibility that some individual with large sums of money to spare might like the excitement of controlling the destinies of a leading soccer club, and might be willing to pay money to buy his way into that situation. Leaving that possibility aside, the Club was in a disastrous state financially. It had no tangible assets; no premises; no pitch in which it had any security of tenure. It had no money in the Bank and no means of obtaining further credit. It owed debts it could not pay, to its Auditors. It was bad news with hotel owners, with coach operators and with the owners of the football pitches it needed to use. The coup de grace could have been administered at any time in the previous few years by the Revenue Commissioners had they forced on their claim for P.A.Y.E. payments.

At the close of the case for the Plaintiff an application was made by Counsel for the Defendants, asking me to dismiss

the Plaintiff's claims at that stage on the grounds that the evidence fell far short of establishing (a) that he was a creditor of the Company, and (b) that the agreement between the Company and Reds Limited could be regarded as being calculated or intended to hinder, delay or defraud creditors of the Company. I refused that application and I can now state the grounds which impelled me to do so. I took the view that there was a prima facie case that moneys had been advanced by the Plaintiff to the Club in the 1981/82 season, in continuation of the practice he had adopted the previous season, and that in line with the informal way the Club had always conducted its affairs, there was an expectation on his side which was also recognised by the Club, that if things improved, and the ship came home, he would sooner or later have a claim for repayment. I still adhere to that view and it is the basis for the judgment already given in relation to the Plaintiff's claim for money due.

Secondly, I took the view that before any limited Company can dispose of all its assets, it must do the best

it can for its creditors, and explore all reasonable possibilities of obtaining a better offer before selling out to a particular bidder. In the present case the only other potential bidders who had appeared over a period of one or two years were the Plaintiff and Michael Kelly. Once the Plaintiff intervened with an offer of £10,000 at the Extraordinary General Meeting, it appeared to me that it was incumbent on the Defendants to satisfy the Court that they had done all that they could reasonably be expected to do to test the market fully before concluding the proposed deal with Reds Limited. Whether the Plaintiff was entitled to be present at that Extraordinary General Meeting or not appears to me to be quite immaterial. Once it comes to the knowledge of the Directors of a company that another and possibly higher bidder is in the background, they cannot ignore that situation, or they do so at their peril if they proceeded to rush through an agreement which they already have in contemplation, and which leaves the creditors

unsatisfied at the end of the day.

Now that both sides have been fully heard, however, I have come round to the view that the Company was right to go ahead with the proposed transfer to Reds Limited on the terms which have already been referred to in the course of the present judgment. The possibility of anyone coming forward with the will and the ability to pour more money into the Club and keep it in business for the coming seasons was a very remote one in 1980, in 1981, and again in 1982. The Plaintiff did his best for the Club in 1980/81 and again in 1981/82, but it was quite clear to everyone connected with the Club that he was running out of steam (in the financial sense) when the 1981/82 season was about to commence, and he did not attempt to conceal this fact in the course of his evidence in the case. He was prepared to bow out gracefully in the face of possible take-over bids by Anthony Byrne and Michael Kelly and it is only a clash of personalities rather than the will or capacity to make a genuine bid for control of the Club which has brought him

back into the arena to challenge the actions of Anthony Byrne and John Nolan. There was evidence to suggest that the Plaintiff's own mother, who was present at the Extraordinary General Meeting, expressed disbelief at the idea that he could support a bid of £10,000, and I am of opinion that in doing so she was expressing the firm belief of everyone who was present that the Plaintiff was no longer in a position to face the continuing drain on his resources which would be involved in running the Club. From the evidence I have heard from the Plaintiff himself, as well as from the other witnesses, I think this belief was well-founded, and that the Directors would have been acting very unwisely were they to call a halt to their own plans for the reorganisation of the Club at the start of the playing season and embark on an assessment of any alternative plan the Plaintiff might wish to put forward.

Secondly, while Michael Kelly was clearly a potential bidder of more substance than the Plaintiff, and a man whose financial and personal credentials were acceptable to what

I will call the Old Guard in Shelbourne, he had disappeared from the picture a year before the Extraordinary General Meeting and had not at any time thereafter put forward any concrete proposals for acquiring the assets (such as they were) of the Club. Having regard to the history of the Club over the last ten years, and the extreme difficulty which was always experienced in finding someone to finance its activities, I have come to the conclusion that the impugned agreement with Reds Limited represented the very best solution which could be achieved at the time for the Club's financial problems. No one ever thought of putting the Club into liquidation, because there was no money there even to meet the legal costs of liquidation proceedings. There has been nothing there for the creditors for years past and they have simply had to resign themselves to their fate. Nor was there any real prospect of anything materialising for them in the future had the club managed to survive another few seasons without a radical reorganisation. The agreement with Reds Limited provided a limited, but not

insignificant, fund for past debts, and gave an assurance that the Club would commence to trade on a sound financial basis for the future.

I am fortified in my belief that the Agreement of 3rd September, 1982, was in the best interests of the Club and its creditors, by the reasonable success which has attended the efforts of the new Board of Directors of Reds Limited since the agreement was concluded.

The Club's tenure of the Stadium at Harold's Cross, which can be regarded as its new home, for the time being at any rate, has been placed on a firm footing, and relations with Bord na gCon, who own the Stadium seem to be quite amicable. The team has achieved its best results for years and gate receipts, as might be expected, have moved up in line with that success. It appears to me that the Defendants, over the period which has intervened since the execution of the Agreement of 3rd September, 1982, have carried into effect what they said they would do and that they should be supported and not hindered in their efforts to revitalise an

old and famous football club.

For these reasons I have come to the conclusion that the Agreement of 3rd September, 1982, was not intended to, nor did it have the effect, of hindering, delaying or defrauding creditors of Shelbourne Football Club Limited, and I must dismiss the Plaintiff's action bearing Record Number 1982 No. 9471 P.

R. J. O'Hanlon.

8th February, 1984.

Note

Counsel for the Plaintiff: - Sean Ryan, SC; with him Ciaran J O'Loughlin BL (instructed by Paul F. Diamond & Co., Solicitors).

Counsel for the Defendants:- Gerard W. Lardner, SC; with him James Salafia, BL (instructed by Kevans & Co., Solicitors for the Defendants).