

UTB LLC V SU LTD [2019] EWHC 2322 (CH)

JUDGMENT HANDED DOWN IN MAJOR COMMERCIAL DISPUTE

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Fancourt J has today handed down judgment in the major Business & Property Courts case concerning the ownership of Sheffield United Football Club, which concluded in a 6-week trial in May and June of this year, in which Luka Krsljanin represented Sheffield United Limited.

The judgment contains invaluable reading for commercial and sports practitioners including on the following issues: implied terms in commercial contracts, good faith in sophisticated joint venture contracts, unlawful means conspiracy, and unfair prejudice petitions. For any practitioners dealing with long-term or complex contracts involving direct personal relationships between major figures, the judgment provides an overview of the essential authorities, as well as detailed reasoning of their practical application.

The case concerned a contract concluded between SUL, a company controlled by English businessman Kevin McCabe, and UTB, a company controlled by Saudi Royal Prince Abdullah bin Mosaad bin Abdulaziz Al Saud. Under the contract, each party held a 50% share of the Football Club. The contract was not for a specified term, but each party could bring the relationship to an end by serving a 'Call Option Notice' under which they could offer to sell their own shares for a specified sum or purchase the other party's shares for the same specified sum.

A separate clause in the contract provided that if any party at any time held more than 75% of the shares in the Club, then the Club would become obliged to purchase from SUL various lucrative properties – including Bramall Lane Stadium at which the Club plays football.



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Luka has a busy commercial practice with a particular focus on multimillion pound disputes in the sport sector and cases dealing with issues of private international law. For a copy of his full CV, please [click here](#).

After a number of years, the parties' relationship deteriorated. SUL served a Call Option Notice offering either to purchase UTB's shares for £5m or to sell UTB its own shares for the same price.

The low price was calculated on the assumption that if UTB elected to purchase SUL's shares, UTB would thereby hold more than 75% of the Club's share capital, and so the Club would be required to buy the properties from SUL which would confer a significant benefit on SUL.

However, before responding to the offer, UTB covertly sought to transfer its shares to a number of nominees, such that it only held 10% of the Club's shares. It then agreed to buy SUL's shares. Having transferred most of its own shares to various nominees, it was able to claim that it held no more than 60% of the Club's shareholding, and therefore that the Club was not obliged to purchase properties from SUL.

Fancourt J has held that UTB's attempt to evade the '75% clause' in the contract was unlawful, in that it was contrary to implied terms in the contract. Accordingly, UTB is obliged to have the Club purchase the properties from SUL, as SUL had originally intended. However, other allegations raised by SUL, including alleged breaches of implied terms of good faith and unfair prejudice entitling SUL to a buyout order, were rejected by the Judge for reasons fully set out in his Lordship's detailed judgment.

If you would like to arrange for Luka to provide an in-house talk on the judgment and its ramifications, please contact clerks@2tg.co.uk.