

UK Court of Appeal Affirms Arbitrability in Intra-Company Disputes

Fulham Football Club (1987) Limited v Sir David Richards, The Football Association
Premier League Limited
[2011] EWCA Civ 855
21 July 2011

Abstract

Last July, the Court of Appeal confirmed that there is no express or implied requirement in the UK Companies Act 2006 section 994 prohibiting the resolution by arbitration of disputes arising out of an unfair prejudice petition, and that public policy does not exclude arbitration as a means for resolving intra-company dispute in an unfair prejudice petition.

Keywords

Arbitration, Arbitrability, Arbitration Act, UK Companies Act, Unfair Prejudice, Public Policy, Contract Interpretation, Football

Arbitrability

As a matter of definition, arbitrability is the question of whether a particular dispute or issue is capable of being settled by arbitration. There are very few instances in which courts have determined that a matter is non-arbitrable.

The Facts

The Football Association Premier League Ltd (FAPL) and its member clubs are bound by the FAPL's Articles of Association, the Football Association (FA) Rules and the FAPL Rules. These rules contain dispute resolution clauses which refer all disputes arising between the clubs or between a club and the FAPL or an official to arbitration.

In 2009, Fulham and Tottenham were competing for Mr Peter Crouch who was then at Portsmouth. It is alleged that Sir Richards, the chairman of the FAPL, intervened to secure an increased offer from Tottenham which was later accepted. Fulham complained but FAPL's legal advisor found no fault with Sir Richard's actions. Fulham brought court proceedings against Sir Richards and FAPL seeking an injunction prohibiting Sir Richards from acting as unauthorised agent in the future and alternatively requesting the removal of Sir Richard as chairman of the FAPL.

The Judgment

The court found

- Firstly that the wide phrasing of the arbitration clauses would undoubtedly cover the current dispute.

- Secondly, the argument that in considering relief under s994 of the UK Companies Act the court must have regard to third parties, such as other shareholders or creditors, which will be strangers to the arbitration was dismissed. The remote risk of such effects did not necessitate a blanket ban on arbitration in cases on unfair prejudice. An internal intra-company dispute can be regulated by the company members *inter se* via arbitration.
- Third, the notion that under s994 and analogous legislation a tribunal would have to have access to remedies beyond the reach of an arbitrator and that therefore any unfair prejudice claim under s994 should, as a matter of public policy, be non-arbitrable was rejected. The court reviewed the two conflicting High Court decisions of *Vocam*^[1] and *Exeter*^[2], dismissing the latter and decided that the determination, if not the remedy, of whether unfair prejudice had taken place is capable of being provided by arbitration.
- Patten LJ stated *obiter* that the only restriction on the arbitrator is hence in respect of the kind of relief which can be granted; if a remedy which was outside his ambit would be considered necessary, a shareholder would then be entitled to present the requisite petition to the court.

Comment

- The judgment illustrates the English courts' willingness to give wide ranging affect to arbitration agreements which supports legal certainty in company law.
- Fulham's argument was weakened by the fact that the relief claimed from the Court had not been pleaded.
- Claims brought under shareholder agreements will certainly be arbitrable. As for claims brought under statute one must identify whether the relevant provision has a wider purpose aimed at safeguarding the interests of third parties.
- Patten LJ's suggestion of a two-stage process in circumstances where a remedy lies outside the arbitrator's jurisdiction would have to be further developed. There is the potential for duplication of proceedings and uncertainty how a disagreement between arbitrator and the court would be resolved.

[1] *Re Vocam Europe Ltd* [1998] BCC 396

[2] *Exeter City Association Football Club Ltd. v. Football Conference Ltd.* [2004] 1 WLR 2910

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Best Regards,

Mrs. Najah El-Khouri
Office Manager

McNair Chambers
5th Floor
Tatweer Tower
West Bay
Doha-Qatar