



Neutral Citation Number: [2019] EWHC 1377 (Ch)

Case No: BL-2018-000281

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 4 June 2019

**Before : Mr Justice Fancourt**

**- UTB LLC** **Claimant**

**- and -**

**SHEFFIELD UNITED LIMITED** **Defendant**

**- and -**

**HRH PRINCE ABDULLAH BIN MOSAAD  
BIN ABDULAZIZ AL SAUD** **Third Party**

**- and -**

**MR YUSUF GIANSIRACUSA** **Fourth Party**

**Claim No: CR-2018-003995**

**AND IN THE MATTER OF BLADES LEISURE LIMITED**

**AND IN THE MATTER OF S. 994 OF THE COMPANIES ACT 2006**

**B E T W E E N :**

**SHEFFIELD UNITED LIMITED** **Petitioner**

**- and -**

- (1) UTB LLC
- (2) UTB 2018 LLC
- (3) HRH PRINCE ABDULLAH BIN  
MOSAAD BIN ABDULAZIZ AL SAUD
- (4) MR YUSUF GIANSIRACUSA
- (5) HRH PRINCE MUSA'AD BIN KHALID  
M BIN ABDULRAHMAN AL SAUD

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**Judgment Approved by the court  
for handing down**

**A P P E A R A N C E S**

Mr A. Gledhill Q.C and Tom Mountford (instructed by Jones Day LLP) appeared on behalf of the First to Fourth Respondents

Mr P. Downes Q.C and Emily Saunderson and Luka Krsljanin (instructed by Shepherd and Wedderburn) appeared on behalf of the Petitioners.

**Mr Justice Fancourt:**

1. On the eighth day of this trial, Mr Downes QC on behalf of Sheffield United Limited (“SUL”) informed me that he was intending to raise an issue about the genuineness of two documents. The documents are agreements made between UTB LLC (“UTB”) and, in the first case, Mr Yusuf Giansiracusa dated 22 January 2018, and in the second case HRH Prince Musa’ad, which is undated but is said to have been signed on about 29 January 2018. Both agreements relate to the acquisition of the shares in Blades Leisure Limited (“Blades”) registered in the name of SUL pursuant to the counter-notice served by UTB on 26 January 2018. Under clause 11.9 of the Investment and Shareholders’ Agreement dated 30 August 2013 (“the ISA”), the giver of the counter-notice is entitled to direct to whom the shares of the recipient should be transferred, if not to itself.
2. Both of the share sale agreements appear to be signed by HRH Prince Abdulrahman on behalf of UTB. In the trial bundles are copies of both agreements; the signature page of the 29 January agreement is a photograph of the document purportedly signed by Prince Abdulrahman.
3. On the morning of the ninth day of trial, Mr Downes showed me a draft report of a handwriting expert, which states that the signature of Prince Abdulrahman on the 22 January 2018 agreement is probably not the same signature as his signature appearing on other documents, and that the original of the 29 January agreement (produced during the trial for inspection) is definitely not the same document as the document photographed and appearing in the trial bundle.
4. Mr Downes indicated that he would be applying for relief against sanctions, to challenge the authenticity of the documents disclosed as the two share sale agreements, and for permission to call expert evidence. That application was made in writing overnight before the start of day 10 of the trial. Pursuant to my directions, UTB responded in writing on Saturday following day 10 and I issued this ruling in draft on the following Sunday.
5. The documents now in dispute were disclosed by UTB on 2 November 2018. The original date ordered for exchange of witness statements, 1 February 2019, was varied by agreement to 13 February 2019 and witness statements were exchanged on that date. Accordingly, pursuant to CPR rule 32.19, SUL was deemed to have admitted the authenticity of the disclosed documents, having failed to serve notice to challenge them by the latter date.
6. Mr Downes accepts that he therefore needs to be granted relief against sanctions pursuant to CPR rule 3.9 before he can challenge the authenticity of the documents disclosed. His explanation for the late application, advanced in submissions but not supported by evidence, is that it was not until the copy documents could be seen side-by-side in the trial bundle, at a late stage of preparation for trial, that the discrepancy in the form of Prince Abdulrahman’s signatures became evident.

7. Mr Downes argues that the two share sale agreements are relevant to two issues in the trial. First, whether upon service of the counter-notice UTB “acquired” more than 75% of Blades shares, within the meaning of clause 9.1.12 of the ISA. SUL’s case is that its shares in Blades became beneficially owned by UTB upon service of the counter-notice and that UTB thereby “acquired” them at a time when it was already the owner of the other 50% of the Blades shares. Second, the alleged conspiracy to harm SUL. SUL contends that if either of the agreements under scrutiny are forgeries that lends support to SUL’s case of unlawful conspiracy.
8. By paragraph 9 of its Particulars of Claim, UTB pleaded:
- “SUL has alleged in correspondence that upon service of the Counter Notice, the obligations contained in ISA clause 9.1.12 arose. This is incorrect, however, since at no material time has UTB acquired 75% or more of the entire issued share capital in Blades (“the Shares”), within the meaning of ISA clause 9.1.12. Specifically:
- (a) On 24 January 2018 UTB transferred 13,280,000 Shares (amounting to 40% of the shares) to UTB 2018 LLC, being a permitted transfer pursuant to article 9.1.4 of Blades’ Articles of Association.
- (b) Following service of the Counter Option [sic], and as permitted by ISA clause 11.9, UTB has directed SUL to transfer its (SUL’s) holding in the Shares as to 10% to UTB, 10% to H.H. Prince [Musa’ad], and 30% to Yusuf Giansiracusa.
- (c) In the premises:
- (i) immediately prior to service of the Counter Notice, UTB owned only 10% of the Shares.
- (ii) Following completion of the transfer(s) of SUL’s shares, UTB will be the owner of 20% of the Shares.”
9. In paragraph 2 of the Prayer, UTB claims a declaration that the obligations contained in clause 9.1.12 “have not arisen, and will not arise by reason of the intended transfers pleaded at paragraph 9(b) above”.
10. In paragraph 38 of its Amended Defence, SUL pleads that UTB acquired the beneficial interest in 100% of the shares in Blades, first because the purported transfer of shares to UTB 2018 was ineffective, and secondly because service of the counter-notice gave UTB the beneficial interest in SUL’s shares in Blades. In paragraph 39, SUL pleads alternatively that UTB had control of 100% of the shares in Blades. In paragraph 40, the second sentence of paragraph 9 of the Particulars of Claim is denied, and in relation to paragraph 9(b) SUL pleads:
- “(c) in a letter dated 31 January 2018 from Jones Day on behalf of UTB, it was stated that *“Ahead of completion, your client shall receive final direction in respect of who will be acquiring the shares and in what proportions”*. In the premises there had by that stage been no acquisition of any rights by any person of UTB’s shares (given the use of the future

tense: “*will be acquiring*”) and in any event any prior notification had been provisional only.

(d) further and in any event, any transaction between UTB and Prince [Musa’ad] (which is not admitted) had the effect that these individuals would acquire UTB’s shares as nominees only. In particular UTB described these individuals as the “Buyer’s Nominees” in a draft share purchase agreement served by Jones Day on behalf of UTB on 29 January 2018.

11. UTB’s Reply denies SUL’s pleadings in this regard and further states:

“to the extent it is alleged that any persons nominated as transferees by UTB pursuant to ISA clause 11.9 were, simply by virtue of that fact, nominees for UTB, the same is denied.”

12. The List of Issues agreed by the parties before the start of the trial includes the general issue of whether the obligations in clause 9.1.12 arose upon service of the counter-notice on 26 January 2018, including the more specific sub-issue of whether UTB acquired control or beneficial ownership of the SUL Blades shares upon service of the counter-notice (issue 4(b)). There is a further issue as to whether the direction by UTB for the transfer of shares by SUL to Prince Musa’ad and Mr Giansiracusa was permitted by the ISA and effective to prevent UTB having acquired more than 75% of the Blades shares (issue (5)).

13. As things stood at that stage, there was therefore an issue as to the effect of the direction that UTB had given, or would in future give, that SUL should transfer part of its shareholding to persons other than UTB.

14. As a result of the parties’ written and oral openings and discussion in court in relation to this application, the issues have somewhat narrowed. The principal issue is as to the lawfulness and effect of the execution by UTB of a transfer to UTB 2018 of four-fifths of its existing shares in Blades. The disputed documents have no relevance to that issue. As to the effect of the service of the counter-notice, UTB accepted in its opening that it thereby became the beneficial owner of SUL’s shares. It argues, however, that beneficial ownership is irrelevant to the question of what shares UTB had “acquired”, and further that UTB at best had beneficial ownership in 60% of Blades’ shares because of the prior execution of the transfer to UTB 2018.

15. At page 3 of the transcript on day 9, I said:

“... if I read it correctly, Mr Gledhill accepts that there was a transfer of the beneficial interest in SUL’s shares to UTB as a result of the service of the counter notice. He doesn’t dispute that as a matter of law, but he says it’s irrelevant because beneficial interest in the shares doesn’t make any difference. But he doesn’t seek to maintain any case that because UTB had agreed with other persons that they would allow them to take or buy the shares, therefore the beneficial interest in SUL’s shares didn’t pass to UTB. He seems to be accepting that, and that being so, it doesn’t

seem to me that the share sale agreements have any legal relevance.”  
(*emphasis added*)

On page 4, I added:

“... so he is not seeking to rely on those share sale agreements for the proposition that UTB did not become beneficially entitled to the SUL shares, at least as I read his case.”

At page 7, Mr Gledhill QC confirmed that my understanding of UTB’s case was “entirely correct”.

16. If, as Mr Gledhill accepts, UTB became the beneficial owner of SUL’s shares upon service of the counter-notice, that is because - as between buyer and seller - a constructive trust arises, equivalent to the position between a buyer and a seller of real property. If that is correct, it arises because of the terms agreed between SUL and UTB. Any sub-sale agreed between UTB as buyer and others is irrelevant to that question. The terms of any sub-sale are *res inter alios acta*.
17. In view of Mr Gledhill’s disclaimer of reliance on any argument that the beneficial interest in SUL’s shares vested in Prince Musa’ad or Mr Giansiracusa, the validity of the execution of the two disputed agreements is irrelevant to the legal issues relating to clause 9.1.12. It is accepted that, upon service of the counter-notice, UTB became beneficially entitled to SUL’s shares. The only issue is whether that beneficial entitlement meant that UTB had “acquired” those shares within the meaning of clause 9.1.12, and, if so, whether in total UTB had at that time “acquired” 75% or more.
18. Mr Downes relies upon the fact that, in paragraph 133.4 of their written opening, UTB’s counsel refer to the fact of the two share sale agreements having been concluded. That reference was in the part of the written opening setting out in detail the factual background to the issues to be decided at trial. The fact that documents are disclosed (in standard disclosure, under the pre-2019 Part 31 disclosure regime) and referred to in a factual narrative does not thereby put in issue the truth of the facts stated, such that the court must investigate and decide the truth. The task of the court is to decide the issues that divide the parties and to find such facts as are necessary for the resolution of those issues, not to decide every factual matter that is raised in the course of the case.
19. As for the relevance of the disputed agreements to the conspiracy claim, the position is as follows.
20. The conspiracy is alleged to have been between UTB, HRH Prince Abdullah and Mr Giansiracusa, and is alleged to have had the intention of causing loss to SUL by depriving it of the benefit of the Property Call Options in relation to the Stadium and the Academy. The primary basis of the conspiracy alleged is the decision to transfer UTB’s shares to UTB 2018. Paragraph 14 of the Particulars of Defendant’s Additional Claim then states:

“A further fall-back position was devised in that upon completion of the sale and purchase of shares pursuant to a Call Option Counter Notice,

UTB would direct that the shares it was to acquire from SUL be vested in other parties”.

As a result of Mr Giansiracusa’s evidence, it now appears that the first focus in time was on the giving by UTB of a direction in favour of other persons, and only later was the transfer of UTB’s existing shares to UTB 2018 considered. However, nothing turns on the characterisation of the former as a “fall-back position”. What is alleged is that the conspirators considered the ability to direct a transfer of SUL’s shares as a means of avoiding the effect of clause 9.1.12 of the ISA.

21. SUL’s summary of the unlawful acts relied upon includes, at paragraph 21(i)(1), reliance on a failure to disclose to SUL an identified lacuna in clause 9.1.12, namely that it “could easily be evaded by the means of a transfer of a sufficient number of shares to a nominee”.
22. Paragraph 22 of the Particulars pleads that the breaches of the ISA alleged had the effect of materially reducing the value of the rights attached to SUL’s shares resulting from the ISA, and that if and to the extent that the alleged scheme was effective in evading clause 9.1.12, UTB was in breach of an obligation to act in good faith. Paragraph 24 pleads that, but for the breaches of the ISA and the conspiracy, SUL would have retained the benefit of clause 9.1.12.
23. In my judgment, the question of whether the share sale agreements were validly executed, as distinct from a decision to seek to nominate transferees of SUL’s shares other than UTB itself, is not material to the conspiracy claim. That claim depends on identified parties agreeing together to act so as to cause harm to SUL. SUL does contend that the scheme of nominating alternative transferees was part of the conspiracy, but what matters in that regard is the fact that the alleged conspirators identified that aspect of the scheme and determined to bring it about. The scheme, if effective, could be brought about by a mere direction to SUL prior to completion. It did not depend on any valid sub-sale between UTB and the intended transferees. It makes no difference to the allegations of SUL whether the alleged conspirators devised the scheme, determined to implement it, prepared appropriate documentation that was validly signed and then gave the direction to SUL, or whether they devised the scheme, determined to implement it, prepared appropriate documentation that was invalidly signed and then gave the direction to SUL. It is not part of SUL’s pleaded case that forging share sale agreements was a means by which harm was intended to be caused to SUL.
24. Insofar as Mr Downes contends, as he does, that the fact that one or more documents was forged (if it is the case) casts light on the extent to which the alleged conspirators were willing to act unlawfully to cause harm to SUL, it seems to me to add no substance at all to the real allegations. Prince Abdulrahman is not an alleged conspirator, nor is any conspirator alleged to have forged his signature. Most materially, the conspiracy alleged does not depend in any way on the existence of executed share sale agreements,

whether forged or genuine. The issue seems to me to be collateral and to be, at best from SUL's position, something that might go to the credit of one or more witnesses if they knew anything about the circumstances of signature. Mr Giansiracusa explained in his evidence that he did not know anything about it.

25. Against those conclusions about the relevance and significance of the validity of execution of the share sale agreements, I must consider whether or not it is appropriate to grant relief against sanctions. It is common ground that the approach in Denton v T.H. White Ltd [2014] EWCA Civ 906; [2014] 1 WLR 3296 should be applied, namely to consider the seriousness and significance of the default, any explanation given for it and whether in all the circumstances of the case it would be in accordance with the overriding objective and just to grant relief.
26. Mr Downes concedes that the failure timeously to give notice disputing the authenticity of the documents in question was not a trivial breach. Notice should have been given by 13 February 2019 at the latest, about 3 months before the start of the trial. In fact, SUL's solicitors first raised the matter on the Saturday after I had spent two days pre-reading, immediately before the oral openings of the parties' cases. No satisfactory explanation of why it took so long to raise the issue has been given. The explanation of the circumstances in which the discrepancy was noticed is not itself a satisfactory explanation for the failure to raise the issue earlier.
27. In my judgment, the breach was a serious breach. A challenge to the authenticity of transactional documents, in circumstances of suspicion of a forgery, is a challenge that must be raised in good time ahead of a trial, so that all parties affected have the opportunity to give further disclosure and adduce relevant evidence on the question. If, as SUL now contends, the validity of the two share sale agreements is a matter of significance for its case, it should have investigated these matters at a much earlier time. Instead, the matters were first raised once the trial had started (with pre-reading) and as a result were not drawn to my attention until day eight of the trial. The significance of the breach in that context is self-evident. If relief against sanctions were granted, UTB would now have to carry out further investigations, disclose documents, in all probability prepare further witness statements, call oral evidence and possibly instruct a handwriting expert and call that witness to give evidence. If the issue were not (as I perceive it to be) a purely collateral issue, SUL would need to amend its pleaded case to raise the new allegations.
28. Although my consideration of this issue coincides with a week's vacation and therefore a pause in the hearing, this is a complex and expedited trial with a tight timetable. These new matters will be a wholly unwelcome distraction, at least so far as UTB is concerned, in the course of further preparation for the resumption of the trial and the arguments that will have to be addressed in detail at the end of it. It is of paramount importance that litigation is

conducted efficiently and at proportionate cost and in compliance with the rules and practice directions of the CPR. Conducting an investigation into the alleged forgery of one or more agreements will inevitably disrupt the smooth running of the trial, interfere with the parties' preparation and lead to considerable further expense being incurred.

29. Given that the issues raised are entirely collateral, as I have explained, it would be a wrong exercise of my discretion to grant relief now in order to permit these issues to be raised, so late in the day. It is not unfair to either party's case, as pleaded and then refined and explained in the course of opening submissions, to proceed on the assumption that the two agreements are validly executed. It makes no difference to SUL's case on unsuccessful avoidance of clause 9.1.12 or on conspiracy to injure whether the agreements were validly executed or not. It would be unfair to UTB to require it to deploy resources now, in the middle of a trial of numerous other complex factual and legal issues, to address allegations of forgery.
30. For the reasons that I have given, I therefore refuse to grant relief against sanctions to enable SUL to challenge the authenticity of the documents that have been disclosed and to call expert handwriting evidence.