



Claim No: CL-2020-000396

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT (QBD)

The Rolls Building
7 Rolls Buildings, Fetter Lane
London EC4A 1NL

Date: 26/03/2021

Before:

MRS. JUSTICE MOULDER

Between:

**MANCHESTER CITY FOOTBALL CLUB
LIMITED**

**Claimant/
Respondent**

- and -

**(1) THE FOOTBALL
ASSOCIATION PREMIER LEAGUE
LIMITED**

**Claimant/
Defendants**

**(2) PHILIP HAVERS QC
(3) JOHN MACHELL QC
(4) DANIEL ALEXANDER QC**

LORD PANNICK QC, MR. PAUL HARRIS QC and MR. DAVID GREGORY
(instructed by Clifford Chance LLP) for the Claimant/Respondent.
The Claimant/Defendants were not present and were not represented.

Approved Judgment

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MRS JUSTICE MOULDER :

1. This is my ruling on the application by the Club for permission to appeal against the judgment handed down on 24th March 2021, which for convenience I refer to as the Publication Judgment.
2. The Club seeks permission to appeal the Publication Judgment on the basis that the court's decision which was to order the publication of the Merits Judgment, dated 17th March 2021, first, took into account irrelevant matters; secondly, failed to take into account relevant matters; and thirdly, was plainly wrong and fell outside the ambit within which reasonable agreement was possible.
3. I have had the benefit of written and oral submissions from leading counsel from the Club, for which I am grateful.
4. I note that the Premier League remains opposed to publication, but was content for this application for permission to appeal to be made by the Club without being separately represented by counsel at this hearing, although I understand that they have an observer listening in.
5. In summary and in brief, it was submitted for the Club that although the Premier League's statement in March 2019 is in the public domain, the court should not have taken into account that a reasonable reader of the public statement would be likely to infer from the public statement that an investigation might involve the production of documents and information and that the court failed to address that a reader would not infer there would be a dispute about the scope of the Premier League's powers, that such a dispute would have come to arbitration and that such dispute would still be live.
6. It was further submitted that the court failed to consider the material damage that disclosure could cause, by disclosing the fact that the investigation is still ongoing and that that damage would be potentially to the Club's reputation with current and prospective commercial partners.
7. It was submitted that the court gave insufficient weight to the fact that both parties to the arbitration were opposed to publication, and that the court attached unreasonable weight to the desirability of public scrutiny in the circumstances.
8. In the Publication Judgment, the court applied the relevant principles set out in the authority of *City of Moscow v Bankers Trust* [2004] EWCA Civ 314. This required the court to carry out a balancing exercise between on the one hand the public interest considerations in favour of publishing judgments, and on the other hand, the desirability of protecting the confidentiality of the original arbitration and its subject matter.
9. The court considered the submissions made on behalf of the Club and in particular whether publication of the judgment would disclose “significant” confidential information. The court formed the view that disclosure of the fact of the existence of the dispute and the arbitration in the circumstances did not amount to “significant” confidential information.
10. The court did not take into account irrelevant matters but considered the scope of the information which was said to be confidential and whether that amounted to significant

confidential information in the circumstances, having regard in particular to the public statement by the Premier League in March 2019 that it was investigating an alleged breach of the rules. That assessment is unchanged by the lapse of time, given that the court considered the submissions concerning the potential detriment which the Club submitted would result from publication at this time.

11. In my view, the court did not fail to consider a relevant matter. The court balanced the factors weighing against publication of the judgment, including the potential detriment, against the public policy interests in publishing judgments. The wishes of the parties are an aspect of the confidentiality of the arbitration which was weighed by the court but cannot be determinative.
12. In my view, having carried out that balancing exercise, there is no real prospect of establishing on an appeal that the decision was plainly wrong and fell outside the ambit within which reasonable disagreement is possible, nor on the basis that the court considered irrelevant matters or failed to consider relevant matters.
13. For these reasons, in my view, there is no real prospect of success on an appeal and the application for permission is refused.
14. In my view, the Club has the right to make an application for permission to appeal directly to the Court of Appeal. It seems to me that on the language of the Act, this is not an appeal under section 68 which would be precluded by the terms of section 68(4), nor an appeal which would be precluded by section 67(4). The policy considerations concerning the finality of arbitration do not appear to be relevant to what is a separate issue, the issue of publication of a judgment. This appeal would not be concerned with the substantive issue which was dealt with in the Merits Judgment.
15. I note that support for that conclusion can be derived from the case of *Virdee v Viridi* [2003] EWCA Civ 41. I note it is of limited support given that full argument was not heard, but nevertheless, I note the analysis of Brooke LJ that the parties were not invoking the express jurisdiction of the Act and I also note the authority of *Peel v Coln Park* [2010] EWCA Civ 1602 concerning an extension of time in an arbitration which also appears to support the conclusion.
16. The Club has sought a stay pending the outcome of the appellate proceedings. I accept that a stay is required on the basis that publication would render such an appeal nugatory. The Club has said that it would file any application for permission to appeal within seven days. I am prepared to order a stay for a period of seven days. If an application for permission to appeal is lodged within that period, the stay will then continue until further order of the Court of Appeal.
