Neutral Citation Number: [2024] EWHC 1561 (Ch D)

Case No: CR-2023-005376

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24/06/2024

Before:

THE HONOURABLE MR JUSTICE ROTH

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Between:

SYSPAL CAPITAL LIMITED	**Claimant**
- and -	
(1) MR CHRISTOPHER JOHN TRUMAN	**Defendants**
(2) SYSPAL HOLDINGS LIMITED	

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- -

Robert Mundy (instructed by **George Green LLP**) for the **Claimant**
Alexander Heylin (instructed by **Fieldfisher LLP**) for the **First Defendant**
The Second Defendant did not appear and was not represented

Hearing date: 14 May 2024

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Approved Judgment

This judgment was handed down remotely at 14.00pm on [24th June 2024] by circulation to the parties or their representatives by e-mail and by release to the National Archives

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THE HONOURABLE MR JUSTICE ROTH

Mr Justice Roth:

1. This is a Part 8 claim. It concerns the correct interpretation of a provision in the Articles of Association ("the Articles") of the Second Defendant ("SHL").

2. SHL, as its name suggests, is a holding company. It carries out no trading activity and has no employees but holds 100% of the share capital of Syspal Limited ("SL"). SL is an engineering company, specialising in the design and fabrication of stainless steel and aluminium products for various industries and sectors. Since the early 2000s, it has expanded into the veterinary and healthcare sectors.

3. The First Defendant, Mr Christopher Truman, had been, since 1980, an employee of SL. He became managing director of SL in 2000 and was closely involved in the running of the business. He was accordingly also a director of SL.

4. On 10 October 2022, Mr Truman was dismissed as an employee of SL. He has brought proceedings in the Employment Tribunal concerning the circumstances of his dismissal. Subsequently, on 3 November 2022, Mr Truman was removed as a director of SL. Mr Truman at the time challenged the lawfulness of his removal. However, nothing turns on that for the purpose of the present proceedings and Mr Truman accepts that he then ceased to be a director of SL.

5. The Claimant, Syspal Capital Limited ("SCL") owns 76% of the shares of SHL which is therefore its subsidiary. The financial statements of SHL for the year ended 31 March 2014 noted that SCL was in turn controlled by Mr Anthony Roberjot. The remaining 24% shareholding in SHL is held by Mr Truman.

6. Mr Truman was a director of SHL until he resigned on 24 May 2023, his 65th birthday. The only other director was Mr Anthony Roberjot.

The Articles

7. The Articles of SHL with which this case is concerned were adopted in December 2015. They replaced the previous articles when a group restructuring took place.

8. Like the articles of association of many private companies, the Articles provide that in circumstances where one shareholder wishes to sell any of their shares, another shareholder shall have the first right to purchase those shares, and the Articles set out a mechanism for the price to be determined.

9. Hence, section 10 of the Articles is headed "Pre-emption" and art. 10.1 provides for the service of a notice, called a "Transfer Notice", in specified terms by any person wishing to transfer any of their shares in SHL. Art. 10.4 then states:

> "10.4 Unless agreed by the Board and the Proposing Transferor not later than 15 days from receipt of the Transfer Notice, the Sale Price for the Sale Shares shall
>
> 10 4 1 in the event that a Transfer Notice is deemed served in respect of the Shares held by Mr C Truman (and for the avoidance of doubt his Family members and trustees of his

> Family Trusts) pursuant to Article 11.1 and/or Article 11.3 as a result of his death prior to 10 April 2024, be the higher of Fair Value and £3,000,000,
>
> 10 4 2 in the event that a Transfer Notice is deemed served pursuant to Article 11.3 as a result of any reason other than the Employee Member's death, permanent incapacity or retirement at 65 years of age, be Market Value,
>
> 10 4 3 save as provided in Articles 10.4.1 and/or 10.4.2, be Fair Value."

10. I was told that the significance of the date of 10 April 2024 is that this was the date when 'key man' insurance cover held by SHL over the life of Mr Truman expired.

11. "Fair Value" and "Market Value" are defined terms under art. 1.1. The essential difference between them is that Fair Value values the shares on a pro rata basis by reference to the value of SHL, whereas Market Value constitutes a valuation that takes account of a minority discount as appropriate.

12. Art. 11.3 is at the core of this dispute. It states:

> "If any Employee Member shall cease for any reason (including but not limited to death or termination of employment by the Employee Member or Company) to be employed as an employee, director or consultant of a Group Company (and does not continue in that capacity in relation to any Group Company) then a Transfer Notice shall be deemed to have been served in accordance with Article 10 1 on the date of such cessation."

13. "Employee Member" is defined in art. 1.1 as follows:

> "Employee Member" means a Member who is also an employee, consultant or director of a Group Company (with the exception of Mr A Roberjot), …"

"Member" is further defined to mean any shareholder in SHL. SCL, SHL and SL are Group Companies.

14. Accordingly, if Mr Truman's resignation on his 65th birthday on 24 May 2023 triggered a deemed Transfer Notice under art. 11.3, he is entitled to be paid "Fair Value" as the price for his shares pursuant to art. 10.4.3. However, if, on its correct interpretation, art 11.3 had previously been engaged on his dismissal as an employee of SL on 10 October 2022, then pursuant to art. 10.4.2 the price which he can receive for his shares is "Market Value", i.e. it incorporates a minority discount. The difference between "Fair Value" and "Market Value" in the circumstances of this case is very significant.

The Competing Submissions

15. The case has been well argued by Mr Mundy for SCL and Mr Heylin for Mr Truman.

16. Mr Mundy submitted, in summary, that the wording "in that capacity" in the second part of art. 11.3 refers to the capacity in which the Employee Member ceased to be employed, so that when Mr Truman ceased to be employed by SL (as he was not employed by any other Group Company) the terms of the provision were engaged and a Transfer Notice was deemed to be served. He contended that this was the natural reading of the language and, further, that it accorded with commercial common sense.

17. Mr Heylin submitted that art 11.3 was addressing three different ways in which an Employee Member might be engaged to work for a Group Company, and that the wording "in that capacity" was a reference back to any of those alternatives, so that when Mr Truman ceased to be employed by SL, the terms of the provision did not apply since he continued to be a director of SHL. He argued that this was the more natural reading, and for his part submitted that it was the interpretation that accorded with commercial common sense.

18. In the alternative, Mr Heylin contended that there should be an implied term in art. 11.3, on the basis of the well-known 'officious bystander' or business efficacy tests, such that the clause should read:

> "If any Employee Member shall cease for any *lawful* reason .. to be employed as an employee, director or consultant…"

19. He said that it cannot have been the intention that by dismissing an Employee Member on wholly impermissible grounds, e.g. on account of their sex or race, there could be triggered a Transfer Notice whereby they could be compelled to sell their shares at the lower of the two stipulated values. In response to question from the Court, Mr Heylin accepted that on this alternative case the word "lawful" might more appropriately be implied before "termination of employment", with the implication that an unlawful termination of employment would not come within the provision. But the result in practical terms would be the same.

20. In the further alternative, Mr Heylin submitted that if in the Employment Tribunal proceedings SL were to be ordered to reinstate Mr Truman, then his earlier dismissal should not be held to fall within art. 11.3.

21. Mr Heylin accepted that on either of these alternative cases, the determination of the basis on which Mr Truman's shares were to be valued would have to await the outcome of the Employment Tribunal proceedings.

22. I should note that both sides agreed that on either interpretation the removal of Mr Truman as a director of SL in November 2022 did not engage 11.3. That was because at that time he remained a director of SHL, another Group Company.

Legal principles

23. There was no real issue between the parties on the governing approach to interpretation. In his recent judgment in *Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail*

Ltd [2023[UKSC 2, Lord Hamblen (with whose judgment Lords Hodge DP, Kitchin and Sales agreed) summarised at [29] the principles of interpretation set out by Lord Hodge DP in *Wood v Capita Insurance Services Ltd* [2017] UKSC 24 at [10] to [15], as follows:

> "(1) The contract must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean.
>
> (2) The court must consider the contract as a whole and, depending on the nature, formality and quality of its drafting, give more or less weight to elements of the wider context in reaching its view as to its objective meaning.
>
> (3) Interpretation is a unitary exercise which involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its implications and consequences are investigated."

24. In his judgment in *Wood v Capita*, which Lord Hamblen was there summarising, Lord Hodge stated at [13]:

> "Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type…."

25. However, when it comes to the background facts, the articles of association of a company are in a somewhat special category compared to a private contract, as explained by Snowden J (as he then was) in *Re Euro Accessories Ltd* [2021] EWHC 47 (Ch) at [34]:

> "… the process of interpretation to arrive at the true meaning of a provision in a company's articles of association must concentrate on the natural and ordinary meaning of the words used, when viewed in light of the scheme and purpose of the articles in general, any extrinsic facts about the company or its membership that would reasonably be ascertainable by any reader of the company's constitution and public filings at Companies House, and commercial common sense."

This was approved by the Court of Appeal in *Ventura Capital GP Ltd v DnaNudge Ltd* [2023] EWCA Civ 1142 at [50]-[51].

26. As regards implied terms, authoritative guidance was given by the Supreme Court in *Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72.

Discussion

27. I consider that the wording of art. 11.3 is not entirely clear, but in my judgment the interpretation put forward by Mr Heylin for Mr Truman is correct. It is common ground that the word "employed" is not used in its strict sense of being an employee under a contract of employment but more broadly and thus covers being engaged to serve as a director or consultant. I think that the reference in parenthesis to not continuing "in that capacity" relates back to the three capacities set out immediately beforehand. It is not, in my view, a reference only to the capacity which the Employee Member previously held. On that basis, here, when Mr Truman ceased to be employed as an employee, since he continued to be a director of SHL (and at that time also SL), art. 11.3 was not triggered and there was no deemed Transfer Notice.

28. I find that this is the more natural reading of the wording and, significantly, that it accords with commercial common sense. I broadly agree with Mr Mundy that the purpose of the provision appears to be that if one of the shareholders "stopped contributing to the day-to-day running of the business" (to quote from Mr Mundy's skeleton argument) the other shareholders should be given the opportunity of buying that shareholder's shares. However, it is not uncommon, especially in private companies, for a senior employee to retire from full-time employment but continue to serve the business as a consultant. I do not see how commercial good sense suggests that in such circumstances an individual would be required to sell his shares, and to do so at the lower of the two valuations spelt out in the Articles.

29. Further, looking at the Articles as a whole, payment of Fair Value is the default position which applies where a shareholder actually serves a Transfer Notice (as compared to a deemed Transfer Notice under art. 11.3): see art 10.4.3. It is notable that an "Employee Member" does not ever have to be an employee: he or she may be only a consultant or director. If "Fair Value" is the basis of valuation for the shares of one who is not involved in the conduct of any of the Group Companies, I do not see that the Articles

should be read to enable a sale to be forced, at a lower price, upon, for example, a director who holds shares but relinquishes his role as a consultant.

30. Moreover, if dismissal of an employee of one of the Group Companies who was also a director could be deemed to serve a Transfer Notice when his employment is terminated although he remains a director, that creates the potential for the employing company to dismiss him for no good reason in order to trigger a forced sale of his shares at the lower price. That is what Mr Truman alleges has occurred in this case, as he contends that he was dismissed by SL because he fell out with Mr Paul Roberjot who had become involved in running the business. That is strongly denied by SL and Messrs Anthony and Paul Roberjot and I take no view as to whether or not that is correct. However, I think that an interpretation of the art. 11.3 which could give rise to that possibility, whether for Mr Truman or any subsequent Employee Member, is most unlikely to accord with the intention of the shareholders when adopting the Articles.

31. This interpretation is in my view reinforced by the relevant surrounding circumstances that were publicly ascertainable as at the time when the Articles were adopted. The Financial Statements and annual return of SHL for 2014-15 showed that Mr Truman was the minority shareholder of SHL, that the only other shareholder was SCL, that SCL was a company controlled by Mr A Roberjot, and that Messrs Roberjot and Truman were the only two directors of SHL. It is clear from art 10.4.1 that the Articles concerning pre-emption had the position of Mr Truman well in mind, whereas Mr Roberjot is expressly excluded from the scope of art 11.3 by the definition of "Employee Member": see para 13 above. Accordingly, while of course there might theoretically be other Employee Members of SHL in the future, as at the time the Articles were adopted art. 11.3 would be seen on the basis of publicly available information as directed in particular at Mr Truman. The Articles were clearly drafted to protect Mr Truman (and his family)'s position as regards the valuation of his shares: he would receive Fair Value if he retired from all positions at 65 or through permanent incapacity and his family would receive Fair Value if his shares were acquired on his death: art 10.4.3 read with art 10.4.2; and his family had the additional protection of a guaranteed £3 million minimum price should he die before 10 April 2024. In those circumstances, I do not consider that art 11.3 is to be interpreted as leaving Mr Truman exposed to a compulsory purchase of his shareholding at the lower valuation if he should be dismissed from a company controlled by Mr Roberjot, while remaining a director.

32. I should add that I did not gain much assistance from the case of *Signia Wealth Ltd v Vector Trustees Ltd* [2018] EWHC 1040 (Ch), to which I was referred by Mr Mundy. It is axiomatic that, save for standard form contracts or standard form clauses, the interpretation of a commercial document is distinct and depends on its own terms, read in the context of the totality of the document and the relevant surrounding circumstances. I of course recognise that *Signia* also concerned a deemed transfer notice of shares pursuant to the articles of association of a private company. In that case, a deemed transfer was triggered when a "Transfer Event" occurred, which was stated to arise when the shareholder became a "Leaver", a term defined in the articles to mean:

> "a holder who is an individual and who is or was previously a director or employee of [Signia] ceasing to hold such office or

> employment and as a consequence no longer being a director or employee of [Signia] …"

33. As part of a long judgment addressing many issues, Marcus Smith J said at [509] that this language meant that "a person is rendered a Leaver should that individual, being both a director and employee, lose only one of these positions."

34. However, not only is the language of the specific article in that case different from that in the present case, but the context was, unsurprisingly, wholly different. Furthermore, as the judge noted at [506], this issue was not seriously contested at trial. The individual at the heart of that case was content to be treated as a "Leaver": the focus of dispute was whether she came within the definition of a "Good Leaver" or a "Bad Leaver", which significantly affected the valuation of her shareholding.

35. Accordingly, even aside from the very different structure of the articles, the interpretation of the definition of Leaver in *Signia* was not subject to argument. While suggesting that it was "a useful cross-check", Mr Mundy very fairly did not suggest that *Signia* was in any way determinative of the matter here before the Court.

36. In the light of my conclusion on the interpretation of art. 11.3, it is unnecessary to decide the alternative arguments advanced by Mr Heylin. I will only say, briefly, that if the article were not to be interpreted as I have held it should be, I would not have accepted that a term can be implied in the manner urged by Mr Heylin. As Mr Mundy pointed out, a dismissal can be unlawful for a wide range of reasons, and not infrequently a dismissal is found to be unfair on account of procedural deficiencies, e.g. an inadequate period of notice, or lack of a proper appeal procedure. I do not see that incorporation of the qualification of "lawful" by reference either to the words "any reason" or "termination of employment" is necessary to give business efficacy to the article, or to give it commercial coherence. The fact that it might make the provision seem more reasonable is clearly not enough. Indeed, the language used, in a document clearly drafted by lawyers, gives the benefit of certainty, and the words "*any* reason" strongly suggest that investigation into the lawfulness of that reason was specifically excluded. See the similar approach to the rules of an employee pension scheme in *Micklefield v SAC Technology Ltd* [1990] 1 WLR 1002.

37. Although I have found the second alternative argument more difficult, in the end I do not consider that the position would be affected if Mr Truman should succeed in his case before the Employment Tribunal and if the Tribunal made an order for his reinstatement. Aside from the fact that this would seem an unlikely remedy in the case of a private company where relations between the individuals had broken down, an order for reinstatement under s. 114 of the Employment Rights Act 1996 is a direction to the employer. In this case, that was SL. I accept that the imposition of such a remedy should not alter the position on the facts as regards SHL and the rights of the other shareholder (i.e. SCL) under the Articles. The observation of Peter Gibson LJ in *Wilson (HM Inspector of Taxes) v Clayton* [2004] EWC Civ 1657 at [32] gives some limited support to this view, albeit that it was a tax case where the Court of Appeal was addressing very different circumstances.

Conclusion

38. For the reasons set out above, I find that, on the correct interpretation of art. 11.3 of the Articles, a Transfer Notice was deemed to be served when Mr Truman resigned as a director of SHL on 24 May 2023, his 65th birthday, and not when he was dismissed as an employee of SL in October 2022. Pursuant to art. 10.4.3, the sale price for his shares is therefore "Fair Value" as defined in the Articles.

39. Since the auditors of SHL have explained that they are unable to carry out a valuation of the shares, the parties are agreed that the Court should direct an inquiry into the valuation of the shares on the basis determined by this judgment. Counsel are invited to draw up an appropriate order accordingly.