SYSPAL CAPITAL LIMITED V TRUMAN AND ANOTHER

[2025] EWCA Civ 469

KEY TAKEAWAYS:

1. The Court of Appeal clarified the relevant considerations in interpreting Articles relating to the valuation of shares, and the emphasis to be placed on each.
2. The decision sets a clear precedent for how similar provisions should be construed going forward.
3. The Court's findings underscore the protection of minority shareholders and place an emphasis on ensuring that the rights of minority shareholders are upheld in corporate governance.
4. The case highlights not only the importance of using precise language when drafting Company Articles, but also the need for interpretations that align with commercial realities and fairness.

ISSUE

The construction of Articles of Association relating to the valuation of the shares of a minority shareholder.

FACTUAL BACKGROUND

The dispute centred around the construction of the Articles of Association (the "Articles") of Syspal Holdings Limited ("SHL"), the unrepresented Second Respondent.

SHL has been owned 24% by Mr Truman, the First Respondent, and 76% by Syspal Capital Limited ("SCL"), the Appellant controlled by Mr Roberjot, since the current version of the Articles were adopted in December 2015. Mr Truman served as a director of SHL until 24 May 2023, when he resigned upon reaching his 65th birthday. Mr Truman was also an employee of one of SHL's subsidiaries, Syspal Limited ("SL"), from 1980 until he was dismissed on 10 October 2022. He was also a director of SL until he was removed on 3 November 2022.

The core issues in this case were (1) whether the termination of Mr Truman's employment by SL, whilst he retained his position as director of SL, triggered a deemed Transfer Notice under the Articles; and (2) the appropriate valuation of his shares.

ARTICLE 1.1

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

ARTICLE 11.3

"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"(emphasis added)

OPPOSING INTERPRETATIONS

There was no real issue between the parties on the governing approach to the interpretation of the Articles, and Article 11.3 in particular.

Both parties sought to advance their interpretation as the more natural reading of the language of the Articles and as more in accordance with commercial common sense.

SCL'S INTERPRETATION

The wording "in that capacity" in Article 11.3 referred to the singular capacity in which the Employee Member ceased to be "employed", in the broader sense of the word within the Articles.

When Mr Truman was dismissed from employment by SL, Article 11.3 was engaged and a Transfer Notice was deemed to be served.

The price for his shares was the lesser "Market Value".

MR TRUMAN'S INTERPRETATION

The wording "in that capacity" referred back to any of the three alternative ways in which an Employee Member might be engaged to work for a Group Company.

When Mr Truman's employment with SCL ceased, the terms of Article 11.3 did not apply because he continued to be a director of SHL.

A Transfer Notice was not deemed to be served.

The sale price for Mr Truman's shares would be the greater "Fair Value".

FIRST INSTANCE

Mr Justice Roth

Ruled in favour of the interpretation presented on behalf of Mr Truman.

Concluded that the relevant provision was not triggered by Mr Truman's dismissal as an employee of SL.

Mr Truman's interpretation was the more natural meaning of the wording of the Articles and aligned with commercial common sense for the following reasons:

- the reference in parentheses to not continuing "in that capacity" related back to the three capacities set out immediately beforehand, rather than only to the singular capacity which the Employee Member previously held (paragraph 27 FI);
- it is not uncommon for a senior employee to retire from full-time employment but continue as a consultant, and commercial common sense does not suggest that in such circumstances that individual would be required to sell their shares at the lower valuation (paragraph 28 FI);
- "Fair Value" is the default basis of valuation in the Articles for the shares of one not involved in the conduct of any Group Company (paragraph 29 FI);
- SCL's interpretation creates the potential for an employee to be dismissed for no good reason in order to trigger a forced sale of their shares at the lower price, a possibility unlikely to accord with the intention of the shareholders when adopting the Articles (paragraph 30 FI); and
- the surrounding circumstances that were publicly ascertainable at the time when the Articles were adopted show that the Articles were clearly drafted to protect Mr Truman (and his family)'s position as regards the valuation of his shares (paragraph 31 FI).

Mr Justice Roth determined that the deemed Transfer Notice would be effective on Mr Truman's 65th birthday, coinciding with his resignation as a director.

Consequently, Mr Truman was entitled to receive "Fair Value" for his shares.

COURT OF APPEAL

Lord Justice Zacaroli (with whom Lady Justice Asplin and Lord Justice Birss agreed)

SCL's appeal on a single ground, namely that Mr Justice Roth should have interpreted Article 11.3 as deeming a Transfer Notice served when an Employee Member ceases to be employed in any one of the three capacities identified, was DISMISSED.

In his judgment, Lord Justice Zacaroli identified that the appeal turned on the meaning of the phrase "does not continue in that capacity" in Article 11.3.

His Lordship judged that Mr Justice Roth reached the right conclusion, largely for the reasons set out on the previous page (paragraph 27 CA), and provided the following additional justifications:

- the use of the singular "that capacity" as referring back to the (single) capacity of being "employed" is a better reading of Article 11.3, and makes more commercial sense, as opposed to SCL's submission that it refers back to one of the specific capacities in which an Employee Member might be employed (paragraph 28 CA);
- the ability to sell the shares at Fair Value is best viewed as a positive benefit to an outgoing Employee Member (paragraph 32 CA);
- SCL's construction gives rise to outcomes which make little commercial sense, particularly given that it was accepted at least part of the purpose of Article 11.3 was to provide the option for a clean break with an Employee Member who ceased to be involved in the day to day running of the business (paragraph 33 CA);
- the very fact that Article 11.3 envisaged service of a deemed Transfer Notice upon an Employee Member ceasing to be employed as a "consultant" at all supports Mr Truman's interpretation (paragraph 36 CA) as:
  - when the Articles were adopted, Mr Truman was the only shareholder who could even potentially fulfil the role of Employee Member (paragraph 37 CA);
  - the only circumstances in which the "consultant" limb of Article 11.3 could ever apply to Mr Truman was if he changed his status from employee to consultant (paragraph 36 CA);
  - on SCL's case, in those circumstances a deemed Transfer Notice would be triggered and, on that basis, there could never be a circumstance when a deemed Transfer Notice could be triggered by Mr Truman ceasing to be a consultant (paragraph 38 CA); and
  - the "consultant" part of Article 11.3 would be "otiose" (paragraph 38 CA);
- other provisions within the Articles only make sense on Mr Truman's construction of Article 11.3 (paragraph 39 CA); and
- the reading of Article 11.3 as applying to circumstances where the Member ceases to be employed altogether by the Group is more consistent with the repetition of the word "any" within the provision than the alternative reading proposed by SCL (paragraph 40 CA).

ALEXANDER'S PRACTICE ENCOMPASSES INSOLVENCY AND COMMERCIAL CHANCERY. THIS INCLUDES CONSIDERABLE CROSS-BORDER AND OFFSHORE EXPERIENCE.

IF WE CAN ASSIST FURTHER, PLEASE FEEL FREE TO CONTACT -
NO5 CLERKS - BP@NO5.COM
ALEXANDER HEYLIN - AHE@NO5.COM
0845 210 5555