Neutral Citation Number: [2025] EWCA Civ 469

Case No: CA-2024-001566

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
Mr Justice Roth
[2024] EWHC 1561 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/04/2025

Before :

LADY JUSTICE ASPLIN
LORD JUSTICE BIRSS
and
LORD JUSTICE ZACAROLI

- -

Between :

SYSPAL CAPITAL LIMITED	**Appellant**
- and –	
(1) MR CHRISTOPHER JOHN TRUMAN **(2) SYSPAL HOLDINGS LIMITED**	**Respondents**

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Robert Mundy KC (instructed by **George Green LLP**) for the **Appellant**
Alexander Heylin (instructed by **Fieldfisher LLP**) for the **First Respondent**
The **Second Respondent** was not represented

Hearing date : 3 April 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 14 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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Lord Justice Zacaroli:

1. This appeal, from the decision of Roth J dated 24 June 2024, raises a short point of construction of the articles of association (the "Articles") of the second respondent, Syspal Holdings Limited ("SHL").

2. At the time of the adoption of the current version of the Articles, in December 2015, and ever since, the shares in SHL have been held, as to 76%, by the appellant, Syspal Capital Limited ("SCL") and, as to 24%, by the first respondent, Christopher Truman ("Mr Truman").

3. SHL is a holding company, which owns 100% of the shares in Syspal Limited ("SL"). Mr Truman was an employee of SL from 1980 until he was dismissed on 10 October 2022, and a director of SL until he was removed from that position on 3 November 2022.

4. Mr Truman was also a director of SHL, until he resigned on 24 May 2023 upon reaching his 65th birthday. The other director of SHL was Anthony Roberjot. The financial statements for SHL for the year ended 31 March 2014 noted that SCL was controlled by Mr Anthony Roberjot.

5. The dispute concerns the pre-emption provisions in the Articles as they apply to the shares of an "Employee Member".

6. An "Employee Member" is, by Article 1.1, "a Member who is also an employee, consultant or director of a Group Company (with the exception of Mr A Roberjot)". Each of SHL, SL and SCL is a "Group Company". At all times since the adoption of the Articles, Mr Truman has been the only Employee Member.

7. Article 11.3 is at the heart of the dispute. It provides:

> "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"

8. Article 10 1 requires any person proposing to transfer their shares to give notice in writing to the Company. By Article 10 2, upon the sale price for the shares being either agreed or determined in accordance with Article 10 4, the shares shall be offered to all Members, except the Proposing Transferor.

9. Article 10 4 applies where the sale price for the shares is not agreed. It provides:

> "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. The dispute arises in this case because, if a deemed Transfer Notice was triggered upon Mr Truman's dismissal as an employee of SL on 10 October 2022, then the sale price for his shares will be at "Market Value" whereas, if a deemed Transfer Notice was triggered only upon his resignation as a director of SHL on 24 May 2023, then the sale price for his shares will be at "Fair Value". It is common ground that Fair Value is likely to be substantially greater than Market Value.

The judge's judgment

11. The judge concluded that it was only upon the resignation of Mr Truman as a director of SHL on 24 May 2023 that a Transfer Notice was deemed to be served, and that his shares are accordingly to be priced at Fair Value.

12. The case turned on the meaning of the phrase "in that capacity" in Article 11.3. There was no doubt that Mr Truman ceased to be employed as an employee of SL on 10 October 2022. The question was whether he continued "in that capacity" in relation to any Group Company thereafter.

13. The judge noted that "employed" has a wide meaning, extending to someone working as a director or consultant, as well as an employee. He decided that "in that capacity" referred back to those three capacities (employee, director or consultant), and not merely to the capacity of "employee".

14. That was, the judge found, the more natural reading of the words, and accorded with commercial common sense. He agreed with SCL's counsel that the purpose of the provision was that if one of the shareholders "stopped contributing to the day-to-day running of the business", the other shareholders should be given the opportunity of buying that shareholder's shares. He considered it was not uncommon, however, for a senior employee to retire from full-time employment but to continue to serve the business as a consultant. He did not see that commercial good sense required such a person to sell his shares, and to do so at the lower of the valuations spelt out in the Articles.

15. It was clear from Article 10 4 3 that the default position was that shares were to be sold at Fair Value. If that was the value to be applied where a Member who was not employed in any capacity by a Group Company transferred their shares, it was difficult to see why a lower value should be forced on, for example, a director who held shares but relinquished his role as a consultant. He was also influenced by the fact that on

SCL's interpretation a Group Company could dismiss Mr Truman for no good reason, in order to create a forced sale of his shares at the lower price. That, he concluded, was unlikely to accord with the shareholders' intention when adopting the Articles.

16. That interpretation was reinforced by the surrounding circumstances, given that Mr Truman was the only "Employee Member" (indeed the only natural person who was a shareholder) when the Articles were adopted. Although it was conceivable that there might be other Employee Members of SHL in the future, on the basis of publicly available information Article 11.3 would be seen as directed in particular at Mr Truman.

17. The judge did not need to deal with Mr Truman's alternative argument, that there should be an implied term in Article 11.3 such that it should read: "If any Employee Member shall cease for any lawful reason … to be employed…". Had he needed to do so, however, he would have rejected such an implied term.

The ground of appeal

18. SCL appeals, with the permission of Newey LJ granted on 23 September 2024, on a single ground, namely that the judge 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.

19. Mr Mundy, who appeared on behalf of SCL, developed this ground of appeal in three ways.

20. First, this was the natural reading of the words chosen. The parties had used the singular "that capacity", rather than the plural "those capacities". That indicated that a Transfer Notice was deemed to be served where the Employee Member did not continue – in any other Group Company – in the specific capacity in which he had ceased to be employed in one of the Group Companies. Moreover, if the parties had intended a Transfer Notice to be deemed served only where the Employee Member ceased to be employed in any of the three capacities, then they could more easily have defined the trigger event simply as "if the Employee Member ceased to be an Employee Member."

21. Second, he contended that there was commercial sense in a Transfer Notice being deemed to be served wherever an Employee Member ceased to be employed altogether (in any Group Company) in any *one* of the three capacities. The parties may well have thought this desirable because of the significant change in the relationship where an Employee Member ceased to be involved in the day to day running of the business (i.e. when he ceased to be an employee) *or* where he ceased to be involved in strategic management (i.e. when he ceased to be a director). Mr Mundy referred in support of this to *Re a Company (No. 004377 of 1986)* [1987] 1 WLR 102, where the articles provided for a deemed transfer notice in respect of shareholder's shares if he ceased to be an employee *or* if he ceased to be a director.

22. It was also commercially coherent that a Transfer Notice would be deemed served even where there was a dispute over the lawfulness of the dismissal of the Employee Member. Mr Mundy suggested that the Employee Member might, if he could show that he suffered financial loss due to his shares being purchased at the lower value under Article 10 1 4, be able to recover that loss in proceedings for his wrongful dismissal.

23. Mr Mundy also pointed to the fact that there is nothing intrinsically commercially unreasonable in a minority shareholder being bought out at a price that reflects the minority shareholding. That is, after all, the starting point where minority shares are purchased pursuant to an order made on an unfair prejudice petition under s.994 of the Companies Act 2006, because "the general principle of valuation of shares on sale is that what has to be valued is what the shareholder has to sell": see, for example, *Shanda Games Ltd v Maso Capital Investments Ltd* [2020] UKPC 2; [2020] 1 BCLC 577, per Lady Arden at §29.

24. Third, Mr Mundy criticised the judge's reasoning that SCL's construction creates a potential for an employee being dismissed for no good reason in order to trigger a forced sale of his shares at the lower price, and that the purpose of the Articles was to protect Mr Truman and his family. He pointed out that where an Employee Member was *only* employed *as an employee*, then it would always be possible to trigger a forced sale at the lower price by dismissing the Employee Member without cause, that a director could also be removed by the majority shareholders at any time, and that the judge's concern in this respect was inconsistent with his rejection of the implied term for which Mr Turman contended.

25. Mr Mundy also submitted that the fact that the shares could be purchased at the lower price was not necessarily a bad thing for Mr Truman because: there is no obligation on the other shareholders to purchase Mr Truman's shares; Mr Truman could not sell the shares to an outsider at less than the price set according to the Articles; and he may find it harder to sell the shares to an outsider at a price which was not discounted for being a minority holding.

Analysis and conclusions

26. This appeal turns on the meaning of the phrase "does not continue in that capacity" in Article 11.3. It is trite that the interpretation of contractual terms is a question of law. Mr Heylin, who appeared for Mr Truman, submitted that the appeal was against a finding of fact, with which this Court should not interfere. He said that the relevant question is the meaning of the word "that", and that "the meaning of an ordinary word of the English language is not a question of law" (citing Lewison on the Interpretation of Contracts, 8th ed., at §4.09). That is plainly wrong: what is in issue is the interpretation of the phrase quoted above within the context of Article 11.3. Its meaning is to be ascertained, as a matter of law, by reference to the Articles as a whole and any extrinsic facts about the company or its membership that would be reasonably ascertainable by any reader of the company's constitution and public filings at Companies House, and commercial common sense: *Re Euro Accessories Ltd* [2021] EWHC 47 (Ch), per Snowden J at §34.

27. I nevertheless consider that the judge reached the right conclusion, largely for the reasons he gave as summarised at §14 to §15 above.

28. So far as the language of Article 11 3 is concerned, the use of the singular "that capacity" does not have the significance Mr Mundy places on it. Although it is capable of referring back to one or other of the specific capacities in which an Employee Member might be employed, it is equally capable of referring back to the (single) capacity of being "employed" – whether as an employee, director or consultant of a Group Company.

29. In my judgment the latter is the better reading of the Article, and makes more commercial sense.

30. As the judge observed, the default position is that in the absence of agreement if Mr Truman wished to sell his shares he was entitled to be paid Fair Value. Article 10 4 2 is the only exception to that.

31. Mr Mundy suggested that a sale at Fair Value was the *exception* wherever a Transfer Notice was deemed to served, and applied only where an Employee Member died, became permanently incapacitated or retired at 65. That is, however, wrong. Article 11 provides for a deemed Transfer Notice in a variety of situations, only one of which (Article 11.3) results in the price being determined other than at Fair Value.

32. It may be true, as Mr Mundy submitted, that a valuation at Fair Value would make it more difficult for the outgoing Employee Member to sell his shares to an outsider, in the event that the other shareholders did not exercise the option to purchase his shares on service of a deemed Transfer Notice. The practical likelihood, however, is that SCL, as the only other shareholder, would be incentivised to exercise the option to purchase the outgoing Member's shares rather than be burdened with a disgruntled minority shareholder. The ability to sell the shares at Fair Value is, accordingly, best viewed as a positive benefit to an outgoing Employee Member.

33. SCL's construction gives rise to outcomes which make little commercial sense, particularly against the backdrop that at least part of the purpose of Article 11 3 – as accepted by Mr Mundy – 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.

34. On SCL's construction, for example, in addition to a forced transfer of shares at the lower value being imposed on an Employee Member who ceased to be an employee but continued to be involved as a director, such a transfer would be imposed on an Employee Member who ceased to be a director of any Group Company, but continued to be employed within the Group. Similarly, such a transfer would be imposed on an Employee Member who ceased to be employed full time, but nevertheless continued to be involved with the day to day running of the business as a consultant. Even more surprisingly, the same would apply if an Employee Member, having first been employed as a consultant, moved to full-time employment.

35. It is not an answer to this to say, as Mr Mundy suggested, that the parties could agree to vary the Articles if they wished to enable an Employee Member who ceased to be employed in only one of two or more capacities to retain their shares.

36. The fact that Article 11 3 envisages service of a deemed Transfer Notice upon an Employed Member ceasing to be employed as a "consultant" at all supports this conclusion.

37. As the judge observed, although it was possible that another person could become an Employee Member, Mr Truman was the only shareholder at the time of the adoption of the Articles who could even potentially fulfil that role. At the time the Articles were adopted, he was an employee of SL. The only circumstance in which the "consultant" limb of Article 11.3 could ever apply to him was, therefore, if he changed his status from employee to consultant.

38. In that event, however, he would cease to be an employee which, on SCL's case, would trigger a deemed Transfer Notice. 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, and that part of Article 11 3 would be otiose. (I do not accept, as was suggested in argument, that an Employee Member whose status changed from employee to consultant would have ceased, even if only for a few days, to be employed in *any* capacity. The sensible meaning of "continues" would encompass someone leaving employment in order to continue as a consultant, even if a weekend, or a holiday, intervened.)

39. There is also some support for this conclusion in Article 9.2, pursuant to which a Member who is a director or employee of "any Group Company" may transfer his shares to his family or a family trust but, in that event, if he ceases to be "a director or employee of any Group Company", then the relevant shares will be treated for the purpose of Article 10 as if they were still held by the member. Although this does not in terms also cross-refer to Article 11 3, Mr Mundy accepted that it would only make sense if it was treated as applying to the case where Article 10 4 2 applies as a result of a Transfer Notice being deemed to be served under Article 11 3.

40. It is possible, as Mr Mundy submitted, to read "ceases to be a director or employee of any Group Company" as referring to ceasing to be a director of any *one* Group Company. That is, however, a less natural reading than that it applies to circumstances where the Member ceases to be employed altogether as a director or employee by the Group. That is more consistent with the repetition of the word "any": "a Member who is a director or employee of *any* Group Company [ceases to be] a director or employee of *any* Group Company". On that interpretation, it lends some (albeit limited) support to the view that Article 11 3 is dealing with the situation where an Employee Member ceases to be employed at all (i.e. by any Group Company) whether as director, employee or consultant (because it is only then that shares transferred to a family member or trust are treated as belonging to the Employee Member and so capable of being caught by the pre-emption provisions).

41. The two authorities cited by Mr Mundy do not assist. The question in this case is simply one of construction of the Articles. The fact that it is possible to draft pre-emption provisions which will give rise to a deemed transfer notice when the shareholder ceases to be either a director or a shareholder (as in *Re a Company*) or that a minority discount is ordinarily applied on the sale of a minority shareholding do not provide any clue as to the proper interpretation of the Articles.

42. For these reasons I would dismiss this appeal.

Lord Justice Birss

43. I agree.

Lady Justice Asplin

44. I also agree.