Case No: BL-2018-001522;
BL-2018-001559

Neutral Citation Number: [2018] EWHC 3877 (ch)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES (BUSINESS LIST)
(CHANCERY DIVISION)

7 Rolls Building
Fetter Lane, London
EC4A 1NL

Tuesday, 10 July 2018

BEFORE:

MR JUSTICE FANCOURT

BETWEEN:

WH HOLDING LIMITED & ANR

Applicants

- and -

E20 STADIUM LLP

Respondent

MR P DOWNES QC (instructed by Gateley Plc) appeared on behalf of the Applicants
MR T PLEWMAN QC (instructed by Gowling WLG) appeared on behalf of the Respondent

---

JUDGMENT
(As Approved)

Digital Transcription by Epiq Europe Ltd,
8th Floor, 165 Fleet Street, London, EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
Web: www.epiqglobal.com/en-gb/ Email: courttranscripts@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

1. MR JUSTICE FANCOURT: Yesterday I granted the applicants relief **ex parte** but built into the order machinery to enable the respondents to come back before me today to contest any of the matters that I dealt with yesterday. Necessarily yesterday I dealt with the application without the benefit of any focused argument on behalf of the respondents. The respondents have today taken up the right which I provided for them and brought the matter back to court.

2. Mr Plewman QC, on behalf of the respondent really makes two points. One is that the form of the order that I accepted yesterday should be made is not entirely appropriate in that it implies that there is some responsibility on the respondent to provide representations or a defence that may be advanced to the FA charge. I accept in principle that is a criticism well-made. It is in substance accepted on behalf of the applicants, and it is agreed that the form of the order can be recast as necessary to make it clear that that is not the case and that what is required is the provision by the respondent of information that will enable the applicants to formulate their own defence or representations to the charge.

3. The second matter in dispute really amounts to this: what is meant by "information"? Mr Plewman accepts that, insofar as questions relate to objective facts about the stewarding or the arrangements for the stewarding or the implementation of any recommendations made in reports since the Burnley match, those are proper matters on which it can be asked to provide information and will do so at this stage without prejudice to any arguments it may advance at the trial of the action.

4. But he says that the requirement to provide information should not extend to an evaluative judgment about whether or not the stewarding or the strategy for stewarding was an appropriate strategy or other questions of that kind, which require some form of judgment to be made and is not simply a matter of objective fact.

5. Mr Downes on behalf of the applicants puts the matter this way. He says that the obligation in the contract which I referred to in my judgment yesterday at clause 24.2, places the responsibility of compliance on the respondent. It is the respondent that is obliged to ensure that it complies with all governing body requirements in relation to stewards, amongst other matters, to the extent that they are to be provided, as they are to be provided by the respondent under this agreement. That means, says Mr Downes, that an assessment of what is necessary for compliance with FA or other regulatory requirements is not a matter for the applicants, although at this stage of the proceedings they may have their own view, but is principally a matter for the respondent, because the respondent has a contractual obligation to ensure that it complies. Therefore, it is obliged to evaluate the suitability or appropriateness of the stewarding that it provides.

6. Mr Plewman says that what is being requested at this stage is really an evaluation of whether or not there is a good or proper defence that the applicant should make in response to the FA charge and the respondent has no contractual responsibility whatsoever for meeting or assisting in meeting a charge of that kind. Its only obligation is to provide the stewarding. Mr Plewman says the respondent should not be sucked into answering questions about the adequacy of compliance at this stage because it is not a matter that the applicant reasonably needs in order to deal with the charge.

7. In my judgment, Mr Downes' arguments are well-made and I consider that the respondent should provide an answer to questions of the kind of which an example is question 5 of the reformulated list of questions with which I have been provided this morning, that is to say, "Please state whether E20's position is that the strategy adopted by E20 to prevent or deter a pitch incursion was appropriate." I consider that a question of that nature is a question to which the applicants reasonably need to have an answer in order to decide how to deal with the charge that has been made against them. The answer to that question depends on an assessment of matters that are in part solely within the knowledge of the respondent and not within the knowledge of the applicants.

8. The need for an answer to that question, says Mr Downes, goes no further than a yes or no answer, which will inform the decisions it has to make. However, there is nothing to require the respondents to limit themselves to a yes or no answer. They can provide details or qualifications or an explanation as they see fit in order to protect their position if they feel they need to, or they can simply limit themselves to a yes or no answer if they do not wish to be drawn further on the question. But I accept the submission that the respondent is best-placed to be able to provide an answer at this stage and must itself have formed a view. The question in substance is really asking the respondent whether it is aware from facts that are known to it, that its strategy was deficient. That is a question that only the respondent can properly answer and, as I have said, it is a question the answer to which the applicants, in my judgment, reasonably and urgently need.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge