Magic Investments SA v Broadbent and The Greater Good Fresh Brewing Co Limited [2026] EWCA Civ 711

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Brief summary

1. Lord Justice Newey sitting at the Court of Appeal (the "**Court**") was faced with two competing interpretations of the word "nominate" in a written agreement. The Court adopted the interpretation which most accorded with the words used in the rest of the contract, and with commercial sense.

2. The Court also summarised some of the law more specifically relevant to s.994 petitions, such as who may be a proper defendant.

The Decision

3. Magic Investments SA ("**Magic**") was a minority shareholder in The Greater Good Fresh Brewing Co Limited, the Second Respondent to the action ("**the Company**"). Mr Broadbent (First Respondent) was a director and shareholder of the Company.

4. Magic presented a petition under s.994 of the Companies Act 2006, alleging that:

    a. The agreement under which Magic had acquired its shareholding had included a provision that it would be entitled to "*nominate*" a person to the Company's board of directors, and to have that nominee appointed ("**the board seat allegation**").

    b. Shares had been issued in the Company at an undervalue, thereby diluting Magic's shareholding ("**the undervalue allegation**").

5. Mr Broadbent made an application to strike out Magic's petition, which was granted by Deputy ICC Judge Agnello KC. Magic appealed unsuccessfully to Mr Justice Marcus Smith. Both Judges resolved the board seat allegation in Mr Broadbent's favour by interpreting "*nominate*" literally; i.e., Magic could merely nominate someone for the board and had no right to have that person appointed.

6. On appeal, the Court applied *Wood v Capita Insurance Services Ltd* [2017] UKSC 24 to the effect that words in a contract are construed according to the language of a contract as a whole, against the factual matrix and in accordance with business common sense.

7. In this context "nominate" meant that Magic had a right to have a person of its choosing placed on the Company's board. This was because:

    a. "Nominate" holds the dual meanings "*propose a candidate*" and "appoint a person".

    b. The agreement in question specified that Magic was entitled to "*nominate someone to the board*" not merely to nominate someone to be considered for appointment.

    c. The lower courts' interpretation would have given Magic no particular rights beyond what it would otherwise have enjoyed, rendering that provision of the agreement redundant.

    d. The broader context pointed strongly towards Magic having been intended to have a seat on the board; in particular it was said to be necessary that it do so in order to meet certain regulatory requirements.

8. The Court further held that where a shareholder is entitled to have a person of its choosing on a company's board of directors, the denial of that entitlement is capable of amounting to unfair prejudice.

9. As to the undervalue allegation, Counsel for Mr Broadbent cited three authorities: *Lowry v Consolidated African Selection Trust Ltd* [1940] AC 648, Shearer v Bercain Ltd [1980] 3 All ER 295, and Pettie v Thomson Pettie Tube Products Ltd 2000 SC 431.

10. Lowry and Shearer are authorities for the proposition that directors are obliged to seek the market value for issued shares unless they have a “good reason” for accepting a lower value.

11. *Pettie* is authority for the proposition that issuing shares at an undervalue may constitute unfair prejudice, on the basis that the minority shareholder will be faced with the choice of either subscribing to the new shares or having its shareholding diluted.

12. On the strength of these authorities, the Court found that there was a real prospect of Magic establishing unfair prejudice, and the Court refused to strike out the petition. Magic was allowed to amend its petition so as to make the share sale point more explicit.

13. It was further argued on Mr Broadbent’s behalf that the petition should be struck out because it was neither just nor proportionate to make Mr Broadbent subject to an order to purchase Magic’s shares.

14. The Court held that there was a real prospect of Magic establishing that Mr Broadbent was sufficiently implicated in the unfairly prejudicial conduct to justify relief being sought against him. The Court cited with approval the dicta of Sales J in *F & C Alternative Investments (Holdings) Ltd v Barthelemy (No 2)* [2011] EWHC 1731 (Ch). The question is whether the defendant is “sufficiently implicated [in the alleged conduct] to warrant relief being granted against him”.

15. Mr Broadbent was a founder of the Company, a director of it, its chief executive officer and a major shareholder. He had also written some of the key correspondence between the parties and while he had done so on behalf of the Company there was good reason to think that he had played a personal role.

16. Finally, the Court considered the effect of an offer by Mr Broadbent to buy Magic’s shares in the Company following a valuation by an expert. Mr Broadbent’s offer did not include the payment of Magic’s legal costs and therefore the existence of that offer did not justify striking out the petition.

17. The application for strike out was dismissed, and the parties were invited to propose directions for the further progress of the proceedings.

Analysis

18. The decision serves as a restatement of specific principles of substantive and procedural law, namely:

    a. The issue of shares at an undervalue may constitute unfair prejudice.

    b. A person sufficiently implicated in unfairly prejudicial conduct may be a defendant.

    c. An offer to buy shares post-proceedings is unlikely to justify strike-out of the proceedings unless it includes the petitioner's costs.

    d. Defective pleadings will typically result in an order to amend rather than strike out.

19. The case also serves as a salutary reminder that different judges may reach different conclusions on matters of contractual interpretation, particularly where the words used have multiple competing definitions.

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