



Neutral Citation Number: [2021] EWHC 711 (Comm)

Case No: CL-2020-000396

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)
IN AN ARBITRATION CLAIM

The Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 24/03/2021

Before:

MRS JUSTICE MOULDER

Between:

**MANCHESTER CITY FOOTBALL CLUB
LIMITED**

Claimant

- and -

**THE FOOTBALL ASSOCIATION PREMIER
LEAGUE LIMITED
PHILIP HAVERS QC
JOHN MACHELL QC
DANIEL ALEXANDER QC**

Defendants

LORD PANNICK QC, PAUL HARRIS QC and DAVID GREGORY (instructed by
CLIFFORD CHANCE LLP) for the **Claimant**
ADAM LEWIS QC and ANDREW HUNTER QC (instructed by **BIRD & BIRD LLP**) for
the **First Defendant**

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 10:30am on 24 March 2021.

.....

Approved Judgment**Mrs Justice Moulder :**

1. These proceedings concern an application by Manchester City Football Club Limited (the “Club”) to set aside the award of the arbitral tribunal dated 2 June 2020 (the “Award”) under Section 67 and/or Section 68 of the Arbitration Act 1996 (the “Act”). The Club also sought the removal of the arbitrators under Section 24 of the Act. That application has been dismissed for the reasons I gave in a judgment handed down to the parties on 17 March 2021 (the “Merits Judgment”). The issue I am now concerned with is whether the Merits Judgment should either remain confidential or be published.
2. I have received written submissions on this issue from both the Club and the first defendant, The Football Association Premier League Limited (the “PL”). Both the Club and the PL have stated that they are content for this matter to be dealt with on the papers and that no additional hearing is necessary. The second, third and fourth defendants did not participate in the hearing which led to the Merits Judgment. However, they were sent drafts of both the Merits Judgment and this judgment.
3. The relevant factual background is set out in the Merits Judgment and need not be repeated in detail here. In short, the tribunal held in the Award that it had, and may exercise, jurisdiction to hear a claim brought by the PL. The PL’s claim in the arbitration proceedings was that, under the PL’s rules (the “Rules”), the Club was contractually required to disclose certain documents and information requested by the PL. The documents and information relate to an ongoing investigation being conducted by the PL into the Club’s affairs. The arbitration was instituted by the PL pursuant to Rule X of the Rules. All relevant proceedings have so far taken place confidentially and in private.

The Parties’ Submissions

4. It should be noted at the outset that both the Club and the PL are opposed to the publication of the Merits Judgment.
5. It is accepted for the Club that the key principles governing the publication of judgments arising out of confidential arbitration proceedings are set out in *City of Moscow v Bankers Trust Co* [2004] EWCA Civ 314; [2005] QB 207. Those principles are discussed in more detail below, but for now it is sufficient to note that they require the court to conduct a balancing exercise between, on the one hand, the public interest considerations in favour of publishing judgments and, on the other hand, the desirability of protecting the confidentiality of the original arbitration and its subject matter (*Bankers Trust* at [39] and [40]).
6. The Club submitted that the Merits Judgment should not be published because it contains “significant confidential information”. In particular it was submitted that:
 - i) Publication would reveal the existence of a dispute between the Club and the PL regarding the latter’s requests for documents and information (i.e., the dispute forming the subject matter of the arbitration).

Approved Judgment

- ii) Publication would also disclose confidential and sensitive matters relating to the ongoing investigation by the PL into the Club's potential breaches of the Rules (to which the arbitration relates), namely:
 - a) The existence of a dispute concerning the appointment of a Commission under Rule W.
 - b) The reference to arbitration of the dispute relating to the document and information requests.
 - c) The Club's challenge to the jurisdiction and impartiality of the arbitral tribunal.
 - d) The fact that the PL has suggested that the Club has sought to delay its handing over of the relevant documents and information by making numerous procedural applications.
- 7. The Club further submitted that it has strong expectations for this information to remain confidential, in essence because the parties have taken significant steps to treat it as such at all material times and because that approach accords with the confidentiality of the investigatory, disciplinary and dispute resolution framework.
- 8. It is the Club's position that it does not need to establish that it would suffer any detriment from the publication. In any event, it submits that:
 - i) Public comment and press speculation will be prejudicial to the ongoing investigation and related proceedings.
 - ii) Publicity about the challenge in these proceedings and the publicity about the ongoing investigation has the potential to materially damage its reputation with current and prospective commercial partners.
- 9. Finally, the Club submits that redacting and/or anonymising the Merits Judgment would either render it unintelligible or would not sufficiently protect the confidential information.
- 10. The PL supports the Club's opposition to publication but has not sought to advance additional reasons as to why publication should be refused.

The Legal Principles

- 11. The relevant principles are clearly set out in the judgment of Mance LJ (as he then was) in *City of Moscow v Bankers Trust Co* [2004] EWCA Civ 314; [2005] QB 207. The key principles relevant to this case are as follows:
 - i) "Whatever the starting point or actual position during a hearing, it is, although clearly relevant, not determinative of the correct approach to publication of the resulting judgment" (at [37]).
 - ii) "Further, even though the hearing may have been in private, the court should, when preparing and giving judgment, bear in mind that any judgment should be given in public, where this can be done without disclosing significant

Approved Judgment

confidential information. The public interest in ensuring appropriate standards of fairness in the conduct of arbitrations militates in favour of a public judgment in respect of judgments given on applications under s.68. The desirability of public scrutiny as a means by which confidence in the courts can be maintained and the administration of justice made transparent applies here as in other areas of court activity under the principles of *Scott v. Scott* and article 6. Arbitration is an important feature of international, commercial and financial life, and there is legitimate interest in its operation and practice...” (at [39]) [emphasis added].

- iii) “The factors militating in favour of publicity have to be weighed together with the desirability of preserving the confidentiality of the original arbitration and its subject-matter” (at [40]).
- iv) A party inviting the court to protect evidently confidential information about a dispute must not necessarily prove positive detriment, beyond the undermining of its expectation that the subject-matter would be confidential (at [46]).

DiscussionWould publication lead to disclosure of “significant confidential information”?

12. The first piece of confidential information identified by the Club is the “existence of a dispute” concerning the PL’s request for documents and information.
13. In my view this information cannot properly be described as “significant” confidential information:
 - i) First, in March 2019, the PL itself responded to press reports by releasing a public statement which stated that it was investigating an alleged breach of the Rules. The existence of the investigation has therefore already been public knowledge for some time as a result of the PL’s statement. Whilst it is not in the public domain that the PL requested documents and information and that the Club resisted that request, any reasonable reader of that public statement would be likely to infer that an investigation might involve the production of documents and information and it is difficult to see how this can be viewed as “significant” confidential information.
 - ii) Second, the Merits Judgment does not contain any significant details relating to the substance of the disclosure dispute: it does not state the nature of the documents and information which were requested; it does not state the significance of those documents and information to the wider investigation; and it does not state the outcome of the arbitration (except as to procedural matters).
14. The only confidential information which will be disclosed is the fact of the existence of the dispute and the arbitration. In circumstances where it is already public knowledge that the underlying investigation is taking place, I do not regard that confidential information as significant.

Approved Judgment

15. I note "the desirability of preserving the confidentiality of the original arbitration and its subject matter" (*Bankers Trust* at [40]). However as set out above there is nothing about the details of the underlying dispute in the Merits Judgment.
16. The expectation of the parties of confidentiality in arbitration is a factor to be taken into account but it is not determinative even where both parties are opposed to publication.

Would publication result in real prejudice or significant detriment to the Club?

17. Whilst I accept that it is not necessary for the Club to prove detriment, I have regard to the prejudice which the Club says would result from publication. Given that the investigation into the alleged breach of the Rules is already public knowledge, even though publication of the Merits Judgment may attract media interest, it is difficult to see any real detriment. I take into account the nature of the underlying challenge and thus the Club's legitimate interest in ensuring that a fair procedure is followed throughout the conduct of the investigation and any related proceedings. Whilst the Merits Judgment makes reference to submissions by the PL that the Club's challenge was tactical, it also sets out the Club's submissions in response to that point and, neither the tribunal nor the Merits Judgment made any such finding. Thus, whilst the Club may wish to avoid further media attention regarding the investigation by the PL, it seems difficult to see any real prejudice from disclosure of the existence of the dispute as to the production of documents and information.
18. It was also submitted for the Club that public comment and press speculation would prejudice the future investigation. It is difficult to see how that could arise where the investigation is carried out by the PL (which is already privy to the information said to be confidential) and, should a Commission or Appeal Board be established under the Rules (as now amended), panel appointments and reappointments are made by an independent judicial figure. If the matter were to go to arbitration, the arbitrators have each to be a "Suitably Qualified Person" that is a barrister or solicitor of 10 years standing and "independent of the party appointing him and able to render an impartial decision" (Rule X.10). Given the safeguards as to independence of both a Commission/Appeal Board member and arbitral tribunal member I cannot see how public comment or press speculation would undermine the independence of these individuals and prejudice the future investigation.

Conclusion

19. It is desirable for any judgment to be made public in order to ensure public scrutiny and the transparent administration of justice, provided "this can be done without disclosing significant confidential information" (*Bankers Trust* at [39]); the confidential nature of the arbitration has to be weighed against the public interest in ensuring appropriate standards of fairness in the conduct of arbitrations.
20. In my view, having weighed the factors referred to above, the desirability of public scrutiny as a means by which confidence in the courts can be maintained and the administration of justice made transparent outweighs the competing considerations in favour of not publishing the Merits Judgment.
21. For these reasons, it is my view that the Merits Judgment should be published.