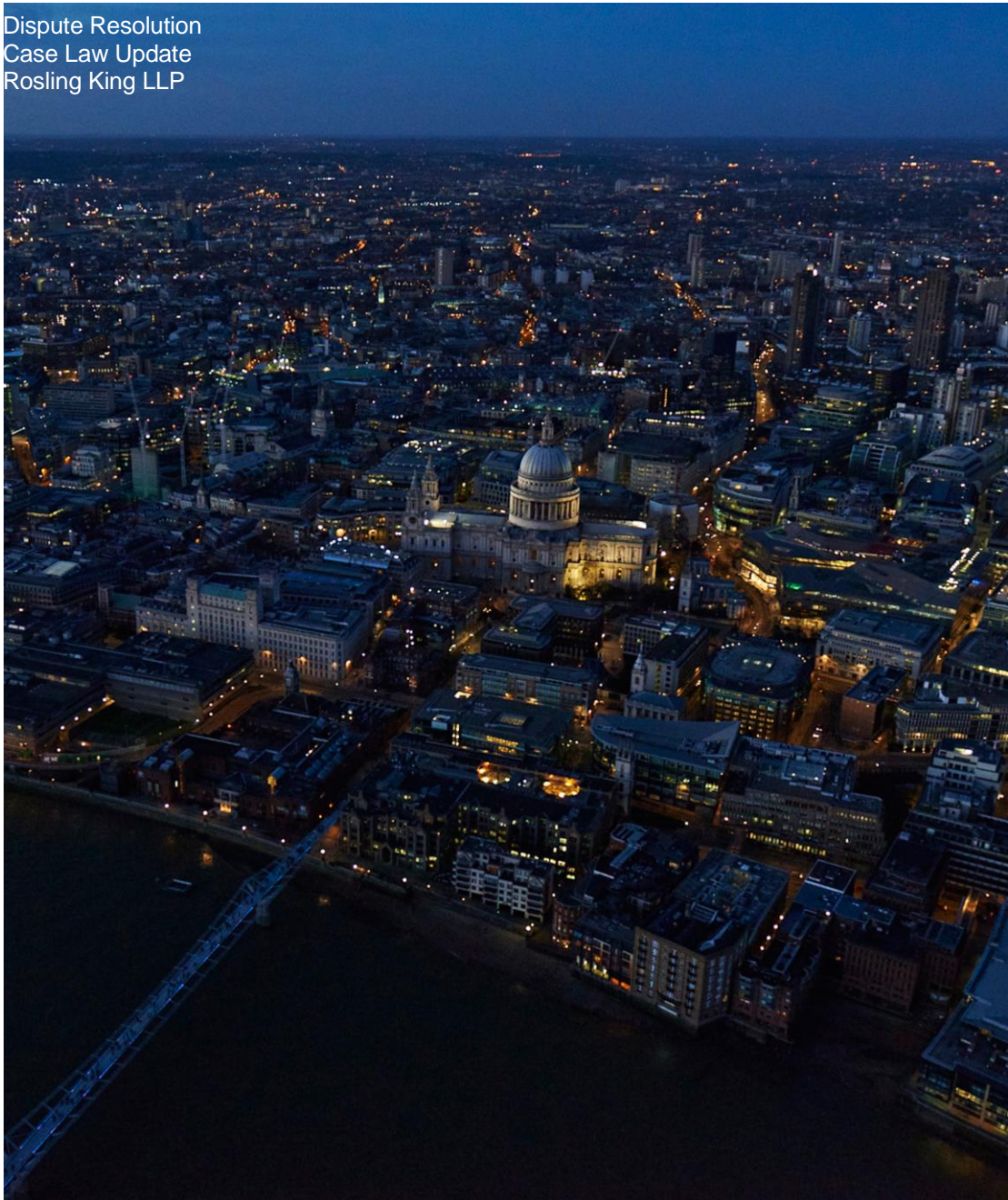


Dispute Resolution
Case Law Update
Rosling King LLP



Background

Blackpool Football Club Limited (“**Blackpool FC**”) was formed on 26 July 1887. At the time of the decision, Blackpool FC had an issued share capital of 37,500 ordinary shares, 76.29% of which was owned by Blackpool Football Club (Properties) Limited (formerly known as Segesta Limited) (“**First Respondent**”). The First Respondent is itself 97.2% owned by Mr Owen Oyston (“**Second Respondent**”). Mr Karl Oyston (“**Third Respondent**”) is the Second Respondent’s son. The First Respondent, Second Respondent and Third Respondent are hereinafter referred to as the “Oystons”. As is usual in section 994 petitions Blackpool FC was joined as the fourth respondent so as to be bound by the outcome of the proceedings.

Further shares were issued by Blackpool FC and by a written agreement dated 5 June 2006 (“**Subscription Agreement**”), VB Football Assets (solely owned by Mr Valeri Belokon until 3 December 2013) (“**Claimant**”) became the owner of 20% of the issued share capital in Blackpool FC. Other agreements were made whereby the Belokon family loaned £4.5 million to the First Respondent which formed a “**Gentleman’s Agreement**” (so-called by the Court) that the Claimant would be treated as an equal partner to the governance of Blackpool FC.

In essence, the Court was asked to consider two broad questions:

1. Were the affairs of Blackpool FC conducted in a manner by the Respondents that were unfairly prejudicial to the interests of the Claimant under section 994 of the Companies Act 2006 (“**CA 2006**”)?
2. If the petition was well-founded, what is the appropriate form of relief under section 996 of the CA 2006?

The allegations of unfair prejudice

These can be broadly divided into three allegations:

1. Substantial payments were made out of Blackpool FC which were alleged to be improper in that that they were made without the Claimant’s consent and were for the personal benefit of the Second Respondent and/or Third Respondent. The Claimant also complained that there was a failure by Blackpool FC to pay dividends.
2. The Claimant was excluded from the management of Blackpool FC. Whilst Mr Valeri Belokon and Mr Normunds Malnacs (an employee of Mr Belokon) were directors of Blackpool FC, they were excluded from receiving material information about Blackpool FC, including information needed for board meetings. The Claimant further complained of decisions which ought to have been made by the board, but were made outside board meetings.
3. The Claimant complained that the adoption of new articles of association by Blackpool FC was unfairly prejudicial.

Decision

In respect of the first allegation, the Court held that specific payments away from Blackpool FC were unjustifiable in that they cannot have been for the benefit of Blackpool FC, but were for the benefit of the Oystons. The payments made by Blackpool FC included a £4.2 million payment to Protoplan Ltd (a company which was substantially owned and controlled by Mr Owen Oyston) (“**Protoplan**”) for stadium construction work, a £4.169 million payment to Zabaxe Ltd (a company 100% owned by Mr Owen Oyston) (“**Zabaxe**”) for repayment of a debt owed by the First Respondent, and a £11 million payment also to Zabaxe but for director’s remuneration to Mr Owen Oyston for past services to an indemnification of Zabaxe. From the Court’s perspective it was obvious the three payments were prejudicial to Blackpool FC: there was a discrimination of interests between the First Respondent and those of the other members of the club and the discrimination benefitted the First Respondent and disadvantaged other members.

Turning to the second allegation, the Court decided that the Claimant had a legitimate expectation that it was entitled to be treated as equal partner in the governance of Blackpool FC by reason of the Gentleman’s Agreement. The Court held the Oystons had systematically and deliberately excluded the Claimant from crucial decisions that were made on Blackpool FC’s behalf in order to extract money from the club for non-football-related loans.

The Court did not find that the third allegation of the adoption of new articles of association by Blackpool FC was unfairly prejudicial.

The Court ordered a buyout pursuant to section 996 of CA 2006. The Respondents were ordered to pay £31.27 million to the Claimant so as to create a clean break. In determining the amount the Respondents were ordered to pay, the Court included within its valuation the payments which were disguised by the Oystons on the basis that the First Respondent should have treated the Claimant in an equivalent manner in line with the Gentleman’s Agreement.

Commentary

The decision is a welcome one for minority shareholders in that it demonstrates the approach of the Courts when faced with a petition that a majority shareholder is abusing its powers to the detriment of a minority shareholder.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.