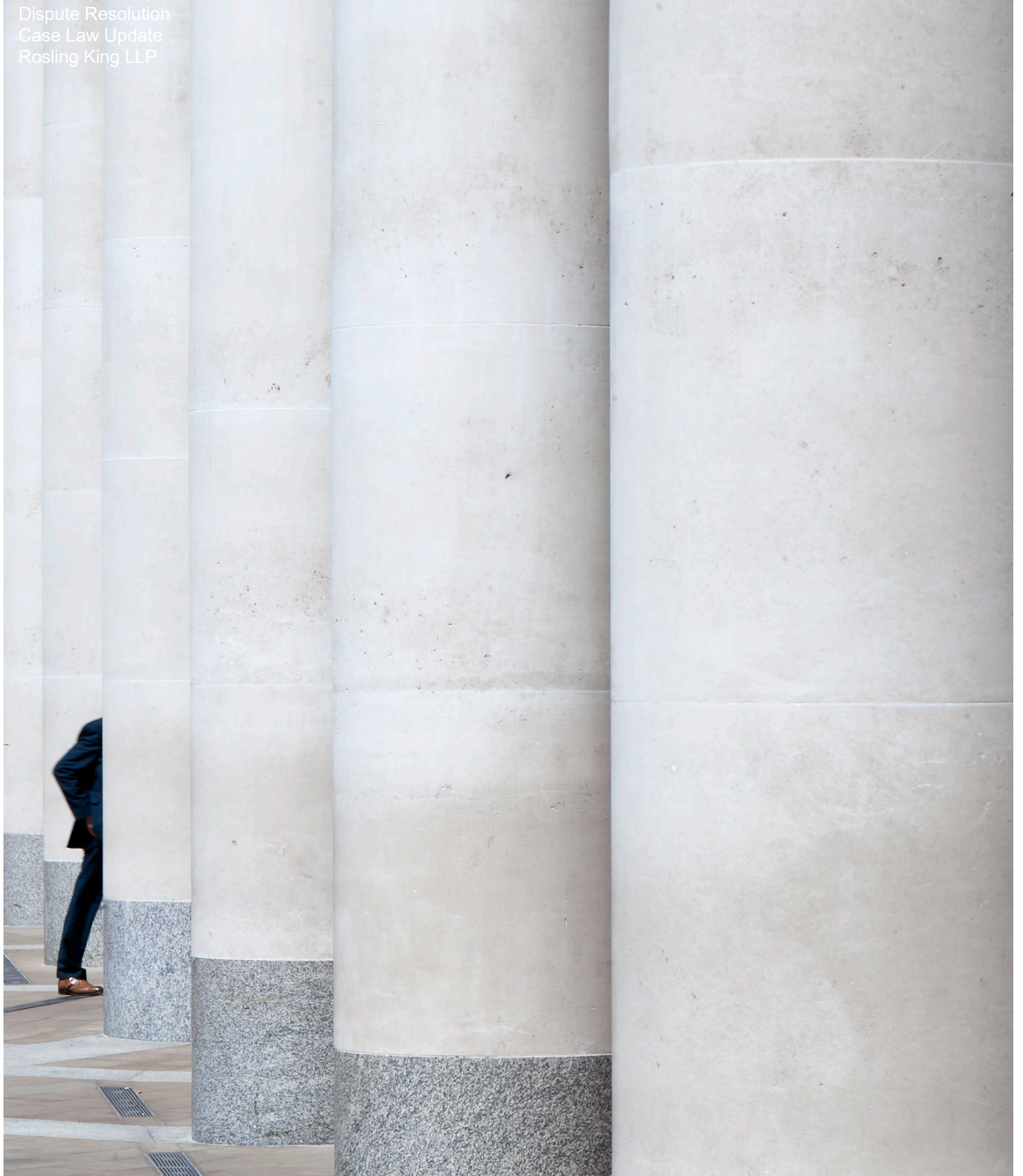




Dispute Resolution  
Case Law Update  
Rosling King LLP



### Background

The case concerns a dispute which arose between UTB LLC (“UTB”) and Sheffield United Ltd (“SUL”) in relation to the management and funding of Sheffield United Football Club. UTB and SUL were both shareholders in Blades Leisure Ltd (“Blades”) of which Sheffield United Football Club Ltd (“SUFC”) was a wholly owned subsidiary. SUFC owns and operates the football club Sheffield United. The principal individual behind SUL was Yorkshire businessman Kevin McCabe and the beneficial owner of UTB was HRH Prince Abdullah bin Mosaad bin Abdulaziz al Saud of Saudi Arabia.

The relationship between the parties began with an investment and shareholders’ agreement on the 30 August 2013 (“the ISA”). The ISA was made between Blades, SUFC, UTB, SUL and UTB and SUL’s guarantors. Under the terms of the ISA, UTB agreed to inject £10 million of capital over a period of two years in return for a 50% shareholding in Blades. It was the intention of Mr McCabe to eventually sell SUL’s remaining 50% share in Blades to UTB along with any remaining property assets. Provision was made in the ISA for UTB to purchase SUL’s shares on the condition that, when UTB gained a super-majority, they would have to purchase the remaining property assets from SUL. When SUFC began to face financial difficulty, disagreement arose in relation to further funding for the club. SUL believed that after the initial two years UTB would fund any deficit. However, UTB believed that after two years the funding deficit would be shared equally. Disagreement spawned further disagreement and soon both SUL and UTB were considering how to end their joint ownership of Blades under the ISA.

SUL acted first by serving a Call Option Notice on UTB, offering to buy UTB’s shareholding for £5 million. SUL did not realise that the call option, whilst it could be used to buy the other party out, also bore the risk that they themselves could be bought out by UTB. UTB did exactly that and, by serving a counternotice on SUL, elected to buy SUL’s shareholding at the same price. UTB sought to enforce the contract of sale and purchase of SUL’s shares at the price of £5 million that arose from service of the counternotice. SUL sought that the contract to be declared void or set aside and an order that UTB sell its shares to SUL at the current value.

SUL issued and served a petition under section 994 of the Companies Act 2006. The petition claimed relief in respect of conduct which allegedly unfairly prejudiced the interests of SUL as a shareholder of Blades.

### The Decision

SUL argued that UTB acted unlawfully and contrary to the terms of the ISA and its duty to act in good faith and in a manner unfairly prejudicial to the interests of SUL. The Court considered this issue separately to the section 994 unfair prejudice petition. SUL’s case was dependant on the existence of an implied obligation on UTB to act in good faith, fairly and openly towards SUL. There was no such express obligation in the ISA or in the articles of association.

SUL argued that the obligation arose because Blades was a quasi-partnership. If Blades was a quasi-partnership then the shareholders would owe each other equitable obligations of trust and confidence, openness and fair dealing, and of good faith, in the same way as partners of a partnership owe each other such duties. SUL alleged that UTB was only able to assert

contractual rights under the ISA by breaching obligations of good faith and therefore it was unconscionable for UTB to be allowed to rely on or enforce the contract of sale and purchase arising from the Call Option Notice and counternotice.

In order to establish a quasi-partnership, SUL would have to show that the shareholders intended to conduct their business affairs on the basis of mutual confidence and mutual duties of fidelity, trust and openness as opposed to the typical shareholder director corporate relationship.

It was clear from the case that there were numerous elements of Mr McCabe's and Prince Abdullah's relationship that were akin to that of a partnership to the extent that Prince Abdullah would refer to Mr McCabe as "partner". The important factor for the Court was that the corporate structure was still adhered to in the management and conduct of the company's affairs.

The Court ultimately rejected SUL's argument on the basis that the ISA contained an entire agreement clause. Mr Justice Fancourt helpfully went on to reason why, in absence of such a clause and despite SUL's submissions, he would still not have considered the company a quasi-partnership. The affairs of Blades were governed by its articles of association and the terms of the ISA. The rights and obligations of each of the shareholders were identified with care and in detail in the ISA. SUFC was managed by professional executives and management staff subject to the strategic control of directors appointed by SUL and UTB in accordance with the matters agreed in the ISA. The Court therefore rejected SUL's assertion that Blades was in fact a quasi-partnership.

SUL also pursued a section 994 unfair prejudice petition and sought an order that would entitle them to either buy all of UTB's shares in Blades or set aside the Call Option Notice. SUL alleged *inter alia* that UTB and Prince Abdullah concealed its intentions from, misled and took advantage of SUL and, therefore, conducted the affairs of Blades in a manner that was unfairly prejudicial to SUL's interests as a member of the company.

The Court found that nothing that UTB did in terms of concealing its intentions from SUL or misleading SUL amounted to management of the affairs of Blades. A shareholder is not entitled to complain about the way in which another shareholder exercises rights in relation to their shares unless it amounts to management of the company's affairs, as distinct from a shareholder's affairs. SUL made a mistake as to the motives of UTB, who took certain steps to take advantage of that mistake. The Court found that this impropriety had nothing to do with the management of the affairs of the company and so SUL had no right to complain.

In its judgment the Court also dismissed SUL's claims for breach of contract and conspiracy and consequently ordered specific performance of the contract for sale and purchase. SUL was forced to sell its 50% shareholding in Blades to UTB in accordance with the counternotice served in response to the Call Option Notice.

### Commentary

The Court's decision to disregard SUL's claim for quasi-partnership serves as a reminder of the limited circumstances in which the Court will make such a finding. If a clear corporate structure has been established, the Court is unlikely to permit this argument as a means of circumventing established company law principles. This is especially true where the relationship between the parties has been set out overtly as it was in the ISA.

In relation to the section 994 unfair prejudice petition, the Court's findings should act as a warning for those who are looking to raise fresh capital through the sale of equity. When considering equity finance, make sure to enter into carefully drafted investment and shareholders' agreements. Otherwise, any shareholder can frustrate your interests and take advantage of your mistakes so long their actions do not amount to management of the affairs of the company. Carefully drafted terms setting out both parties rights and obligations can help alleviate the risks should relationships sour.

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