

The Premier League, Covid-19, and Contractual Interpretation

24 February 2022

INTRODUCTION

In *The Football Association Premier League Ltd v PPLive Sports International Ltd* [2022] EWHC 38 (Comm), the High Court considered an application for summary judgment by the Football Association Premier League Ltd (the “**Premier League**”) in respect of debt claims against PPLive Sports International Ltd (“**PPL**”). The primary issue that fell to be determined was whether Covid-19-related measures implemented in the 2019/2020 Premier League season amounted to a “fundamental change” to “the format of the competition”.

BACKGROUND

In broad terms, PPL and the Premier League entered into two separate contracts whereby PPL obtained the rights to show three seasons of live and delayed Premier League football matches, and match clips, on television in mainland China and Macau (the “**Live Package Agreement**” or “**LPA**” and the “**Clips Package Agreement**” or “**CPA**”, respectively).

The sums to be paid to the Premier League under these agreements were considerable; payment under the LPA was to be US\$701 million and under the CPA was to be US\$8.02 million.

The first of the three football seasons under the LPA and CPA was the season that, in normal circumstances, would have run from August 2019 to June 2020. However, in light of the Covid-19 pandemic, the Premier League season of 2019/2020 was suspended from 13 March 2020 with the UK Government banning all public gatherings, including football matches on 23 March 2020 until 17 June 2020.

Under the agreements, PPL was due to pay to the Premier League two instalment payments: US \$210.3 million under the LPA on 1 March 2020; and US\$2.673 million under the CPA on 1 June 2020. However, PPL did not make either payment.

Notwithstanding PPL's non-payment, the Premier League continued to provide PPL with the relevant feeds of matches under the LPA and CPA for the remaining 92 matches of the 2019/2020 season that were played in June to July 2020.

On 20 August 2020, the Premier League suspended both agreements, and then on 3 September 2020 terminated both agreements.

On 3 September 2020, the Premier League commenced proceedings for the unpaid instalments, and on 9 April 2021, applied for summary judgment of their claims.

Key Terms of the LPA:¹

Under clause 12.1(d) of the LPA, the Premier League warranted that:

"...during the Term the format of the Competition will not undergo any fundamental change which would have a material adverse effect on the exercise of the Rights by the Licensee..."

Clause 12.1(d) also provided that if there was any such "fundamental change", then:

"...the Licensee shall be entitled to enter into a period of good faith negotiations with the Premier League in order to discuss a possible reduction of the Fees payable...in order to reflect the effect of that fundamental e change".

Summary Judgment—The Principles:

Under the Civil Procedure Rules Part 24.2, the Court may give summary judgment against a defendant where it considers that:

- the defendant has no real prospect of successfully defending the case; and
- there is no other compelling reason why the case should be disposed of at trial.

The Parties' Submissions

The Premier League argued that its two claims in debt for each of the instalments under the LPA and CPA, respectively were straightforward. The contractual due date for payment of the instalments had passed; the payments had not been made by PPL; this

¹ N.B. The Court noted that the CPA followed the wording and definitions of the LPA, and so the same result would flow under both agreements.

non-payment had been admitted by PPL; and PPL's defences were unsound. Thus, the Premier League asserted it was entitled to summary judgment on its claims.

In response, PPL submitted that "the format of the competition" had undergone a "fundamental change" due to the way the remaining matches were played, and argued that this had a "material adverse effect" on PPL's rights under the LPA. For example:

- matches were played in empty sports stadiums, without any fans present;
- the remaining 92 fixtures were condensed into a five-week period;
- a number of matches were re-scheduled from weekends to weekdays; and
- fixtures were scheduled to kick-off in the late evening (China Standard Time).

Thus, PPL contended that it had a real prospect of successfully defending the Premier League's claims. It argued that the Covid-19-related changes to the 2019/2020 Premier League season triggered clause 12.1(d) of the LPA, which would have entitled PPL to seek to negotiate a reduction of the fees payable.

JUDGMENT

The Court considered that the primary issue between the parties was whether the conditions under which the interrupted 2019/2020 Premier League season resumed in June 2020 amounted to a "fundamental change" to "the format of the competition", such that PPL could rely upon the terms of clause 12.1(d). The Court reasoned that if the changes could be so characterised, then it would have to consider whether such changes had a "material adverse effect" on the exercise of PPL's rights. Importantly, the Court considered that the former point was suitable for summary determination, whilst the latter point was not, and would require a trial.

Firstly, the Court found that there was no doubt that there were significant changes made by the Premier League to how the remaining matches of the 2019/2020 season were played. However, the Court noted that English contract law does not require, or expect, contracts to be rewritten simply because events transpire differently to what is expected, as "*this would lead to confusion and indeed chaos.*"

Second, the Court highlighted that construing a contract is a "*unitary exercise [which] involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated.*"²

On this basis, the Court held that "the format of the competition" did not include kick off times, the days when matches were played, or whether there were any fans. Instead,

² Citing *Wood v Capital Insurance Services Ltd* [2017] UKSC at [12] per Lord Hodge JSC.

it referred to the way the competition was undertaken between the teams, e.g., how many times they played one another; how many points were awarded for various results; whether they played at “home” or “away”; and how the league table was organised.

The Court held that this conclusion was clear from the terms of the contract itself, which provided that two examples of “fundamental change” were (i) a reduction in the number of clubs and (ii) the competition ceasing to be the premier league competition played between professional football clubs in England and Wales.

The Court also found this consistent with the Premier League Rules (known by both parties), which set out rules in relation to the “League Competition” (including rules regarding points and goal differences), but said nothing about the scheduling of matches at particular dates, times or frequencies.

Finally, the Court held that this conclusion also made commercial sense, as it would be strange if PPL were to be given a veto over when and how matches were played.

Thus, the Court granted the Premier League summary judgment on its claims for US\$212.973 million in respect of the outstanding licence fee instalments.

GOING FORWARD

Covid-19-related disruptions alone are not sufficient to absolve parties of their contractual obligations where the particular disruption caused does not directly effect those contractual obligations.

It is important for parties to draft force majeure clauses that appropriately reflect their risk and cover all the events and circumstances in which they would want to invoke the clause.

As ever, contractual terms remain of foremost importance—the “contract is king”.

This case also serves as a prime example of the cost and time savings a well-considered summary judgment application can achieve for parties it took just over nine months from issue of the application to judgment being delivered.

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Please do not hesitate to contact us with any questions.

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