

**Article written by Angela Paschalides, Candidate Attorney, checked by Michal Asoulin, Associate at Schindlers Attorneys, and released by Charlotte Clarke (Solicitor of England and Wales).**

22 September 2021

## **Background**

The High Court of Justice of England and Wales (Commercial Court, Business and Property Courts) (the “**Court**”) heard an application by Manchester City Football Club Limited (the “**Claimant**”) regarding the publication of a judgment handed down by the Court in relation to arbitration proceedings (the “**Application**”).

In terms of the arbitration, the Football Association Premier League Limited (the “**Defendant**”) brought a claim that, in terms of the rules of the Football Association Premier League Limited (the “**Rules**”), the Claimant was contractually obligated to disclose certain documents and information as was requested by the Defendant, which documents and information related to an ongoing investigation being conducted by the Defendant into the Claimant’s affairs. The Claimant then applied for the removal of the arbitrators in terms of section 24 of the Arbitration Act, 1996, which application was dismissed by the Court (the “**Merits Judgment**”). The Application itself, was concerned with whether the Merits Judgment should either remain confidential or be published by the Court.

It was noted by the Court that both the Claimant and the Defendant were opposed to the publication of the Merits Judgment. The Claimant submitted that the Merits Judgment should not be published due to certain “significant confidential information” contained therein and specifically that:

- i. publication would reveal the existence of a dispute between the [Claimant] and the [Defendant] regarding the latter’s requests for documents and information (i.e., the dispute forming the subject matter of the arbitration); and*
- ii. publication would also disclose confidential and sensitive matters relating to the ongoing investigation by the [Defendant] into the [Claimant’s] potential breaches of the Rules (to which the arbitration relates).*

Despite the fact that it did not need to establish that it would suffer detriment as a result of the publication, the Claimant submitted further that:

*i. public comment and press speculation will be prejudicial to the ongoing investigation and related proceedings; and*

*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.*

The Defendant supported the Claimant's opposition and did not advance further reasons against publication.

### **Court Held**

The Court considered the following key principles as set out in the case of *City of Moscow v Bankers Trust Co* [2004] EWCA Civ 314; [2005] QB 207:

*i. whatever the starting point or actual position during a hearing, it is, although clearly relevant, not determinative of the correct approach to the publication of the resulting judgment;*

*ii. any judgment should be given in public, where this can be done without disclosing significant confidential information; and*

*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.*

In accordance with the above principles, the Court set out to answer the following two questions in order to arrive at a decision.

#### **1. Would publication lead to disclosure of “significant confidential information”?**

The Court found that the “existence of a dispute” concerning the Defendant's request for documents and information did not constitute significant confidential information. Further, that the Merits Judgment did not contain any significant details relating to the substance of the dispute, including the nature and/or significance of the documents and information.

**2. Would publication result in real prejudice or significant detriment to the Claimant?**

The Court held that, despite the fact that publication of the Merits Judgment might attract media interest, it was difficult to determine any real detriment or prejudice from disclosure of the existence of a dispute.

Accordingly, the Court concluded that “[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 ... 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.”

Based on this consideration, the Court held that the desirability of public scrutiny and the administration of justice being made transparent, outweighs the competing considerations advanced by the Claimant and thus ordered that the Merits Judgment should be published.

**Value**

This decision confirms the position in English law that any judgment should be made public in order to ensure public scrutiny and the transparent administration of justice, provided that this can be done without disclosing significant confidential information.