**Contractual terms prevail in dispute over football television rights during the coronavirus pandemic (Football Association Premier League v PPLive Sports International Ltd)**

–Commercial analysis: The coronavirus pandemic has interfered with nearly all aspects of business life to one degree or another. One such interference was especially felt in respect of Premiership football fixtures. The case under consideration examined how the disruption because of the pandemic affected a contract for television rights. In the context of a summary judgment application the Court considered, in particular, the interpretation of the words ‘fundamental change, ’the format of the competition’ and ‘material adverse effect’. Other issues including advance payments, penalties, unjust enrichment and force majeure were also considered. Written by Fred Philpott, barrister at Gough Street Chambers.

*Football Association Premier League Ltd v PPLive Sports International Ltd (a company incorporated in Hong Kong SAR)* [2022] EWHC 38 (Comm)

**What are the practical implications of this case?**

The practical implications of the case are stark. A party entered into a contract whereby it was granted football TV rights for significant sums of money. However, its ability to receive the content was severely disrupted. Perhaps understandably, the business which contracted to pay this substantial amount of money was unwilling to do so when the content it hoped to be able to show on TV was unavailable to the extent of not existing at all for a significant period of time. It is likely that many disputes may arise outside of the context of TV rights where COVID-19 restrictions interfered with the performance of a contract.

**What was the background?**

PPLive Sports, a Hong Kong company (PPL), agreed with the FA Premier League to buy rights to show matches. There were two principal contracts: the live package agreement for a sum of US$701m; and a clips package agreement (which covered match highlights) for US$8.2m. PPL were granted rights to broadcast the matches in the People’s Republic of China and Macau. In March 2020 the UK government banned all public gatherings including professional association football matches. In April 2020 the Premier League formally suspended the 2019/2020 season and when it resumed in June 2020 it was under very different conditions, including matches being played in empty stadiums. Following these restrictions on Premiership games PPL declined to pay the instalments due. The Premier League terminated the agreements in September 2020 for non-payment and sought summary judgment for £212m. .A number of defences were raised but the principal one was that PPL relied upon a warranty that the format of the competition would not undergo any ‘fundamental change which would have a material adverse effect’ on the exercise of the rights by them. In the event of such fundamental change PPL would be entitled, under the contract, to enter into good faith negotiations with the Premier League to discuss a possible reduction in the licence fees. There were other subsidiary defences, including unjust enrichment, apportionment of the fees paid in advance and that the fees constituted a penalty.

**What did the Court decide?**

In respect of the main question the court considered the construction of the agreements. ‘Fundamental change’ was expressly provided for in the agreements and the court concluded that, on the basis of that provision, there had been no change to the format of the competition, still less a fundamental one. It was said that the competition consisted of a number of matters such as the fixture list, the ’season’, and the ’PL Preview Programme. PPL argued that the changes imposed on the resumed fixtures in June 2020 were changes to the format of the competition but the judge did not agree. They remain unchanged. Whether the fans are there, or not, does not affect the ‘format of the Competition’. The judge said:

‘Without embarking upon any form of analysis of the psychology of crowds, it might affect the result—playing at home is seen as an advantage generally—but that is not the same as affecting the format of the competition’.

When considering the proper construction of ’fundamental change’, ’format of the competition’ and material adverse effect’, the court said the starting point is the words the parties have used but these are not focused upon to the exclusion of the factual matrix, or the context in which the agreement was reached. Construing a contract is a unitary exercise which involves an iterative process by which the contract and its commercial consequences are investigated (see *Wood v Capita Insurance Services Ltd* [2017] UKSC 24). All the elements of the format of the competition (such as how many points are awarded for different results) were unchanged.

In respect of the other defences, the court held that the principle of unjust enrichment could not be used to override an express contractual obligation.

PPL submitted that the fees were advance payments and should be apportioned either to individual matches or seasons. They argued that any other construction would mean they would have overpaid by having paid in excess of one third of the total fee but only broadcast one season out of three and so they were entitled to a restitutionary counterclaim. The court held that was not sustainable. The contract was clear that the fees were not advance payments and the parties had not agreed to apportion them. The court referred to *Dargamo Holdings Ltd v Avonwick Holdings Ltd* [2021] EWCA Civ 1149 which authoritively stated the relationship between restitutionary claims and contract. This made it clear that a payee cannot be unjustly enriched if they were entitled to receive the sum paid to them (referred to as an ‘obligation rule’). There is no scope for the law of unjust enrichment to intervene by reference to a basis which directly contradicts contractual terms. There was no unjust factor in the Premier League attempting to hold PPL to the contractual bargain.

As regards penalties it was held that the legitimate interest of the Premier League included being paid the sums for the rights even if the rule against penalties could apply. There was no unconscionable conduct or abuse by the Premier League of any of its legal rights for purposes other than that for which they were conferred.

It had been accepted that the coronavirus pandemic was not a force majeure event. The fact that the claim resulted in a ’huge impact’ on the Chinese sports market and the investment in time and money by PPL historically to promote and increase the profile of the Premier League was not a relevant consideration.

**Case details**

* Court: Commercial Court (QB), Business and Property Courts, High Court of Justice
* Judge: Mr Justice Fraser
* Date of judgment: 11 January 2022

Fred Philpott is a barrister at Gough Street Chambers. If you have any questions about membership of LexisPSL’s Case Analysis Expert Panels, please contact caseanalysiscommissioning@lexisnexis.co.uk.