Mauro Milanese v Leyton Orient Football Club Limited

Case No: HQ15X03460

High Court of Justice Queen's Bench Division

26 May 2016

[2016] EWHC 1161 (QB)

2016 WL 02996983

Before: Mrs Justice Whipple

Date: 26/05/2016

Hearing dates: 8, 9, 10, 14, 15, 16 and 17 March 2016

Representation

Mr Tom Croxford and Mr Nick De Marco (instructed by Centrefield LLP) for the Claimant.

Mr Caspar Glyn QC (instructed by Mishcon de Reya LLP) for the Defendant.

Judgment

Mrs Justice Whipple:

I. Introduction

1 The Claimant was the Director of Football of the Defendant football club from 10 July 2014 until his dismissal on 26 January 2015. The Claimant claims the sums specified in his contract of employment (the "Contract") as falling due on termination without notice. In the alternative, he claims damages for wrongful termination. He also claims for salary, expenses and accrued holiday pay due at the date of dismissal.

2 The Defendant denies the claim. The Defendant contends that it was entitled to dismiss the Claimant summarily. The Defendant wrote to the Claimant on 26 January 2015 saying he was dismissed with immediate effect " *as a consequence of serious misconduct by you that have brought the Club into an unbearable situation, as well as the breaking by you of the good faith principle underlying the employment contract*" . No explanation was given in that letter or at that time.

3 The Defendant now contends that its reason for dismissing the Claimant, at that time, was the discovery of the Claimant's overspending on players and failure to admit to that overspending when questioned. When the Defendant entered its defence, coupled with an extensive counter claim, the Defendant expanded the grounds for summary dismissal far beyond allegations of overspending, to include the following additional grounds for summary dismissal (many of which were the product of a retrospective examination of various aspects of the Claimant's employment undertaken after his departure: this is a case where the Defendant relies on the principle in *Boston Deep Sea Fishing and Ice Company v Ansell (1888) 39 Ch D 339* , that an employer can dismiss summarily for gross misconduct which was only discovered in retrospect).

4 Thus the issues raised by the Defendant as justifying summary dismissal can be listed under the following headings (set out in roughly chronological order) noting that some of these allegations overlap in time:

i) errors by the Claimant in connection with the transfer of a player named Shane Lowry

("Lowry"),

ii) errors by the Claimant in connection with the transfer of Darius Henderson ("Henderson"),

iii) impropriety in setting up a business called Liberty Italia Ltd ("Liberty Italia"),

iv) failings in relation to the handling of a talented young Academy Player (the "Child"),

v) impropriety including accepting a secret profit in connection with the transfer of the player Andrea Dossena ("Dossena"), and

vi) overspending on players ("Club Overspending").

5 Accordingly, there are a total of six issues advanced by the Defendant to justify summary dismissal (within the pleading, these were sub-divided into 27 separate allegations). Based on these allegations of misconduct by the Claimant, the Defendant advanced a counterclaim for substantial sums, arguing that the Claimant owed and had breached fiduciary duties owed to the Defendant and should now be required to return money had and received by the Claimant, and meet other claims.

6 The Claimant denied wrongdoing in any and all of the ways now relied on by the Defendant. The Claimant maintained his claims; he denied the counterclaim.

7 This summary of the litigation history reveals a rather unhappy situation. The key features of the Defendant's case only came to be disclosed to the Claimant, for the first time, in pleadings lodged at Court, then developed through witness statements lodged by the Defendant. The Claimant had no idea of the case that would be advanced against him when he embarked on his claim. That is very unfortunate. I would consider it a matter of basic fairness in an employment context that an employee should be told the reasons for his dismissal at the time of his dismissal, and, if further reasons subsequently come to light, of those other reasons too, without having to wait to see the Defence to his claim.

8 After setting out a number of preliminary points, I shall examine each of the six issues relied upon by the Defendant to justify summary dismissal, before turning to the counterclaim.

9 In this judgment, I shall quote from a number of emails and other documents. Many of those documents were originally in Italian. I quote from the translations which were provided to the Court.

II. Preliminaries

Service Agreement

10 By a Service Agreement dated 10 July 2014, the Defendant (named in that agreement as the "Club") employed the Claimant (named in that agreement as the "Director of Football") as its sporting director and caretaker manager on terms set out in the agreement. The term of the agreement was one year, from 1 July 2014 to 30 June 2015. The Claimant's Job Title was as follows:

> "The Director of Football will provide his services to the Club as sporting director and caretaker manager of the First Team and of the Youth Team subject to the terms of this Agreement…"

11 His remuneration was set out at clause 5, which cross referred to Schedule 1 . Schedule 1

provided for a basic net salary, together with a performance related bonus if the Defendant was promoted from the Football League 1 (where it was playing in the 2014/15 season) to the Championship, but that such bonus would only be payable if the Defendant was an employee at the end of the season when promotion occurred. It provided for the Claimant to have a mobile phone and accommodation at the Defendant's expense.

12 By clause 7, the Claimant was obliged to devote all his time to his employment. That clause provided:

> "Subject to the provisions of this Agreement, the Director of Football will not during the Employment without the prior written consent of the Board or the Supervisor (which shall not be unreasonably withheld or delayed) be engaged, concerned or interested in any business or undertaking whatsoever (whether paid or unpaid) other than the business of the Club (except as the owner for investment of shares or other securities quoted on a public stock exchange and not exceeding 5% of the total issued shares of any company)."

13 By clause 8, the Claimant's duties and obligations were described. Specifically, the agreement provided as follows:

> "8.3. The Director of Football shall have responsibilities towards staff recruitment, in transfers and contracts (incoming/outgoing and renewals) in scouting and youth recruitment. In particular:
>
> • Responsibilities towards staff recruitment – The Director of Football shall be responsible for handling staff recruitments, such as hiring and firing the First Team manager, the Head of youth development, the chief scout and other backroom staff (coaches and physiotherapists).
>
> • Responsibilities in transfers and contracts – The Director of Football shall be responsible for handling transfers and contract negotiations, such as:
>
> # In relation to transfers (incoming), finding and making offer for youth players for the future, handling new signing contract negotiations for players in the First Team, handling new signing contract negotiations for players in the Youth Team, finalizing the First Team signings, finalizing signings for young players for the future.
>
> # In relation to transfers (outgoing), finding new club for First Team players listed for transfer/loan and finding a new club for Youth Team players listed for transfer/loan.
>
> # In relation to contract renewals, deciding which First Team players' contracts to extend and handling contract negotiations, as well as deciding which Youth Team players' contracts to extend and handling contract negotiations.
>
> • Responsibilities in scouting and youth recruitment – The Director of Football shall be responsible for hiring staff for scouting and recruiting and for supervising their activities, including setting arrangements for the scouting team, receiving updates on the players scouts have found, bringing youth players into the club and monitoring their developments.
>
> Such responsibilities will be exercised by the Director of Football in a way that the Supervisor or the Board maintains the power to approve, or in any event have an involvement into, the single decisions.
>
> 8.4. The Director of Football shall at all material times observe and be subject to the relevant Football Association Rules and Regulations and either the Football League Rules or the Premier League Rules (dependent on the rules which apply to the league in which the First Team play at the relevant time)."

14 The duties and responsibilities were set out at clause 9, and prohibited the Defendant from appointing anyone else to have responsibility for signing, selecting or negotiating transfers of

players without first consulting the Claimant and in good faith.

15 The agreement could be terminated with immediate effect on written notice under clause 10, which provided as follows:

> "10.1. The Club shall be entitled to dismiss the Director of Football at any time with immediate effect on written notice if the Director of Football:
>
> (a) commits an act of gross misconduct being, isconduct regarded by the Club as being so serious that it justifies instant dismissal, including but not limited to:
>
> (i) conviction for a criminal offence which results in a custodial sentence other than an offence which in the reasonable opinion of the Board does not materially affect the Employment;
>
> (ii) serious incapacity to perform his duties due to abuse of drugs or excessive consumption of alcohol;
>
> (iii) theft;
>
> (iv) unauthorised possession of property of the Club or causing malicious damage intentionally to the Club's property or the property of employees, members or members of the public;
>
> (v) serious insubordination or conduct that has brought the Club or the game into serious disrepute; or
>
> (b) ceases to be entitled to work in the United Kingdom in accordance with the provisions of Section 15 of the Immigration, Asylum and Nationality Act 2006 ."

Clause 10.2 gave the Claimant a right to terminate without notice in the event that the Defendant was in serious or material breach, and clause 10.3 permitted the Claimant to terminate on one week's notice in the event that the ownership of the club changed.

16 Termination by the club was permitted, on notice, by clause 10.4 which provided as follows:

> "(A) In the event that the Club wishes to terminate this Agreement, otherwise than under clause 10.1 to 10.3, it must:
>
> (a) give written notification of termination to the Director of Football; and
>
> (b) pay to the Director of Football an amount of compensation equal to the Director of Football's basic annual Salary net of any deductions for income tax and National Insurance Contributions (as appropriate), and not being subject to any duty of the Director of Football to mitigate any loss which the Director of Football may have suffered as a result of the termination of this Agreement pursuant to this Clause 10.4, such amount to be paid within 14 days of giving written notice under (a) above."

The Claimant had reciprocal rights to terminate on notice:

> "(B) In the event that the Director of Football wishes to leave the Club in order to take up employment with another football club (the "New Club"), then the Director of Football may do so without being in breach of this Agreement if:

(a) the Director of Football gives written notification of termination to the Club; and

(b) the New Club pays to the Club an amount of compensation equal to the Director of Football's basic annual Salary, gross of any deductions for income tax and National Insurance Contributions (as appropriate), such amount to be paid within 14 days of giving written notice under (a) above."

Those provisions were supplemented by clause 10.5 in the following terms:

"For the avoidance of doubt the parties agree that the compensation set out in Clause 10.4 above constitutes a genuine pre-estimate of the Other Party's loss as a result of such early termination of this Agreement by the Terminating Party."

17 The agreement contained reference to the Defendant's disciplinary, dismissal and grievance procedures at clause 11. Provision for holidays and sick pay was contained at clauses 12 and 13 respectively. Both parties were under an obligation to respect the confidentiality of any information belonging to the other party by clause 14.

Football Regulations

18 The Defendant is subject to regulations issued by the Football Association. The Football Agents Regulations 2014-15 were in place at the time of the events complained of, now superseded by the FA Regulations on Working with Intermediaries introduced in April 2015). The following provisions are relevant to this case:

"A. General

1. A Player or Club must not at any time use the services of, or seek to use the services of, pay, or seek to pay, either directly or indirectly, an Unauthorised Agent in relation to any Agency Activity.

2. A Player or Club may retain only the services of an Authorised Agent or Exempt Solicitor in relation to any Agency Activity, or represent themselves.

3. A Player or Club must take all reasonable steps to satisfy themselves that any person carrying out or seeking to carry out any Agency Activity, whether directly or indirectly, is an Authorised Agent or Exempt Solicitor and is entitled to act under a valid Representation Contract or Exempt Solicitor Terms of Representation.

…

C. Dual Representation & Conflicts of Interest

1. An Authorised Agent may only act for one party to a Transaction or Contract Negotiation save where the Authorised Agent and other relevant parties comply in full with the requirements of the process regarding player consent set out at Regulations C4 and C5.

2. A Club, Player or Authorised Agent must not so arrange matters as to conceal or misrepresent the reality and/or substance of any matters in relation to a Transaction or Contract Negotiation.

…

F. Requirement to Inform the Association of the Identity and Role of an Agent, and Details of Remuneration

1. An Authorised Agent, Club and Player must ensure that the name, signature and licence or registration number of each and every Authorised Agent or Exempt Solicitor carrying out any Agency Activity in relation to a Transaction or Contract Negotiation

(whether directly or indirectly) is shown on all relevant contracts and documents as is required from time to time. This must include the name of the client, the name of any Organisation with which an Authorised Agent is associated, a description of the services provided, and all remuneration arrangements, including any remuneration paid or due to be paid to each and every person involved in the Transaction or Contract Negotiation. This obligation applies to any person who has carried out any Agency Activity in any part of a Transaction or Contract Negotiation (including where any duties or services or responsibilities are assigned or subcontracted).

…

G. Remuneration

1. An Authorised Agent or Exempt Solicitor may be remunerated by the Club or the Player for whom he acts.

…

3. An Authorised Agent must not make, or seek to make, any payments of any kind, either directly or indirectly, to any Club, Club Official, Manager or Player as a result of a Transaction or Contract Negotiation.

…

Remuneration of an Authorised Agent / Exempt Solicitor Acting for a Player

5. Where an Authorised Agent undertakes Agency Activity for a Player, the Player may discharge his obligations to pay the Authorised Agent as specified in the Representation Contract between them in one, or more, of the following ways only:

(a) The Player may pay the Authorised Agent directly; and/or

(b) The Player may request in writing, and the Player's Club may agree, that the Club makes a genuine deduction in periodic instalments from his net salary in favour of the Authorised Agent, so that the sums are deducted and paid in discharge of the Player's obligation to the Authorised Agent contained in the relevant Representation Contract; and/or

(c) The Player may request, and the Player's Club may agree, that the Club discharges the Player's liability towards his Authorised Agent, as contained in the relevant Representation Contract, on the Player's behalf as a taxable benefit, provided always that:

(i) The Player and the Club fulfil the relevant requirements of tax law in relation to such payment(s); and

(ii) The payments are made through The Association in accordance with Regulation G10.

…

H. Authorised Agents

…

16. An Authorised Agent must not, either directly or indirectly, make any approach to, or enter into any agreement with, a Player in relation to any Agency Activity before the 1st day in January of the year of the Player's sixteenth birthday, save with the prior written consent of The Association (requested in accordance with Regulations K10 — K12 below), which shall consider such matter only upon the written application of the Authorised Agent and the Player. For the avoidance of doubt Registered Close Relations are not subject to the prohibition set out in this Regulation.

17. An Authorised Agent cannot enter into a Representation Contract with a Player under the age of eighteen years of age unless it is countersigned by the Player's parent or legal guardian with parental responsibility.

18. An Authorised Agent must not charge or receive any fee or commission or payment or remuneration of any kind, either directly or indirectly, as a result of introducing a Player who is under 16 or still in full-time education to a Club.

…"

19 The Defendant is also subject to the rules of the Football League, including the Youth Development Rules. The League produced a "Players' and Parents' Guide" for the 2013/14 season. That guide included the following:

"Termination of Registration

During a period of registration you may only be released from the club if all parties are in agreement to a cancellation (i.e. club and player/parent). The termination is recorded in either form YD7 (without compensation) or Form YD10 (with compensation).

There are procedures in place to allow either the club or player/parent to make an application to the League to terminate a registration. Please refer to youth development rules 242-245 in the appendix.

Contact with Other Clubs

Throughout your period of registration with your club (including the initial seven day registration process) you are not permitted to approach other clubs. Likewise, other clubs are not permitted to either directly or indirectly make an approach to or communicate with you or any person connected with you (e.g. family and friends) unless this has been agreed with your current club in advance. This is an important feature of the Academy system and is core to the respect that players, parents and clubs need to have for each other.

Agents

What is an agent? An agent is a person who directly or indirectly represents, negotiates on behalf of, or is engaged by, advises or otherwise acts for a club or a player.

Football Association rules do not permit agents to approach or offer representation to any child before 1st January in the year of their 16th birthday or the year in which they finish full time education (whichever is later).

Even when you reach the age when agents are permitted to have a representation contract with you, you should be extremely careful. You are advised to take independent legal advice before entering into a representation contract with an agent. Furthermore, you are encouraged to make early contact with the Professional Footballers Association (PFA). The PFA is the union for professional footballers in England and Wales and it exists to protect, improve and negotiate the conditions, rights and status of all professional and scholarship players.

If you are concerned about the behaviour of an agent you should contact your club's Designated Safeguarding Officer immediately."

Defendant's Management Structure and Personnel

20 The Defendant club, after a long period of ownership by Matchroom Sport Ltd, was purchased in July 2014 by Mr Francesco Becchetti, an Italian with media interests in Albania and other places. Mr Becchetti appointed Alessandro Angelieri as chief executive of the Defendant club. Neither Mr Becchetti nor Mr Angelieri, at that time, had experience in running or managing a football club, and neither spoke good English.

21 Mr Becchetti invited the Claimant to become the Defendant's Director of Football. The Claimant had long experience in the football industry, and spoke both English and Italian. The Claimant had previously been a professional football player and had played for clubs in the Italian Serie A as well as clubs in the English premier league (he had played for Queen's Park Rangers, for example, some years earlier). The Claimant had retired as a player in 2009 and had then moved into football management in Italy. From June 2011 to July 2014, the Claimant had been director of football at FC Varese which played in the Italian Serie B. This was the Claimant's first job in football management in the UK.

22 The new management team also included Luca Formica, an associate of Mr Becchetti's, who appears to have had an informal role in assisting Mr Becchetti and Mr Angelieri.

23 The outgoing management team was headed by Matthew Porter, a director of Matchroom Sport, who had been CEO of the Defendant for many years. Mr Porter stepped down as CEO when Mr Becchetti took control in July 2014, but he remained a non-executive director of the Defendant until 1 October 2014. During that handover period, Mr Porter was the only authorised Football League signatory working at the club, and therefore he had to sign all the paperwork which was required to be filed by FA Rules or League Regulations.

24 The club's manager when Mr Becchetti took over was Russell Slade. He remained the manager under the new owners (at least until September 2014 when he left). Mr Slade had achieved considerable success in the 2013/14 season. Under the outgoing management, he had worked closely with Mr Porter in negotiating and finalising player transfers. The new management introduced the Claimant to the senior management team as Director of Football, a role which had not previously existed. When Mr Slade left, Kevin Nugent was appointed for a short time as manager. But in October 2014, the Claimant himself became the caretaker manager, a job he held until December 2014 when Fabio Liverani took over as manager until the Claimant left the Defendant's employment in January 2015.

25 The management of the Defendant's academy, for junior players, remained unchanged following the change of ownership of the Defendant and throughout the Claimant's employment: Andy Edwards was the Academy Director supported by Richard Thomas as Academy Manager.

III. Wrongful Dismissal

Gross Misconduct under the Service Agreement

26 I have set out the relevant contractual terms above. I agree with Mr Croxford that clause 10.1 of the Service Agreement must be construed objectively. So, for the summary dismissal provisions to operate, it must be reasonable for an employer to regard the misconduct as " *so serious"* that summary dismissal can be justified; the fact that the Defendant alone regarded that conduct as sufficiently serious would be insufficient, if that belief was unreasonable or objectively unjustified. This is only to give business efficacy to the contract and reflect what the parties doubtless intended by it.

27 I also agree that dismissal without notice is only permitted under the contract in circumstances which, if not falling within one of the five examples of misconduct specified within clause 10.1, is of a similar degree of seriousness. The threshold is set high, deliberately. Seriousness must of course be assessed in context, taking all aspects of the employment, the contract, and the particular alleged breach into account.

Implied Terms

28 In addition to the express contractual terms, the Claimant was subject to the ordinary implied terms, including the duty to act in a manner consistent with mutual trust and confidence, and to observe fidelity, loyalty and good faith in dealings with his employer.

29 There is a dispute as to whether, in addition to the contractual terms (express and implied), the Claimant owed fiduciary duties to the Defendant. I shall come to that below.

The Defendant's Grounds for Summary Dismissal

30 The claim for wrongful dismissal is resisted by the Defendant on the basis of the six issues outlined in the Defence, any one of which (it is argued) would justify summary dismissal. I now turn to those grounds.

Lowry

31 The earliest issue relied on by the Defendant as justifying summary dismissal is the Claimant's involvement in the transfer of Shane Lowry in July 2014. This story starts on the first day of the Claimant's employment with the Defendant, on 16 July 2014. (Although the agreement commencement date was 1 July 2014, it is clear that the Claimant in fact only started work later that month.) The essence of the Defendant's complaint is that the Claimant negotiated the transfer of this player including a signing on fee, which he should not have done; further, the Claimant lied about that signing on fee when he was asked about it. The Claimant says that he had nothing to do with the agreement for the signing on fee, that he did not negotiate or approve this transfer which was the responsibility of Mr Porter, and anyway, any problems with the terms of the transfer were rectified by an amended agreement signed a few days later (which did not include a signing on fee).

32 The evidential trail begins with an email from Mr Lowry's agent, James Featherstone, to Mr Porter, dated 16 July 2014, which listed proposed terms for transfer of the player, including a proposed signing on fee of £25,000 per season, and agent's fees of 10% of guaranteed remuneration for each year of the contract. That email was forwarded by Mr Porter to the Claimant on 16 July 2014, with Mr Porter adding a note saying " *I think you can get the signing on fee down by £5k and the agent fee down as well…maybe £7.5%".* The transfer was signed on 18 July 2014. I have not seen signed copies of the documents, but the unsigned copies show a signing on fee of £40,000 (£20,000 per season) with a weekly wage of £3,500 payable to the player for the first season rising to £3,750 in the next season; Mr Featherstone was recorded as acting for the club.

33 On 28 July 2014, Mr Angelieri was asked to approve a number of payments. He queried the sign on fee for Lowry. Mr Angelieri looked at the Lowry contract which he forwarded by email to Mr Becchetti and the Claimant, saying:

> "When they signed (Matt [Porter] I presume) agreed a fee of £40,000 however nobody authorised it (neither Mauro, myself, Luca nor Francesco I presume). It's an amount that doesn't go unnoticed. Don't want to be mean but something fishy is going on between Russell and Matt."

34 Mr Becchetti queried whether the payment had been authorised by the Claimant, and the Claimant emailed him to say:

> "I didn't know about any signing on fee, that'll be why Matt [Porter] was in a rush that day. I always ask the President…"

35 Mr Becchetti directed that the payment should be withheld and the contract renegotiated. Revised terms were agreed which did not include any signing on fee, but increased the player's remuneration to £3,800 per week for the current season, rising to £4,050 for the next season. Mr Featherstone was still named as the club's agent.

36 At the heart of this issue, lies the disputed matter of fact, as to how the original contract, including the signing on fee, came to be signed. The Defendant says that the terms, including the signing on fee, were expressly authorised by the Claimant, and the mistake was his. The Claimant denies that he gave that authorisation, and he contends that the mistake was someone else's. Critical to the resolution of this issue is the evidence of Lindsay Martin, the Defendant's long-standing Club Secretary. She explains in her witness statement that her role involves:

> "….undertaking or delegating all of the administrative duties that facilitate the smooth running of the Club. I am also the official contact between the Club and the football bodies including the Football Association, and the Football League. My main duties include dealing with fixtures, handling all correspondence to / from the Club, maintaining

> Club records and managing the administrative side of the player contracts and transfers (including the transfer documentation)."

She sets out in her witness statement, and confirmed to me, that her standard practice was to prepare the transfer documentation based on information that she was given, and she would then provide draft copies for review by the person responsible for negotiating the particular transfer on behalf of the club before signing was arranged. The transfer documentation comprises a number of documents: the Football League Agent Declaration Form (AG1), the Contract Form relating to the Player (Form 13a), the Registration Form and Bonus Schedule for the Player, and the Representation Contract for the Agent where applicable.

37 Ms Martin told me that in this case she had started to prepare the Lowry transfer documents on the basis of an email forwarded to her by Mr Featherstone, a football agent involved in the transfer. When the Claimant arrived at work, Ms Martin said that she showed him a copy of this email, and that he put a tick by those terms he agreed and a cross by those he did not; he had ticked the term relating to the signing on fee. Ms Martin drew up the transfer documents and contract, and included the £40,000 signing on fee at Schedule 2 of the player contract. She gave the draft documents, including the player contract, to the Claimant for him to approve; he did approve it, because he gave it to the player to sign. Mr Porter signed the contract later, as the club's authorised signatory. When Ms Martin had gathered, a few days later, that there was a problem with the signing on fee, she had asked the Claimant about it. She says that the Claimant said to her that he had insisted that she should take this out of the contract; but she was quite clear in her witness statement and in her evidence to me that the Claimant had never so insisted, and that she would not have included the signing on fee in the contract unless that had been approved and instructed by him, at the time.

38 Mr Porter's evidence corroborates Ms Martin's evidence. While he was CEO, he gave the information to Ms Martin to enable her to draw up the documentation, but she was not involved in negotiations, which he or Mr Slade would conduct for the club. After the Claimant's arrival at the club, Mr Porter told me that he was not involved in negotiating any transfers and, specifically, he did not negotiate this transfer.

39 I am perfectly satisfied that Ms Martin's version of events is truthful and I accept it. Ms Martin was an impressive witness. She had a good recollection of these events (and indeed other events about which she was questioned). She was very clear about her role, which is purely administrative; she does not negotiate the contracts herself and she would not include terms in a contract for signature unless they have been authorised by the appropriate person at the club. That tallies precisely with Mr Porter's evidence about her role: he too was an impressive witness whose evidence I accept.

40 By contrast, the Claimant's oral evidence on these matters was imprecise; he appeared to have little detailed recall of these events and was confused about whether he had seen the email with the agent's requested terms, and if so, whether he had ticked the term relating to the signing on fee. I did not find his argument that the "old guard" remained responsible for negotiating and finalising the transfer deals, even after the Defendant's ownership had changed, to be credible.

41 I reject the Claimant's evidence on this issue. I find that the Claimant was in charge of transfers (and the terms of those transfers) from the moment he started his employment as the Director of Football, and that Mr Porter did not have authority to conclude the deals from that point and ceased to be involved. I conclude that the Claimant did know about and authorise the signing-on fee. He then lied when he said to Ms Martin, a few days later, that he had asked her to take it out of the contract.

42 The Defendant suggests that the Claimant's authorisation of the signing on fee is, in and of itself, an error of such gravity that it justifies summary dismissal. I do not agree. The circumstances are relevant. The Claimant was new in his job and unfamiliar with the commercial environment in which he was now working. Mr Porter's email of 16 July 2014 did give the impression that the signing fee was, in principle, acceptable, and perhaps the Claimant took his prompt from that email. The Claimant did not check the payment with Mr Becchetti, but on the other hand, the Claimant had a senior role with the Defendant and might reasonably have assumed that he had authority to conclude the details of any individual transfer, within the discretion permitted by the Service Agreement, clause 8.3 not being prescriptive as to which

particular decisions or elements of any transfer deal required prior approval. In the end, the Claimant did what he thought was right to secure the transfer of the player, and even if the deal was imperfect, unwise or excessive, that is not gross misconduct within the Service Agreement.

43 I agree with Mr Glyn, however, that the more troubling aspect of this episode is the fact that the Claimant lied about it, to Ms Martin, to his work colleagues, and in the end to me. That lack of honesty undermines the Claimant's credibility when it comes to examining other issues and so has a wider significance.

44 A related point advanced by Mr Glyn is that the Claimant by lying, even at this early stage, was in fundamental breach of his employment contract. The submission is that the Claimant's act of dishonesty, in and of itself, amounts to gross misconduct. I cannot accept that extreme proposition. That would mean that any employee who told untruths at work could be liable to summary dismissal without more. That is not consistent with the definition of “gross misconduct” as I have construed it within the Service Agreement. The analysis must depend on the context, in this case having regard to the high threshold set by the parties in the Service Agreement. The context here shows this to be a relatively trivial incident: the Claimant denied having authorised the payment when questioned by a fellow employee (Ms Martin). Perhaps he had forgotten. More likely he felt under pressure at the outset of his employment, and so tried to cover up this early mistake.

45 There was no gross misconduct associated with this episode. It does not amount to grounds for summary dismissal, alone or in combination with other allegations.

Henderson

46 This issue revolves around the role of an agent named Alex Levack in the transfer of a player named Darius Henderson to the Defendant. The terms of the transfer deal included a payment of £140,000 to Mr Levack, including £46,800 for services rendered. The Defendant's case is that Mr Levack never did act for the club, he acted for the player; the transfer documents which named him as agent for the club were incorrect and in breach of the FA Regulations ; this is a serious matter for which the Defendant could be sanctioned by the FA, and amounted to a gross breach of the Claimant's Service Agreement.

47 This sequence starts on 28 July 2014 when Will Salthouse, an agent connected with Darius Henderson, emailed the Claimant with proposed terms for the transfer of Henderson. On 29 July 2014, the Claimant forwarded that email to Mr Becchetti describing Henderson as the “ *centre forward that we need”* and noting that the figures proposed were exaggerated. On 30 July 2014 the Claimant sent Mr Salthouse's proposed terms to Ms Martin, presumably so she could draw up the transfer documents. Ms Martin printed off that email, and marked it in pen with various questions. She then sent the Claimant an email asking for further information, which she listed, including *“is Agent working on behalf of the Club or the Player?”* The Claimant marked up Ms Martin's hand-annotated copy email, including a note at the foot of the page that the agent's fee would be £46,800.

48 Ms Martin drew up the transfer documents which were signed. On the AG1, the agent was named as Alex Levack, acting for the Defendant. A representation contract dated 30 July 2014 was signed by Ms Martin for the club, and named Alexander Levack as the club's agent on the transfer of Henderson, for a fee of £46,800 payable on 1 August 2014, and amounts payable for the next two years after that, depending on whether the club remained in League 1 or went up to the Championship. £56,160 was then paid to Side Kick Management, which was the fee due to Alex Levack (this being the agreed £46,800 plus VAT).

49 The Defendant's case on the facts was advanced by Ms Martin. In her witness statement, she confirmed the exchange of emails, and said that the Claimant had further negotiated with Mr Salthouse on the evening of 30 July 2014 at the stadium offices, and that after this negotiation was complete, Mr Salthouse had confirmed to her that Alex Levack should be named as the Defendant's agent, and should be paid £46,800. In her oral evidence to me, she said the same thing, but added that the Claimant had been in her room with Mr Salthouse and others when Mr Salthouse had said that the agent was Alex Levack: she remembered Mr Salthouse and the Claimant “ *milling around* ” her desk at the time, as she drew up the documents, as it was getting late. She prepared the documents on the basis of this information and gave them in draft to the Claimant, who approved them for signature.

50 The Claimant denies that he was aware that Alex Levack was to be named as agent, acting for the club. He said that it was Ms Martin's responsibility to ensure compliance with FA Regulations , and that he had nothing to do with the agreement of the agent's fee.

51 Here too I prefer the evidence of Ms Martin. I am quite sure her version of events is accurate. I conclude that the Claimant knew perfectly well that Alex Levack was being substituted for Will Salthouse as the agent, when he had not in fact been involved in any way in the negotiations; that Alex Levack was to be paid the agreed agent's fee of £46,800 for year one, with fees due for years 2 and 3; and that Alex Levack was to be named as the club's agent in the transfer.

52 Does the Claimant's conduct here amount to gross misconduct justifying summary dismissal? There are, as with the Lowry issue, two aspects, the substantive deal, and the dishonesty in failing to own up to it.

53 On the substantive deal, I conclude that there has been no gross misconduct. First, on the fee itself: I conclude that the Claimant was the Director of Football and might reasonably have thought that he had the authority to agree this payment to the agent; my reasoning here is similar to my reasoning on the Lowry issue. Secondly, in relation to the swapping of agents' names and the appointment of Levack as agent for the club, although there is a suggestion that Mr Levack had not done anything for anyone on this deal, and Mr Salthouse was in truth working for the player and not the club, I accept the Claimant's evidence that it is often unclear who the agent is acting for, when the transfers come to be negotiated and completed, in real life. Indeed, this was a point made by Mr Porter in his evidence, where he said that it is often hard to know who the agent is working for. I am therefore unable to say whether there was in fact a breach of the FA Regulations here: the Defendant's case rests on Regulation C.2, quoted above, which puts an obligation on the club, player and agent not to misrepresent the reality of any given transaction; but even if there was a breach of the FA Regulations , and in consequence a breach of the SA which requires the Claimant to comply with the FA Regulations , I do not characterise that breach as gross misconduct under clause 10.1. That is not to say that breach of the FA Regulations is a trivial matter: those Regulations are there for a good reason and must be taken seriously. But I have to take note of the fact that the regulations are sometimes breached, even by clubs and individuals who are doing their best to comply with the regulations in spirit and letter. In this context I was shown a number of awards of the Independent Regulatory Commission of the FA where clubs were found to be in breach of FA Regulations , in one instance because of inaccuracy about the agent's details on the AG1. I take these various awards to evidence the reality that errors do occur in practice.

54 So far as the particular circumstances of this case are concerned: the Claimant had just come from Italy, and had not worked as a director of football in the UK before; even a short conversation with the Claimant (then or now) would have demonstrated that he was not familiar with the detail of the FA Regulations , but yet he received no training from the Defendant on those Regulations; the Claimant says that he relied on Ms Martin as the regulatory expert, and he may have thought that he could rely on her to get the documents right, even though her role was in fact more limited and administrative in character and she looked to him for all the details.

55 This was not gross misconduct.

56 The other aspect of this episode is the Claimant's lack of honesty. I have rejected his evidence where it conflicts with Ms Martin's. I conclude that he was aware that Alex Levack was to be named as agent and was to be paid a substantial sum by way of agent's fee. That lack of honesty in his evidence to the court undermines his credibility generally. I shall return to that point.

Liberty Italia

57 The allegation here is that the Claimant breached his contract of employment by setting up a rival company. The sequence starts on 5 November 2014 when Hooton Ahmadi (a football agent) wrote to his accountants, in an email copied into the Claimant, asking those accountants to set up a VAT registered company for the Claimant, described as a friend; that company was to be owned 50:50 by the Claimant and Mr Paladini, a fellow Italian and well-known businessman with interests in football. The Claimant paid the accountants' fees on 7 November 2014. The Company was incorporated under the name “Liberty Italia Ltd” on 9 December 2014. The VAT 1 (application for registration for VAT) was drafted by the accountants and sent to the Claimant for

signature; it recorded the Business Activities as “soccer consulting”, with an estimated value of supplies in the next twelve months of £100,000.

58 The Claimant's answer in his Reply was that this company was set up following a business proposition made by Mr Angelieri to Mr Paladini, for Mr Paladini to introduce Mr Angelieri to Bernie Ecclestone and others with a view to supplying flight simulators for sale. The purpose of the company was to receive and share any introduction fee payable from Mr Angelieri for such an introduction. In his second witness statement, dated 2 March 2016 (and served shortly before trial), the Claimant gave further details of the arrangement, saying that Mr Paladini had wanted the Claimant to share 50:50 in any commission received in relation to the simulators and that this led to Liberty Italia being set up with the Claimant as a 50% shareholder. The Claimant emphasised that the company never traded and nothing came of the idea. When he gave evidence to me, the Claimant said that he had discussed going into business with Mr Paladini to open a restaurant or bar, as well as the possibility of fees relating to the simulators; and that the VAT 1 was wrong in saying that the business would relate to “soccer consultancy”.

59 The establishment of this company breaches clause 7 of the Service Agreement. Whatever the purpose of Liberty Italia, the Claimant did not have the prior written consent of the Board or the Supervisor (ie Mr Becchetti) to become involved in any other business concern outside of the Defendant. Even if this was related to a business idea which stemmed from Mr Angelieri, on the Claimant's own account that idea was discussed between Mr Angelieri and Mr Paladini, and the Claimant needed the Defendant's authority before becoming involved.

60 But this was not gross misconduct. The context, again, is important. Liberty Italia never traded, and never did anything more than exist as a shelf company. This breach is nowhere near the level of seriousness required by clause 10.1 of the Service Agreement.

61 There is, however, a point on credibility. I am not satisfied that Liberty Italia was, as the Claimant argued, a vehicle to receive introduction fees from Mr Angelieri in relation to the simulators. The dates do not fit: Mr Paladini's evidence was that his meeting with Mr Angelieri to discuss the simulators took place in late November, but this was some weeks *after* Mr Ahmadi had contacted his accountant about setting up this business for the Claimant. Income from the simulators cannot be the explanation for it. Perhaps the explanation was a proposed bar or restaurant as the Claimant said in evidence (although that would be inconsistent with the VAT1), perhaps it was something else (possibly soccer consultancy as the VAT1 recorded). I make no finding on what the purpose was, other than rejecting the Claimant's evidence (in his Reply, his second witness statement and orally) that it was connected with Mr Angelieri's flight simulators. That evidence was untrue. That is a matter to take into account in assessing the Claimant's credibility, a point to which I shall return.

The Child

Introduction

62 This allegation is far and away the most serious allegation against the Claimant. At its heart is an issue of credibility, centring in particular on what occurred at a meeting on 17th December 2014: there are two versions of events, and only one can be correct.

63 The Child (who cannot be named for legal reasons) was a 14 year old youth player registered with the Defendant's Academy for two seasons, the 2014/15 season and the 2015/16 season (at the end of which he would be 16 years old). That registration could be terminated in accordance with the FA rules which are outlined in the Youth Development Players' and Parents' Guide, referred to above. A child of that age cannot have an agent (again, see the Guide), although there is nothing to stop a child's parents seeking advice on their child's behalf if they so wish.

64 The Child was (and remains now, I understand) a very talented young footballer. In the autumn of 2014 he was selected for the England under 15 squad. This led to widespread interest in him amongst football clubs, including some clubs in the Premier League.

Facts

Initial Contact

65 It was in this rather frenzied environment that the Child came to the attention of Ali Barat, who describes himself as a “football agent/intermediary”. Mr Barat is not a registered as an authorised agent with the FA (and is therefore properly to be referred to as an “unauthorised agent”). He lives and works in the United Arab Emirates, but spends time in the UK subject to the limits dictated by his non-domicile tax status (Mr Barat gave evidence at the trial via video-link from Abu Dhabi, because, he told me, he could not spend any more time in the UK this tax year without jeopardising his non-domicile tax status). Mr Barat is a friend of the Claimant's. Mr Barat has at no time been an employee of or had any role in representing the Defendant.

66 Following a tip-off from a third party, Mr Barat contacted the Child's father (who also cannot be named for legal reasons and to whom I will refer as the “Father”). They discussed the possibility of the Child moving away from the Defendant to play for another club. On 7 November 2014, Mr Barat texted the Father inviting him to the boardroom at the Defendant's ground, to watch a match the following Tuesday. The Father texted back on 12 November 2014 saying that his son now had an agent. This was followed up by Mr Barat texting the Father back saying this:

> “That's fine it was about a club premier league club I have an offer for him from so happy to work with you or his new agent maybe call me when you have a chance. Thanks”

67 The offer to which Mr Barat was referring was an offer from West Ham Utd, which had been received by the Defendant from West Ham on the previous day, 11 November 2014. Mr Barat had nothing to do with obtaining this offer. The offer was sent by email from West Ham to Mr Edwards (the Defendant's Academy Director); Mr Edwards forwarded it to Mr Angelieri; Mr Angelieri forwarded it to the Claimant asking him what he thought of it. The Claimant forwarded it to his friend, Mr Barat, at just past midnight on 12 November 2014, and Mr Barat responded to the Claimant within minutes saying *“Lovely let's discuss tomorrow”.*

68 From this sequence it can be seen that Mr Barat was misrepresenting matters by suggesting to the Father by text that “he” had an offer for the Child; the Defendant had the offer, not Mr Barat. Further, this sequence gives rise to a question about why the Claimant forwarded the offer to Mr Barat, who had nothing to do with the Defendant club and was just a friend of the Claimant's. I was given no satisfactory answer to this question and I am still unclear on what the Claimant's explanation was for forwarding the offer to his friend.

69 Mr Barat then exchanged texts with the Father, arranging a meeting for Friday 14 November at 6.30pm, described in the following way by Mr Barat by text:

> “Meeting confirmed with Mauro Milanese the Leyton Orient Football Director @ 6.30 pm on Friday at his home address.”

The Claimant and Mr Barat were present at that meeting as well as the Father. There is a dispute about what occurred at that meeting. The Father says that Mr Barat and the Claimant wanted to be involved as agents for the Child; they proposed setting up a company of which the Father would also be a director, to receive money for the transfer of the Child. This is denied by the Claimant and Mr Barat who say that they discussed the possibility of the Defendant releasing the Child to transfer registration to another club, with the Claimant emphasising that any transfer would have to be for the right price and would have to be sanctioned by Mr Becchetti.

70 On the following day, 15 November 2014, Mr Barat emailed the Claimant saying this:

> “Further to our meeting please find again a copy of the offer that I had sent you from West Ham in regards [the Child] in your academy.”

71 The Claimant did not respond to this email, and did not point out to Mr Barat the obvious inaccuracy in that email, namely that Mr Barat had never sent the West Ham offer to the Claimant, rather the Claimant had forwarded it to Mr Barat. The only possible explanation for this email, and the inference I draw, is that Mr Barat wanted to have something to show the Father, if the Father asked for proof, that he (Mr Barat) had been responsible for getting the offer from West Ham; in fact, as I have said, Mr Barat had not been responsible for that offer. This email, if

shown to the Father for that purpose, was a misrepresentation of the truth. When questioned about it, the Claimant said it was a "mistake" by Mr Barat: that is an understatement.

72 Mr Barat set up a meeting between himself, the Father and Dave Hunt, the Academy Director at West Ham. Mr Hunt asked for confirmation that the Father had permission to discuss the Child's transfer from the Defendant (as was required under the FA regulations). On 16 November 2014, Mr Barat emailed the Claimant with wording by which the Defendant would give him that authorisation; within a short time, the Claimant had forwarded that wording to Mr Hunt, signed off by himself, so giving the Father and Mr Barat permission to discuss the transfer. It does not appear that the Claimant discussed with anyone at the club, specifically Mr Edwards or Mr Thomas who ran the Defendant's Academy, whether this permission should be given to Mr Barat and the Father, or whether the club wanted there to be any authorised negotiations with West Ham. Nor does it appear that the Claimant at any stage asked the Father whether he wished to have Mr Barat assisting him in this way.

73 On 18 November 2014, Arsenal FC made an offer for the Child. This was by email to Mr Edwards. That offer consisted of £37,500 on registration; £37,500 on 15 March 2015; and £25,000 on signing a professional contract on his 17th birthday, a potential total payment of £100,000. That evening, Mr Barat emailed the Claimant saying that he had spoken to Arsenal, Crystal Palace and West Ham, and that Leicester City and Chelsea were tracking him too. On 19 November 2014, at 11.10 am Mr Edwards copied Arsenal's offer to the Claimant. At 11.41 that day, Mr Barat texted the Father saying:

> "… I'm with Mauro now. I've just had an enquiry from Arsenal. Let me know if we can meet today."

74 This text misrepresented matters. The Arsenal offer had come to the Defendant, not to Mr Barat. At 12.02, the Claimant forwarded the Arsenal offer to Mr Barat by email, but Mr Barat had plainly known of it before receiving that email.

75 On 19 November 2014, the Claimant and Mr Barat travelled to Arsenal to meet Richard Law, the author of Arsenal's offer for the Child and head of football operations at Arsenal. That evening, they met the Father at the Defendant's training ground (called the "Score"). There is a dispute about what occurred at that meeting, with the Father saying that the Claimant and Mr Barat again talked about setting up a company to receive payments for the Child and that the Claimant joined in the discussions about a 3-way split to distribute the money. The Claimant and Mr Barat say that there was discussion of the terms offered by Arsenal, and no discussion of any money split, not least because the Child could not earn any money until he became an adult. The Father says that during this meeting he was shown an email from the Claimant to Mr Barat giving Mr Barat authority to speak to West Ham on the Defendant's behalf; the Claimant could not remember whether this email was shown.

76 On 25 November 2014, the Father texted Mr Barat saying:

> "Arsenal bid the same as West Ham. Why was it turned down?"

Mr Barat answered:

> "Both turned down. Arsenal was less I'll be back Friday from Abu Dhabi let's get together."

Later, Mr Barat texted:

> "I'll confirm time with you when i land and speak with Mauro".

From this exchange it is clear that the Father wanted an explanation for why the offers for the Child had been turned down by the Defendant. He turned to Mr Barat for those explanations. This is consistent with the Father's understanding that Mr Barat worked for and represented the Defendant. I note that Mr Barat at no stage said in any text or email I have seen that he did not work for the Defendant and could not speak for the Defendant. Nor does the Claimant suggest

that he, at any stage, made it clear to the Father that Mr Barat did not represent the Defendant.

77 On 28 November 2014, on instructions from the Claimant, Mr Edwards responded to Arsenal's offer with a counter offer. He asked for £125,000 on registration, £125,000 on 21 July 2015, and the use of Arsenal's 3G training pitch when weather conditions were poor. The total value sought was therefore £250,000 together with some ancillary benefits for the Defendant. This offer was rejected by Arsenal on 3 December 2014; Arsenal restated its original offer. The email from Arsenal was forwarded by the Claimant to Mr Barat.

78 On 2 December 2014, the Father and Mr Barat had a third meeting. This took place at Chelsea Harbour Club. Although Mr Barat denied this meeting, the Father remembered it clearly because it happened that the Chelsea squad were at that hotel at the time of the meeting. I accept that this meeting did take place, as the Father says. The Father told me that by this time he felt he was being given the run around by the Defendant club and was trying to find out what was going on; that was why he attended the meetings.

79 At some point before 17 December 2014, there was a fourth meeting. This took place at the block in Vauxhall where the Claimant lived (I accept that the meeting was not at the Claimant's flat but in a meeting room in the same block); the meeting then moved to a local restaurant. The Father remembered meeting Mr Paladini at that meeting. The Claimant denies that Mr Paladini was present at any meeting; Mr Paladini similarly denied this. I can understand Mr Paladini's evidence which was given on the misapprehension that this was a formal meeting in the Claimant's flat. Once the Father had given his evidence, it became clear that the setting for the meeting was very different. It would have been easy for Mr Paladini to forget meeting the Father, briefly, in a restaurant. Further, there is a dispute about what occurred at this meeting. The Father says that Mr Barat produced an authority from the Claimant authorising Mr Barat to act on behalf of the Defendant in respect of all transfers, on the club's headed paper, shown to the Father as a PDF document on Mr Barat's phone. The Father says that the Claimant and Mr Barat appeared to be working together; they told the Father not to mention any of these discussions to anyone at the club; and they said that they had done this before with a 15 year old player from abroad who was trying to get to Arsenal. The Father said that *"I was willing to work with them because I thought it would assist my son in moving to a top tier football club".* The Claimant and Mr Barat deny that the Father was shown any form of authority for Mr Barat to act for the Defendant, deny that they were working together, and deny that there was any discussion of anything beyond Arsenal's existing offer.

80 On 15 December 2014, the Child was again called up for England. On 16 December 2014, Arsenal increased its offer by a further £25,000 contingent payment so making the total potential value of the offer £125,000 (there was a dispute whether the £125,000, contingent on first team appearances for Arsenal, would in fact have been payable anyway under the rules – I do not need to resolve that dispute). A deadline for acceptance by 5pm on 18 December 2014 was imposed. The Claimant forwarded this further offer to Mr Barat by email.

81 By text timed at 17.13 on 16 December 2014, Mr Barat contacted the Father:

> "Call me please I've just received an email from arsenal".

82 A meeting was arranged for 6.30pm on Wednesday 17 December 2014. The meeting was at the offices of solicitors instructed by Mr Barat. Before looking at the details of that meeting, I should recount two other important features of the evidence. First, the solicitors had invited Mr Barat and the Claimant to lunch in early December and there had been a fair amount of email correspondence about that engagement. It is clear that the Claimant was in touch with the solicitors and knew that they were working with Mr Barat. Secondly, it is clear from the Claimant's mobile phone records that the Claimant and Mr Barat were in frequent telephone contact with each other during this period. There were a large number of calls between them on 18–26 December 2014.

Meeting on 17 December 2014

83 The parties put forward very different versions of what occurred at the meeting on 17 December 2014. The Defendant's case is based on the Father's evidence. The Father says that he arranged to meet the Claimant and Mr Barat on a street corner near the solicitors' offices. The

three of them went in together and signed in at reception. The solicitor joined them in the meeting. The Father had thought he was going to sign the transfer documents, but instead a document was presented to him which was something different. The Father was reluctant to sign, but the Claimant and Mr Barat put pressure on him to do so. Mr Barat and the Claimant said that the Child could move to QPR for between £20,000 and £40,000, a percentage of which they would pay to the Father. The Father answered saying he wanted his son to go to Arsenal, not QPR. The Claimant then told him that if he did not sign, the Defendant would not permit the Child to transfer to another club and told a story about another player who would " *rot in the stands* " rather than be allowed to transfer. The Father asked for some time alone to look at the document. He went into a separate room with the solicitor; he took a copy of the document and spoke to "Jason" another agent with whom he had dealings; Jason told him not to sign the agreement. The Father went back into the meeting room and refused to sign the agreement but said he would think about it overnight, in order to get away. The Father said that the document on the table:

> "upset me because I was being railroaded into signing my son's next 4 years away to someone I did not know or like and who did not have my son's interests at heart but had his own agenda."

84 The Claimant says that he came into the meeting after it had started. It was immediately obvious to him that there had been some disagreement between Mr Barat and the Father because the atmosphere was tense. He was irritated because he did not want to be there. He did not threaten the Father or say that the Child would not be able to move unless the agreement was signed. He just said that the final decision on whether to let the Child go rested with Mr Becchetti, not him. He knew nothing about the agreement on the table.

85 I heard evidence from Mr Barat about this meeting. Mr Barat largely supports what the Claimant said, except that Mr Barat says that the Claimant was at the meeting from the outset and did not come in after the meeting was underway.

86 I have some written evidence, adduced under a Civil Evidence Act notice, from the solicitor who was present at that meeting. He has checked the visitors' book at his office and confirms that the Father, the Claimant and Mr Barat all signed in at the same time.

The Agent Agreement

87 I must set out the important features of the agreement which was tabled at that meeting. That agreement provided, as follows (amongst other things):

> "This Letter of Agreement sets out the basis on which I, Ali Barat, (the " **Agent** ") will enter into a representation agreement with the Player upon the Player reaching the age of sixteen, under which I shall act as the Player's exclusive authorised agent and representative in connection with the transfer of the Player and/or the negotiation or renegotiation of contracts on his behalf (the "Representation Agreement"). This Letter of Agreement has been prepared on the understanding that the FA Agents Regulations (the " **Regulations** ") will be amended or replaced entirely in April 2015.
>
> In consideration of the rights and obligations set out in this Letter of Agreement, the following provisions shall govern the parties' relationship and are intended to be legally binding with immediate effect for a term of five years:
>
> 1. Upon signing this Letter of Agreement, you agree to sign and date the mandate at Appendix 1, under which the Agent is authorised to act as the Player's exclusive authorised agent and representative in connection with the transfer of the Player and/or the negotiation or renegotiation of contracts on his behalf (the " **Mandate** ") and agree to procure that the Player's Mother […] shall also sign the Mandate.
>
> 2. Upon the Player reaching the age of 16, you shall take such steps as are necessary to procure that the Player enters into the Representation Agreement with the Agent.
>
> …

> 5. The Agent agrees to make payment to you of 50% of any payment or commission received by the Agent in connection with the Services (save for sums received by him from the Player consequent on the performance of the Services) such sums to be exclusive of any Value Added Tax that may be payable."

88 There was no right to terminate on notice. The Agent's liability was limited to £10,000. The agreement was to be kept confidential by both parties.

After the Meeting

89 After the meeting, the Father went home. He discussed what had occurred with his wife. He says that she was very upset. He too was " *driven to distraction* ". He sent an email to Mr Barat at 06.44 the following morning, 18 December 2014, in the following terms:

> "When I came home last night I showed my wife the contract I am being forced to sign, told her what was discussed at Leyton Orient with you and Mauro she burst into tears. If I sign this document which forces me have you as my sons agent he gets to leave, if I don't he's forced to stay. That is blackmail.
>
> You led me to believe you would work with my existing agent to get the best for my son and Leyton Orient, who has been willing to work with you and get you compensated.
>
> It now seems you are getting the best deal for yourself. I cannot be forced to give you the power to control my sons future. I still do not how as an employee of Leyton Orient you an do this.
>
> I know by not going to the meeting with you and Leyton Orient solicitors this morning you will jeopardise my sons move but I cannot allow myself to be blackmailed. I shall be meeting with my solicitors today along with the FA with a view to taking [the Child] out of Leyton Orient. I shall also be speaking to Richard Thomas and Andy Edwards and informing them of my decision today."

90 The Father contacted Mr Thomas (the Academy Manager) and asked to see him that evening. Mr Thomas told me about that meeting. Mr Thomas said that the Father was very distressed, worried and anxious when they met. Mr Thomas has known the Father for some time, but he looked like he had *"aged 10 years in a week".* The Father told Mr Thomas that the Claimant and Mr Barat had pressured him into signing, they had suggested the move to QPR, they had spoken about setting up the company, and that the Claimant had threatened to block any move if the Father did not go along with the plan.

Conclusions

91 The agent agreement is very troubling. Indeed, when I asked Mr Croxford (counsel for the Claimant) to state his and his client's view of it, he accepted that the agreement was both oppressive and in clear breach of the FA Regulations . He did not think that it would have been enforceable as a matter of law; he may be right, but that is hardly the point.

92 There are many problems with the agreement. These are some of them:

> i) Mr Barat describes himself as the player's "authorised agent", but Mr Barat was not authorised by the FA and this was a misrepresentation.
>
> ii) Mr Barat was appointed the "Player's exclusive authorised agent", but the Player was only 14 at this time, and the FA Regulations are quite clear that a minor cannot have an agent.
>
> iii) The agreement was to be "legally binding with immediate effect for a period of 5 years", and so would apply from December 2014, when the Child was 14, to the age of 19. Again, a minor cannot have an agent.

iv) There was no provision for termination on notice. The Father (and Child) were therefore tied into the agreement for a fixed term of 5 years, the remainder of the Child's junior years and into his majority. This was oppressive.

v) If the Child decided he did not want Mr Barat as his agent when he turned 18, then his termination of the agreement would potentially result in a claim for breach of contract (and damages) against the Father.

vi) The Father was obliged to “take such steps as are necessary to procure” that the Child entered into a Representation Contract with Mr Barat when he turned 16 (at which point he could have an agent – with his parents' consent – under FA Regulations). This put an obligation on the Father to do something which lay outside his control.

vii) If the Father was unable to secure his son's consent in this way at 16, the Father would again be exposed to a claim for breach of contract (and damages).

viii) The 50% split of any payment or commission applied to any income obtained by Mr Barat on any of the Services for the duration of the agreement. It is not clear what payment or commission was envisaged. The Child had no say, for the duration of the contract. This appears exploitative of the Child, and unfair.

93 It would be a serious breach of the Claimant's contract of employment with the Defendant for the Claimant to have been involved in this agreement, particularly if the Claimant had himself applied any pressure on the Father to sign it, or colluded with anyone else to exert pressure to that end.

94 The central issue is one of credibility. On that issue, I favour the Defendant's case. I have no doubt that the Father is telling the truth and I accept his version of events. I reject the Claimant's version of events. My reasons are the following.

95 First and foremost, the Father gave clear and compelling evidence. When he could not remember particular details he said so; when pressed on other matters, he was able to explain precisely what had occurred and often add the sort of “humdrum” details which lend authenticity (for example: he told me about the lift at the Claimant's block of flats, about the Chelsea team being present at the meeting at Chelsea Harbour, and about the time he met Mr Paladini). He had no reason to come to Court and lie; and lie on a very grand scale (if the Claimant's case is to be accepted).

96 The Father complained to Mr Barat within hours of the meeting on 17 December 2014, in the email of the early hours the next morning. This email – including its typos – is plainly authentic and the recent complaint strongly supports the Father's version (see para 89 above).

97 The Father also relayed his story, within a day, to Mr Thomas. I accept Mr Thomas' evidence that the Father recounted the meeting in terms almost identical to his account before me. And I accept Mr Thomas' recollection that the Father was very shaken and anxious at that meeting. The fact that the Father reported his concerns within a very short time after the meeting on 17 December 2014 is strong evidence of the truth of that account.

98 There are other features of the evidence which lend support to the Father's case:

i) The Claimant's case depends on him not being present at the start of the meeting on 17 December 2014. He says that he entered after that meeting had started and so he missed any exchange between Mr Barat and the Father about the agreement. But the Father, Mr Barat, and the solicitor all agree that the Claimant was there from the outset. I prefer their joint view, corroborated by the office visitor's book, to the Claimant's asserted recollection. If that is so, he was present when the agreement was produced and when the Father expressed his unhappiness about it.

ii) The Claimant has a track record of dishonesty. He has lied about the meeting in this one way I have already identified. He lied about his involvement in the Lowry and Henderson episodes. I conclude that the Claimant is a man who is prepared to lie when confronted with uncomfortable truths.

iii) Although part of the Claimant's case is corroborated by Mr Barat, I am not persuaded that Mr Barat gives credible evidence. On his own case, Mr Barat asked his solicitor to draw up the agent agreement and then tabled that agreement at the meeting on 17 December 2014; Mr Barat could not see anything wrong with the agreement when questioned. This causes me to question his integrity given the obvious problems with that agreement, outlined above. Further, there are specific instances where Mr Barat has not told the truth. An easy example is his suggestion in evidence that the Father would not have had his email address, which Mr Barat used to support his theory that someone else had written the email of complaint on the morning of 18 December 2014; but I was shown an email exchange between the Father and Mr Barat dated 4 December 2014, using the same addresses as appear in the 18 December 2014 exchange and it was clear that the Father did have Mr Barat's email address, as Mr Barat knew full well. Overall, I was not impressed with Mr Barat's evidence.

iv) The solicitor was not called to give evidence. He was a critical witness and the Claimant would surely have called him if the Claimant's version of events was correct, issuing a witness summons if that individual declined to attend voluntarily. In fact, that witness had been contacted in advance of this case and had indicated that he preferred not to become involved, citing “professional reasons” (which were not further explained by him or to the Court). Instead, a rather equivocal note of his recollection of that meeting was produced, served under a Notice pursuant to the Civil Evidence Act 1995 . The note carries little weight with me (to the extent that its contents are inconsistent with the Father's evidence) given the lack of cross examination of the solicitor even though he was available to give evidence (his office is just down the road from the Royal Courts of Justice).

99 So what was going on? I conclude that the Claimant had a joint plan with Mr Barat to get Mr Barat appointed as the Child's agent (either directly, or through the Father). It is not necessary for me to decide whether the Claimant intended to profit from that agency by a share in any commissions paid and I make no finding on this either way, for lack of evidence. I do conclude, however, that the Claimant wished to give the Father the impression that Mr Barat acted for the Defendant, or at least with the Defendant's authority in order to promote that joint plan. That is why:

i) he attended meetings with Mr Barat and the Father to discuss the Child's future,

ii) he wrote letters of authorisation for Mr Barat (I have seen one, relating to negotiations with West Ham; I accept that there was another one, namely the PDF shown to the Father at the fourth meeting),

iii) he forwarded the offers from West Ham and Arsenal to Mr Barat,

iv) he did not counter Mr Barat's email of 15 November 2015 which credited Mr Barat with the West Ham offer.

100 The Claimant and Mr Barat were successful in conveying that false impression to the Father: in his email dated 18 December 2014, the Father referred to Mr Barat as an “employee” of the Defendant, and in his evidence the Father told me that he understood that Mr Barat did work for the Defendant. I accept that evidence.

101 How far did the Claimant's involvement in the agent agreement extend? I conclude that the Claimant not only knew about the agent agreement, he also tried to get the Father to sign that agreement and put pressure on the Father to do so. The Father describes what happened at the meeting of 17 December 2014. The pressure was applied by the Claimant (himself or in collusion with Mr Barat) offering to set up a company from which the Father would profit, suggesting a transfer to QPR for financial gain, and (when those incentives were resisted) by threatening the Father that his son would not be released if the Father did not sign. The last element was attributable clearly on the father's evidence, to the Claimant alone. The other elements were part of the joint plan and it does not matter who actually said the words.

102 This was a very serious breach of the implied term of mutual trust and confidence. The particularly offensive aspect of the Claimant's behaviour was the abuse of his position as the Defendant's Director of Football. He used that position to introduce Mr Barat and support his efforts to “get alongside” the Father and then, with Mr Barat, he used his position to lean on the Father, in an effort to get the Father to sign the agent agreement.

103 I find the allegations of repudiatory breach particularised at paragraph 15 q, s, v and w of the Defence to have been established. Together, these breaches constitute gross misconduct which meets the high threshold set by the Service Agreement. The Defendant was entitled to dismiss the Claimant summarily.

Footnotes

104 The agent agreement was drafted by a solicitor, so Mr Barat told me; the solicitor was present throughout the meeting on 17 December 2014. I have not heard from that solicitor. In the circumstances, I have not named that solicitor, or the firm he works for. That firm and that solicitor will be made aware of this judgment and will doubtless wish to consider whether further action is appropriate.

105 Finally, and to conclude this sorry chapter, I wish to express my regret that the Father, the Child, and the Child's mother (who was reported to be very upset when she was told of the meeting on 17 December 2014) were put through such a difficult experience. I believed Mr Angelieri, Mr Edwards and Mr Thomas when they told me of their shock and upset at finding out what had happened. I accept that they genuinely wanted the very best for the Child. I hope that the Child's memories of his time with the Defendant's Academy will not be soured by this entanglement with the Claimant and Mr Barat.

Dossena

106 The evidence relating to this allegation is diffuse, and the Defendant's case depends on inferences which I am invited to draw, which themselves depend to a large part on my findings in relation to other parts of this case. I shall set out the bare facts first, taken from the documents.

107 On 1 November 2014, an Italian agent called Matteo Materazzi contacted the Claimant with proposed terms for Dossena. On 4 November 2014 the Claimant responded with final terms, including a 10% fee for the agent. He copied Sandro Stemperini, an Italian colleague, into this email. On the same date the Claimant informed Mr Becchetti and Mr Angelieri of the offer. On 5 November 2014, Mr Becchetti queried the agent's percentage. The Claimant replied explaining the agent's fee and naming the agent as Mr Materazzi. Mr Becchetti signed the deal off by email on 5 November 2014, including the agent's fee. Mr Materazzi said that he would arrange for Dossena to come to the UK to sign. The signing took place on 6 November 2014. Mr Materazzi did not accompany Dossena. Instead, Domenico Scopelliti attended with the player and signed the AG1, as agent for the club. The representation contract between the Defendant and Mr Scopelliti provided for him to be paid a fee of £25,730 plus VAT, together with 10% of Dossena's gross annual wage for the next season. Dossena was to be paid £7,667 per week for the remainder of the season (the agent's fee of £25,730 appears to be 10% of that weekly amount for the remaining 8 months or so of the 2014/15 season).

108 On 28 November 2014, Mr Scopelliti submitted an invoice in his name to the Defendant for the agent's fee as well as an expenses claim for £264. He chased payment by email to the Claimant on 1 December 2014 and the money was paid as claimed.

109 On 3 January 2015, Mr Scopelliti texted his details to the Claimant (his company is called

"SM Sport Assist Ltd" trading from an address in London SW6). The Claimant texted back asking what was the exact amount, and Mr Scopelliti responded saying " *25730 pounds of which 10,000 euro is the amount of the invoice".* On 8 January 2015, Mr Barat emailed an invoice dated 7 January 2015 for £10,000; that invoice was made out to SM Sport Assist Ltd. The Claimant forwarded this to Mr Scopelliti by email later on 8 January 2015 under the heading "Fattura" (invoice). Mr Scopelliti forwarded this to Alessandro Messina of Michael and Gordon (Mr Scopelliti's accountants) under the heading "Fattura Milanese" (the Milanese invoice), in his email referring to " *10,000 euro"* (noting that the invoice is in fact for £10,000). Mr Messina confirmed payment of that invoice to Mr Barat's company on 9 January 2015 in the amount of £7,805, the sterling equivalent of €10,000; Mr Messina used the same heading, namely "Fattura Milanese", on his email. Mr Scopelliti forwarded that confirmation to the Claimant by email dated 16 January 2015.

110 The Defendant relies on an attendance note of a telephone conversation with Mr Materazzi, in which Mr Materazzi told the Defendant's solicitors that: he had acted for Dossena, Mr Stemperini was a friend of the Claimant's, Mr Stemperini had acted for the Defendant in the transfer, Mr Scopelliti had nothing to do with the negotiation but was simply the agent who signed the paperwork to comply with FIFA Regulations, Mr Materazzi received €11,000 for his involvement from Mr Stemperini, and he did not know who else had received what, if anything.

111 The Defendant makes five allegations based on the above sequence of events:

i) The Claimant falsely caused the Defendant to represent to the FA that SM Sports Assist Ltd (Mr Scopelliti) was the Defendant's agent;

ii) The Claimant dishonestly caused the Defendant to pay SM Sports Assist Ltd (Mr Scopelliti) £25,730 by way of agent's fee;

iii) The Claimant paid himself a secret commission of £7,805 by using the transfer from SM Sports Assist Ltd to Mr Barat's business account;

iv) The Claimant dishonestly worked with Mr Scopelliti's company and Mr Barat's company to generate a false commission for agent work which the Claimant then benefited from; and

v) The Claimant caused the Defendant to enter into a contract with Dossena which the Defendant would not otherwise have done, had it known the true facts.

112 The Claimant denies these allegations. He says that he was introduced to Mr Scopelliti as the person who could get Dossena to sign for the Defendant. Dossena was a good player who would benefit the Defendant's team. The terms of Dossena's transfer were agreed and signed off by Mr Becchetti, including the payment to the agent. Mr Angelieri approved Mr Scopelliti being appointed as the club's agent. Dossena was signed on 6 November 2014 and Mr Scopelliti's fee was then paid: the deal was concluded. Separately, Mr Barat contacted the Claimant two months later because Mr Scopelliti owed Mr Barat €10,000. Before then the Claimant had known nothing about Mr Barat's arrangement with Mr Scopelliti for the latter to pay an introduction fee to Mr Barat if he concluded any business with the Defendant club. The Claimant, hearing that Mr Barat's fee remained outstanding, offered to help his friend. That was why he got involved. Mr Scopelliti paid the €10,000 to Mr Barat and that was the end of the matter. The Claimant had no interest in that money, and the email header "Fattura Milanese" means nothing. The Defendant's case that the money went to the Claimant is entirely misplaced.

113 The Claimant's case rested on oral evidence from the Claimant himself and Mr Barat. I have found that there are problems with evidence offered by those individuals in other contexts. But on this matter I also heard from Mr Scopelliti, and the Defendant's case could only be right if I found that Mr Scopelliti is lying.

114 Mr Scopelliti is an Italian lawyer who lives in London and advises Italian companies wishing to conduct business in the UK; he also does some football consultancy. He is registered with the

Italian football authorities, and with the FA as an “overseas agent” which means that he is entitled to sign FA regulatory documents. He told me that in November 2014 he was contacted by Mr Stemperini who asked him (Mr Scopelliti) to assist with the Dossena transfer, because Mr Scopelliti had connections in the UK (and, I understood, was able to sign the transfer documents within the FA Regulations). Mr Scopelliti confirmed that he was not involved in the negotiations for Dossena, although he knew that a deal was reached. Mr Scopelliti met Dossena at the airport on 5 November 2014, and looked after him generally, accompanying him to the signing at the Defendant's premises the next day, 6 November 2014. On 8 November 2014, Mr Scopelliti submitted his invoice for £25,730 to the Defendant. He was paid this amount, and out of it he paid Mr Stemperini €16,000, and retained the rest; this was a private deal between him and Mr Stemperini, not known to the Claimant. That was the full explanation for the Dossena transfer.

115 He also told me that long before he (Mr Scopelliti) was invited to become involved in the Dossena transfer, he had met Mr Barat. The first meeting was in 2012. They met again in September 2014 by chance. By this time Mr Becchetti had taken over at the Defendant, and Mr Scopelliti hoped that there might be an opportunity for him to work with the new Italian owner. Mr Barat had told Mr Scopelliti that he knew people at the Defendant's club and that he would introduce Mr Scopelliti to those people; they agreed that if any work came from that introduction, Mr Scopelliti would pay Mr Barat an introduction fee of €10,000. Mr Barat introduced Mr Scopelliti to the Claimant shortly thereafter. Mr Scopelliti introduced a client of his, Serse Cosmi, an Italian football coach to the Defendant in October 2014 when Mr Slade left the club, but this introduction did not lead to Mr Cosmi being hired by the Defendant and no fee was generated. At the beginning of January 2015, Mr Scopelliti got a call from the Claimant who said he had been asked to inquire about the payment of the introduction fee; the Claimant said he did not know the full background but he would help to resolve any dispute between Mr Barat and Mr Scopelliti if there was one. That is why Mr Scopelliti confirmed the amounts by text to the Claimant, and why Mr Barat sent his invoice via the Claimant, which invoice was forwarded on by email string headed “Fattura Milanese”.

116 The question that arises, if the evidence of Mr Scopelliti is to be accepted, is why the Claimant got involved in chasing up Mr Barat's introduction fee, when the Claimant had nothing whatsoever to do with Mr Barat's deal with Mr Scopelliti for such a fee to be paid? But I feel I now have an answer to that question: in light of all the other evidence I have heard and conclusions I have reached, I conclude that the Claimant was trying to help his friend, Mr Barat, recover the introduction fee, as a further demonstration of their close working and personal relationship. Mr Barat asked his friend, the Claimant, to intermediate, knowing that Mr Scopelliti would be unlikely to refuse a request which came from the Claimant.

117 There is no evidence at all that the €10,000 ended up with the Claimant personally. It was paid to Mr Barat; I cannot know what happened to it after that. I am unable to accept that the use of the heading on the email string “Fattura Milanese” has the significance which the Defendant attaches to it and conclude that Mr Scopelliti's explanation is anyway more likely to be true than the Defendant's case (after all, if the Claimant really was making a secret profit, he was hardly likely to do so by reference to an email chain headed “Fattura Milanese”). I therefore reject the Defendant's case that the Claimant made a secret profit.

118 I also reject the Defendant's case that the Claimant only recommended Dossena so that he could make a secret profit or otherwise for reasons contrary to the Defendant's interests. Dossena was a capped player who had played in the top leagues in Italy and the United Kingdom; his transfer would have been a coup for the Defendant. But, with all that experience, he would have been expensive. I do not accept that the agreement to pay an agent's fee of £25,730 was dishonest or otherwise in breach of contract: that payment may simply have been the price of the transfer – just as the exchange of emails with Mr Materazzi suggests.

119 There is a lack of clarity about who Mr Scopelliti was acting for. Mr Scopelleti himself was not very clear about this (answering the same question in different ways at different times), and seemed to have little grasp of the important distinction between a player's and a club's agent which is made in the FA Regulations . I make no finding on whether the AG1 was wrong in naming Mr Scopelliti as the club's agent; but even if it was wrong, I conclude that this falls into the category of regulatory breaches which, even though in breach of the Service Agreement, are short of gross misconduct; my reasoning is similar to that outlined under the Henderson transfer above.

120 Mr Glyn invited me to take great care over the details of this allegation. I have done so and can assure him and his client that I have examined closely the documents, witness evidence and arguments. In the end, I see all the same dots as Mr Glyn sees but I do not join them up in the same way. The Defendant has not made out its case for gross misconduct arising out of the Dossena transfer.

Club Spending

121 This was in fact the reason for the Claimant being dismissed by the Defendant in January 2015. The other five issues were identified later in time, and retrospectively.

122 The essence of the complaint is that the Claimant assured Mr Becchetti and Mr Angelieri that the Defendant's salaries were low compared to other clubs playing in League 1, and so argued that the Defendant should increase its salaries; in this context he said that Bristol City was spending around £10 million on salaries that season. It became clear when a Football League Report ("League 1 – SCMP Benchmarking Report 2014/15") was released on 20 January 2015 that the Defendant was the third highest spender in League 1 with expenditure of £4.7 million, which greatly exceeded the average spend for clubs in that league of £2.3 million. It is alleged that when this report was discussed by Mr Becchetti, Mr Angelieri and the Claimant on 24 January 2015, the Claimant lied about having himself said, only two months earlier, that Bristol City had been spending around £10 million on salaries. Thus there are two aspects to the complaint: first that the Claimant overspent the Defendant's money, and secondly that he lied about it when confronted.

123 The Claimant argues that the 2014/15 salary bill was largely consequent on transfers negotiated without his involvement, by Mr Porter and Mr Slade before the Claimant arrived; further, he says that Mr Angelieri made the comment about Bristol City, not him.

124 I accept that the Claimant spent more on transfers than the Defendant had spent historically. But I am unable to find that was gross misconduct: from the outset of his employment, the Claimant was tasked with improving the performance of the Defendant's first team in the hope of promotion to the Championship in the 2014/5 season. Against that background, it was reasonable for him to suggest that the Defendant would have to spend more on hiring good players and indeed to spend more in the search for success (the fact that the Defendant did not do particularly well in the first part of the 2014/5 season is nothing to the point: Leyton Orient would not be the first football club to find out that expensive players do not necessarily equate to success in the league). Further, I am not satisfied that the Claimant was incorrect in telling his directors that the Defendant's salaries were low compared to other clubs playing in the same league (noting that the Defendant was only in third place in January 2015, and that other clubs were therefore, even by that date, spending more than the Defendant).

125 I accept that the Claimant might have said that Bristol City were spending £10 million on players, but he might genuinely have thought that to be the case when he made that remark (in fact the Football League Report shows that the club – anonymised in the report – with the highest player costs spent around £6 million in 2014/15). Come January 2015, the Claimant may have forgotten what he had said about Bristol City a few months earlier, or he may have been embarrassed that the team was not doing better and so tried to deflect criticism away from him. Either way, this is a trivial episode. The Defendant has not established that there was a breach of contract, or any dishonesty, let alone gross misconduct.

Conclusion on Summary Dismissal

126 The Defendant did have grounds to dismiss the Claimant summarily. Those grounds resulted from the Claimant's misconduct in relation to the Child.

127 I conclude that the issues raised by Lowry, Henderson, Liberty Italia, Dossena and Club Overspending do not amount to gross misconduct and would not justify summary dismissal.

128 The claim fails.

IV. Damages

129 In consequence of my findings, and subject to the Counterclaim, the Claimant is entitled to be paid up to the date of his summary dismissal on 26 January 2015, pursuant to the contract which was valid up to and including that date, but was thereafter repudiated by his conduct. He is also entitled to any expenses incurred before the Service Agreement was terminated. He is not entitled to damages for wrongful dismissal.

130 If I had concluded that the Claimant was wrongfully dismissed, I would have accepted his claim to payment, alternatively damages in the amount of £100,000 representing his annual net salary. That is because clause 10.4 (A)(b) determines the compensation for termination in an amount " *equal to one year's net salary* "; I note that Clause 10.4(B)(b) prescribes a similar amount if the Claimant had left to go to another club, to be paid by that other club to the Defendant, and so the compensation at this level could cut both ways. Clause 10.5 states in terms that this is a genuine pre-estimate of loss as a result of early termination: I accept that clause at face value in the context of the Service Agreement. If the Claimant's employment was terminated mid-season, it would be difficult for him to find another job until the beginning of the next season; likewise, if the Claimant moved to another club and the Defendant had to manage for the rest of the season, the Defendant would have struggled to find someone available. The compensation provision was intended to act as a disincentive to termination mid-season. The commercial rationale for both parties was that the Service Agreement should indeed last for the full year, failing which a full year's net salary would be due as compensation.

131 If the Claimant was wrongfully dismissed, he would also be entitled to accrued holiday not taken: see clause 12.3.

132 The claim for damages for damage to reputation was not pursued.

IV. Counterclaim

133 The Defendant counterclaims for various amounts asserting that it has an equitable claim, consequent on the Claimant's alleged breach of fiduciary duty. Before considering whether the Claimant was employed as a fiduciary, it is necessary to clear the decks of those parts of the counterclaim which are no longer live, given my conclusions on the claim.

134 The Defendant's counterclaim seeks to recover the amounts which the Defendant argues were overpaid or wrongly paid to third parties, but I have concluded that those transactions do not reveal any fundamental breach of contract. For reasons I have already set out, I conclude that the Claimant was authorised under the contract to make those payments and no claim for repayment could be advanced, even if the Claimant was a fiduciary. So, the following parts of the counterclaim must fail, without more:

i) The claim for repayment of £48,400 paid to Mr Levack and any further payments which may fall due under the contract relating to Henderson's transfer;

ii) The claim for repayment of the agent fee of £25,730 paid in respect of the transfer of Dossena;

iii) The claim for repayment of the wages and other payments to Dossena until the end of his contract with the Defendant.

135 The rest of the counterclaim consists of a variety of claims for repayment of sums paid (including: the return of all wages paid to the Claimant during his employment, the cost of his accommodation during that time, loss of profit on the transfer of the Child to another club, and unquantified damages for exposure to FA disciplinary action and stigma). These heads of claim all turn on the Defendant's contention that the Claimant occupied a role as fiduciary in relation to the Defendant.

136 The parties are agreed on the approach. They both cite *University of Nottingham v Fishel [2000] ICR 1462* , per Elias J at pp 1492 — 1493:

> "By contrast, the essence of the employment relationship is not typically fiduciary at all. Its purpose is not to place the employee in a position where he is obliged to pursue his employer's interests at the expense of his own. The relationship is a contractual one and the powers imposed on the employee are conferred by the employer himself. … This is not to say that fiduciary duties cannot arise out of the employment relationship itself. But they arise not as a result of the mere fact that there is an employment relationship. Rather they result from the fact that within a particular contractual relationship there are specific contractual obligations which the employee has undertaken which have placed him in a situation where equity imposes these rigorous duties in addition to the contractual obligations. Where this occurs, the scope of the fiduciary obligations both arises out of, and is circumscribed by, the contractual terms; it is circumscribed because equity cannot alter the terms of the contract validly undertaken. …
>
> Accordingly, in determining whether a fiduciary relationship arises in the context of an employment relationship, it is necessary to identify with care the particular duties undertaken by the employee, and to ask whether in all the circumstances he has placed himself in a position where he must act solely in the interests of his employer. It is only once those duties have been identified that it is possible to determine whether any fiduciary duty has been breached…"

137 Mr Glyn argues that the Claimant was a fiduciary for the Defendant, because he was trusted to spend the Defendant's money on transfers, and to report to Mr Beccheti, as is implicit within clause 8.3 of the Service Agreement. Mr Croxford disagrees, arguing that the Defendant is simply attempting to improve the nature or extent of the remedy available in contract, in circumstances where the totality of the Claimant's obligations were covered by the Service Agreement (ie contractual), and where there were no specific contractual obligations undertaken within that employment relationship which were capable of making the Claimant a fiduciary.

138 I agree with Mr Croxford. I conclude that there was no additional fiduciary obligation owed by the Claimant, above and beyond the contractual obligations (express and implied) owed under the Service Agreement.

139 Specifically, the only area where I have found the Claimant to be at fault is in relation to the Child. Distasteful as that episode may be, it is not connected with or contrary to any particular duty undertaken by the Claimant pursuant to the Service Agreement. The Child's proposed move away from the club does not fall within the ordinary language of clause 8 of the Service Agreement, which refers only to "youth recruitment" (which this was not), and to outgoing transfers for players listed for transfer or loan from the Youth Team (which was not the Child's situation). The reference to "transfers" in that clause does not, as a matter of ordinary language, extend to youth players who are subject to specific Football League rules (see above). Mr Glyn argued that the Claimant had an obligation to report his own wrongdoing, as part of his role as the trusted Director of Football, but I do not agree that the reporting obligation was as demanding as Mr Glyn argues (there was only a vague obligation to invite the approval or the involvement of Mr Beccheti, see clause 8.3), that it involved any particular measure of trust being bestowed on the Claimant, or that even if I am wrong about that, that it could conceivably extend to requiring the Claimant to report his own wrong-doing in relation to the Child.

140 In any event, even if the Claimant was a fiduciary, I fail to see that any of the Defendant's remaining heads of claim would or could have succeeded by way of counterclaim.

> i) There is no reason for the Claimant to repay to the Defendant all of his salary and benefits during employment. There was no failure of consideration. The Claimant worked for the Defendant for several months, with many aspects of his performance not being subject to any criticism by the Defendant. He is entitled to be paid for his time and to have his contractual benefits (accommodation, etc) paid to him for so long as the Service Agreement remained in place.
>
> ii) No loss on transfer of the Child, nor any loss of opportunity for greater profit on that transfer, has been established as flowing from the Claimant's misconduct in relation to the Child. What transfer fee might have been paid to the Defendant in different circumstances is

pure speculation: this is football, there are many unknowns. Further, there were delays in progressing the transfer which were not the Claimant's responsibility (rather the responsibility of Mr Becchetti, who wanted to put forward an increased counter offer), and there is no evidence that the Defendant made any serious attempt to increase the transfer fee on offer, and to that extent the Claimant has established that the Defendant has failed to mitigate the loss now claimed. Whilst accepting Mr Edwards' evidence of fact as to the sequence of events, I am not persuaded of the Defendant's case that the Claimant's actions caused the Defendant to sustain a quantifiable loss on the Child's move away from the club.

iii) The FA has not to date taken or intimated any action which might give rise to fines. But in any event, I have not found that there was a breach of FA Regulations on the transfers of Henderson or Dossena. Even if there was, I am not satisfied that the Defendant would be entitled to pursue the Claimant for any fines imposed for reasons outlined above.

iv) The claim for stigma damages was not pursued at trial.

141 The counterclaim based on the existence of a fiduciary duty was tenuous. I am not persuaded by it.

Conclusion

142 I dismiss the claim and the counterclaim.