

## Sheffield United Football Club Limited v West Ham United Football Club Plc [2008] EWHC 2855 (Comm)

**Fiona Banks**  
**Monckton Chambers**

**23 December 2008**

*In the latest stage of the ongoing legal battle between Sheffield United and West Ham over the Carlos Tevez affair, Sheffield United have succeeded in their application to the High Court for an interim order restraining West Ham from taking any further steps to pursue an appeal or challenge to the Court of Arbitration for Sport in Lausanne ('CAS')*

On 18 September 2008 an arbitral body, constituted under Rule K of the rules of the Football Association, issued an interim award, holding that Sheffield United was entitled to recover damages from West Ham for breach of contract. Sheffield United succeeded in arguing that the engagement of Carlos Tevez by West Ham in the 2006/7 football season had been in breach of the rules of the Premier League. This in turn amounted to a breach of contract, and the arbitrators found that such a breach was an effective cause of Sheffield United being relegated to the Championship. West Ham filed an appeal from this decision to CAS on 2 October 2008.

Sheffield United applied for an interim injunction pursuant to section 37 of the Supreme Court Act 1981 and section 44 of the Arbitration Act 1996, arguing that the pursuit of the appeal to CAS was in breach of the arbitration agreement contained in Rule K and that CAS had no jurisdiction to entertain any such appeal. Further, Sheffield United contended that damages would not be an adequate remedy for such a breach and that the balance of convenience lay in granting an interim injunction to restrain West Ham from taking any steps before CAS, pending the trial of Sheffield United's claim for a permanent injunction.

West Ham denied that the pursuit of an appeal to CAS was in breach of the arbitration agreement. Rather, the parties had agreed to CAS having an appellate arbitral role: the parties were bound by the rules of the Football Association Premier League which in turn bound clubs to comply with the statutes and regulations of FIFA. Article 63 of the FIFA statutes gave CAS jurisdiction to consider appeals against final decisions passed by members.

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It was contended that CAS should determine any question as to its jurisdiction, following the decision of the Court of Appeal in *Weissfisch v Julius* [2006] 1 Lloyd's Rep 716. In any event, if there was a breach of the arbitration agreement, West Ham contended that damages would be an adequate remedy and that the injunction should be refused. West Ham also sought to stay Sheffield United's proceedings pursuant to section 9 of the Arbitration Act 1996.

The parties disputed the appropriate test for the strength of the claimant's claim on such an application. Sheffield United contended that the test was the conventional *American Cyanamid* test, namely, whether the claimant's case raised a serious issue to be tried. West Ham submitted that the test was higher in the case of an application for an interim anti-suit injunction.

Teare J therefore considered the strength of Sheffield United's case. Rule K5(b) provided that an award of the arbitral tribunal was to be final and binding upon the parties from the date it is made. The Judge noted that there was no provision for any arbitral appeal in the FA Rules. He therefore considered that Sheffield United had a very strong argument that the effect of Rule K5(b), and the absence of a provision for an arbitral appeal, was that the award of the arbitral tribunal alone would finally and exclusively determine the issues between the parties.

The Judge could not discern any real prospect that the argument that article 63 created an arbitral right of appeal to CAS would succeed, there being no award passed by the FA, only an award of an arbitral tribunal independent of the FA. Accordingly, Teare J held that Sheffield United had, at its lowest, a very strong case that West Ham's recourse to CAS was in breach of the arbitration agreement: he could not therefore envisage Sheffield United failing at trial to secure a permanent injunction. There was therefore no need to determine the question of the correct test that Sheffield United had to satisfy as to the strength of its claim.

It was held that damages would not be an adequate remedy for breach of an arbitration clause. As to the balance of convenience, the Judge rejected West Ham's argument that CAS should determine its own jurisdiction on the basis that this was not a case where the assertion that the parties had agreed to CAS as an appellate arbitral tribunal had been supported by an argument with any real prospect of success. Teare J held that the balance of convenience lay firmly in favour of granting the injunction sought by Sheffield United. The arbitration agreement between the parties was governed by English law, suggesting that it was for the court rather than CAS to determine its true construction. However prompt CAS would be in determining the question of its own jurisdiction, the parties would be engaged in the process of arguing that question at a time when they should be engaged in preparing for the quantum hearing.

Teare J was also satisfied that the application met the requirements of section 44(3) and (5) of the Arbitration Act 1996 (which he considered as part of his evaluation of whether it would be just and reasonable to grant the injunction) given that the case was one of urgency and that the tribunal was unable for the time being to act effectively.

West Ham's application to stay Sheffield United's proceedings under section 9 of the Arbitration Act 1996 was also rejected: had West Ham wished to seek a stay under section 9, the application should have been served promptly, making plain that West Ham required the Rule K arbitral tribunal to determine whether or not CAS had been agreed as an appellate arbitral tribunal.

Paul Harris and Fiona Banks appeared for West Ham United

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