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IN THE HIGH COURT OF JUSTICE Claim no. CL-2018-000631
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice,
The Rolls Building,
7 Rolls Buildings,
Fetter Lane,
London, EC4A 1NL

Wednesday, 2nd October, 2019

Before:

MR. LIONEL PERSEY QC
(Sitting as a Judge of the High Court)
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BETWEEN:

SDI RETAIL SERVICES LIMITED Claimant

-and-

(1) THE RANGERS FOOTBALL CLUB LIMITED Defendant

(2) LBJ SPORTS APPAREL LIMITED
T/A ELITE GROUP
Proposed Second Defendant

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19
MR. SA'AD HOSSAIN QC and MS. JOYCE ARNOLD (instructed by
Reynolds Porter Chamberlain LLP) appeared for the
Claimant.

MR. AKHIL SHAH QC and MR. CHRISTOPHER KNOWLES (instructed by
Allen & Overy LLP) appeared for the Defendant.

MS. PATRICIA BURNS (instructed by Enyo Law LLP) appeared
for the Proposed Second Defendant.

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P R O C E E D I N G S
(Transcript prepared without access to court bundles)
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1 MR. HOSSAIN: Good morning, my Lord.

2 THE JUDGE: Is in the fifth round or the quarter finals?

3 MR. HOSSAIN: Something like that, my Lord. My Lord, in this
4 round, I appear with Ms. Arnold, for SDIR, my learned friends,
5 Mr. Akhil Shah QC and Christopher Knowles, appear for Rangers,
6 and Ms. Patricia Burns appears for Elite. Just in terms of
7 bundles, apologies first of all that in your bundles, I
8 believe you did not have the most recent updates to the
9 inter-solicitor correspondence. That, I believe, was sent
10 only this morning.

11 THE JUDGE: I have read it all.

12 MR. HOSSAIN: I am grateful. For today the issues are narrowed,
13 so the only bundle we need to look at is application bundle 1,
14 but just for information, as your Lordship will have seen,
15 there is quite a bit more material that has been included in
16 the overall bundles, including all the pleadings, witness
17 statements, orders and so on. There was a bit of criticism in
18 Rangers' skeleton about why the bundles had been organised in
19 this way. In case it is helpful, the aim is to have a bundle
20 that can be used in adapted form for the CMC in due course and
21 indeed, in due course, I hope to provide a starting basis for
22 a trial bundle.

23 On our side, we thought it was helpful, given that a new
24 party is being introduced, to have all this material
25 conveniently organised. We did send over a draft index to

1 both parties and received no comments that it was
2 inappropriate so it was a little bit surprising to see that
3 there was a criticism of it in my learned friend's skeleton,
4 but there we go. My Lord, I am pleased to say the issues
5 before your Lordship are pretty narrow today.

6 THE JUDGE: Shall we take them issue by issue?

7 MR. HOSSAIN: Indeed.

8 THE JUDGE: The first issue is the question of when the Amended
9 Defence and Defence should be served.

10 MR. HOSSAIN: Yes.

11 THE JUDGE: And Mr. Shah, I think, if coat-tailing on Elite with
12 that. Ms. Burns, you want an extra four weeks.

13 MS. BURNS: My Lord, yes.

14 THE JUDGE: I notice in your skeleton that there are various
15 concerns about not having adequate documentation and the like
16 and even not having some of your own documentation.

17 MS. BURNS: That is right, my Lord.

18 THE JUDGE: Has that been rectified at all?

19 MR. HOSSAIN: My Lord, I am going to address that.

20 THE JUDGE: It seems to me that if that is the case, I would have
21 expected to see a witness statement if that sort of point was
22 going to being made. As you know, it is quite dangerous now
23 to make or resist an application without a witness statement.
24 You might a cropper (see the Supreme Court of last week).
25 What I am anxious to do is to ensure that everyone is on a

1 level playing field as soon as possible. You will not know
2 the answer to this, Ms. Burns, but how much of the
3 documentation that you consider to be relevant at the moment
4 was already in the trial bundles on the speedy trial?

5 MR. HOSSAIN: My Lord, what I can say is that we have already
6 provided a substantial of disclosure with the drafts. There
7 will be very little, if any, further disclosure that we shall
8 be giving as our initial disclosure when we serve the
9 Reamended Particulars of Claim. The issue about whether Elite
10 has retained certain documents, as I understand it, is simply
11 an issue to do with whether they are retained on the Consilio
12 system, which they are not, not whether the documents are
13 still in existence and available in another form, but at any
14 rate, the volume that we were provided with by way of Elite's
15 disclosure in advance of the April trial was about two Lever
16 Arch files. If it would assist Elite, we will provide copies
17 of those two Lever Arch files. I am bound to say that that
18 disclosure that was given pursuant to a consent order was only
19 completed something like less than ten days before the trial
20 and on our side we were able to digest and get on top of that
21 for the purposes of cross-examination and submission within
22 that ten-day period. So, given that we are talking about
23 Elite's own documents that they indeed have and have had
24 throughout, the fact that they are not available to Elite
25 apparently on the Consilio system any more does not seem to us

1 to be a significant matter that would warrant a four-week
2 extension, but at any rate we will provide, if requested,
3 those two Lever Arch files approximately of documents.

4 THE JUDGE: When did Elite or Enyo Law essentially come on to the
5 record with this application because I saw correspondence that
6 they were not responding to.

7 MR. HOSSAIN: October 2018 was the first application so the
8 history ----

9 THE JUDGE: I am talking about the history since August of this
10 year.

11 MR. HOSSAIN: Oh, since August? 7th August is when we sent the
12 draft. 9th August is when we issued the application.

13 THE JUDGE: I saw various letters from those instructing you to
14 Enyo Law which apparently were not responded to so I just
15 wondered when Enyo Law did start to engage with this
16 application.

17 MR. HOSSAIN: My Lord, that I do not know. Perhaps Ms. Burns can
18 comment. All I know is that since October 2018, Enyo has been
19 there acting for Elite because there was the application in
20 October for Teare J's order not to be sealed, which was
21 unsuccessful. The application was made by Mr. Coulton QC,
22 instructed by Enyo. Then there was the application before
23 my Lord at the end of January 2019 to have a participation,
24 short of being a party, that Mr. Hubbard made, instructed by
25 Enyo Law. Then there has been quite the extensive

1 participation, at least in the background, because Mr. Farr
2 Mr. Underwood were giving their witness statements and
3 disclosure was being given and all of that was with Enyo as
4 the solicitor instructed by Elite.

5 THE JUDGE: I seem to recall that Enyo did attend the trial as
6 well, did they not?

7 MS. BURNS: No, my Lord, I do not think it did.

8 MR. HOSSAIN: That I do not know. So I cannot speak to when Enyo
9 has specifically become engaged in dealing with this
10 application, but it has been involved for some time. My Lord,
11 if one can, if I can just expand a little bit in relation to
12 whether Elite should have eight weeks rather than four weeks
13 in order to ----

14 THE JUDGE: Why does it prejudice you? Does it prejudice you if
15 they have eight weeks rather than four weeks? I can tell you
16 now that I am concerned that given that these allegations are
17 quite serious and even if they could have been responded to,
18 or focused upon, a little earlier than it would appear they
19 have been, it surely is correct that Elite should have an
20 opportunity to put their best foot forward.

21 MR. HOSSAIN: Of course, my Lord.

22 THE JUDGE: I do not want them to come back and say they want to
23 amend. I want them to plead as full a case as possible.

24 MR. HOSSAIN: I entirely accept that. There are a number of
25 points to be made. First, there is the obvious point that

1 they have in fact had the draft for eight weeks now. There
2 were some minor typographical changes that were made that were
3 provided on Friday, but they do not affect the substance of
4 the matter. They have had the draft for eight weeks. They
5 are not coming into this litigation cold.

6 They have already had all, or nearly all, of the initial
7 disclosure that will be given and they have the disclosure
8 that they gave in April. Of course, there must have been some
9 quite serious work done on the Elite side in relation to the
10 April trial in considering those documents in order for
11 Mr. Farr and Mr. Underwood to put in their witness statements
12 in the first place. So that, as it were, is a preface to the
13 general point that we are not here asking for an indulgence
14 from the court to have some shortened timetable for defences.
15 We are simply inviting the normal rule to apply. In a way,
16 although Elite complains about lack of prejudice, that is the
17 wrong way about because we are not the people who are seeking
18 to have shortened timescales.

19 In relation to the prejudice that there may be, there
20 are a couple of points. First of all, there is the overriding
21 objective of dealing with matters as quickly as they can be
22 dealt with. We are now talking about, certainly in respect of
23 the Elite non-exclusive rights agreement and the retail units
24 agreement, agreements that were entered into over two years
25 ago.

1 Secondly, my Lord, I would say this. We do not yet know
2 what defences or indeed what counterclaims are going to be
3 made in response to these new claims, but the history of this
4 litigation, my Lord, is a history from SDIR's perspective of
5 unwelcome surprises. We had the September 2017 agreements
6 that we discovered had been entered into without full warning.
7 We then have the Elite/Hummel agreement and the retail units
8 agreement being disclosed to us after the October hearing.
9 So, what has happened serially in these proceedings is that
10 surprising events have occurred and those surprising events
11 have frequently required us to ask the court for expedition in
12 order to have preliminary issues or even whole trials
13 determined.

14 Now, that is merely to say that, in our submission, we
15 have earned a degree of scepticism about what future
16 developments there may be. We do not know what they are going
17 to be, but putting it at its lowest, there remains the
18 possibility that matters will emerge through defences, through
19 counterclaims, through documents or other things that may
20 affect ongoing arrangements. We are dealing here with
21 agreements that are still ongoing between the parties. There
22 is the possibility that there may be issues that are suitable
23 for some preliminary issue that are requiring some earlier
24 determination. There is the possibility that they will
25 require some earlier determination. I cannot say what they

1 are. In fairness to your Lordship, I cannot identify that
2 specific matter, but there is that possibility.

3 Now, all that I am asking for today is for essentially
4 the ordinary timetable towards fixing a CMC. I will come on
5 to that because our suggested dates have been, we suggest,
6 slightly later dates than we had originally suggested. We are
7 now suggesting not before 3rd February and that takes into
8 account some of the points made fairly by Rangers and Elite.
9 At any rate, what we would like to have is a situation where
10 if matters do arise that raise case management issues, we are
11 in the best position to allow the court to do something, to
12 make directions, rather than it being said that there may be a
13 need for the court to do something -- order a preliminary
14 issue or something like that -- but there is no point because
15 there is no time to do so before the next football season
16 commences.

17 So, the way in which I would put it, my Lord, is that
18 recognising the specific history of this litigation, put at
19 its lowest, there is the possibility that things will arise
20 that may make having a CMC in early February a very valuable
21 thing, but I do come back to the point that I am not
22 suggesting some shortened timetable and I will come on to
23 explain how the disclosure pilot timetable works in
24 conjunction with the 3rd February date. I am not suggesting
25 shortening any of the ordinary times ----

1 THE JUDGE: Can I tell you now that I am not available. I noticed
2 the draft order provided for the CMC to be before me, but I am
3 not available in February. In fact, I am not available
4 beyond, at the latest, 17th January. Thereafter, I am engaged
5 in another matter for at least six to eight weeks.

6 MR. HOSSAIN: Well, that is a relevant consideration, my Lord.

7 THE JUDGE: It seems to me that you are raising potential
8 concerns, but there is currently no ground for those concerns.
9 I would have thought, with fairly active case management,
10 possibly from a very early stage, end of this year/very early
11 next year, if the court is given updates and if I hear any
12 hearings that the parties want to have, I do, for my sins,
13 have a reasonable amount of knowledge about this case because
14 I have been hearing various disputes over the last year so it
15 may be that I can assist the parties to jog along a bit more
16 quickly or to try and define issues as they come up, and
17 narrow them.

18 As I see it -- and please feel free, anyone, to tell me
19 that I am wrong -- most of the relevant disclosure has
20 probably been deployed in one way or another. I would have
21 thought that Sports Direct have probably given most of the
22 disclosure that they need to give and in fact the issues
23 depend more upon what may or may not have happened as between
24 Rangers and Elite. It may be there is some more disclosure
25 that needs to come from each of those parties. Again, I do

1 not see how that that can be particularly difficult and it
2 ought to be easy for you to identify those heads of disclosure
3 that you have not yet seen, that you want to see or that you
4 think may exist, and to flag that up fairly early on.

5 MR. HOSSAIN: My Lord, indeed. It is certainly fair to say that
6 there is going to be a big overlap between the disclosure that
7 has been given relevant to April and the disclosure that will
8 be relevant for the ongoing claims. There will be a need to
9 go through the disclosure process thoroughly in the light of
10 the new causes of action and claims. For our part, when it
11 come to fixing the CMC, the rules ordinarily provide for a
12 period of 42 days after ----

13 THE JUDGE: What if we call it a directions hearing rather than a
14 CMC? Therefore, we fix a hearing that we may be able to use
15 to advance matters without it necessarily being a formal CMC.
16 We are a long way down the road on some of these issues
17 already. Although Ms. Burns and Mr. Shah will not have as
18 much experience of this case -- whether that is a good thing
19 or not, I will not say -- they will be able to read themselves
20 in pretty quickly, particularly if they have access to all the
21 documents, which has they should do, which have been deployed
22 thus far.

23 MR. HOSSAIN: Does your Lordship have in mind that today one might
24 fix a not before date for a CMC, but additionally have a
25 directions hearing ----

1 THE JUDGE: That is what I do ----

2 MR. HOSSAIN: ---- for perhaps half a day or something like that

3 ----

4 THE JUDGE: Yes.

5 MR. HOSSAIN: ---- in early January?

6 THE JUDGE: Partly so the parties can actually report to the court

7 because I am a little concerned about how much of the court's

8 time has been taken up with the various issues so far, even

9 with just two parties. Virtually everyone in the Commercial

10 Court has had a bash at one or other of the hearings and it

11 does seem to me that we need to try and be as efficient as

12 possible.

13 MR. HOSSAIN: Well, can I take instructions on that?

14 THE JUDGE: Just let me add one point. On disclosure, I would be

15 minded to order that all of the disclosure that has been given

16 thus far in the case by all three parties should stand as

17 disclosure, or the first tranche of disclosure in the

18 forthcoming disputes.

19 MR. HOSSAIN: We have agreed that all disclosure ought to stand as

20 disclosure. We would suggest that whether it is built into

21 the order or not, the parties go through the mechanism that

22 has been helpfully set out in Rangers' skeleton argument.

23 Now, if a directions hearing were set for, let us say, early

24 January, the position, on our reckoning of time, is that we

25 would serve our draft list of issues for disclosure with our

1 reply on 15th November. That is on a four-week basis for
2 defence. So that by the time one gets to the end of December,
3 one would then have had comments from the defendants on that
4 draft list of issues for disclosure and model C requests. So,
5 whilst there are further steps that would be required to be
6 completed in advance of a CMC, nonetheless that seems to be
7 quite a useful amount of work that would have been completed
8 before a directions hearing in January that the court can
9 usefully address at that stage. We would very much endorse
10 that suggested approach as being a good way to cut through or
11 address early any issues that might arise between the parties.

12 THE JUDGE: PD 51 has not in fact been applied at all thus far in
13 the case, has it?

14 MR. HOSSAIN: No.

15 THE JUDGE: Because most of the hearings have been brought on with
16 a fair degree of urgency, have they not?

17 MR. HOSSAIN: Yes. So, my Lord, we would very much take on board
18 your Lordship's suggestion and that would actually address the
19 possibility that I am raising that things may arise through
20 defences and counterclaims or otherwise that might require
21 some early intervention by the court. If we need that -- and
22 I do not say we do -- if that possibility were to arise,
23 January would be the time to deal with that. On that basis,
24 there is more time that could be allowed before one fixes a
25 CMC that would accommodate my Lord's availability because we

1 would very much like to have your knowledge applied to the
2 case as that will greatly shorten matters when one is dealing
3 with case management.

4 That may affect your Lordship's view about how long
5 Elite should be given to serve a defence, although the dates
6 that I was giving to your Lordship about what would have been
7 completed before a January hearing are predicated on four
8 weeks for Elite to produce its defence. So, if Elite were to
9 be given significantly more time than four weeks, that does
10 have a knock-on effect on what would have been achieved before
11 a further directions hearing.

12 THE JUDGE: I can tell you now that I am minded to give them an
13 extra four weeks simply because of the nature of the issues
14 involved and because they can use that four weeks not only to
15 plead the case out and get proper instructions and interview
16 the witnesses they have not yet interviewed, but they can also
17 -- and I would require them to -- focus on considering a list
18 of issues, which you could possibly provide in draft a bit
19 earlier than your reply, but just a draft list of issues, and
20 they could also focus on what further discovery they may have
21 to give or they may wish to ask for. So, by early January, I
22 would have thought that quite a lot of the post-pleading steps
23 would have been set in train already.

24 MR. HOSSAIN: Can I just respond briefly to those points?

25 THE JUDGE: Yes.

1 MR. HOSSAIN: In my submission, it is difficult for us to provide
2 a list of issues even in draft before we have seen what the
3 defence is.

4 THE JUDGE: I can see what the issues are likely to be simply from
5 your very lengthy pleadings.

6 MR. HOSSAIN: One can. All I would suggest, my Lord, is that in
7 order to prevent too much to and fro of drafts in relation to
8 lists of issues, I would suggest following the usual course,
9 which is that we provide it once we have seen what the defence
10 is and we have identified whether any issues arise in reply to
11 those points.

12 On disclosure, I entirely agree that Rangers and Elite
13 should be considering disclosure as they are preparing
14 generally their case, but again what I would suggest is that
15 the most time-efficient way of dealing with it is for us to
16 provide our list of issues for disclosure and then that
17 focuses all parties' minds on the disclosure exercise and one
18 moves into a different phase.

19 Where that comes to, my Lord, is that what I would urge
20 on your Lordship-- and I accept your Lordship is minded to
21 give more time and I am not going to press hard against that
22 suggestion -- to go for a compromise date, giving them one or
23 perhaps two extra weeks -- (Pause for instructions) A very
24 good point is made to me that if at least Rangers is only
25 given four weeks, even if Elite is given more, that does

1 enable us to do a little bit more work in preparation for a
2 draft list of issues. At any rate, what I would urge on
3 your Lordship is a compromise position and part of the reason
4 for that, my Lord, is that on the four-week basis, one gets to
5 late December when the deadline for a model C requests passes.
6 If, for example, the time for defence was stretched to six
7 weeks, my Lord, then that deadline would fall on 10th January.
8 Therefore, on that basis, following the disclosure pilot
9 deadlines, by an early January directions hearing, the
10 position would still be, as I was indicating, that you would
11 have had replies, draft lists of issues, comments on those
12 draft lists of issues, and model C requests all completed.
13 The only scenario in which those are not completed is if Elite
14 has eight weeks, or if Elite has more than six weeks, then we
15 are into that territory.

16 THE JUDGE: There is just one further point which I think it would
17 be helpful to discuss now. It has been suggested against you
18 that there is no need for an early trial in this matter
19 because you have all the relief and injunctions that you need
20 already and you have not made out a case as to why the trial
21 should be heard sooner rather than later of the remaining
22 issues.

23 MR. HOSSAIN: The procedural history here is there had been a
24 suggestion, initially on our side, of directions that would
25 lead to a trial in June. Taking on board what has been said

1 by the defendants about the time they need, we are not
2 pursuing that. We are not pursuing anything beyond asking for
3 a CMC to be listed for the earliest possible moment.

4 In case it is relevant, I do note that in Rangers's
5 skeleton the primary basis that they put in saying that we do
6 not need any further relief, in particular injunctive relief
7 against Elite, that that will never arise, is on the basis
8 that the arrangements between Rangers and Elite under the
9 Elite non-exclusive rights agreement expire at the end of the
10 2019/2020 season.

11 In fact, if one looks at the Elite non-exclusive rights
12 agreement, paragraph 21, I believe of that, says that the
13 agreement shall be extended if there has not been a breach by
14 Elite of the KPIs for the season 2020/2021.

15 So, I do not know whether it is being said by Rangers
16 and Elite that in fact they have reached an agreement that
17 that the September non-exclusive rights agreement is in fact
18 going to expire at the end of this season. If they have
19 reached such an agreement, they should tell us so. On the
20 face of the agreement, though, and putting it no higher than
21 this, there is the possibility that the arrangements between
22 Rangers and Elite will continue for 2020/2021. We do not have
23 injunctive relief against Elite, but there are contingencies,
24 one can see, where injunctive relief might be available,
25 indeed appropriate, against them. So, that is all that I was

1 going to say about that.

2 We recognise, my Lord, we live in a world of the
3 pragmatic and we have reflected in the light of what the
4 defendants have said and we have adjusted the directions that
5 we are seeking, so that what we feel we are entitled to and
6 what we think is doable is getting a CMC not before
7 3rd February or indeed such date as would be convenient for
8 your Lordship. That is how we put that point.

9 My Lord, can I take instructions about the point
10 your Lordship raised to do with your Lordship's availability
11 in February? (Pause for instructions) If your Lordship is
12 able and minded to order an early directions hearing in
13 January, which we very much consider would be appropriate,
14 then that leaves more latitude when it comes to the CMC and we
15 would be happy for that CMC to come on, on a not before date
16 that would coincide with your Lordship's availability.

17 My Lord, unless I can assist your Lordship further on
18 those two questions of time for a defence and time for a CMC,
19 then those are my submissions.

20 THE JUDGE: Thank you very much.

21 MR. SHAH: My Lord, I do not know if you want to hear from
22 Ms. Burns first.

23 THE JUDGE: I was thinking that perhaps it might be nice to hear
24 from Ms. Burns.

25 MR. SHAH: Then we come to the CMC.

1 THE JUDGE: She is the road block on the critical path, so perhaps
2 we should hear from her first.

3 MS. BURNS: My Lord, I am grateful. I am weary of saying too much
4 on the issue of the extension, lest I snatch a defeat from the
5 jaws of victory. But on the points that my learned friend
6 raised regarding prejudice, there were two points made against
7 me, one related to the overriding objective and the other
8 related to history of nasty surprises in this litigation and
9 SDIR having earned a degree of scepticism.

10 If I can deal with the second point first, I would say
11 that SDIR has certainly not earned a degree of scepticism as
12 against Elite, which is a new party to these proceedings, and
13 which, as a non-party, has been very co-operative to date in
14 that it voluntarily provided the non-party disclosure on which
15 SDIR now bases its claims.

16 As for the overriding objective point, it is clearly in
17 accordance with the overriding objective for Elite to be given
18 time to review all the documentation existing in the
19 proceedings now, so that it can put in as full a defence as
20 possible. If it does not have time to review the existing
21 documentation at this stage, the pleading, it can be done, but
22 it will be full of non-admissions when it may have been
23 possible to plead an admission or a denial and Elite will
24 inevitably have to make amendments at a later stage. It is
25 the professional upon of Enyo Law that Elite requires eight

1 weeks to properly investigate these allegations and plead a
2 defence and in circumstances where SDIR has not identified any
3 prejudice it will suffer by the extension, in my submission,
4 that is a good enough reason to grant the modest four-week
5 extension that Elite seeks.

6 There is also a more general point about the unfairness
7 of SDIR's position. First, it is offering Elite a new party
8 to the proceedings the same length of time to plead a defence
9 from scratch, as it is offering Rangers an existing party to
10 respond to its latest amendments. That cannot be right
11 because Elite's workload is certainly going to be far greater
12 than Rangers. Second, the amendments were not put together
13 with any particular urgency, so it difficult to see why the
14 defence should be hurried. Mr. Cran says, at paragraph 41 of
15 his 14th witness statement that the claims against Elite for
16 inducement of breach of contract and unlawful means conspiracy
17 both arise from documents disclosed prior to the speedy trial,
18 i.e., early April or even before; but SDIR did not serve the
19 draft reamended particulars until 7th August, so it took some
20 16 weeks to put together its amendments.

21 THE JUDGE: I imagine they also had to review the transcripts as
22 well of the speedy trial, because there were certain lines of
23 questioning at the speedy trial which are possibly not
24 irrelevant to where we are now.

25 MS. BURNS: My Lord, yes. I also recognise that some tweaks may

1 have been made following the handing down of judgment in July.
2 But the vast majority of the material necessary to please the
3 claim against Elite has been available to SDIR since April,
4 and it was almost a further three weeks after judgment was
5 handed down before SDIR served the draft reamended
6 particulars.

7 It is also worth bearing in mind that the draft
8 amendments were served during the long vacation and without
9 any prior notice of SDIR's claims whatsoever. Had SDIR served
10 a letter before action, Elite would have had up to 12 weeks to
11 respond to that, and then a further 28 days to plead a defence
12 once the particulars were served.

13 THE JUDGE: You do not need to push any further on that.

14 MS. BURNS: My Lord, I am grateful. Turning to the listing of the
15 CMC and the proposal for an dearly directions hearing in
16 January, we have no objection to an early directions hearing
17 in January and think it could still be useful for the court
18 have a steer on where the parties are, even if we are slightly
19 less advanced along the Practice Direction 51U timetable and
20 not quite at the Model C request stage. If we have a list of
21 issues for disclosure at that stage, in my submission, that
22 would be very helpful.

23 THE JUDGE: Practice Direction 51 is not compulsory, a judge can
24 take a different course if he thinks it is appropriate.

25 MS. BURNS: I recognise that, my Lord. In the absence of any good

1 reason to do that, in my submission, the new disclosure
2 process ought to be followed ----

3 THE JUDGE: Even in a case where much of the disclosure is already
4 out there and has been exchanged between the parties.

5 MS. BURNS: That may be the case, that is something that could be
6 usefully discussed at the directions hearing in January, once
7 the issue that arise from Elite's defence and any further
8 claims are better understood.

9 THE JUDGE: What do you say you have not got by way of
10 documentation that has been exchanged that you need to see
11 before you can draft your defence?

12 MS. BURNS: I am grateful for my learned friend's offer to provide
13 us with the non-party disclosure that we gave, that would be
14 most helpful. In addition to that, the claims are also based
15 on the disclosure given by Rangers prior to the speedy trial,
16 which we do not have, and we submit that we should also have
17 SDIR's disclosure so that we have the full picture and are
18 able to review everything before we plead the defence. I note
19 also that my learned friend said there may be some additional
20 initial disclosure to come with the particulars on Friday.

21 In terms of the listing of a later CMC, I think the
22 parties are getting closer together now on what might be a
23 suitable date for that. The point I raised in any skeleton
24 argument, which is still Elite's position, is that Elite finds
25 it difficult to commit to a certain not before date at this

1 point because it does not yet know when the pleadings will
2 close. It may make additional claims, a counterclaim which
3 will entail a further round of pleadings. I take
4 your Lordship's point that we may be able to curtail the
5 Practice Direction 51 timetable in the circumstances of this
6 particular case, in which case there will probably be a
7 sufficient buffer built in anyway between the close of
8 pleadings and the case management conference; but our position
9 is that it is difficult to commit to a specific date at this
10 point.

11 Unless there is anything further, my Lord, those are my
12 submissions.

13 THE JUDGE: Thank you very much. Mr. Shah?

14 MR. SHAH: My Lord, although Rangers has been an established and
15 is an established defendant in this case, the present legal
16 team starts with the disadvantage that we are relatively fresh
17 to the issues and the documents.

18 So far as the timing of the defence is concerned, we
19 would urge upon your Lordship that whatever the extension is
20 given to Elite, our defence should be served at the same time.
21 That is so that the procedural timetable is the same for both
22 and leads to greater simplicity. More substantively, it does
23 allow, at least for issues on which there is a joint interest,
24 to be discussed when the parties are equally informed.
25 Examples of that, if you were to look at paragraph 5 of SDIR's

1 skeleton, would be, for instance, there is a claim of failure
2 to comply with the Elite/Hummel agreement in which Sports
3 Direct said they have a direct right to enforce under the
4 Contract (Rights of Third Parties) Act. That is something
5 that would benefit the defence, Rangers' defence would
6 certainly benefit some discussion with Elite. Similarly, the
7 claim for Rangers' breach of clause 5.1 of the agreement and
8 further agreement for failing to supply or procure supplement
9 of replica kit.

10 Again, one of the issues that is likely to arise is the
11 extent to which Sports Direct is engaged with Elite in terms
12 of agreeing terms of supply. Equally, on the other claims
13 there are issues of joint interest that it would benefit
14 discussing and allowing at least a fully pleaded position.

15 Having a common timetable is not going to lead to any
16 procedural disadvantage, my Lord. That is because the
17 directions hearing which you have suggested is going to allow
18 the court to keep a control on the procedure, and we are
19 amenable to a directions hearing in early January. It does
20 cause some difficulty for my junior, but we will be able to
21 deal with that. It also means that your Lordship does not
22 have to compress the disclosure timetable unnecessarily under
23 Practice Direction 51U because you are not going to be making
24 disclosure order under that practice direction at that
25 directions hearing, but you can at least direct the parties

1 along the disclosure process at that hearing. To that extent,
2 there is no disadvantage in allowing the pleaded claims to be
3 aligned.

4 In terms of the disclosure, your Lordship is right that
5 this is an unusual case, in that there has already been
6 extensive disclosure on the issues that go to liability. But
7 there has not been complete disclosure, because obviously they
8 have not been pleaded issues. The deceit claim is a serious
9 claim but it is a fairly narrow factual compass. Obviously
10 the contractual claims and the failure to supply, there has
11 not been any disclosure. On quantum, there has not been any
12 disclosure at all. The parties simply have not looked at that
13 and the court has not had to look at that; that obviously
14 involves questions of the counterfactual, it involves
15 questions of the process in which the agreements were entered
16 into and that will require further disclosure. Equally,
17 Rangers' counterclaim will require disclosure.

18 Even though there has been extensive disclosure, there
19 is going to be identifiable additional disclosure which needs
20 to be sensibly managed. Although the pilot scheme under the
21 practice direction postdates the commencement of these
22 proceedings, it is clear that it does apply to these
23 proceedings to future disclosure. Of course, your Lordship
24 has an ability to depart for good reason, but this is a case
25 where, in particular, there probably is not good reason to

1 depart from it, because in a sense it may well be that this is
2 a case where Model C requests, which are similar to
3 arbitration requests, will be much more appropriate for some
4 of the issues that have been raised.

5 My Lord, that is a reason why the directions hearing, we
6 say, would in fact be a good way to assess where the parties
7 are. But equally it is a reason why you do not need to
8 compress the steps that are taken.

9 In relation to the actual steps that have been proposed,
10 I do not know if Mr. Hossain is going to give you any further
11 detail on his timetable. The one concern that we have, and it
12 may be that in fact changes, because 3rd February CMC is no
13 longer feasible. But the one concern we had was that, I think
14 one of the steps he was proposing was that the Model C
15 requests were to be made by 27th December. Now, the 27th
16 December falls in the Christmas week and the way Christmas
17 falls this year is that it is on a Wednesday. So, it is quite
18 likely that people are going to be away that week and the
19 following week. So, in terms of trying to have substantive
20 steps there, it just seems a little bit unrealistic and
21 probably unnecessary.

22 My Lord, it may be that in fact the better course is
23 that we have the directions hearing flagged in the order
24 today, and then we leave the question of the CMC or we put a
25 longstop date for the CMC date to be fixed which, given

1 your Lordship's availability, would be a period that would be
2 after it sounds like March or April 2020.

3 My Lord, unless I can assist you any further.

4 THE JUDGE: No. Thank you very much. I am going to order as
5 follows, but I am also going to encourage the parties to have
6 a word after I have made my order. I do give eight weeks for
7 service of the amended defence from Rangers and the defence
8 from Elite, but if and in so far as either party is minded to
9 make a counterclaim, and draft orders do not actually cater
10 for that, any such counterclaim must form part of that
11 pleading.

12 MR. SHAH: My Lord, I should have flagged, we already have a
13 counterclaim but we are proposing to amend ours. We will
14 propose the amended counterclaim and Mr. Hossain and his
15 clients will have the ability to object to it.

16 THE JUDGE: If you are able to give more advanced notice than
17 eight weeks from today's date as to what the contents of that
18 are, I would encourage that.

19 MS. BURNS: My Lord, may I clarify when your Lordship says
20 counterclaim, you also mean any other additional claims?

21 THE JUDGE: Yes. Currently, your clients obviously have only just
22 become parties and I do order they become parties, second
23 defendants, but you have not raised any claims against SDIR
24 yet, have you?

25 MS. BURNS: No, we have not; nor against Rangers. They are just

1 all things we need to consider.

2 THE JUDGE: So, eight weeks takes us to the end of November, is it
3 not?

4 MR. HOSSAIN: 29th November.

5 THE JUDGE: 29th November. By when would you be able to serve
6 your reply and any defence and counterclaim?

7 MR. HOSSAIN: We would suggest two weeks, So, can I take
8 instructions? (Pause for instructions) My Lord, if it is
9 just a matter of replying to a defence from Rangers and Elite,
10 then we have said two weeks. We still say two weeks, so that
11 would take you to the 14th or 15th December. If it is a
12 matter of responding to a counterclaim, obviously, that
13 depends when do we get advance notice of the draft
14 counterclaim, have we consented to it, and so on. That
15 element of it is slightly up in the air. But in terms of
16 ordering the time by which we serve our reply, then two weeks
17 from 29th November, we are content with that. Indeed, I think
18 it almost needs to be that in order to have as many steps done
19 before the January directions hearing.

20 THE JUDGE: Then I am also going to order that the parties prepare
21 jointly, with full cooperation, a draft list of issues. That
22 should be done by Friday, 10th January.

23 MR. HOSSAIN: My Lord, is that a list of issues for disclosure?

24 THE JUDGE: No. The issues in the case.

25 MR. HOSSAIN: The issues in the case.

1 THE JUDGE: Which may then determine the ambit of disclosure.

2 I will hear a directions hearing, if convenient to all
3 parties, because I do want all parties to be there, on
4 17th January. I do have a currently have availability on
5 the 15th and the 16th, if that is more convenient to all the
6 parties.

7 MR. SHAH: My Lord, I wonder if I could put a plea in for
8 the 15th. That is only because I start a trial the following
9 week.

10 THE JUDGE: That is always the way, is it not?

11 MR. HOSSAIN: I am not sure Mr. Shah knows this, but it may be a
12 trial against me! Yes, it is a trial in which I am involved.

13 THE JUDGE: You can develop a good working relationship if you
14 have not got one already!

15 MR. HOSSAIN: I would also ask for the 15th on that basis.

16 MS. BURNS: 15th January suits me, my Lord.

17 THE JUDGE: I would like the parties to try and identify what
18 disclosure each party thinks it needs at that hearing. It may
19 not be possible to nail it down completely, but if we can make
20 some progress on disclosure and future timetabling with regard
21 to that at that hearing I would like to do that.

22 Here is a little shot across the bows. I have been
23 wonder whether these disputes need to take up as much court
24 time as they are clearly going to do if the matter runs its
25 course. Has any consideration been given to mediation?

1 MR. HOSSAIN: Yes.

2 THE JUDGE: As between yourselves and Rangers?

3 MR. SHAH: We are not aware that there has been any discussion,
4 mediation, but then we have very limited experience of this
5 case.

6 THE JUDGE: Well, this is just a shot across the boughs. It may
7 be something to which I will return in January. The parties
8 may wish to give some thought to it in advance, and perhaps
9 cut me off.

10 MS. BURNS: My Lord, I beg your pardon, I may have misheard you,
11 I thought I heard you say Friday, 10th January for the list of
12 issues for disclosure.

13 THE JUDGE: Yes.

14 MS. BURNS: A list of issues in the case, I beg your pardon.

15 THE JUDGE: Yes.

16 MS. BURNS: Friday is a 13th in December.

17 THE JUDGE: 10th January.

18 MS. BURNS: Sorry, it is January and not December. I mis-spoke.
19 Thank you very much.

20 THE JUDGE: Please try and draft an order up that reflects that,
21 but do I need to do anything else at this stage?

22 MR. HOSSAIN: No, my Lord. Does your Lordship have in mind
23 that -- that is the draft list of issues for the issues in the
24 case. That is agreed between the parties for 10th January.
25 There is also separately from that the pilot disclosure

1 sequence of events, so some of that will also have been
2 undertaken before the January hearing. I am assuming, but do
3 say if that is not correct, that the parties will get on with
4 that.

5 THE JUDGE: The parties are to get on with that, and I want all
6 documents that have so far been disclosed in these proceedings
7 from the start to be provided to all parties.

8 MR. HOSSAIN: We will do that, my Lord. My Lord, the only issue
9 that I am told to mention in relation to providing all
10 disclosure is that, as your Lordship may be aware, there were
11 confidentiality issues that were raised in relation to some of
12 those.

13 THE JUDGE: The club issues?

14 MR. HOSSAIN: Yes. Most of the confidentiality issues that were
15 raised were to do with confidentiality belonging to Elite or
16 Hummel; so, presumably, those issues do not persist. Some of
17 the issues were raised in relation to confidentiality to
18 others. So, there may be a small selection of documents where
19 in order for us to be free to provide them to Elite, either we
20 have to expand the confidentiality club by agreement or it is
21 said by Rangers that there is no longer a confidentiality
22 issue related to that. I anticipate that will be a small
23 number of documents, albeit that the current confidentiality
24 club, the scope is quite broad.

25 THE JUDGE: I would encourage expanding of the confidentiality

1 club, if necessary, to cover all documents that may have
2 confidentiality issues.

3 MR. HOSSAIN: My Lord, in terms of the draft list of issues for
4 disclosure, as I have previously indicated, our proposal was
5 that we would serve that with our reply, and I thought we
6 would continue to ----

7 THE JUDGE: If Ms. Arnold can do that, that I think would be
8 ideal, because it would enable the defendants to focus at an
9 early stage.

10 MR. HOSSAIN: Yes, that is what we had thought. Can I take
11 instructions as to whether there is anything else I need to
12 raise. (Pause for instructions) No, my Lord, nothing further
13 from me. I do not think your Lordship needs to make any
14 further directions, save as to costs, which I think are agreed
15 as costs in the case.

16 THE JUDGE: Costs in the case, yes. Now, should any issues arise
17 between you, and I hope they will not, and good cooperation
18 will continue between now and Christmas, I am fairly heavily
19 engaged in two other matters, but I am more than happy to deal
20 with any applications or housekeeping matters on paper, if the
21 parties are content for that to be done. If e-mails are sent
22 to the Registry and my clerks, then I will attend to matters
23 as quickly as I can.

24 MR. HOSSAIN: I am grateful, my Lord.

25 THE JUDGE: This does now require a lot of cooperation between the

1 parties.

2 MR. HOSSAIN: I am grateful, and that point is certainly taken on
3 board.

4 THE JUDGE: Good. Anything else?

5 MR. SHAH: My Lord, no.

6 MS. BURNS: No, my Lord.

7 THE JUDGE: Thank you very much for dealing with this.

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