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EXPERT DETERMINATIONS AND MANIFEST ERRORS IN WH HOLDING LTD V E20 STADIUM LLP [2025] EWHC 140 (COMM)

In [WH Holding Ltd v E20 Stadium LLP \[2025\]](#) the Court clarified what constitutes a manifest error for the purposes of setting aside an expert determination where "manifest error" is an exception to the final and binding nature of expert determinations.

BACKGROUND

On 22 March 2013, WH Holding Ltd ("**WHH**") and E20 Stadium LLP ("**E20**") entered into a Concession Agreement (the "**Agreement**") relating to the use of the London Stadium by West Ham United Football Club (the "**Club**"). The Agreement contained an "anti-embarrassment clause" at Clause 20. This enabled E20 to share in any gains made from future share sales by the "Relevant Shareholders" (as defined in the Agreement) of WHH in any interest in the Club. The amount due under Clause 20 was referred to as a "Stadium Premium Amount".

On 10 November 2021, the Relevant Shareholders entered into a series of share sale agreements with 1890 Holdings AS. This included a put and call option agreement (the "**Option**") between David Sullivan, the largest shareholder in WHH, and 1890 Holdings AS.

A dispute arose between WHH and E20 in relation to the Option. E20 contended that the Option constituted a "Qualifying Transaction" under Clause 20, entitling E20 to a Stadium Premium Amount. WHH contended that, on a proper application of Clause 20, no Stadium Premium Amount was due in respect of the Option.

THE TERMS

Clause 50 of the Agreement provided for any dispute arising in relation to Clause 20 to be resolved by way of expert determination, and for that determination to be final and binding on the parties in the absence of manifest error.

After the dispute had arisen, the parties entered into an independent Expert Agreement on 14 December 2022. This reiterated that the parties "are not permitted to challenge the Decision in any legal proceedings or otherwise, save where such challenge arises as a result of manifest error or fraud on the part of the Expert".

ISSUES

The Expert Agreement instructed an expert to determine whether a Stadium Premium Amount was due in respect of the Option.



The expert determined that the Option constituted a Qualifying Transaction and, using the calculations set out in Clause 20, a Stadium Premium Amount of £3,600,000 was payable by WHH to E20.

WHH challenged the expert's determination on the grounds that the expert made three manifest errors. The issues before the High Court (the "**Court**") were whether the expert made manifest errors in his application of Clause 20 to:

- a) calculate the Stadium Premium Amount at £3,600,000;
- b) find that three separate share sales constituted a single "Qualifying Transaction"; and
- c) find that the Option Agreement constituted a "Qualifying Transaction".

THE LAW

When considering a determination under an expert determination clause, the starting point is that the parties, having freely agreed to put an issue to expert determination, shall be bound by their agreement, save in cases of fraud or bad faith on the part of the expert, or where they have departed from their instructions.¹

It is no longer the position that a single mistake on the part of an expert in their determination will invalidate their entire report.²

When considering whether an error constitutes a "manifest error", it is necessary to consider the definition of "manifest error". The precise meaning depends on the context and the contract in question.³ For an error to be manifest it need not be negligent. This creates some difficulty in objectively defining manifest error. Beyond the subjective context, for an error to be manifest it must be "obviously or easily demonstrable without extensive investigation".⁴ An error will be considered "obviously or easily demonstrable" where it is "so obvious and obviously capable of affecting the determination as to admit of no difference of opinion" (the "**Veba Test**").⁵ What is meant by "without extensive investigation" will depend upon the context. Unless the contract makes clear i.e. a certificate final for the purposes

of a quality analysis, extrinsic evidence may be admissible and where it may not be able to demonstrate the error immediately, an investigation limited in time and extent may be necessary.

The Court's approach to assessing an expert determination is also important, particularly what the role of the Court is and what documents the court will draw upon. In this case, the Court was not deciding an appeal. Here, the issue was not an expert determination of fact, but was broader by determining a wider dispute. Although expert determination clauses often provide that experts are not to act as arbitrators, in this case, it was agreed that the expert was required to give reasons. The Court acknowledged the parties' desire for finality but still contemplated an examination of the reasoning to determine if it disclosed any manifest error.

An interesting point made was the Court's role in determining whether the expert erred in law. It stated that even if the expert did err in law, for this to be challenged it would need to be shown that the error was a manifest error. An error alone would not suffice.

Having regard to the wording of what the parties agreed, the Court considered that it was permitted to review the underlying agreement in question, the parties' written submissions, any documented oral submissions, the expert's written determination, and any documents referred to in the aforementioned.

DECISION

Paul Mitchell KC, sitting as a Deputy High Court Judge found that the expert had made two errors in applying Clause 20 of the Agreement.

The Court found that the expert had calculated the Stadium Premium Amount using several agreed methods under Clause 20.11. This was despite the use of the disjunctive "or" indicating that one of three methods could be used, not all three. In reading the word "or" as "and", the Court found that the Veba Test was satisfied, and the error constituted a manifest error.

¹ Jones & Ors v Sherwood Computer Services Plc [1992] 1 WLR 277

² Veba Oil Supply & Trading GmbH v Petrotrade Inc (The Robin) [2001] EWCA Civ 1832

³ Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd [2003] UKSC 2

⁴ IIG Capital LLC v Van Der Merwe [2008] 1 All ER (Comm) 435.

⁵ Veba Oil Supply & Trading GmbH v Petrotrade Inc (The Robin) [2001] EWCA Civ 1832



This is important as an "error" alone is insufficient, the error had to be a manifest error.

The Court also found that the expert had treated several transactions as a single Qualifying Transaction within the meaning of Clause 20.10.

The Court found that the expert did so partly on the same basis as he used to calculate the Stadium Premium Account and partly due to incorrect contractual interpretation. The Court found that the Veba Test was satisfied on the grounds that the expert had misapplied the provisions of a clear and well-drafted agreement.

As a result of these manifest errors, the Court found that the determination was not final and binding on WHH.

COMMENTS

There are legal and practical takeaways from this case that are useful to parties when considering the most appropriate forum for dispute resolution. Whilst expert determination is commonly used to resolve more technically complex disputes, parties should give consideration to the limited scope to challenge an expert determination.

Legally, this case provides further clarity to the meaning of "manifest error" and the standard to which the Court must be satisfied to deem an error a manifest error. In doing so, it demonstrates the high bar and limited scope of a challenge to an expert determination based on manifest error.

It also provides guidance as to the Court's role when assessing errors in expert determinations and the approach that the Court will take.

From a practical standpoint, with greater clarity of the definition of manifest error at common law, parties may wish to apply more time to what they require in an expert determination clause and in the expert determination agreement. Not only in defining "manifest error" (perhaps by reference to the case law definitions), but also in setting out the procedure, the documentation to be submitted, whether oral or written submissions are required and whether reasons are required as part of the expert's decision.

This would vary depending upon whether what is required is a pure certificate final clause or something more fundamental such as an expert determination of a price review or financial formula used in contracts to assess prices, payments or compensation.

Please note that the above decision is in the process of being appealed.

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