

## Legal Briefing

### Ted Lowery considers a challenge to an expert's determination on grounds of manifest error

*WH Holding Ltd v E20 Stadium LLP* [2025] EWHC 140 (Comm)

In the Commercial Court

Before Paul Mitchell KC sitting as a Deputy High Court Judge

Judgment delivered 27 January 2025

#### The facts

Under a Concession Agreement dated 22 March 2013, E20 granted WH rights to use the London Olympic Stadium during the football season as a home ground for West Ham United, a football club wholly owned by WH. Clause 20 of the Concession Agreement comprised an “*anti-embarrassment*” provision whereby E20 was entitled to share in any gains made by the shareholders of WH in connection with a sale or transfer of interests in West Ham United. In that event, clause 20 required WH to pay to E20 a share of any profits made by the shareholders – defined as the Stadium Premium Amount – and included detailed arrangements for calculating this amount. Clause 50 of the Concession Agreement provided that any dispute relating to clause 20 was to be referred to an expert whose decision was to be final and binding in the absence of manifest error.

On 10 November 2021, WH issued 688 ordinary shares to a third party. At the same time, the third party purchased shares from various WH shareholders under three separate sales agreements and one of those shareholders entered into an option agreement with the third party for further share purchases, exercisable before 25 March 2022.

E20 contended that these arrangements engaged clause 20 and that a Stadium Premium Amount of some £3.6 million was payable by WH. WH disagreed and the dispute over whether any Stadium Premium

Amount was payable was referred to an expert. The expert issued a determination on 12 February 2023 in favour of E20.

WH challenged this outcome and during December 2023 issued a Part 8 application seeking declarations that it was not bound by the expert's determination on grounds that the determination included two manifest errors: firstly, that the expert had accepted E20's calculation of the Stadium Premium Amount which WH maintained was incorrect and contrary to the terms of the Concession Agreement; and secondly, that the expert had treated the three sales agreements and option agreement as a single transaction which was incorrect as a matter of fact and, again, contrary to the terms of the Concession Agreement.

#### The issue

Was the expert's determination non-binding because of manifest errors?

#### The decision

The judge noted that, where the expert was not sitting as an arbitrator and the parties had agreed to be bound by the expert's determination, the Part 8 application was not analogous to an appeal, so that for example, if the court reached a different conclusion on any legal questions, that would not automatically lead to a finding of manifest error. Rather, the court's role was to decide if WH had proved the manifest errors it contended for by showing that the expert's interpretation of the Concession Agreement was obviously wrong.

On WH's first ground, the judge found that E20 had arrived at the Stadium Premium Amount of £3.6 million by undertaking two separate calculations, each on a different basis, but had then blended them into a hybrid computation that was not provided for by the terms of the Concession Agreement. Therefore, having endorsed E20's calculations, the expert was in error.

On WH's second ground, the judge noted that even if the three share sales agreements and the option agreement could be treated as a single qualifying transaction under the Concession Agreement, the latter included no mechanism allowing thereafter for the calculation of a unitary Stadium Premium Amount (the judge noted that E20's own approach

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to calculating the £3.6 million involved pro-rating the Stadium Premium Amount due on the share sales agreements on a different basis to the amount claimed as due on the option agreement). Hence again the expert had fallen into error.

The judge considered that these errors were manifest where both were unarguably contrary to the express terms of the Concession Agreement and went to the heart of the expert's determination. Thus the expert's determination was not binding.

### Commentary

Ordinarily an expert's determination can only be challenged on grounds of fraud, bias or material non-compliance with the procedure prescribed by the contract. As happened here, parties will frequently include an express exception on grounds of manifest error.

In this case, having reviewed the authorities the judge distilled the principle that a manifest error must be so obvious and be obviously capable of affecting the determination as to admit of no difference of opinion. On the facts, these criteria were satisfied where the calculation of the Stadium Premium Amount adopted by the expert patently did not follow the complex but relatively clear mathematical processes set out in the Concession Agreement and where the outcome of the expert procedure would have been reversed had the calculation been carried out correctly.

**Ted Lowery**  
March 2025