DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

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Case Update: WH Holding Ltd v E20 Stadium LLP [2025] EWHC 140 (Comm)

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Key Words:

Expert Determination, Manifest Error, Concession Agreement, Stadium Premium Amount, Qualifying Transaction, Adjusted Consideration, Anti-Embarrassment Clause, Contractual Interpretation, Reasoned Determination, Final and Binding, Extrapolation, Blended Calculation

Summary

This case concerns a dispute between WH Holding Limited (WHH) and E20 Stadium LLP (E20) over the interpretation of a 2013 Concession Agreement [1,2]. The agreement included an **anti-embarrassment clause**, ensuring E20 shared in gains from WHH's shareholders if they sold or transferred interests in West Ham United Football Club Limited [3]. The dispute arose from transactions between WHH shareholders and 1890 Holdings AS, particularly a put-and-call option agreement [4,5]. An expert ruled in favour of E20, stating WHH owed a £3.6 million **Stadium Premium Amount** [5]. WHH challenged this, arguing "manifest errors" in the determination, and sought a declaration that it was not binding [1]. The **High Court upheld WHH's challenge**, finding that the expert had made manifest errors, making the determination non-binding [73, 86, 87].

Key Themes:

1. ***Expert Determination vs. Arbitration:*** *Experts can conduct independent investigations, unlike arbitrators, who rely on presented evidence [13-16].*
2. ***"Manifest Error" Exception:*** *The case examines the level of error required to challenge an expert's determination [6, 17, 18, 20].*
3. ***Contractual Interpretation:*** *The dispute focuses on interpreting Concession Agreement clauses, particularly regarding the Stadium Premium Amount [4-6, 11, 30vi, 31, 32].*
4. ***Conclusive Evidence Clauses:*** *The ruling explores their role and limits within contracts [22-24].*
5. ***Clear Reasoning in Expert Determinations:*** *The judgment stresses the importance of well-reasoned expert decisions [22, 24-27].*

Background

1. **The Agreement (2013):** E20 granted WHH a 99-year concession to operate events at London Stadium, which also became West Ham United's home ground [2].
2. **Anti-Embarrassment Clause:** Clause 20 required WHH to pay E20 a Stadium Premium Amount if certain shareholder transactions occurred [3,4]. This applied to shareholders, including David Sullivan and David Gold, who held indirect shares in WHH [2,3].
3. **The 2021 Transactions:** In November 2021, WHH shareholders engaged in transactions with 1890 Holdings AS, including share sales and a put and call option agreement, triggering the dispute [5,27]. E20 claimed a Stadium Premium Amount was due [5].
4. **Expert Determination:** Per Clause 50, the dispute was referred to an expert, who ruled that WHH owed £3.6 million [4-6, 61].

Legal Issues and Analysis

- **The Central Issue:** The key legal question was whether the expert's determination contained "manifest errors," making it non-binding [1, 6, 17, 18]. The court examined the **contractual framework, legal principles, and the expert's reasoning** [22, 23, 7, 12, 24(32)].
- **The Meaning of "Manifest Error"**: The court defined a manifest error as one that is "**obvious or easily demonstrable without extensive investigation**" [24(31)] and "**so obvious and obviously capable of affecting the determination as to admit of no difference of opinion**" [20(31), 24(32), 70, 83]. It confirmed that reviewing the expert's reasoning and essential documents was permissible to identify errors [26, 27].
- **WHH's Claims of Error:** WHH alleged two key errors [62, 63]:
    - **Incorrect Calculation:** The expert wrongly combined two different notional valuations of WHH, misinterpreted "or" as "and," and blended the **Share Sale Adjusted Consideration and Option Adjusted Consideration** [47, 48, 63, 64, 70, 71, 84i-ii]. The court agreed.
    - **Incorrect Classification of Transactions:** The expert **incorrectly treated the share sales and the option agreement as a single transaction** [63, 72]. The court found this was due to an **incorrect calculation approach** [77-78].
- **Court's Analysis:**
    - The expert erred in **blending Adjusted Consideration figures** without contractual support [71, 84].
    - The expert wrongly **treated separate transactions as one** [63, 79, 80].
    - The errors were **manifest**, because they were obvious and outcome-altering [84]. The court rejected the idea that a manifest error must be a "howler" or "blunder" [81-83], instead finding that **misreading "or" and an impossible calculation sufficed** [84].

Conclusion

The court found WHH had proven **two manifest errors** in the expert's determination:

1. **Miscalculation of the Stadium Premium Amount, and**
2. **Incorrect classification of transactions** [62, 63, 84i-ii].

It declared the expert's determination **non-binding** [86-87].

Key Takeaway:

Expert determinations can be challenged for "manifest errors"—errors that are obvious and affect the outcome [70i-iii, 82-84i]. This case underscores the importance of clear contractual language [85ii] and that the court's role is not to review legal correctness but to assess whether the expert's interpretation was obviously wrong [31-32]. Experts must provide clear reasoning and adhere strictly to the contract's wording [24(34), 25, 26, 12(2.8(1)-(3), 2.10)].

Parting Thoughts

While parties agree to be bound by expert determinations, the "manifest error" exception provides a safeguard against misinterpretations or deviations from contractual terms. The court does not act as an appeal court but ensures the expert's interpretation was not obviously wrong. The case highlights that experts must stay within the contract's language rather than attempt an equitable outcome.

#ExpertDetermination #ManifestError #ContractualInterpretation #ConcessionAgreement #StadiumPremiumAmount #QualifyingTransaction #AdjustedConsideration #AntiEmbarrassmentClause #ReasonedDetermination #FinalAndBinding #BlendedCalculation #CommercialLaw #LondonStadium #WHHolding #E20

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

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Director: N. J. Davies BSc (Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, Chartered Builder, Chartered Construction Manager, Chartered Surveyor, Chartered Arbitrator, Panel Registered Adjudicator, Mediator, Mediation Advocate, and Solicitor-Advocate

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