Appeal Nos. UKEAT/0354/12/SM
UKEAT/0355/12/SM
UKEAT/0356/12/SM
UKEAT/0357/12/SM

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8JX

At the Tribunal
On 20 November 2012

Before

THE HONOURABLE MR JUSTICE WILKIE

MR G LEWIS

MR P SMITH

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(1) MRS L KAVANAGH
(2) MR D MOSS
(3) MR K WATTS
(4) MRS E ROAKE APPELLANTS

(1) CRYSTAL PALACE FC (2000) LTD
(2) CPFC Ltd
(3) CPFC 2010 Ltd RESPONDENTS

Transcript of Proceedings

JUDGMENT

APPEARANCES

For Mr K Watts, Mrs E Roake & Mrs L Kavanagh	MRS CHARLOTTE HADFIELD (of Counsel) Instructed by: Hugh James Solicitors Hodge House 114-116 St Mary Street Cardiff CF10 1DY
For Mr D Moss	MRS JANE RUSSELL (of Counsel) Instructed by: Russell Jones & Walker Solicitors 50-52 Chancery Lane London WC2A 1HL
For Crystal Palace FC (2000) Ltd & Others	MR MARTIN PALMER (of Counsel) Instructed by: Walker Morris Kings Court 12 Kings Street Leeds LS1 2HL

UKEAT/0354/12/SM
UKEAT/0355/12/SM
UKEAT/0356/12/SM
UKEAT/0357/12/SM

SUMMARY

TRANSFER OF UNDERTAKINGS – Economic technical or organisational reason

The Employment Tribunal erred in law in misapplying the facts it found to the statutory regime. Had it done so without error it would have concluded that the dismissal of the Appellants was not for an ETO reason as the dismissals were not for the purpose of continuing the business but with a view to sale or liquidation. Accordingly it would have concluded that the liability for the various claims passed from the transferor to the transferee.

UKEAT/0354/12/SM
UKEAT/0355/12/SM
UKEAT/0356/12/SM
UKEAT/0357/12/SM

THE HONOURABLE MR JUSTICE WILKIE

Introduction

1. This is an appeal by four Claimants, Mrs Kavanagh, Mr Moss, Mr Watts and Mrs Roake, against decisions of the Employment Tribunal sitting at London South between 10 and 13 October 2011 and on 5 and 6 January 2012. There were three Respondents to their claims. The first Respondent, Crystal Palace Football Club (2000) Ltd, played no part in the proceedings and by reason of that the Tribunal found that, in default of any notice of appearance, their claims of unfair dismissal, wrongful dismissal, a complaint under Regulation 15(1) of the **Transfer of Undertakings (Protection of Employment) Regulations 2006** (TUPE), and a complaint under section 189(1) of the **Trade Union and Labour Relations (Consolidation) Act 1992** were all successful as against the first Respondent. The first Respondent has played no part in this appeal; for reasons that will become clear, the findings against the first Respondent are of little benefit to the Claimants. The second and third Respondents, namely CPFC Ltd and CPFC 2010 Ltd, succeeded before the Tribunal in their argument that liability for unfair dismissal found against the first Respondent did not pass to either of them and, similarly, in respect of the other claims made that had succeeded as against the first Respondent the liability in respect of those claims similarly was found not to have passed to the second and/or the third Respondent.

2. At the heart of the argument before the Employment Tribunal and at the heart of their reasoning were the questions of whether the sale of Crystal Palace FC (2000) Ltd to the third Respondent, CPFC 2010 Ltd, constituted a TUPE transfer, whether or not the dismissal of the Claimants by the first Respondent was connected with the transfer, and, if so, whether liability

for that dismissal passed to CPFC 2010 Ltd as transferee or whether it did not pass to them because the reason for the dismissal was what is colloquially known as an "ETO" reason.

The facts

3. The factual matrix against which the Tribunal had to make its decision was to some extent convoluted and at its heart concerned the ownership at various times of Crystal Palace Football Club and the club's stadium, Selhurst Park. The first Respondent, Crystal Palace FC (2000) Ltd, had become the owners of the club in about 2000. However, at no relevant time were they the owners of the ground at Selhurst Park. That stadium was owned by Selhurst Park Ltd. In 2008 Crystal Palace FC (2000) Ltd obtained a loan from Agilo Master Fund Ltd in the sum of over £5 million. Crystal Palace FC (2000) Ltd was put into administration by Agilo on 26 January 2010. The administrator was a Mr Guilfoyle. Shortly after that event, on 12 February 2010 Selhurst Park Ltd entered administration. Price Waterhouse Coopers were appointed administrators. The chief creditor of Selhurst Park Ltd was the Royal Bank of Scotland, part of Lloyd's Banking Group PLC. From the outset the aim of Mr Guilfoyle as administrator was simple and clear-cut, and described in paragraph 17 of the Tribunal's decision; it was to sell the club as a going concern. The only other alternative was liquidation, which, because of the particular nature of the business of a football club, it was said and was found by the Tribunal, would leave few or no assets to be realised for the benefit of the creditors.

4. Accordingly, on 9 February 2010 Mr Guilfoyle advertised in the Financial Times the sale of the club. The person who, through a consortium, eventually purchased the club as well as

the stadium was a Mr Parish. He entered the frame fairly quickly; by 18 February he had signed a confidentiality agreement with the administrators. By the end of March, because there were no other credible bidders, the consortium was incorporated as the third Respondent, CPFC 2010 Ltd, and was granted preferred bidder status. The negotiations proved somewhat difficult and plainly involved, as the Tribunal found, the parties taking up public positions for tactical reasons that might not necessarily represent their true thoughts and intentions. For example, at one stage, on 26 April, Mr Parish had informed Mr Guilfoyle that his consortium was no longer interested in purchasing the club. However, the consortium continued to negotiate with Agilo and with Price Waterhouse Coopers in respect of, respectively, the purchase of the club and the purchase of the stadium. At all relevant times it was the case that Mr Parish and his consortium were not interested in purchasing the club if they could not at the same time purchase the stadium. Mr Guilfoyle, being the administrator of the club, had no direct impact on the attitude of Lloyd's Bank, which was, for all practical purposes, the owner of the stadium.

5. As far as the negotiations between Mr Parish and Mr Guilfoyle were concerned, the terms of a sale purchase agreement were reached towards the end of May and separate copies were signed separately by Mr Guilfoyle on 17 May. On 24 May the consortium signed a copy, but that was held in escrow; that is to say, it did not have legal effect because it was being held back pending the sale of the stadium.

6. Towards the end of May Mr Guilfoyle, as the administrator, found that the club was running into severe cashflow difficulties. At one stage Agilo had provided a further loan of £1 million to keep the club going, but that had become exhausted. At one time there was a

suggestion that Mr Parish and his consortium would provide a further loan of £1½ million but on condition that it was to be a preferential loan ahead of any creditors. Agilo objected to that condition, and so the loan was not forthcoming.

7. The Tribunal found, at paragraph 42 of their decision, that the club was in a parlous funding position in the absence of an imminent purchase. At that point, Mr Guilfoyle decided to "mothball" the club over the close season, when no matches would be played, in the hope that it might be possible to sell the club at a future date, and to that end he told his assistant, Ms Hammond, to ask Mr Alexander, a director of the club, to produce a list of employees who could be made redundant and still permit the core operations of the club to continue during the close season. That much was recorded in an instruction from Ms Hammond to Mr Alexander. On 25 May Ms Hammond wrote to the solicitor for the consortium. In that letter she described the funding deficit and recorded that a decision had been made "that we will not trade into June" and that they proposed to make the majority of the administrative staff redundant on Friday and proceed with the immediate sale of the club's more valuable players. She recorded that should Mr Hinchcliffe's clients wish to prevent that course of action they would require immediate funding and confirmation that the stadium sale had been agreed by no later than 28 May. In response to that communication Mr Parish responded to the effect that at that stage it was best that CPFC 2010 Ltd withdraw their bid in the hope that it may encourage someone else to come forward in the short time that it seemed they had left. He asked for clarification on what was meant by not trading into June and whether it was the intention to liquidate the club.

8. It is clear that what was going on, to some extent, was by way of brinkmanship. That some of this was bluff is reflected in an email of 30 May internally from Mr Guilfoyle to one of his partners saying that the threat to sell the most valuable player was not viable, as it would scupper the deal and lead to hostilities with Agilo as to their legal right to the proceeds of sale of the player. On the other hand, on 28 May Mr Guilfoyle sent an email to the creditors' committee indicating that the situation was so serious that he had decided to adjourn the committee meeting until 1 June.

9. The Tribunal summarised the position as of 28 May in the following terms at paragraph 52:

> **"We find that, as Mr Parish told us, the consortium came to an agreement with Agilo on or about 28 May. However, that agreement was not sufficient to conclude the sale of the Club. The important missing element was an agreement about the sale of the stadium and that was not concluded until about 7 June. We are unable to accept the claimants' case that these emails showed that Mr Guilfoyle knew on 28 May that the Club would be sold to the consortium."**

10. 28 May was the date upon which the dismissal letters were given to the 29 staff who were being made redundant, including the 4 Claimants, and details of that development were published in the national press on 28 May. Pursuant to that, press statements were issued on 30 and 31 May. The consortium press statement of 31 May included a report of what Mr Guilfoyle had told Sky Sports News. He had said:

> **"I'm millions of pounds behind, the staff weren't paid on Friday and a number were made redundant, others were asked to carry on working for nothing and it is not a situation I can allow to continue for long. So I've got to start selling players and if I do that the indications are that 2010 will withdraw […]. The bank has got to get involved and has got to understand the issue the consortium have and whether they can resolve it. I've been confident, but I'm not confident anymore. I'm concerned now. I'm concerned that this problem may not be overcome in time."**

11. The Tribunal commented on these events in the following terms at paragraphs 55-57:

> **"55. In short, the public message was that the impediment to a sale of the Club was the reluctance of Lloyds Bank to agree a deal with the consortium. This publicity led to a public protest by supporters and media pressure on Lloyds to agree the sale of the stadium.**
>
> **56. The pressure on Lloyds had the desired effect, and an agreement for sale of the stadium was made within a few days. By 7 June, the sale of the Club to the consortium had been agreed, subject to the CVA, and the transfer of the Football League share. […]**
>
> **57. The CVA was approved on 25 June 2010. The Football League share was transferred on 19 August 2010, when the sale was completed. […]"**

The law

12. The factual matrix as evidenced by these findings of fact fell to be applied to the relevant statutory regime as explained in certain authoritative decisions of this court and the Court of Appeal. The starting point is the **TUPE Regulations 2006**. Those Regulations and their predecessors were passed into law for the purpose of giving effect to Council Directive 2001/23/EC, a directive on the approximation of the laws of member states relating to the safeguarding of employees' rights in the event of transfers of undertakings of businesses or parts of undertakings of businesses. In particular, the preamble to that Directive includes at paragraph 3 the following:

> **"It is necessary to provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded."**

13. The relevant parts of the Regulations are Regulations 4, 7 and, for a particular part of the argument in this case, 8. Regulation 4(1)-(3) provides that:

> **"(1) […] a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.**
>
> **(2) Without prejudice to paragraph (1), but subject to […] Regulation 8 […] on the completion of a relevant transfer—**

(a) all the transferor's rights, powers, duties and liabilities under in or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and

(b) any act or omission before the transfer is completed of or in relation to the transferor in respect of that contract […] shall be deemed to have been an act or omission of or in relation to the transferee.

(3) Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in Regulation 7(1) […]."

14. Regulation 7 concerns dismissal of employees because of relevant transfer. Paragraph (1) provides:

"Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated for the purposes of Part X of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for his dismissal is—

(a) the transfer itself; or

(b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce."

15. Paragraphs (2) and (3) provide:

"This paragraph applies where the sole or principal reason for the dismissal is a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer.

(3) Where paragraph (3) applies—

(a) paragraph (1) shall not apply;

(b) without prejudice to the application of section 98(4) of the 1996 Act (test of fair dismissal), the dismissal shall, for the purposes of section 98(1) and 135 of that Act (reason for dismissal), be regarded as having been for redundancy where section 98(2)(c) of that Act applies, or otherwise for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held."

16. Regulation 8 is entitled "Insolvency". Paragraph (7) provides:

"Regulations 4 and 7 do not apply to any relevant transfer where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of an insolvency practitioner."

The appeal

17. Regulation 8(7) of the Regulations came into play in the argument before the Tribunal on this basis. The Claimants' case was that the effect of Regulations 4 and 7 to the extent that we have rehearsed them was that their dismissals by Crystal Palace FC (2000) Ltd were for a reason connected with the transfer and they were automatically unfair because they were for a reason that was not an ETO reason entailing changes in the workforce, and, by reason of that, the liability of Crystal Palace FC (2000) Ltd in respect of that unfair dismissal and the other ancillary claims was transferred to CPFC Ltd and CPFC 2010 Ltd (it would seem, principally, the latter) as being the transferee. One of the possible arguments that might come into play, however, was whether the fact that the person dismissing them was the administrator of Crystal Palace FC (2000) Ltd meant that Regulations 4 and 7 did not apply by virtue of Regulation 8(7) of the Regulations; that is to say, where it might have been argued the transferor was the subject of analogous insolvency proceedings that had been instituted with a view to the liquidation of the assets of the transferor and were under the supervision of an insolvency practitioner.

18. That self-same issue had arisen for decision in the Court of Appeal on appeal from the Employment Appeal Tribunal in December 2011 in the case of **Key2Law (Surrey) LLP v De'Antiquis** [2011] EWCA Civ 1567, with the Secretary of State for Business, Innovation and Skills intervening. In the decision of the Court of Appeal the relevant provisions of the **Insolvency Act 1986** were found to be decisive because the administration procedure in question in that case was introduced by the **Insolvency Act 1985** and consolidated in Part II of

the 1986 Act, comprising sections 8-27. However, section 248 of the **Enterprise Act 2002** substituted a new Part II of the 1986 Act, section 8 of which provides that:

> **"Schedule B1 to this Act (which makes provision about the administration of companies) shall have effect."**

19. Schedule B1 contains 116 paragraphs. Section 3 of that Schedule was said to be central to the argument; it is entitled "Purpose of Administration", and it provides, so far as is relevant, as follows:

> **"(1) The administrator of a company must perform his functions with the objective of—**
>
> **(a) rescuing the company as a going concern, or**
>
> **(b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or**
>
> **(c) realising property in order to make a distribution to one or more secured or preferential creditors. […]**
>
> **(4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—**
>
> **(a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and**
>
> **(b) he does not unnecessarily harm the interests of the creditors of the company as a whole."**

20. One of the arguments that had arisen in that case was whether, for the purposes of Regulation 8(7), the question whether the transferor was the subject of analogous insolvency proceedings when the company in question was in administration pursuant to the statutory scheme just described was a question which was always to be answered in the same way, namely no, or whether it was a fact-sensitive issue that would depend upon an analysis of a number of circumstances and evidence supporting those contended circumstances. The answer from the EAT and the answer from the Court of Appeal was very clear and to the point, namely

that it was in favour of the absolutist approach. It had the merit of achieving legal certainty, as it meant that all involved would know where they stood upon the making of an administration appointment.

21. It was common ground in argument before us that the issue that was decided in the **De'Antiquis** case was not the question of whether a decision to dismiss by an administrator could never be for an ETO reason if in connection with a transfer, but the logically prior question of whether, in the case of a company going into administration, Regulations 4 and 7 of the TUPE Regulations applied at all, the answer to that question being that they always did apply because Regulation 8(7) was not apt to apply to an administration for the statutory purposes already described.

22. The questions for the Tribunal, therefore, were whether the dismissals in question were the transfer itself or a reason connected with the transfer, and, if the answer to either of those questions was yes, whether the reason was not an ETO reason entailing changes in the workforce. In connection with their analysis of the argument the Employment Tribunal had to make certain findings of fact. The principal finding that they had to make was what Mr Guilfoyle's reason was for dismissing the Claimants. In argument before them there had been two propositions contended for. One, contended for by the Respondents, was that the ostensible reason given by Mr Guilfoyle was in fact the true reason, and that was that:

> **"He could no longer afford to pay all the Club's employees and he had to reduce the workforce and wage bill in order to mothball the Club in the hope that a purchaser would be found."**

23. The Claimants, on the other hand, submitted that the true reason for the dismissals was to reduce the wage bill in order to make the purchase of the club more attractive to the consortium. The Tribunal considered those arguments and considered the evidence in respect of them and at paragraph 72 found that there were no grounds for inferring that there was collusion between Mr Guilfoyle and Mr Parish, and, at paragraph 73, they found that his ostensible reason was a genuine reason, namely in order to keep the club alive as a going concern in the hope that there would be a sale in the future. When he dismissed the Claimants a transfer of the club to CPFC 2010 Ltd remained a possibility, but it was no more than that. Having made those findings of fact, the Tribunal concluded, consistent with those findings, that the reason was not the transfer itself but it was connected with the transfer, the connection being Mr Guilfoyle's decision to reduce the workforce in order to maintain the club as a going concern with a view to future sale (paragraph 74).

24. Having made that decision, the Tribunal's next logical task was to decide whether that reason was an ETO reason. In that respect Mr Bacon, who before the Employment Tribunal appeared for Mr Watts, had made a simple submission. He submitted that it could not be an ETO reason, relying on a particular paragraph in the decision of the Court of Appeal in the case of **Spaceright Europe Ltd v Baillavoine and Anor** [2011] EWCA Civ 1565. In that case the Claimant was a chief executive officer of a company who was dismissed by administrators on the day it entered administration, and a month later the administrator sold the assets and business to the Respondent transferee. In connection with the claim for unfair dismissal relying on Regulation 7(1), the Employment Tribunal had found that he was dismissed for a reason connected with the transfer, namely to enable a purchaser to acquire the business without the

continued employment of its chief executive officer. In so finding, it rejected the Respondent's case that the reason was purely to save costs. On that basis, the argument had been that it was an ETO reason entailing changes in the workforce, but the Employment Tribunal found that it was not an ETO reason. The respondent lost both before the EAT and before the Court of Appeal. In the Court of Appeal Mummery LJ, giving the lead Judgment, turned in paragraph 47 of his Judgment to the issue of economic, technical or organisational reason for dismissal, and it reads as follows:

> **"I agree with the ET and the EAT that the Claimant was not dismissed for an ETO reason. For an ETO reason to be available, there must be an intention to change the workforce and to continue to conduct the business, as distinct from the purpose of selling it. It is not available in the case of dismissing an employee to enable the administrators to make the business of the company a more attractive proposition to prospective transferees of a going concern."**

25. Before the Employment Tribunal, in this case, Mr Bacon's contention was that, by virtue of paragraph 47 in the judgment of Mummery LJ, the dismissal could not be for an ETO reason. The Employment Tribunal did not directly respond in its decision to that submission; rather, at paragraph 78 and again at paragraph 84 they characterised the main argument as one that required them to find that there was an absolute position whereby no administrator could ever dismiss an employee for an ETO reason (presumably providing that the dismissal was in connection with a transfer). The Employment Tribunal, rejecting that contention, concluded in paragraph 84 that the question whether a dismissal by an administrator in connection with a transfer was or was not an ETO dismissal remains a fact-sensitive question whose answer is decided by identifying the reason for the administrator's decision.

Discussion

26. In our judgment, the Employment Tribunal cannot be criticised for coming to that conclusion. It seems to us that the issue upon which the Court of Appeal in **De'Antiquis** concluded there was an absolute position was not a question of whether a particular dismissal was or was not for an ETO reason, nor does it seem to us to be right to read into paragraph 47 of **Baillavoine** a conclusion that no administrator could ever dismiss for an ETO reason. What that paragraph, however, does very clearly is to posit two alternative positions: first, where the reason for a dismissal was the intention to change the workforce and to continue to conduct the business; second, and distinguished from that position, was where the dismissal was part and parcel of a process, with the purpose of selling the business. In the former case, there could be a dismissal for an ETO reason, but in the latter case there could not. If the decision to dismiss was for the purpose of selling the business, then, consistent with: the purpose of the Directive; and the purpose of the Regulations, as identified in preamble 3 of the Directive; the Court of Appeal, by which we are bound, has clearly indicated that in those circumstances the administrator could not dismiss for an ETO reason, thereby escaping, on behalf of the transferee, the consequences of the actions of the transferor.

27. The Employment Tribunal, having decided that the matter was fact-sensitive, then purported to answer the question by reference to their findings of fact. In paragraphs 81 and 82 they say this:

> **"81. It seems to us that the answer to this question** [namely, could that dismissal be for an ETO reason] **requires a distinction between the administrator's reason for the dismissal, and his (or her's [sic]) ultimate objective. […]**
>
> **82. If the administrator's reason is the necessity of reducing the wage bill in order to continue running the business, in our view that is an ETO reason. That reason is separate from the longer term objective of being able to sell the business in due course."**

28. And at paragraph 85, where they say as follows:

> **"We accept Mr Guilfoyle's evidence that the reason for the dismissals was that the administrators had run out of money, and unless staff costs were reduced, the Club would have to be liquidated. That is an economic reason entailing changes in the workforce. Mr Guilfoyle's intention was to continue to conduct the business of the Club with a skeleton staff, in the hope that it might be sold in the future."**

29. The Tribunal, at paragraph 86 of the decision, come to what, in our judgment, is a wholly surprising conclusion, based on the evidence that they had very carefully gone through, in particular of the public statements made on the television by Mr Guilfoyle immediately after and, amongst other things, in connection with the decision to dismiss the Claimants. They say as follows:

> **"It was not in Mr Guilfoyle's contemplation that the very fact of making the redundancies and the subsequent publicity about the likelihood of the Club being liquidated, would very quickly result in sufficient pressure on Lloyds Bank to agree to sell the stadium, the step which enabled the sale of the Club."**

30. In our judgment, that conclusion flies in the face of the evidence and were it necessary for us to reach a conclusion for the purposes of this decision, we would identify it as a perverse decision. However, it is not necessary for our purposes to make any such finding, because, in our judgment, standing the very clear findings that they have made about the intentions of Mr Guilfoyle from the outset to sell the club as a going concern, failing which there would have to be a liquidation, the fact that that remained his intention throughout and that, by the 28 May, his purpose was to put the club in mothballs pending the possibility of a sale to Mr Parish or some other purchaser, it was an erroneous application of those findings of fact to the law clearly enunciated in paragraph 47 of **Baillavoine** to conclude that the dismissal was for an ETO

reason. In our judgment, their findings of fact pointed unambiguously to the fact that there was no intention on the part of Mr Guilfoyle to continue to conduct the business. On the contrary, his decision was to put the club in mothballs (that is to say, not to conduct any business but to preserve it so that it could, in new hands, if that came about, resume the conduct of business).

31. Furthermore, in **Baillavoine** at paragraph 47 there is a very clear distinction drawn between a dismissal for the purpose of continuing to run the business, and a dismissal that is for the purpose of selling it. It is very clear from all the findings of fact that the Tribunal made that the only possible conclusion that they could draw was that the dismissal of the Claimants was for the purpose of selling the business, albeit it was not at that stage certain that there would be a sale, nor necessarily to whom the sale would be, but, in our judgment, by reason of the authorities to which we have been referred, that is not relevant for the purposes of the application of Regulations 4 and 7.

Disposal

32. It therefore follows that, in our judgment, the Employment Tribunal erred in law in applying their findings of fact to the law as explained in paragraph 47 of **Baillavoine**. In those circumstances, this appeal of the Claimants must succeed. Mr Palmer, for the Respondents, and Ms Russell and Ms Hadfield, for the Claimants, are at one in agreeing that, if that is our conclusion, then the order that we should make is that the decision of the Employment Tribunal, that liability in respect of the claims for unfair dismissal and the other claims does not pass to the second and/or third Respondent, must be overturned and for it is substituted a

finding that the liability for those various claims does pass to the second and/or third Respondent. That is the order that we make.

33. Because of the basis upon which we have allowed the appeal, we have not dealt at any length with the alternative arguments put forward by the Claimants. Had we been required to do so, we would have dismissed their appeals on those grounds, because it seems to us that the Tribunal was entitled to come to the findings of fact that it did and that necessarily precluded the need for them to make findings of fact in relation to the other arguments, and therefore the fact that they do not appear in the Tribunal's decision does not constitute an error of law or an inadequacy in the reasons.