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Saxon Woods Ruling Tightens Rules On Director Good Faith

By **Ben Land-Maycock and Katy Knight** (July 2, 2025, 3:04 PM BST)

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On June 9, the U.K. Court of Appeal handed down judgment in Saxon Woods Investments Ltd. v. Francesco Costa.[1]

The court held that a director who fails to meet objective standards of honesty, even where they believe they have acted in the company's best interests, does not satisfy the requirement under Section 172 of the Companies Act 2006 to act in good faith and, accordingly, has breached their duty owed to the company under that section.

Further, the Court of Appeal held that where shareholders contract to express what the success of the company is, a director who knowingly causes the company to breach such provision will be in breach of their Section 172 duty to promote such success.

This article examines the key findings of the case — including how they depart from the judgment of the U.K. High Court — and discusses what this means in practice for transactional lawyers and those advising boards and minority investors.

Background

The case concerned Spring Media Investments Ltd. A shareholders' agreement was entered into between Spring Media and its shareholders to govern Spring Media's affairs.

Clause 6.2 of that agreement required the parties to work together in good faith toward a sale of all, or substantially all, of Spring Media's shares or its business and assets by Dec. 31, 2019, and to give good faith consideration to any opportunities for such an exit before such date. If an exit had not occurred by such date, the shareholders' agreement required Spring Media's board to engage an investment bank to cause such an exit.

Francesco Costa, chairman of Spring Media's board and a substantial indirect shareholder, believed that delaying an exit would generate a better price. The 2019 deadline passed, an exit had not been achieved, and Spring Media had failed to meaningfully engage with an interested third-party acquirer.

Saxon Woods Investments Ltd., a Spring Media shareholder, petitioned for an order of the court under Section 994 of the Companies Act that the conduct of Spring Media's affairs was unfairly prejudicial to certain members.

The High Court held that Costa had caused Spring Media to breach Clause 6.2 of the shareholders' agreement, believing that a delay was in Spring Media's best interests. The High Court also held that Costa had misled Spring Media's board on the instructions that had been given to the investment bank engaged by Spring Media.

The High Court found that Costa's conduct was unfairly prejudicial to Saxon Woods' interests. The High Court did not, however, agree with Saxon Woods that Costa had acted in breach of his Section 172 duties.

Applying the test set out in Regentcrest v. Cohen in 2001,[2] the High Court held that Costa's sincere belief that he was acting in Spring Media's best interests was effectively a complete defense to any claim that he was acting in breach of his duties under Section 172.

The High Court ordered a conditional buyout, whereby Costa would purchase Saxon Woods's shares, but only if a further trial found that Spring Media would have received a final offer of more than $75 million net of debt but for the breaches caused by Costa. If the subsequent trial found such offer would have been $75 million or less net of debt, there would be no relief.

The Court of Appeal overturned the High Court's finding that there had been no breach by Costa of his Section 172 duties. The Court of Appeal held that Section 172 was a fiduciary duty and, therefore, the requirement that a director act in good faith demanded nothing less than honesty toward the company.

Citing the U.K. Supreme Court's 2017 decision in Ivey v. Genting Casinos,[3] the Court of Appeal affirmed that determining whether a person had acted honestly or dishonestly required an objective assessment of their conduct based on the standards of ordinary decent people.

Applying the Ivey test, the Court of Appeal held that, despite his sincere belief he was acting in Spring Media's best interests, Costa behaved dishonestly in misleading the board as to the progress, or lack thereof, toward an exit and so breached his Section 172 duties.

The Court of Appeal also accepted that knowingly causing Spring Media to breach Clause 6.2 of the shareholders' agreement constituted a further breach by Costa of his duties under Section 172.

The Court of Appeal set aside the High Court's order and instead ordered an unconditional buyout by Costa of Saxon Woods's shares at their open market value as at Dec. 31, 2019.

Honest Means Are Required

Section 172(1) requires a director to "act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole." The Court of Appeal judgment confirms that this duty is not wholly insulated by sincere belief.

Relying on Regentcrest, the High Court had held that a director's sincere conviction provided full statutory protection, allowing a director to take any action they subjectively believe to be most likely to promote the success of the company.

Costa, the High Court held, believed other shareholders would thank him later for his actions, but it was not charitably accepting a deferral of gratitude that prevented Costa's breach of Section 172 — it was his sincere belief that his actions were in Spring Media's best interests.

The Court of Appeal held that this position could not stand. The phrase "in good faith," ostensibly neglected by the High Court, but used in the statute, must have meaning — and the Court of Appeal concluded that it required a director to act honestly toward the company.

Additionally, post-Regentcrest, the courts have established that honesty is not a wholly subjective concept. Instead, a two-step process is required: First, one must ascertain a director's state of mind subjectively, and second, one must apply the objective standards of ordinary decent people to determine whether his conduct was honest or dishonest.

Absent exceptional circumstances, conduct involving deception will fail the objective honesty test, and will, therefore, almost always be conduct that breaches Section 172 — and that will be true regardless of a director's belief that such conduct is in the company's best interests.

The test in Regentcrest will stop the court from finding breach where it may take a different commercial view from a director on the company's best interests, but it does not give a director carte blanche to engage in any conduct he sincerely believes will promote success. A director is duty bound to act honestly toward the company.

Exit Clauses

It seems that companies and their stakeholders may not always appreciate the binding nature of express contractual obligations requiring a company to achieve an exit within a specified time frame.

Exit obligation clauses are commonly viewed as soft targets that can be informally revised or even ignored where market conditions change, or internal dynamics shift.

Indeed, a former senior investment banker acting as a witness for Costa explained that in his experience such clauses are:

usually designed to trigger a discussion around the date specified in the agreement, and then people work in good faith to figure out what should happen next — if it doesn't make sense at that point in time, you don't sell.[4]

Costa's appeal argued that the true meaning of Clause 6.2 of the shareholders' agreement was that the parties must work together in good faith during the relevant period, i.e., between the date of the agreement and Dec. 31, 2019, and not that they need to work together toward an exit before Dec. 31, 2019.

The Court of Appeal disagreed and preferred the High Court's interpretation, and the clause's natural reading, that it imposed an obligation to work together in good faith toward an exit by the end of 2019.

The Court of Appeal's decision in Saxon Woods makes clear that clauses of this type are not polite statements of intention — they are binding obligations.

Exit clauses crystallize the shareholders' collective definition of success. When a director knowingly deviates from the agreed statement of success, they are not exercising any residual discretion contained in such clauses. None exists.

Instead, they are subverting the express goal the company was meant to pursue. The Court of Appeal's decision affirms that such conduct will often be both unfairly prejudicial and incompatible with the director's statutory duty to promote the success of the company in good faith.

Appropriate Remedy Under Section 996

The Court of Appeal's decision made clear that a remedy under Section 996 of the Companies Act must fully address the prejudice suffered. Despite finding that Costa's conduct had unfairly prejudiced Saxon Woods' interests, the High Court would have left Saxon Woods without relief had a further trial not determined that a more than $75 million net of debt exit offer would have materialized in 2019.

A remedy that left Saxon Woods trapped in a company controlled by the same director who the Court of Appeal found had deliberately disregarded their rights, and deceived Spring Media in doing so, could not, in the Court of Appeal's view, be an effective cure.

Since the Court of Appeal found a breach of fiduciary duty where the High Court did not, it set aside the High Court's order.

An order of relief will be strongly influenced by the nature of the wrongdoing. In this case, Costa's breach was not a simple misjudgment. It was a deliberate and continued act of concealment that the Court of Appeal could not say would not happen again.

Nothing short of an unconditional buyout could remedy the harm. The appropriate remedy was not simply redress, but instead a cure.

Practical Takeaways

Boards should be advised that a director who misleads others, even in the belief that such deception is ultimately in the company's best interests, will very likely breach Section 172 of the Companies Act.

Both judgments repeatedly emphasized what information was shared with, or concealed from, the board. The High Court cited an apparent lack of correspondence between Spring Media and its appointed investment bank as supporting the position that the bank had been given instructions that were not consistent with what Costa had told Spring Media.

Further, one witness's recollection of a board meeting supporting Costa's position was somewhat undermined by the minutes recording that she had not been present at it. Well-drafted minutes, written bank mandates and contemporaneous emails showing genuine consideration of exit opportunities can become a so-called honesty audit trail if a dispute later arises.

Directors and shareholders should also be advised that exit clauses are enforceable and meaningful. Courts will enforce binding obligations requiring a company to pursue an exit by a given date and will not treat them as merely aspirational.

Shareholders' agreements that contain exit obligations often only require a company to keep shareholders reasonably updated as to the progress of any exit.

Noncontrolling shareholders should consider seeking greater specificity of exit-related information, including requiring the company to provide copies of engagement letters and similar sale-process documentation to narrow the chance of any agreed process being derailed.

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[1] Saxon Woods Investments v. Francesco Costa [2025] EWCA Civ 708.

[2] Regentcrest plc (in liquidation) v. Cohen [2001] 2 BCLC 80, ¶ 120.

[3] Ivey v. Genting Casinos (UK) Ltd (trading as Crockfords Club) [2017] UKSC 67; [2018] AC 391.

[4] Saxon Woods Investments Ltd v. Costa [2024] EWHC 387 (Ch), ¶ 115.