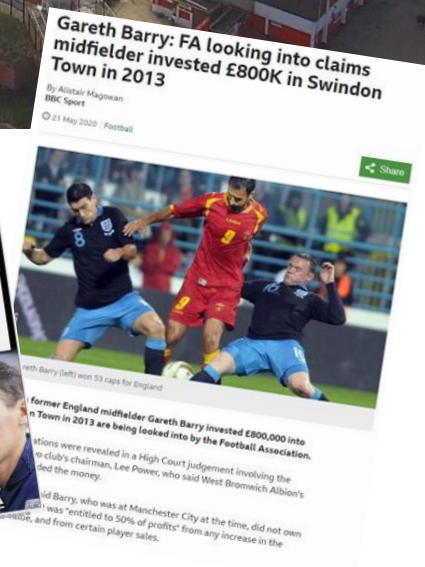




Swindon Town Supporters' Trust

Court Cases Review - May 2020



Introduction

There's never a dull moment with Swindon Town, and when the news broke late Tuesday afternoon about two court cases involving the club, we saw social media go into a wild frenzy of activity.

We had been aware that Clem Morfuni had fallen out with Lee Power, as he had disappeared from the Swindon Town scene in the summer of 2019 and was no longer attending meetings between the Trust and the Club, despite being a large part of the earlier discussions around the County Ground.

However, we were not aware of the Michael Standing/Gareth Barry case that had started in December 2019 due to the potential sale to Able (the American company) that was revealed by the Swindon Advertiser in October 2019 (<https://www.swindonadvertiser.co.uk/sport/17973711.documents-show-able-company-swindon-llcs-interest-purchasing-swindon-town-club-continues-deny-approach-made>)

Our legal advisors were alerted of the recent proceedings and had forwarded us copies of the court papers, just hours before they became publicly available, so we had a chance to review in detail.

There were quite a few surprises within the court judgments, and now that the national media have picked up on the case, it's fair to say that many Town fans are concerned for the future.

On Thursday we discussed both cases with our legal partners and have made a couple of observations that will be shared in the following pages. Overall, this review is intended to provide some analysis and clear thinking around the various issues that have arisen in recent days. As Town fans we will be well placed to deal with anything that comes, and we must be ready to work together for the future security of our club.

The Ownership Battles

Key Court Case Details

There was a detailed write-up of both court cases in the Swindon Advertiser this week:

<https://www.swindonadvertiser.co.uk/news/18463345.swindon-towns-lee-power-taken-court-club-sale>

Court documents show a share sale agreement was signed in June 2018, with Clem Morfuni's company Axis agreeing to pay £1.1m in return for 15 per cent of the shares in Swinton and 15 per cent in Seebeck.

The cash was paid by the end of December 2018 and under the terms of their agreement Axis should have received new business partner documents confirming the shares and should have been registered as a "member" on the companies' paperwork. That is yet to happen and therefore Axis took action.

The sticking point here seems to be that Lee Power would face a substantial capital gains tax bill on the sale of the Swinton shares. He asked for the "consideration" in the share agreement to be revised from £1.1m to just £1.

Axis' lawyers drafted a revised share agreement and another contract for a £1.1m loan between Axis and Swindon Town but these documents were never signed. To date no share certificate proving Axis' part-ownership of Swinton has been received, it was said.

In the other case, Michael Standing is claiming to be a 50% beneficial owner of Swindon Town following a verbal agreement with Lee Power and a circa £3.8m investment. Lee Power submitted a defence in this case and suggested that the c£3.8m provided to him by Standing was actually a loan from a footballer, Gareth Barry, and that Standing (Gareth Barry's football agent) is not a 50% owner of Swindon Town.

Injunction Wordings

Axis shareholding seemingly confirmed:

In this case, as submitted by Mr Slade QC, there are now no circumstances under which Axis will not obtain its 15% shareholding as this has been admitted by the Defendants. It is only a matter of time. I might add that a way of avoiding the injunction might be by the Defendants agreeing to the relief sought in the claim and registering Axis' 15% shareholding in Swinton. But for whatever reason, Mr Power is refusing to do this and therefore it is necessary in my view for Axis' position to be secured in the meantime.

...or a possible £1.1 million refund

As Mr Slade QC also pointed out, if for some reason Axis does not get registered as a shareholder, the £1.1 million will be repayable by the Defendants and this would amount to some degree of security for Axis' cross-undertaking.

...and club cannot be sold without consent

For the reasons set out above, I am satisfied that there is a serious issue to be tried and that the balance of convenience lies in favour of granting an injunction to Axis preventing a sale of the shares or assets of the Club without Axis' prior written consent. Accordingly, I grant that injunction.

The Michael Standing Injunction also confirms that no sale can happen without his written consent:

1. Until trial or further Order, the Defendant must not, save with the express written consent of the Claimant:
 - (i) Sell or otherwise dispose of or deal with shares registered in his name in the company Swinton Reds 20 Ltd., or exercise any rights attached to such shares, if any such sale, disposal, dealing or exercise would have the effect of reducing the Defendant's shareholding in such company below a 50% shareholding.
 - (ii) Cause Swinton Reds 20 Ltd. to take any steps which would have the effect of reducing the shareholding of Swinton Reds 20 Ltd in the capital of Seebeck 87 Ltd. below its current level.
 - (iii) Cause Seebeck 87 to take any steps which would have the effect of reducing the shareholding of Seebeck 87 Ltd. in the capital of Swindon Town FC Limited below its current level.
 - (iv) Take any steps which would have the effect of transferring any of the assets and business of Swindon Town FC Limited to a third party, save in the ordinary course of business.
2. Until trial or further Order, the Defendant must not, save with the express written consent of the Claimant, assign, transfer, mortgage, charge, declare a trust over, sell or otherwise deal with certain land at Twelve Oaks Golf Course, Lechlade Road, Highworth, Swindon SN6 7QR, the legal title to which is registered in the Defendant's sole name.



What Does this all mean?

Both Axis and Michael Standing have been successful in securing injunctions.

Taking the tax issue aside, the Axis case appears relatively straightforward, but subject to a defence from Lee Power, the Court has suggested that Lee Power should now transfer the 15% shareholding to Axis. If this does not happen, then it could go to trial, or Axis could be repaid.

It would appear that Standing was actually successful in securing an injunction back in December 2019 to prevent Lee Power from selling or transferring either Swindon Town or the proposed Twelve Oaks training ground, subject to a trial to decide the legal status of Standing's 50% ownership claim.

The trial regarding Standing and Power's ownership claims could also take up to 12 months to get a ruling unless this ownership issue can be resolved privately between the parties.

Threat of Administration

During the court case, it was suggested by Lee Power that Town could be put into Administration.

From the Swindon Advertiser article: <https://www.swindonadvertiser.co.uk/news/18463343.lee-power-says-swindon-town-go-administration-sale-fails>

“Town’s chairman said the club would be likely to have to go into administration if the Able sale fell through. His evidence was that Town would need in the region of £700,00 to £750,000 between May and August this year in order to continue operating, which he was not able to provide. The judge concluded there was no evidence to back up Power’s assertions.”

.. and in the last couple of weeks, Lee Power has also appeared on both TalkSport and BBC Wiltshire to convey his concerns for the club over the coming months, as a result of the Coronavirus pandemic.

<https://talksport.com/radio/listen-again/1589716800/1589720400>

<https://www.bbc.co.uk/sport/football/52706893>

What Does this all mean?

Given that the final home match of the 2019/2020 season appears to be the defeat to Forest Green on Saturday 7th March, it would appear the club will miss out on the income from at least four home matches.

On the plus side, season tickets went on sale on 12th February, Phase 1 sales were complete and Phase 2 sales were well underway before the lockdown commenced – so hopefully this income has been banked.



In addition, Swindon Town staff and players have all been placed on furlough, covering 80% of their wages and the club has received a certain amount of advanced payments from the EFL:

<https://www.swindonadvertiser.co.uk/news/18397842.swindon-town-fc-players-furloughed-will-still-get-full-pay>

and there is plenty of media speculation about Premier League bailouts, this needs to be carefully monitored.

<https://www.thesun.co.uk/sport/football/11695277/premier-league-efl-cash-bailout>

COIN TOSS Premier League chiefs asked to fund £200m bail-out of cash-strapped EFL clubs

Finally, we have some protection in that the injunction secured by Axis prevents Lee Power from ‘taking active steps’ to put the Club into insolvency without agreement.

Mr Slade QC, in his skeleton argument, suggested a new paragraph (3) to the draft Terms of Order in the following terms:

“(3) Until trial or further Order, without the prior written consent of Axis none of Mr Power, [Swinton] nor Seebeck shall do, permit or suffer to be done any act whereby [Swinton], Seebeck or [STFC] may be wound up, or enter into any compromise or arrangement under the Insolvency Act 1986.”

This mirrors the wording in sub-clause 7(g) of the SSA and is to prevent Mr Power carrying through with his threat to put the Club into administration if the deal with Able is unable to go ahead.

Mr Asquith submitted that this wording is too broad and it could potentially be a breach of such order for Mr Power not to oppose a creditor’s winding up petition even where there are no good grounds for doing so. I agree with Mr Asquith that the wording needs to be tightened up, as I think Mr Slade QC accepted, so as only to cover positive steps being taken by the Defendants to put those companies into some form of insolvency procedure. In short, I am prepared to make that Order but in a more limited form of restricting the Defendants from taking active steps to put Swinton, Seebeck and/or STFC into an insolvency procedure.

Threat of FA or EFL Action

The worrying point from the Standing claim is that neither Michael Standing or Gareth Barry are eligible owners of a football club under English Football League (EFL) rules, as one is a football agent and the other a football player. Therefore, if Standing's claim is successful there will be a breach of EFL rules and potential penalties to be applied against Swindon Town Football Club. If Power is successful there could also be EFL penalties due to Gareth Barry's funding of Swindon Town Football Club.

The Telegraph Coronavirus News Politics Sport Business Money Opinion Tech Life Style Travel Culture


Football - Rugby Union - Cricket - Formula 1 - Women's Sport - Cycling - Tennis - Golf - Boxing - Racing - More...

FA to examine 'extraordinary' claims Gareth Barry secretly invested £800,000 in Swindon Town

Allegations emerged in a High Court judgment against club chairman Lee Power, who said Barry stood to make millions

By Ben Bannister
21 May 2020 - 11:00pm

Related Topics
Swindon Town FC



The Football Association is to examine "extraordinary" claims Gareth Barry secretly invested £800,000 in [Swindon Town](#) and stands to make millions from the club, *Telegraph Sport* has been told.

The allegations emerged in a High Court judgment against the club's chairman, Lee Power, who said Barry was behind a cash injection that would entitle the former England star to "50 per cent of the profits arising from any increase in value of the club, including 50 per cent of net profits arising from sales of certain players".

Barry told the court he "categorically" had not invested in Swindon but had lent his agent, Michael Standing, money which was used for that purpose.

Power made his claim after Standing went to court to seek an injunction preventing shares in the Swindon being sold without his agreement...

What does this mean?

This brings back painful memories for those of us who are old enough to remember the cruel demotion that the club and supporters suffered in 1990, and we cannot go through anything like that again:

<https://thewashbag.com/2012/04/23/going-up-198990-every-silver-lining-has-a-cloud>

Rest assured, if penalties are imposed upon the club, we will fight it every step of the way.

We are well financed and have pro-bono legal support available to help us too.

The County Ground

Obviously, the current uncertainty surrounding the ownership of Swindon Town is unsettling - but we encourage all parties to work together to drive out a positive outcome for our football club.

How does this impact the stadium purchase?



Whilst the court papers raise serious concerns, we are reserving judgement until the courts make their conclusions.

The positive we can take is that there are numerous parties who are keen to control Swindon Town and take it forwards, building on the success that Richie Wellens and his team have delivered for us this season.

Our plans to work with the owners of Swindon Town to purchase the County Ground from Swindon Borough Council remain intact. We have created these agreements to be agnostic as to who the owner of Swindon Town is, however, **we are unable to execute these agreements until we have clarity around the current ownership situation.**

We are keen to work with all parties to support a successful and stable future for the club.

Vice-Chairman Rob Angus was on BBC Wiltshire this week and you can hear from him by clicking here :

<https://truststfc.tv/wp-content/uploads/2020/05/BBCWiltshire-210520.mp3>

And you can also hear from David Renard, Leader of Swindon Borough Council – from the same day:

<https://truststfc.tv/wp-content/uploads/2020/05/BBCWilts-DavidRenard210520.mp3>

Conclusion

Here are a few final words in summary, regarding each of the challenges we currently face:

The Ownership Battles

Looks like Clem Morfuni and Axis might get their 15% shareholding, so we expect that one to be settled out of court. It could bring a tax issue to Lee Power, so how that might impact him, we don't really know.

The club is also not being sold any time soon, both injunctions prevent that unless agreed by all parties. The training ground ownership also appears to be under challenge and will not be sold or re-mortgaged.

This could take up to a year to resolve and will be very costly for someone if it goes to trial.

Threat of Administration

The judge in the recent court case dismissed the idea of Administration and granted an injunction to Axis preventing Lee Power from 'taking active steps' to put the Club into insolvency without agreement.

We can only hope that the income derived from season ticket sales and the EFL, combined with the 80% furlough, is sufficient to get the club through to a time when hopefully crowds are allowed to return to football. It's a truly unique set of circumstances, and therefore difficult to predict an outcome.

We also hope the football authorities and the Premier League will continue to support the lower league EFL clubs and players, who will be struggling due to the impacts of COVID-19.

Should the club go into Administration – there could be a knock-on effect and possible punishment given that we have been there twice before (albeit a very long time ago).

The Trust is well established now, and we have an emergency plan for such a scenario.

Threat of FA or EFL Action

This may well rest on the outcome of the ownership battle, i.e. if Michael Standing wins his case, then either he or Gareth Barry may well face some action. Whether that is then also interpreted by the league as a situation whereby Swindon Town have benefited illegally and should therefore face penalties, remains to be seen.

If Lee Power wins the case, we may still face some action – it's hard to say at the moment and worth noting that in Lee Power's defence he states that no rules have been broken.

We shall monitor the situation, but once again – we are a well-established Supporters' Trust and we have the resources available to us that will ensure we fight for the rights of Swindon Town supporters.

The County Ground

Obviously, the sale has been impacted – not only by the COVID-19 situation, but also by the ownership wrangle. We will not be able to move on until both are sorted out but having spent over five years working toward the purchase, we will not give up and will see this deal through.

It is worth noting that the Goddard estate covenant already protects our interests in that the stadium and surrounding area is purely for sporting use. What our 50/50 Joint Venture agreement will enable is investment into redevelopment of the stadium, whilst still ensuring that supporters interests are protected.

The legal paperwork is yet to be signed, and is between Swindon Town Community Mutual Ltd, and Swindon Town Football Company Ltd – it is independent of any individual owner.

Let's Work Together



This is a unique set of circumstances, with much claim and counterclaim, in the midst of the significant challenges that COVID-19 brings to our way of life and the economics of all of us.

We call on all parties who are battling for ownership of our beloved football club to work together to secure a successful and stable outcome. We are willing to play our part to support this in any way we can.

A final word of thanks must go to our Red Army Fund contributors (www.redarmyfund.co.uk), who have supported us for several years and help us to do our work in a professional manner.

It's become clear since it was started that we often see a spike in Red Army Fund memberships during high-profile news moments, but please be aware that the fund is running in a very limited way right now – as management of the various benefits (badges, pens, shirts) can be a significant and complex overhead (due to shifting demand).

If you would like to sign-up and support our work – it's appreciated, but we know these are difficult times so please only do so if you can easily afford it. When all of this has calmed down and the stadium purchase moves forward – we will relaunch the Red Army Fund in a major way and retrospectively recognise your contributions in some way.

That's it for now then, if you have any questions or concerns – please email info@truststfc.com

COYR