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Neutral Citation Number: [2006] EWHC 2903 (Ch)
Claim No. 5LV90264

IN THE HIGH COURT OF JUSTICE
MANCHESTER DISTRICT REGISTRY CHANCERY DIVISION
IN THE MATTER OF:

Claim No. 5LV90264
Courts of Justice,
Crown Square, Manchester.
Date Wednesday, 26th July, 2006

B e f o r e :

HIS HONOUR JUDGE HODGE Q.C.
(Sitting as a Judge of the High Court)

IN THE MATTER OF: PROFORM SPORTS MANAGEMENT LIMITED **CLAIMANTS**

AND

PROACTIVE SPORTS MANAGEMENT LIMITED
AND
MR. PAUL STRETFORD **DEFENDANTS**

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MR. T. KING Q.C. (Instructed by Quinn Barrow) appeared on behalf of the Claimants
MR. V. JOFFE Q.C. AND MR. D. CASEMENT (Instructed by Halliwells LLP.) appeared on behalf of the Defendants

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HTML VERSION OF JUDGMENT

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HIS HONOUR JUDGE HODGE Q.C.

1. Wayne Rooney is a footballing phenomenon who needs no introduction, even to this Judge. He was born on 24 October 1985. He was the youngest goal scorer in the history of the Premiership Football League when, just short of his 17th birthday, he scored the last minute winning goal for Everton Football Club against the then league champions Arsenal, resulting in Arsenal's first league defeat in almost a year. His first international game was a friendly match against Australia in February 2003, when he became the youngest person ever to play for England. He became the youngest ever competitive goal scorer for England in the qualifying round of the European championships when he scored a goal against Macedonia on 6 September 2003. He was then aged only 17 years. On 31 August 2004 he signed for Manchester United. In 2005 he became the Fifpro Young Player of the Year. His physical state and condition dominated the footballing headlines during the first half of this year; and his performance in England's final match in the World Cup generated some controversy.

2. By its claim form, issued in the Queen's Bench Division of the Liverpool District Registry on 31 October 2005 and subsequently transferred to the Chancery Division, and by its Particulars of Claim, the claimant, Proform Sports Management Limited (to which I shall refer as Proform) claims against the first defendant, Proactive Sports Management Limited (to which I shall refer as Proactive), and the second defendant, Mr. Paul Stretford, one of Proactive's directors, damages for unlawful interference with and/or the procuring of a breach of a contract between Proform and Wayne Rooney, dated 12 December 2000.

3. By their defence, the defendants deny all liability. By an application notice, dated 19 April 2006 and issued shortly thereafter, the primary relief which the defendants now seek before me is summary judgment for the defendants on the claim. This judgment deals only with that aspect of the defendants' application. The defendants' Part 24 application is supported by the second witness statement of Julian Diaz-Rainey, the defendants' solicitor, dated 20 April 2006. In answer, Proform relies on the witness statements, first of the claimant's solicitor, Paul Vaughan Thomas, and secondly of Peter Mcintosh, the director of the claimant, both dated 24 May 2006. In reply, the defendants rely on the fourth witness statement of Mr. Diaz-Rainey, dated 12 June 2006. Proform also relies on a witness statement of a trainee solicitor, Manesha Vithali, dated 10 July 2006.

4. On this application Mr. Victor Joffe Q.C. appears for the defendants, leading Mr. David Casement of Counsel. For Proform Mr. Timothy King Q.C. appears. Both Counsel have submitted written skeleton arguments to me. That of the defendants is dated 18 July 2006. Mr. King's is dated 21 July 2006. Both skeleton arguments reached me only at about ten-past ten yesterday morning, the first day of the hearing of this application.

5. The background to this application is as follows: Proform entered into a representation agreement with Mr. Rooney on 12 December 2000 for a term of two years. At the time Mr. Rooney entered into that agreement, he was only a little over 15 years of age, and he did not have the benefit of legal advice. His father, Mr. Wayne Rooney Senior, also signed the Proform agreement. The agreement was expressed to be a management and agency agreement between Proform and Wayne Rooney, therein described as the player

> By clause one, Wayne Rooney appointed Proform to act as his executive agent and to carry out all the functions in respect of personal representation on behalf of his work as a professional football player for a period of two years from the date of the agreement.
>
> By clause two, the player confirmed that he was free to enter into the agreement, and wished to employ Proform to represent him exclusively in contract negotiations and transfers.
>
> Clause three provided for the player to pay Proform a management fee equal to 5% plus Value Added Tax on the player's earnings under his player contract and transfers.
>
> By clause four, Proform was to have the following duties: (1) to employ competent persons, and (2) to devote their time attention and skill to manage, advise and negotiate for the benefit of the player, and to perform their duties diligently.
>
> By clause five, the player was to have the following duties: (1) not to appoint any other agents, and (2) not to negotiate playing contracts and transfers covered by the agreement in person, and to refer to Proform all offers of contract and transfer negotiations received by him.
>
> By clause six the player agreed to pay any such fees applicable under the agreement within the correct terms, as detailed on a Proform invoice.

A box at the bottom of the formal agreement provided expressly that Proform reserved the right to assign the benefit of the contract in their absolute discretion.

6. It is the defendants' case that this agreement related only to player representation, that is to say, contracts with clubs; and not to marketing and image rights, in respect of which Wayne Rooney remained free to contract with other parties, such as Proactive.

7. At this point the background becomes somewhat controversial. The defendants say that Wayne Rooney and his parents became disillusioned with Proform, and approached Proactive. Proactive met with the Rooney family and explained what they did, but informed the family that they could not enter into a player representation agreement with Mr. Rooney whilst the Proform agreement was in existence. They were, however, so they say, prepared to enter into an image rights agreement with Wayne Rooney.

8. The matter is put somewhat differently in the claimant's reply, which was, as pointed out by Mr. King, verified by a Statement of Truth signed by Mr. McIntosh. According to paragraph 17.3 Mick Doherty, being at one time on the coaching staff of Everton Football Club, approached Mr. McIntosh at an Under 18 football game at Belfield in early 2002 and asked if Mr. McIntosh was interested in "selling" Mr. Rooney. A few weeks later the same Mick Doherty telephoned Mr. McIntosh and stated that his "gaffer" (by which he meant Mr. Stretford) had asked him to advise Mr. McIntosh that Mr. Stretford was interested in Mr. Rooney. Mr. Doherty did not explain in this conversation that this interest was limited to image rights only. Mr. McIntosh responded that he was not interested in such an approach or interest.

9. By sub-paragraph 17.4 of the reply, it is alleged that it was the plain import from a conversation that took place between Mr. Stretford and Mr. McIntosh in May 2002 (Mr. Stretford telephoning Mr. McIntosh to discuss the subject of Wayne Rooney's representation) that Mr. Stretford was very interested in representing Mr. Rooney as his agent (whether personally or on behalf of Proactive). Mr. McIntosh did not want to terminate the Proform agreement with Wayne Rooney, and Mr. Stretford therefore ended the telephone conversation abruptly. At no point during this telephone enquiry from Mr. Stretford did he explain that his or Proactive's interest in Wayne Rooney was limited to image rights only.

10. On 27 June 2002, a letter was written to Proform and signed by Wayne Rooney and by his parents. The letter stated -

> "As you are aware, the contract between Wayne and yourself expires in December 2002. Following careful consideration we have decided that we will not be renewing this agreement. This is in no way a reflection of the work that you have undertaken to date, it is more a review on what we believe are Wayne's requirements going forward. Therefore, we will not be utilising the services of the company from this point forward. As you are aware there has been a great deal of interest in Wayne from a number of the major representation agencies and having considered all options we have made the decision that Wayne's professional career will be better served by one of these companies. I would request that Wayne be released from all obligations under the terms of the representation agreement immediately.
>
> It only remains for me to thank you for all your support and efforts and to wish you all the best for the future."

11. On 1 July a similar, but not identical, letter was sent to X8 Limited. X8 Limited had by then effectively taken over Proform's business, and there had been some concern at that stage as to whether X8 Limited was claiming to have acquired the benefit of the Proform agreement with Mr. Wayne Rooney. The initial paragraph of the letter (which again was signed by Wayne Rooney and by his parents) to X8 Limited mirrored the first paragraph of the letter of 27 June 2002 to Proform itself. The second paragraph, however, was in slightly different terms. I quote,

> "We have therefore made a number of approaches to other football management companies in order to gain an understanding of the services that they offer. We have decided to sign for Proactive Sports Management based in Wilmslow from December of 2002. We recognise that this makes it difficult for us to work together in the short term and would therefore ask that you contact Neil Rodford, the managing director", on a number which is then given, "to discuss the best way forward for all parties."

The third paragraph mirrored the terms of the earlier letter of 27 June.

12. The second paragraph was in identical terms to an earlier draft letter from Mr. Rooney and his parents to Proform, which had also been dated 27 June 2002. That draft bears in manuscript the words "ORIGINAL which Paul changed". The inference I am invited to draw by Mr. King is that Mr. Stretford had changed an earlier draft of the letter to Proform from terms which, in the second paragraph, corresponded to those of the letter of 1 July to X8 Limited, to the terms of the second paragraph of the letter that was actually sent to Proform on 27 June.

13. The defendants contend that those letters constituted effective notice of rescission of the Proform contract. Mr. Joffe indicated that that was an issue it was not necessary for me to decide on the present application; it was a matter that he said was not relevant for today.

14. In July 2002, Proactive entered into a document which is expressed to be a representation agreement. It was made on 17 July 2002 between Wayne Rooney, his parents and Proactive. The recitals included a recital that Mr. Rooney and his parents together wanted Proactive to represent the client, and the company wanted to represent the client, in respect of the client's, that is to say Mr. Rooney's, commercial and business affairs. It is quite clear from clause three that the agreement extended not simply to marketing and image rights, but also to matters such as transfer and contract negotiations. That agreement, which is at pages 145 through to 153 of the application bundle, was signed on behalf of Proactive by Mr. Rodford.

15. It is said by the defendants that that July agreement, by purporting to be a player representation agreement as well as an image rights agreement, was entered into under a mutual mistake and was therefore void. It is also said that as far as player representation was concerned, as opposed to image rights, it was never acted upon. Sub-paragraph 27 (7) (iii) of the defence pleads that the July agreement was void and was never acted upon (save for certain steps which were taken preparatory to dealing with Mr. Rooney's image rights, namely a company Stoneygate 48 Limited was set up as an image rights company and a payment of £25,000 was made on 13 August 2002 from Proactive's Sports Marketing division, rather than from its Representation division). That payment was made pursuant to clause five (remuneration) which provided, by clause 5.1.1, that in consideration of entering into the agreement and performing the obligations set out therein, Proactive was to pay to Mr. Rooney and his parents together the sum of £50,000, payable as follows: as to £25,000 upon the signature of the agreement by all the parties, and the balance of £25,000 was to be payable on the date on (but not before) Wayne Rooney reached 18 years of age, and subject to the provisions of a subsequent clause, clause 5.2. Again Mr. Joffe says that it is not necessary for me to decide whether the agreement made in July was in fact void for mistake, or whether it was in fact ever acted upon.

16. It is then said by the defendants that in September 2002 the Rooney family obtained legal advice, and leading Counsel, Alan Newman Q.C., advised that Mr. Rooney was entitled to avoid the Proform agreement by reason of his minority. On 13 September 2002, Mr. Newman drafted two letters to terminate the Proform agreement on the grounds that it was voidable due to Mr. Rooney's minority, together with a covering note. It is said that the defendants were made aware of that advice. In fact the covering note, which is at pages 154 to 155, merely deals with the question whether it was necessary for Wayne Rooney to send a letter to X8 Limited in order to avoid the contract; and deals solely with the question whether an assignment of the benefit or the burden of the contract could be effected by Proform to X8 Limited. It overlooks the express provision in the Proform agreement permitting assignment, to which I have already referred. The draft letter to X8 Limited does not expressly deal with the issue of termination on the grounds of Wayne Rooney's minority; but it does refer to the contemporaneous letter to be sent to Proform, which does in terms state that, having taken the advice of leading Counsel, the writer is clearly of the view that the management and agency agreement was voidable at the option of Wayne Rooney, on the grounds of his age at the time of signing the agreement; and invited the recipient to take the letter as formal notice, on Wayne Rooney's behalf, that he thereby avoided the management and agency agreement, which thenceforth was to be treated as void and of no effect. Letters in the terms drafted by Counsel were then served on Proform and X8 Limited on 18 September 2002; and it is then said that the defendants were made aware of that fact.

17. There is an issue which cannot, and Mr. Joffe says does not need to be, determined in the context of this present application as to whether the letter to Proform was in fact received by them; but Mr. Joffe submits it is quite clear that X8 was, or should have been, through its solicitors (who were also the solicitors acting then for Proform, Nexus), aware of the Rooneys' purported termination of the December 2000 Proform agreement.

18. It is then said by the defendants that, having been provided with the advice of leading Counsel, on 19 September Mr. Stretford, on behalf of Proactive, signed a player representation agreement with Mr. Rooney. This it is said was done in the belief that, as leading Counsel had advised, Mr. Rooney was free of the Proform agreement. In fact the formal written advice of Mr. Newman dealing with the issue of the impact on the Proform December 2000 agreement of Mr. Rooney's minority was only dated 31 October 2002. That advice is exhibited as exhibited JDR4 to a further witness statement, his third, of Mr. Diaz-Rainey dated 15 May 2006, made in relation to an application by the claimant, Proform, for further information under Part 18 of the Civil Procedure Rules. Be that as it may, it is the defendants' case that within 24 hours of signing the September 18 agreement, Mr. Stretford and Proactive reconsidered and decided that it would be better if they did not represent Mr. Rooney until the period originally set out in the Proform agreement expired, which of course it was due to do on 11 December 2002, notwithstanding their belief, as they say was the case, that the Proform agreement had been set aside. It is said that the September agreement was therefore set aside with the mutual consent of all parties. Mr. King for Proform stigmatises that evidence as "incredible".

19. It is said by the defendants that neither the July nor the September agreements were ever acted upon by Mr. Stretford or Proactive, and that this is confirmed by a letter dated 23 October 2002 from Michael Dunford, then the Chief Executive of Everton Football Club, for whom Mr. Rooney was playing at the time. That letter, addressed to Mr. McIntosh of Proform, refers to an article which had appeared in the Daily Mail on Wednesday 23 October. Mr. Dunford felt that he must, for the record, make Mr. McIntosh aware of certain facts. He confirmed that there had been no negotiations over the professional contract between Everton Football Club and Proactive. Mr. Rooney Senior had informed the Club that when Proform's two year agency agreement expired in December, he wished all future negotiations in respect of Wayne's professional contract to be conducted by Proactive. Thus, no such negotiations could, nor would, take place without Proform's agreement until 13 December 2002. It is recorded that Wayne was currently registered with the Football Association and the Football Association Premier League on a scholarship agreement which had commenced on 1 July 2002, and could remain in force until 25 June 2005 or be extended for a further two years by Everton exercising an option clause. The letter concluded that it would be Everton's wish, as Mr. McIntosh would expect, to be able to conclude a new professional contract for Wayne at the earliest opportunity, but it appeared that unless an agreement could be reached between Proform, Proactive and the Rooney family, that any such negotiations would not commence until 13 December 2002. That letter was copied to the Football Association, to the Football Premier League and to Cuff Roberts (solicitors). Proactive entered into a player representation agreement with Wayne Rooney on 14 December 2002, three days after the expiry of the term of the Proform agreement. Proactive then began to represent Mr. Rooney as a player. On 1 February 2003, Wayne Rooney entered into a Football Association Premier League Football League contract with Everton Football Club.

20. Essentially, in this case, Proform alleges that, by reason primarily of the July and the September agreements, the defendants are liable for inducing breach of contract. The value of the claim is not particularised, but the defendants say that an indication of Proform's view of its worth is given by the Particulars of Claim, paragraph 12, which suggests that it may be worth in excess of 1.5 million.

21. The defence, amongst other things, challenges the validity and/or enforceability of the Proform agreement. In particular it asserts (1) that the Proform agreement was an unreasonable restraint of trade, contrary to public policy and therefore void, (2) further, or alternatively, that it was voidable as a contract with a minor, (3) insofar as Proform seeks to contend that its agreement was analogous to a contract for necessaries or of apprenticeship, that the agreement was not necessary for Mr. Rooney when he entered into it and did not contain any obligation on Proform to provide Mr. Rooney with training, and (4), alternatively, if the Proform agreement was analogous to a contract for necessaries or of apprenticeship, it was not for Mr. Rooney's benefit, (5)

that it was terminated by the letters to Proform and X8 of 17 September 2002, (6) that the defendants only entered into the September agreement in the light of legal advice, and (7), that there is no causation.

22. Two further legal points are taken. First, it is denied as a matter of law that a person can be liable for inducing or facilitating the breach of a voidable contract. Secondly, that the particulars of claim have failed to set out an essential element of the alleged tort, namely intention; although it is acknowledged that paragraph 17.7 of the reply seeks, in the contention of the defendants unsuccessfully, to address that point.

23. In addition to the above, the defence also raises defences to the claim on factual grounds, which would plainly be matters for trial. At paragraph 17 of his witness statement, in support of the application for summary judgment, Mr. Diaz-Rainey states, I quote,

> "There are a number of issues which are fact sensitive in the present case and the parties clearly intend to present conflicting evidence, which can only be resolved at trial. However there are a number of matters which are so clearly against the claimant that it is appropriate for this matter to be disposed of by way of summary judgment. The existence of these issues is clear from the defence filed and served in these proceedings but the claimant has failed to deal or deal adequately with these issues or any of them."

At paragraph 38 of his witness statement, Mr. Diaz-Rainey acknowledges that on a summary judgment application, it is unlikely that a court would be able to resolve the issue of whether Mr. McIntosh was suitable to act on behalf of Wayne Rooney. However, it is said that the summary judgment application does not raise any such factual issues. Rather, the defendants say that, as a matter of law, the claim is entirely misconceived and has no reasonable prospect of succeeding. In this regard the defendants say (1) as a matter of law, they cannot be liable for inducing the breach of a voidable contract; and the Proform agreement was such a contract, because (i) it did not fall within the class of contracts which are enforceable against a minor, and (ii) even if it did, it was not for Wayne Rooney's benefit. (2) As a matter of law, the defendants say they cannot be liable for inducing breach of contract if they acted on legal advice, which they did; and (3), they say that Proform cannot establish that any acts or omissions of the defendants caused them any loss.

24. For the claimant, the respondent to this reverse summary judgment application, Mr. King reminds me of the provision of CPR 24.2, which set out the grounds for summary judgment. The court may give summary judgment against a claimant on the whole of the claim or on a particular issue if (a) it considers that the claimant has no real prospect of succeeding on the claim or issue and (b) there is no other compelling reason why the case or issue should be disposed of at a trial. He refers me to the applicable notes in Volume 1 of Civil Procedure (2006 edition), in particular at paragraphs 24.2.3 and 24.2.5.. He submits that the essence of the applicable principles are

> (1) that the overall burden of proof is on the applicant to establish that there are grounds to believe that the respondent has no real prospect of success and that there is no other reason for a trial: it is a negative test.
>
> (2) The inclusion of the word 'real' in the rule distinguishes fanciful prospects of success, but all this means is that the respondent has to have a case which is better than merely arguable. There is no onus to show his case would probably succeed at trial. He quotes from paragraph 24.7.5 of the White Book -
>
> > "If the applicant for summary judgment adduces credible evidence in support of his application, the respondent becomes subject to an evidential burden of proving some real prospects of success or some other reason for a trial. The standard of proof required of the respondent is not high."

(3) The hearing of an application for summary judgment is not a summary trial. Where there are significant differences between the parties on factual issues, the court is in no position to conduct a mini trial.

25. Mr. Joffe begins his application by setting out what he says is considerable relevant common ground in the case. In particular he says that it is common ground that: (1) Mr. Rooney was aged 15 and accordingly a minor at the time when he entered into the Proform agreement on 12 December 2000. (2) That Mr. Rooney was already on schoolboy forms with Everton when he signed the Proform agreement. Mr. Joffe tells me that this is a reference to Form YD. Mr. McIntosh in his witness statement, at paragraph five, in fact says that Wayne Rooney was a trainee in December 2000 when he signed with the claimant. It seems to me that it does not matter whether he was on schoolboy forms or merely a trainee with Everton when he signed the Proform agreement. What is important is that he was already with Everton at that time. (3) Under the Football Association Rules, Mr. Rooney, as a person not in full-time education, was not able to sign a professional contract until he was 17. Had he been in full-time education, he could not have signed such a contract until he was 18.

(4) It is common ground that Mr. Rooney and his parents had no legal advice before signing the Proform agreement. (5) That agreement was made between Mr. Rooney and Proform. (6) Proform was incorporated on 9 November 2000, just 33 days before the Proform agreement was signed, and it was formed as a £100 company. (7) Proform had never had any significant worth. Its 2001 accounts showed an income of £43,687, a loss on ordinary activities after tax of £76,413 and net assets of £14,704. That reference to net assets was explicable only on the basis of a substantial increase in the share capital which in fact post-dated the reference date in the relevant accounts. The 2002 accounts showed a loss on ordinary activities after tax of £14,974 and net liabilities of £270 after income of only £6,851. Mr. King told me on instructions that that was because X8 had taken over most of the business of Proform during the year 2002. The corresponding figures for 2003 and 2004 are, in the case of profits and losses, nil; and in the case of net assets, £270, thus suggesting that Proform was not then trading. Thus, it is said by the defendant that Proform was insolvent, at least from 1 January 2002. (8) Finally, Proform was struck off the register under Section 653 (5) of the Companies Act 1985 on 14 September 2004, on the application of its directors at the time. It was dissolved on 21 September 2004. It was only restored on 18 April 2005 in order to pursue these proceedings.

26. For the claimant, Mr. King submits that there appears to be no dispute but that Proactive, with knowledge of the claimant's agreement of December 2000 (as evidenced by Mr. Rooney's letter of 27 June 2002 which was clearly written, so the claimant says, with the assistance of Proactive, acting through Mr. Stretford), entered into the July and September Proactive agreements with Wayne Rooney. He submits that the very fact of their execution amounts to a prima facie breach by Wayne Rooney of his obligations under the Proform agreement. He also invites the court to note that the defendants themselves have not deigned to provide evidence of the facts which would be within the knowledge of those identified in paragraph one of Mr. Diaz-Rainey's supporting witness statement as being the sources of the information relied upon by him in his witness statement in support of the application. Mr King points to the fact that none of those persons, namely Paul Stretford (himself the second defendant) Neil Rodford, Wayne Rooney Senior, Mrs. Rooney or Michael Dunford have filed witness statements confirming the truth of the matters set out in Mr. Diaz-Rainey's witness statement. He also would add that there is no evidence from Wayne Rooney himself, nor is there evidence from the relevant fee earner at DLA, who is said to have drafted the July 2002 agreement, which it is said was executed under a mistake of fact as to its contents.

27. The first ground of the defendants' application is that they cannot be liable for inducing the breach of a voidable contract. The principles are said to be expressed at paragraph 25-23 of the 19th edition of Clerk and Lindsell on Torts (published in 2006). I quote -

> "Where the contract is determinable, the defendant incurs no liability merely by inducing the contracting party to determine the contract lawfully, for there is then no breach. It must follow, therefore, that it is no tort to procure the breach of a voidable contract, at least where the person induced is the party who enjoys the right to rescind."

28. I was taken to a number of authorities in support of these propositions. It is said by Mr. Joffe for the defendants that the proposition that it is no tort to procure the breach of a voidable contract must follow logically from the proposition that the defendant incurs no liability merely by inducing the contracting party to determine the contract lawfully. He submits that Slade J. was prepared to assume that such was the law in Greig -v- Insole [1978] 1 WLR 302 pg. 333. Slade J. between letters A and B recorded that a question that had been the subject of some argument before him was whether it could be a tort to induce the breach of a merely voidable agreement. His conclusion at letter G was as follows:

> "For the purpose of this judgment, therefore, so far as it is relevant at all, I propose to assume in favour of the defendants, without deciding, that it does not constitute a tort for a third party to induce a person to exercise a lawful right to rescind a contract."

29. Mr. King relies upon the limited terms of Slade J's assumption that it does not constitute a tort for a third party "to induce a person to exercise a lawful right to rescind a contract." Mr. King says that that statement does not extend beyond inducing a person to exercise a lawful right to rescind a contract. It does not in terms apply to inducing a person to act in breach of a contract which is voidable, but which he has not then previously sought to avoid.

30. Mr. Joffe says that two earlier authorities neither considered by, nor even cited to, Slade J. show clearly that there can be no liability for procuring the breach of a voidable contract with a minor. He submits that those decisions go further than the assumption that Slade J. was prepared to make. Those cases are both decisions at first instance. The first is De Francesco -v- Barnum, a decision of Fry L.J. sitting as an additional Judge of the Chancery Division and reported at (1890) 45 Ch 430. The other decision is Shears -v- Mendeloff (1914) 30 Times Law Reports 342, a decision of Avory J. sitting with a common jury.

31. Mr. King points out that in Shears -v- Mendeloff, the second paragraph of the recital of the facts records that the contract was one that the minor was not only entitled to repudiate, but one "that he did repudiate in the Autumn of 1913". Thus Mr. King says that Shears -v- Mendeloff was not a case in which the matter fell to be decided. So far as the other authority, De Francesco, is concerned, he submits that there is no indication in Fry L.J.'s judgment that he considered this actual point at all. Mr King makes the point that neither authority is cited in Chitty in connection with the proposition for which Greig -v- Insole is cited as authority. He submits that in De Francesco the issue simply did not raise its head at all. He submits that, until avoided, the contract is binding. He questions the principle that no-one can be liable for inducing the breach of a voidable contract, on the footing that, unless and until a voidable contract has been avoided, it remains valid.

32. Mr. Joffe submits that the Proform agreement was at all times a voidable contract which was avoided in June, or if not in June, in September, 2002, and therefore there can be no liability in tort, even if, which he denies, the defendants procured a breach of that contract. Mr. King submits that the 27 June letter, rather than seeking to avoid the contract, in terms acknowledged that the claimant's agreement would continue until December 2002, and therefore cannot be relied upon as an avoidance of the contract. He disputes that the September letter was ever received. He makes the point that the Dunford letter of October 2002 acknowledges that the Proform agreement continues until its stated expiry date.

33. On the issue of law as to whether there can be any liability for procuring the breach of a voidable contract with a minor, I find in favour of Mr. Joffe's argument. I acknowledge that Slade J. merely assumed that it was not a tort for a third party to induce a person to exercise a lawful right to rescind a contract. In my judgment, although he was merely prepared to assume that, he was right to do so. I agree with Mr. Joffe that it follows logically from the

proposition that where a contract is determinable, the defendant incurs no liability merely be inducing the contracting party to determine the contract lawfully, for there is then no breach, that it is no tort to procure the breach of a voidable contract, at least where the person induced is the party who enjoys the right to rescind. I accept Mr. King's submission that the point was not decided in Shears -v- Mendeloff because on the facts it was unnecessary to do so, the contract having already been repudiated. I am also prepared to accept that the point may not have been directly thrown up for decision in the De Francesco case; but it does seem to me that if a contract is voidable, then there should be no liability for procuring the breach of it. It does not matter whether the contract has already been avoided, or whether the alleged tortfeasor merely induces the minor to breach the contract. If the contract is one which the minor is entitled to avoid, then it does not seem to me that liability for the tort of wrongfully interfering with, or of inducing the breach of, the contract should arise. I can see no justification for holding a defendant liable for the tort in such circumstances, notwithstanding the fact that the contract remains valid until avoided. The fact that it can be avoided should be, in my judgment, in principle a defence to any claim for the tort of wrongful interference with, or wrongfully procuring a breach of, the contract.

34. It then becomes necessary to consider the next stage in Mr. Joffe's argument. He submits that the law as to minors' contracts is correctly stated in Chitty on Contracts, 29th edition 2004, at paragraphs 8-004 to 8-005. Paragraph 8-004 identifies the only contracts which are binding on the minor as contracts for necessaries. However, a diversity of meanings has been given to the word "necessaries". In one sense the term is confined to necessary goods and services supplied to the minor, but in another it extends to contracts for the minor's benefit and in particular to contracts of apprenticeship, education and service. Paragraph 8-005 provides that apart from contracts for necessaries and contracts of apprenticeship education and service, the general rule at common law is that a minor's contract is voidable at his option; i.e. not binding on the minor, but binding on the other party.

35. As to other beneficial contracts, Mr. Joffe relies on paragraph 8-028. I quote -

> "The principle that contracts beneficial to a minor are binding on him is not confined to contracts for necessaries and contracts of employment, apprenticeship or education in a strict sense. It extends also to other contracts which in a broad sense may be treated as analogous to contracts of service, apprenticeship or education. So, for instance, a contract by a minor (who was a professional boxer) with the British Boxing Board of Control whereby he agreed to adhere to the rules of the Board was held binding on him because he could not have earned his living as a boxer without entering into the agreement."

The authority cited is Doyle -v- White City Stadium Limited [1935] 1 KB 110.

> "Similarly, it has been held that an agreement between a minor and a publisher for the publication of the minor's biography which was to be written by a "ghost writer", was binding on the minor."

The authority cited is Chaplin -v- Leslie Frewin (Publishers) Limited [1966] Ch 71.

> "So also, a contract between a group of under-age musicians (known as "The Kinks") whereby they appointed a company as their manager and agent, was held binding as analogous to a contract of employment."

The authority cited is the first instance decision in Denmark Productions Limited -v- Boscobel Productions Limited reported only at (1967) 111 Solicitors Journal 715 and reversed on other grounds by the Court of Appeal. The footnote goes on to contrast from that case the case of Shears -v- Mendeloff (1914) 30 TLR 342, where the contract contained oppressive terms and was void. The text goes on:

"On the other hand there is no general principle to the effect that *any* contract beneficial to a minor is binding on him. So a minor's trading contracts are not binding on him, even if beneficial."

36. Thus, two questions arise. First, whether the contract between Wayne Rooney and Proform falls within the class of contracts analogous to contracts for necessaries and contracts of employment, apprenticeship or education. If so, secondly, and only if the first question is answered in a positive sense, whether this particular contract was one which was beneficial to Wayne Rooney. Mr. Joffe submits that a contract analogous to one of apprenticeship, education or employment is only enforceable against a minor if it is of benefit to him at the time when he enters into it. Where the contract contains terms, some of which are beneficial to him and others not, the question is whether, taken as a whole, the contract is to his advantage. The burden of showing benefit is always on the party seeking to uphold the contract. At paragraph 31 of his written skeleton argument, Mr. Joffe poses the question whether the Proform agreement fell within the class of minors' contracts which were analogous to those of apprenticeship, education and service. At sub-paragraph six he proposes a negative answer to that question. He says that Proform cannot show that the contract is so analogous. At the time when it was signed, Mr. Rooney was already with a club, Everton, that was providing him with training. He had no need for any training from Proform. He submits that the Proform agreement makes no provision for training, education or instruction in any way.

37. The absence of such provision was, he submits, the basis of the decision in Shears -v- Mendeloff that the contract could not be construed as one for necessaries. Shears -v- Mendeloff was of course the case before Avory J., where a minor who was a professional boxer had appointed the plaintiff his sole manager on commission and agreed not to take any engagements under any other management without the plaintiff's consent for three years. Such a contract was held unenforceable against the infant, on the grounds that it was a trading contract, and also as one which could not be construed as being beneficial to him. Mr. Joffe contrasts such a case with the decision in Roberts -v- Gray [1913] 1 KB 520, where the infant had entered into a contract to go on a tour as a professional billiard player. That contract was held to be one for necessaries and for his benefit. The Court of Appeal held the contract to be binding on him as a whole. Mr. Joffe submits that the basis of the decision in that case was clearly that the contract could be construed as one for necessaries, because it was for teaching, instruction and employment. By contrast, he submits that the Proform agreement contains nothing which can be said to be analogous to instruction, education or training. Nor did the Proform agreement permit Mr. Rooney to make a start as a footballer or enable him to earn a living. It is on that basis that he distinguishes the cases of Chaplin -v- Leslie Frewin and Doyle -v- White City Stadium, which are authorities relied upon by Mr. King. Mr. Joffe submits that in those two cases the minor was enabled to earn a living by reason of a contract he entered into. That is not the position here. There was no payment being made to him. He was already contracted to Everton. That was all that he needed. He had no need of a contract to represent him as a professional footballer. He would on turning 17 be in a position to earn his living via a contract with Everton Football Club or any other club, and he had no need of an agreement with an agent to enable him to do so. Certainly he did not need to be bound to such an agent for two years. After all, he could not under the Football Association Rules sign a professional contract at the earliest until he was 17, assuming he was not then in full-time education; and he had no need of representation in his work as a professional footballer, as clause one of the Proform agreement stated.

38. Mr. King submits that the terms of the Proform contract speak for themselves. He relies upon the terms of Mr. McIntosh's witness statement, which record that Proform was providing all the functions in respect of personal representation and management, advice and negotiation for the benefit of Wayne Rooney. That was intended to encompass all aspects of the services undertaken by the claimant for a player aged 17 years or under. He submits that the case falls squarely within the principle stated at paragraph 8-028 of Chitty, that contracts beneficial to a minor, and which can thus be upheld, are not confined to contracts for necessaries and contracts of employment, apprenticeship or education in a strict sense. They extend also to other contracts which in a broad sense may be treated as analogous to contracts of service, apprenticeship or education. In any event, he submits that the defendants cannot establish - and the burden is upon them -that the claimant has no real prospect at trial of bringing the agreement within these principles. Whether the agreement is within the same must, he submits, be a mixed question of construction and fact.

39. I am conscious that on this issue I have, as Mr. King submits, to be satisfied that the claimant has no real prospect of succeeding in establishing that the Proform agreement falls within the class of contracts analogous to those described as contracts for necessaries, contracts of employment, apprenticeship or education. Clearly Wayne Rooney's agreement with Everton Football Club would fall squarely within the class of contracts identified at paragraph 8-028 of Chitty. However, it does seem to me that the same cannot be said of the Proform agreement. On the evidence, Mr. Rooney was already engaged with Everton. Under the terms of the Football Association rules, he could not enter into any contract of employment until he was 17, if then not in full-time education. Even if he entered into a contract with Everton when he was 17, that contract, if not for his benefit, would of course be voidable at his election. It does not seem to me that a contract in the terms of the Proform agreement, whereby Proform was to act as his executive agent and to carry out all the functions in respect of personal representation on behalf of his work as a professional football player, falls to be considered as analogous to the class of contracts considered at paragraph 8-028 of Chitty. As I say, Mr. Rooney was already with Everton on Mr. McIntosh's own evidence, (see paragraph 18 of his witness statement). At this time, and indeed in 2002, Wayne Rooney only wanted to play for Everton; he did not wish to play for any other club. He was already doing so.

40. It does seem to me that the Proform agreement is much more analogous to the contract considered by Avory J. in Shears -v-Mendeloff than it is to the class of contract considered in cases such as Doyle -v- White City Stadium and Chaplin -v- Leslie Frewin and Denmark Productions -v- Boscobel Productions Limited. As Mr. Joffe submitted, music group mangers are very different from players' representatives. Music group managers organise matters that are essential to the very business of the musical artiste. Players' representatives do not undertake matters that are *essential* to the player's training or his livelihood. They do not enable the minor to earn a living or to advance his skills as a professional footballer. In my judgment, cases such as Chaplin and Doyle make it clear that the basis of the class of analogous contracts is that the minor is entitled to earn his living or to start to do so. It does not seem to me that the Proform agreement is analogous to such a contract. I say that particularly bearing in mind the fact that, under the Football Association rules, no contract can be entered into by a player as young as Wayne Rooney then was. No contract could properly be entered into by him until a time less than two months before this representation agreement was due to expire; and even if entered into by Wayne Rooney at that time, it would have been voidable at his instance if not genuinely for his benefit. That would have continued to be so throughout the remaining short duration of the management and agency agreement. It seems to me that the Proform agreement is at one remove from the class of contract that has been treated in the authorities as being subject to the exception to the general voidability of minors' contracts, applicable where such a contract is for the minor's benefit. As paragraph 8-028 of Chitty makes clear, "A minor's trading contracts are not binding on him, even if beneficial". It seems to me that this case falls within the general principle that merely because a contract is beneficial to a minor, if such is the case, it is not binding on him unless it falls within a particular category.

41. So for those reasons, it seems to me that Mr. Joffe is correct in saying that the Proform agreement does not fall within the class of minors' contracts which are analogous to contracts of apprenticeship, education and service. On that footing, it is unnecessary for me to consider the point that was addressed at length at paragraphs 32 through to 48 of Mr. Joffe's skeleton argument, whether the Proform agreement was for Mr. Rooney's benefit. Given that this is a summary judgment application, it seems to me that it would be undesirable for me to venture any expression of judicial opinion on that issue; and I do not propose to do so.

42. I should, however, deal with the two other issues that were relied on by Mr. Joffe. First, he submitted that acting on legal advice was a defence to a claim of having induced a breach of contract. He developed this argument at paragraphs 49 to 54 of his written skeleton. He concludes with the submission that, given Proactive's knowledge of the existence of leading Counsel's advice and of the letters rescinding the Proform agreement, Proactive was entitled to enter into the September agreement. He further submits that it cannot be said in these circumstances that the defendants had the requisite intention to commit the tort of inducing breach of the Proform agreement by executing the September agreement. He submits that there is no specific challenge to the

defendants' account of the matter in the claimant's reply. There is no specific evidence addressed by the claimant on this issue; and that essentially any challenge to the defence involves mere Micawberism on the claimant's part: the hope that something will turn up on discovery.

43. In my judgment, Mr. King on this issue is right to say that this is essentially all a matter that turns on the evidence; and had this been the only live issue, I would not have been inclined to give summary judgment on it in favour of the defendants. Given that I am proposing to grant summary judgment on the point I have already addressed, it is probably undesirable that I say anything more about that aspect of the matter.

44. Mr. Joffe's final point related to causation, which he addressed at paragraphs 55 - 58 of his written skeleton. He submits that neither Proactive nor Mr. Stretford took any steps under the July agreement, other than in relation to Mr. Rooney's image rights. So far as the September agreement is concerned, on the very day after it was signed, Mr. Stretford decided to cancel it, and it was not acted upon or implemented in any way. Thereafter no steps were taken by the defendants in relation to Mr. Rooney's representation until after the expiry of the Proform agreement. That is confirmed by Mr. Dunford's letter of 23 October 2002, and by the fact that Mr. Rooney's new contract with Everton was signed only on 1 February 2003. Mr. Joffe submits that the Rooney family had been so disenchanted with Proform that they would not have entered into a new contract with Everton whilst Proform acted as his agent. He submits that it is incumbent on Proform to show how the defendants' alleged tortious acts were causative of loss or damage; and in the light of the above, it is clear that they are unable to do so. In essence, he submits that there can be no realistic prospects of success on the issue of causation. Essentially the Rooneys were going to wait until the Proform agreement had expired by effluxion of time before doing anything.

45. In my judgment, had it been relevant to do so, I would not have acceded to that line of argument. In my judgment, Mr. King is right to submit that it really all depends on the facts, and there is sufficient obscurity and uncertainty as to those facts to have merited the case going forward to trial. Mr. King did accept, in answer to a question from the bench, that if on the evidence all that the defendants had done was to say to the Rooneys "Do not do anything until after the expiry of the Proform agreement on 11 December 2002", then there would have been no tortious conduct on their behalf; but he said that that was not all that was done. There was the entry into the July agreement, which on its face clearly goes beyond a mere image representation agreement, and extends to matters of negotiating transfers and contracts. There is no evidence from the solicitors who drafted the agreement as to how any mistake came about. There is then the September agreement; and although I would not say that it is "incredible" that it should have been ditched only the day after it was entered into, it is a matter that it seems to me does call for investigation. There are the assertions in the reply that even before June of 2002, Mr. Stretford and Proactive were interested in acquiring the rights to represent Mr. Rooney.

46. In my judgment, there is a sufficient substratum of fact alleged by the claimant, and to be inferred from the documents and evidence generally, including the evidence that was given by Mr. Stretford at the trial in Warrington Crown Court in October 2004, to have allowed this matter to go forward. If it is the case that the defendants had first put into the minds of the Rooneys that Proform was not the appropriate person to be taking negotiations on Wayne Rooney's behalf forward, then it does seem to me that there would have been a live issue on causation; and had that been the sole matter, I would not have granted summary judgment.

47. So to summarise:

(1) In my judgment there is no reasonable prospect of the claimant establishing at trial that the Proform agreement was a contract for necessaries or analogous to a contract of apprenticeship, education or service, so that as a matter of law it falls outside the general rule that contracts with minors are voidable.

(2) In the light of that holding, it is unnecessary for me to consider whether the Proform agreement was for the benefit of Wayne Rooney, so that as a matter of law it falls outside the general rule that contracts with minors are voidable. I am satisfied that Mr. Joffe is right in his submission that there can be no liability in tort, even if the defendants were responsible for procuring a breach of the Proform agreement, because, in my judgment, that agreement was voidable by Mr. Rooney.

(3) I would not have given summary judgment on the basis that, given the legal advice of leading Counsel, the defendants could not be said to have had the necessary intention to induce a breach of contract, had I not already held that the contract was voidable as a matter of law.

(4) I would have held that the claimant had a real prospect of proving that at least some loss had been caused by the alleged inducement to breach of contract on the part of the defendants.

For the reasons I have given, however, I do give summary judgment to the defendants.

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