



Press Summary

14 July 2026

Saxon Woods Investments Limited and others (Respondents) v Francesco Costa (Appellant)

[2026] UKSC 21

On appeal from: [2025] EWCA Civ 708

Justices: Lord Sales (Deputy President), Lord Briggs, Lord Hamblen, Lord Burrows and Lady Rose

Background to the Appeal

This appeal concerns the standard of behaviour required of a company director, as a fiduciary who owes a duty of loyalty to the company, and who is required to act in good faith, when the director genuinely disagrees with his or her fellow directors as to the best way forward for achieving success for the company. In this summary as in the judgment, the pronouns “he” and “his” are used to refer to directors because the director in the present case is a man.

Spring Media Investments Limited (the “Company”) is a company incorporated in England and Wales. It is the holding company for a group of companies which provides creative services to existing businesses in the fashion, beauty and luxury brand sectors. The appellant, Mr Costa, was a director of the Company at all material times until October 2025, and chairman of the board until July 2024. Mr Costa was not himself a shareholder in the Company but held a substantial indirect interest in it through a Luxembourg entity. The first respondent, Saxon Woods Investments Limited (“Saxon Woods”), is a shareholder and held 22.33% of the shares in the Company as at 31 December 2019.

The business was originally founded in 1996 as Spring Studios Limited (“SSL”) by its initial Chief Executive Officer, Mr Loy, and two other individuals who left soon afterwards. On 20 May 2016, a new shareholders’ agreement was executed in respect of the Company (the “SHA”), replacing an earlier shareholders’ agreement from 2013. The parties to the SHA were: the Company; SSL; each of the shareholders (including Saxon Woods) and Mr Loy (collectively, the “Investors”). In the SHA, the Company and the Investors agreed to work together in good faith towards achieving an “Exit” (ie the sale of the Company or its shares) by no later than 31 December 2019. Although the conduct of the Company’s affairs was primarily entrusted by its constitution to its board of directors, the Company delegated the conduct of the sale process exclusively to Mr Costa.

The sale process was not carried out in accordance with the SHA because Mr Costa believed that a sale later than by the end of 2019 would be likely to generate a better financial return for the Company and the Investors. The trial judge found that Mr Costa had adopted various tactics to achieve his objective of effectuating a later sale. These included: ensuring that no other director (save for one) had any knowledge or involvement in the sale process, misleading the board by giving his fellow directors the impression that the Company was fulfilling its obligations under the SHA (whereas to his knowledge it was not) and failing to disclose to the board that his instructions to the Company's advisors in connection with the sale did not encompass achieving a 2019 Exit. Mr Costa ultimately achieved his strategic objective of delaying any sale beyond the end of 2019. Unfortunately for Mr Costa, the Company and the Investors, the prospect of a profitable Exit was destroyed by the adverse impact of the Covid Pandemic on the Company's business in and after 2020.

Saxon Woods presented a minority shareholders' petition against Mr Costa for relief from unfair prejudice under sections 994-996 of the Companies Act 2006 ("CA 2006"). It did so on the basis that Mr Costa had been personally responsible for the Company's failure to abide by the Exit strategy agreed in the SHA, so that he should be ordered to buy out Saxon Woods' shares in the Company at the price reflecting the value which those shares would have had if that strategy had been followed, and an Exit achieved in 2019. At the trial, the judge held that Saxon Woods' case on unfair prejudice had been made out, but Mr Costa's conduct had not amounted to a breach of fiduciary duty under section 172 CA 2006 or involved dishonesty on his part. Consequently, the judge made only a conditional buy-out order requiring Mr Costa to buy Saxon Woods' shares at the value they would have had at the end of 2019 *if* it were proved at a later hearing that, had the Company complied with the Exit strategy agreed in the SHA, a final offer of more than US\$75 million net of debt would have been received for the Company by the end of 2019.

Both Saxon Woods and Mr Costa appealed. The Court of Appeal dismissed Mr Costa's appeal and allowed Saxon Woods' appeal. The Court of Appeal ordered an unconditional buy-out by Mr Costa of Saxon Woods' shares, with the exact value (as at the end of 2019) to be determined at a further hearing in the High Court. The primary reason for the Court of Appeal departure from the trial judge's order was that they considered that Mr Costa had been in breach of fiduciary duty under section 172 CA 2006. This was because, in their view, Mr Costa's deception of the board was dishonest according to the modern objective test of dishonesty in *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords Club)* [2017] UKSC 67; [2018] AC 391 ("*Ivey*"), and therefore not in good faith. In addition, the Court of Appeal held that it was not open for Mr Costa to formulate or act upon his own judgment about a strategy for the success of the company, since that had been conclusively determined by the SHA. Mr Costa appealed against both conclusions to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. Lord Briggs gives the judgment, with which Lord Sales, Lord Hamblen, Lord Burrows and Lady Rose agree.

Reasons for the Judgment

The principle that the court will not interfere with the exercise of the business judgment of directors in managing the affairs of a company, if the directors act bona fide in what they consider to be in the best interests of the company, is of long standing [29]. It was famously enunciated by Lord Greene MR in *Re Smith and Fawcett Ltd* [1942] Ch 304 and has come to be applied generally to the exercise of all discretionary powers by the board [30]. The directors' duty as articulated in *Re Smith and Fawcett* has been understood in later authorities and textbooks as a fiduciary duty of loyalty, and the test to determine whether that duty has been

breached, whether by the board or by individual directors, has been described as “subjective”. “Subjective” in this context means that the court will not interfere with the subjective view of the directors (ie the view they actually and genuinely hold) merely because it forms a different objective view of what was really in the best interests of the company [31]. This principle has come to be applied not only to decisions of the board, but also to decisions or acts of individual directors, in deciding whether a particular act was a breach of fiduciary duty [32].

However, no authority or academic writing prior to the enactment of the CA 2006 suggested that the court’s respect for the business judgment of directors extends to a case where one director has sought to pursue his own judgment as to the best way to promote the company’s interests by a covert strategy (concealed from his fellow directors) to pursue an objective which directly conflicts with the business judgment and strategy already resolved upon by the board as a whole. This is not surprising as such conduct would appear to be obviously disloyal by a fiduciary, contrary to the mode of governance established by the typical company’s constitution, and not acting in good faith. While counsel for the appellant submitted that the requirement of good faith means only that the director’s thought process, rather than his conduct, fell within the obligation of good faith, there are powerful judicial statements to the contrary [33]-[35].

A duty not to covertly or otherwise to subvert the management of the company’s affairs by the board as a whole is not expressly mentioned in section 172 or elsewhere in Chapter 2 of Part 10 of the 2006 Act, which sets out what are described as the general duties of directors. However, such a duty is best regarded as part of the section 172 general duty, rather than something completely separate from it. This is for a number of reasons. First, section 172 may be read as imposing a communal obligation to promote the success of the company on the members of the board [43]. Secondly, if the primary responsibility of the board is to be discharged effectively, an individual director must bring his independent view of the way best to promote the success of the company to the attention of his colleagues on the board, and he must not by covert conduct pursue some other strategy than that decided upon by the board [44]. Thirdly, there are numerous indications in Chapter 2 that it is intended to affirm rather than impede the governance of the company in accordance with its constitution [45]. Fourthly, the concept of assimilating specific duties by directors to make disclosure to the board within what is now the section 172 duty is affirmed by authority [46]-[48].

Finally, it is no answer to a claim of a breach of the section 172 that the matter complained of looks more like a breach of one of the other general duties, as the section 172 duty is closely related to the other general duties, and a director who acts in breach of the other general duties will also often be in breach of his duty under section 172 as well. In this case, Mr Costa’s conduct might have been characterised as a breach of both limbs of section 171, but that does not exclude it from the ambit of section 172 [49]-[50].

When read in isolation, it may be suggested that the language about good faith in section 172 governs the director’s thinking, rather than his conduct. On this construction, contended for by the appellant, if a director genuinely believes that a certain course for the company to take is best calculated to promote its success, then the director is free (and perhaps obliged) to adopt any course of conduct he wishes to secure that the company takes that course, regardless whether, objectively speaking, his conduct involves lies, cheating, deception, dishonesty or disloyalty – ie what any reasonably well-informed observer would regard as plain bad faith [51]. The alternative view supported by Saxon Woods is that the requirement for good faith extends not merely to the director’s thinking but also to his conduct in the pursuit of achieving what he believes is the best course for the company to take. Saxon Woods submitted further that, even though the court will not second guess the director’s genuine view about the best way forward for the company by its own objective assessment, the requirement for good faith

does involve at least some objective element if the director's conduct is challenged in court [52].

While the rigorous application of grammatical rules might be said to favour the first of those alternatives, the second construction is clearly to be preferred, for three main reasons [53]. First, it is more consistent with a codification of the existing law – according to which the court adopted an objective assessment to the determination of the extent of a fiduciary's duty of loyalty, and alleged breaches of it [54]-[56]. Secondly, it fits section 172 better into its context as part of Chapter 2, and with its purpose [57]-[59]. Thirdly, it strains credulity to think that the first alternative can have been intended, because of its consequences. The notion that the careful and experienced framers of this important codification of directors' duties thought that a director is required by section 172 only to think (and not also to act) in good faith is highly unlikely and would be a recipe for chaos and paralysis in corporate governance, and destructive of the collegiality of the board [60].

Accordingly, the Court of Appeal was correct to reverse the trial judge on the question whether a breach by Mr Costa of his duty under section 172 was made out on the facts: it clearly was [61]. However, while the Court of Appeal focussed its analysis upon a conclusion that Mr Costa had acted dishonestly, applying the objective test laid down in *Ivey*, Lord Briggs's analysis proceeds upon a broader basis, concentrating on the requirement for good faith rather than dishonesty on its own, even though the dishonesty question may form part of that wider enquiry. The test for dishonesty elaborated in *Ivey* makes sense in the context of legal duties which arise irrespective of a pre-existing or separate fiduciary relationship. But where the defendant owes a fiduciary duty of loyalty, the question is whether that duty has been breached, and while dishonesty may be evidence of that, the duty itself supplies the relevant analytical framework; it is unnecessary to elaborate it by reference to *Ivey* [62]. Yet, the outcome in this case (that there was a breach of section 172 by Mr Costa) is the same, so the order made by the Court of Appeal cannot be impugned. Lord Briggs prefers to express no concluded view as to the correctness of the Court of Appeal's second conclusion that Mr Costa was independently in breach of the section 172 duty simply because the SHA determined what was the route for success of the Company. It is unnecessary for this court's resolution of the appeal [63]-[64].

The Court of Appeal was right to hold that the trial judge erred in ruling that Mr Costa did not act in breach of his section 172 duty to the Company. That was an important matter relevant to the exercise of discretion as to the remedy to be ordered. For that reason, and the additional reasons given by the Court of Appeal at paragraph 133 of its judgment, the trial judge's exercise of discretion as to remedy cannot stand. The Court of Appeal was therefore required to exercise the discretion as to remedy afresh and was entitled to hold that the appropriate remedy was the unconditional buy-out order which it made [65].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)