ALERT MEMORANDUM

Thinking Right, Acting Wrong: Lessons From *Saxon Woods v Costa*

September 8, 2026

In *Saxon Woods v Costa,*[1] the Supreme Court has confirmed that the requirement of good faith in s.172 of the Companies Act 2006 (CA 2006) is not limited to the director's subjective thought processes about company strategy, but also requires their conduct to be objectively in good faith.

Accordingly, a director who subjectively believed that delaying the sale of a company (contrary to the terms of a shareholders' agreement) was in the best interests of the company was nonetheless in breach of s.172 where the actions he had taken in pursuit of that course were concealed from the board and, assessed objectively, in bad faith.

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The case centred on the conduct of Mr Costa, a director of Spring Media Investments Limited (the Company). Pursuant to a shareholders' agreement (the SHA), the Company and its shareholders had agreed to work together towards a sale of the Company (an Exit) by no later than December 31, 2019.

In November 2018, the Company hired an investment bank to commence the sale process, and the Company entrusted the conduct of the sale process exclusively to Mr Costa. All communications with the investment bank were channelled through Mr Costa and only Mr Costa and one other director knew what the investment bank had been instructed to do.

Despite the terms of the SHA, Mr Costa believed that a sale after December 2019 would be likely to generate a much better financial return and therefore sought to delay the sale of the Company. Among other things, Mr Costa: instructed the investment bank in terms that did not encompass achieving an Exit by December 31, 2019; rebuffed attempts by his fellow directors to obtain knowledge about the Exit process; and misled the board by giving them the impression that the Company was fulfilling its obligations under the SHA to Exit by December 31, 2019 (when Mr Costa knew it was not).

No Exit was achieved by December 31, 2019, and shortly thereafter the Company's business (and thus the value of its shares) was devastated by the adverse impact of the Covid pandemic.

[1] [2026] UKSC 21

The Claim

Saxon Woods Investments Limited (SW), a minority shareholder in the Company, presented an unfair prejudice petition pursuant to s.994 of the CA 2006 alleging that Mr Costa had caused the Company to breach its obligations under the SHA by failing to procure that it work in good faith towards an Exit by December 31, 2019. SW claimed that Mr Costa should be ordered to buy out its shares in the Company at a price reflecting the value they would have had if an Exit had been achieved in 2019, before the pandemic.

High Court Decision

At first instance, the trial judge accepted that there had been unfair prejudice under s.994, finding that:

- The Company had breached the SHA by not working in good faith towards an Exit by the end of 2019; and
- The Company's breach of the SHA was the result of Mr Costa's conduct.

However, the trial judge rejected SW's contention that Mr Costa had acted in breach of duty under s.172 CA 2006, holding that the subjective nature of that duty meant that the question was whether "*the director honestly believed that his act or omission was in the interests of the company*". On this basis, the judge concluded that Mr Costa was not in breach because "*Mr Costa did sincerely believe that he was acting in the best interest of the Company*".

Both parties appealed aspects of the High Court decision.

Decision of Court of Appeal

The Court of Appeal upheld the trial judge's conclusions in relation to the breaches of the SHA. However, the Court of Appeal overturned the trial judge's finding in relation to s.172, concluding that Mr Costa had acted in breach of this duty. Its reasoning was as follows:

- The duty under s.172 to act in good faith in the best interests of the company is the paradigm example of a fiduciary duty. While the meaning of the requirement to act "*in good faith*" is context specific, at its core it requires honesty; this is particularly so in the context of a fiduciary duty.
- There was nothing in the SHA that limited or modified the core meaning of the duty imposed by s.172.
- Whether a person has acted honestly is determined by an *objective* assessment of their conduct in the light of the facts as they knew or believed them to be at the relevant time. Although a dishonest state of mind is subjective, the standard by which the law determines whether it is dishonest is objective. In focussing on Mr Costa's subjective state of mind, the trial judge did not address the question of whether Mr Costa's conduct was, objectively, honest by the standards of ordinary decent people.
- Deliberately deceiving the board of a company must always, or almost always, be inconsistent with a director's duty under s.172.
- The judge's finding that Mr Costa had misled the board and concealed from them the fact that he was doing nothing to achieve an Exit before 31 December 2019 could only have led to a finding of dishonesty. As such he was in breach of s.172.
- Mr Costa was also in breach of s.172 by causing the Company to breach its obligations under the SHA.

Mr Costa appealed to the Supreme Court.

The Decision of the Supreme Court

The Issue Before the Supreme Court

The critical question for the Supreme Court was the meaning, in s.172 CA 2006, of the requirement that "*a director of a company must act in the way <u>he considers, in good faith</u>, would be most likely to promote the success of the company*".

Mr Costa submitted that the requirement of good faith governs only the director's thinking, rather than his conduct, noting that, grammatically, the words "*in good faith*" appear to be part of the phrase "*he considers in good faith*". SW, by contrast, submitted that the requirement of good faith extends not merely to the director's thinking but also to his conduct in pursuit of achieving what he believes is the best course for the company to take.

Analysis and Conclusions

In a unanimous decision, the Supreme Court held that "*while the rigorous application of grammatical rules might be said to favour the first of those alternatives, the second is clearly to be preferred*."

Giving the unanimous judgment of the Court, Lord Briggs identified three reasons for this conclusion:

- Consistency with the common law: The statutory duties derive from pre-existing common law and equitable rules and the CA 2006 expressly provides that they are to be "*interpreted and applied in the same way as common law rules or equitable principles*". Prior to the CA 2006, the common law had long applied an objective test to determine whether a fiduciary had breached the duty of loyalty (now enshrined, vis-à-vis directors, in s.172); it was never enough for a fiduciary just to say that he genuinely believed he had acted in accordance with that duty.[2] Lord Briggs stated that "*the clearest words*" would have been required to displace this objective approach.[3] While the Court will accept the business judgment of a director, providing his belief is genuine, "*the individual director does not thereby obtain carte blanche to seek to implement his dissenting view by any means, however covert or disloyal, he thinks necessary*."[4]
- Consistency with context and purpose: Lord Briggs noted that the statutory duties in CA 2006 were intended to operate in harmony with the governance of a company in accordance with its constitution. This was not achieved by an interpretation of s.172 which permits (perhaps even requires) an individual director to pursue his own dissenting opinion about the best way to secure the company's success by covert and disloyal tactics in defiance of the board's opinion as to the best business strategy for the company to follow, even to the point of misleading the board.[5]
- Straining credulity: As to the notion that s.172 required a director merely to think, rather than act, in good faith, Lord Briggs described this as "*a recipe for chaos and paralysis in corporate governance, and destructive of the collegiality of the board of directors as a whole which all stakeholders in limited companies are entitled to expect*." This, he said, could not have been what was intended by the careful and experienced drafters of the CA 2006.[6]

Accordingly, the Supreme Court upheld the Court of Appeal's decision that Mr Costa had acted in breach of s.172.[7] The Supreme Court's decision was, however, reached without reference to the objective test for dishonesty applied by the Court of Appeal, with Lord Briggs explaining that his analysis had proceeded "*upon a somewhat 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*."

Having upheld the Court of Appeal's finding on this basis, it was not necessary for the Supreme Court to consider whether the Court of Appeal's second reason – i.e. that Mr Costa was independently in breach of duty because he knew that what he was doing was contrary to the SHA – was correct. Lord Briggs nonetheless stated that had the breach of duty case against Mr Costa rested solely on this basis, he would "*not have found it easy to determine*", noting that:

"*The mere fact that a company has contracted with others (here its shareholders) to pursue a certain route to success cannot in my view altogether close off any analysis by its directors whether it would be better served by changing course, even if that were to*

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involve a breach of contract. Circumstances arising after the date of the contract may require the directors to reconsider the course which they had previously committed the company to pursue. Beyond that, the question whether such a change of course should be pursued would be a matter for the business judgment of the board."[8]

Accordingly, the Supreme Court expressed no concluded view and the question of whether, and if so when, a director's conduct in causing a breach of contract by a company will, without more, constitute a breach of s.172 therefore remains to be determined.

Practical Implications

While significant, as the first occasion on which the Supreme Court has considered the proper interpretation of s.172, the decision in *Saxon Woods* is largely confirmatory rather than revolutionary.

The Supreme Court has confirmed that s.172 is – consistent with orthodoxy – subjective in the sense that the court will not interfere with the genuinely held (subjective) view of the directors merely because it forms a different (objective) view of what is in the best interests of the company. It has also confirmed, however, that the objective test long applied at common law to breaches of the fiduciary duty of loyalty is equally applicable in determining whether a director has acted in breach of s.172.

Key practical takeaways for directors and their advisers are as follows:

- The court will not interfere with the business judgment of a director who genuinely believes that a particular course of action is in the best interests of the company. However, the manner in which the director pursues that course of action must itself meet the standard of good faith, assessed objectively.
- Directors should not covertly take steps to unilaterally implement their preferred strategy and should engage openly with other board members and seek to persuade the board through legitimate means.
- Where the proposed course would involve the company breaching a contract, or departing from a previously agreed course, extra care should be taken to assess and explain the risks and benefits and ensure that a collective decision is taken by the board.

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