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Integrity: player and club ownership in football

Third party ownership of players, as highlighted by the Carlos Tevez affair and dual ownership of clubs, as highlighted by the 'Granada 74' case, have raised questions of sporting integrity in football. In the first instalment of a two-part article, Daniel Geey and Victoria Ross of Field Fisher Waterhouse and Maja Rotkvic, of Jiménez de Parga Abogados, explain how the Tevez issue has raised questions about how European football league rules on the ownership of clubs and players interact with the rules of FIFA and UEFA.

Introduction

Player ownership issues in the football arena have been on the tip of the tongue of every broadcaster and newspaper editor since the West Ham 'Tevez' affair. Now that the Premier League (PL) is strengthening its rules for the coming season (the 'PL Rules') in order to safeguard the interests of the game and stamp out any influence that third party owners could have on PL clubs, there may remain a potential ownership vacuum which goes to the heart of the debate of transparency and accountability in the sphere of player and club ownership in football.

This article, split into two parts, looks into the potential for conflicts of interest within the realm of club and player ownership by the same person. Various associations have been looking to tighten their grip on the third party ownership issue, at a time when authorities are concerned about third parties usurping the autonomy a club has over its own affairs. This situation may arise when there is a lack of information as to who controls the economic rights to a player. An owner of a club, for example, may have an ownership stake in a player who is playing against his team. Such a situation could have ramifications for the industry as a whole, because vested interests which are not declared could lead to allegations of unsporting conduct.

The ownership of both players and football clubs by the same person could pose a serious threat to the PL, UEFA, and FIFA's aim of protecting the integrity and sporting conduct of clubs throughout Europe. Recently there have been issues surrounding the dual ownership of football clubs by one entity. In Spain in particular, one company owns two Spanish league clubs. The team, after

changing their name, were effectively transferred from the regional Spanish division to the Spanish second division. This has led to accusations of one club purchasing another, in order to circumvent the ethos of promotion by sporting merit alone. This will be dealt with in part two of this article.

Transparency and third party player ownership

Since the beginning of the 2006-7 season, issues surrounding third party player rights have been commonplace in the PL, especially in relation to PL club West Ham United FC. The recent PL tribunal and arbitration into the Carlos Tevez transfer to West Ham United (who has subsequently moved to Manchester United) and the implications for third party ownership of Tevez's contract, have given the matter a sharp focus for the PL, UEFA and FIFA.

One problem that presents itself is whether the people who own the economic rights to certain players should be subject to regulation.

Consider the following situation: certain individuals have recently stated that they may be interested in purchasing a PL club¹. One such individual who made such a statement was Kia Joorabchian, a businessman involved in MSI Group Ltd and Just Sports Inc. Either directly or indirectly, the companies that Mr. Joorabchian represents were purported to own the economic rights to Argentinean players Carlos Tevez and Javier Mascherano. This could leave open the possibility of Tevez or Mascherano playing against a PL club that has been purchased by Mr. Joorabchian. No-one is suggesting that Tevez or Mascherano would be instructed to play poorly to favour the team owned by Mr. Joorabchian, or that Mr. Joorabchian would instruct his

team to play poorly against his players to increase their value, but such economic objectives could, in some instances, rank higher than the objective of winning a football match. This is certainly no slight on Mr Joorabchian or the PL, but serves to highlight the key issues of integrity of the game and transparency for fans, that were stressed so emphatically in the ENIC decision² on multiple club ownership (see part two of this article).

A further issue raised by third party player ownership relates to the influence that the owners of players may exert over the club for which that individual plays. Currently, PL Rule V.20 (formerly PL Rule U18) states that no club may enter a contract that enables a third party 'to acquire the ability materially to influence its policies or the performance of its teams'. This rule was cited against West Ham in the Tevez tribunal and arbitration decisions, as the third party contract contained a clause giving exclusive power to the third party owner to facilitate the transfer of the player. West Ham did not have a veto over this right. Such a stipulation breached the PL Rules.

Just as it was vital in the Tevez tribunal and arbitration decisions for the PL to maintain the game's integrity and transparency by adherence to the PL Rules by the PL clubs, it was critical to stem any accusations of an inherent conflict of interest which could serve to erode notions of fair play and a level playing field in a hugely popular sport.

A European dimension

This issue is not confined to the domestic game, however, as similar conflicts could occur if an owner of a European club that played in a UEFA club competition played against a team that had players in

FIFA have also taken steps to regulate third party ownership

whom that club owner had an economic interest. To my knowledge, there is currently no such UK domestic or European based register highlighting any potential conflicts. The issue of transparency was given particular consideration in the ENIC decision (and subsequent UEFA Rules enacted concerning the integrity of the competition), but there appear to be few safeguards in place to inform the general public, and prevent conflicts between player and club ownership from occurring. The ENIC case only highlighted instances where an individual could not own more than one club, and crucially did not refer to the problems which may arise when a club owner has additional economic rights in certain players in more than one club. The question remains whether there is such a substantive logical distinction between both types of ownership.

Important questions may include:

- Is there any way to ensure that third party player owners do not have an ownership stake in a club and economic ownership of a player in an opposing team?
- Could it be the case that third party player owners have multiple players playing in opposing teams, and in fact have already competed against each other?
- Would it devalue the integrity of the game if fans and players alike knew that a player may have different motives which may compromise the best interests of his team?
- Do UEFA and FIFA need to have additional measures to ensure the highest levels of transparency to fend off accusations of conflicts of interest?

Premier League and FIFA reaction

It has been reported that the PL have stated that the existing rules

will now be more strictly applied for the remainder of the current season, and that new updated rules will be put in place in readiness for the 2008/9 season³. What is unclear, however, is the consideration which is to be taken into account in determining what would constitute 'material influence', to breach the PL Rules. It would be highly doubtful that such third party agreements would be totally prohibited under any new PL Rules. Most probably, third party ownership of a player would have to fall in line with the PL approved loan agreements entered into between Liverpool and Mascherano and Manchester United and Tevez.

FIFA have also taken steps to regulate third party ownership. They have adopted a new regulation, the text of which states that: 'No club shall enter into a contract which enables any other party to that contract, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams'⁴.

The practice of third party ownership is prevalent, for example, in South America. It is commonplace for potential investors to purchase the economic rights to a player, thereby allowing the clubs to 'lease' players they would otherwise be unable to afford. It would at least seem that FIFA has recognised the need for increased transparency and club independence when third party ownership deals are in place. It remains to be seen how FIFA will interpret this rule and crucially, whether such a definition will be broader than any future PL Rule incorporated into the 2008/9 Rules.

Conclusion

The Carlos Tevez affair has brought to the football authorities'

DUAL OWNERSHIP

attention the potential conflicts of interest that can exist when a third party, rather than a football club, owns an economic interest in a player, especially when that third party may be involved with discussions over potential club ownership. FIFA's rule change provides evidence that it is keen to safeguard against situations where third parties that own players are able to influence club policies or the performance of teams. However it remains to be seen how FIFA's rule will be applied in practice.

This paper has sought to bring into focus the multiple dimensions of ownership issues in the football arena. Dual ownership of players and football clubs could pose a serious threat to the integrity and sporting behaviour of clubs throughout Europe that the PL, UEFA and FIFA have tried hard to protect.

The question as to whether companies or individuals who own the economic rights of certain players should be subject to more stringent regulation is an important consideration at a time when player ownership issues, in the PL especially, have caused new and novel problems for the league. The logical extension of this premise is that if such third party agreements are declared, there can be little accusation of any conflict of interest between one person's simultaneous ownership of a club and a player.

In the second part of this article, to appear in the January edition of *World Sports Law Report*, we will discuss the implications of dual club ownership, which has recently

posed problems in Spain where a lower division club was able to purchase the registration of a club in a higher division. We will examine potential conflicts of interest that can occur when an individual owns an interest in more than one club.

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