

Rules of the
Court of Session
1994
Rule 14.4(1)

FORM 14.4



**UNTO THE RIGHT HONOURABLE
THE LORDS OF COUNCIL AND SESSION**

THE PETITION OF

- (1) **NIGEL JOHN ECCLES**, residing at [REDACTED]
[REDACTED]
- (2) **LESLEY JAYNE ROSS ECCLES**, residing at [REDACTED]
[REDACTED];
- (3) **THOMAS GORDON GRIFFITHS**, residing at [REDACTED]
[REDACTED] and
- (4) **ROBAT JONES**, residing at [REDACTED]
[REDACTED]

PETITIONERS

For Orders under sections 994 and 996 of the Companies Act 2006

in respect of FanDuel Limited (Company Number: SC333797), 1 Exchange Crescent, Conference Square,
Edinburgh, EH3 8UL

HUMBLY SHEWETH:

1. The First Petitioner is Nigel John Eccles, residing at [REDACTED], [REDACTED]. The Second Petitioner is Lesley Jayne Ross Eccles, residing at [REDACTED], United States of America. The Third Petitioner is Thomas Gordon Griffiths, residing at [REDACTED], United States of America. The Fourth Petitioner is Robat Jones, residing at [REDACTED], [REDACTED]. The Petitioners are members of FanDuel Limited (Company Number: SC333797) (hereinafter referred to as "**FanDuel**"). The Petitioners seek orders in terms of sections 994 and 996 of the Companies Act 2006. FanDuel was incorporated in Scotland on 12 November 2007 as a company limited by shares. FanDuel has its registered office at 1 Exchange Crescent, Conference Square, Edinburgh, EH3 8UL. This Court accordingly has jurisdiction. There are no proceedings pending before any other Court involving the subject matter

of the present Petition and between the parties hereto. No agreement exists between the parties prorogating the jurisdiction over the subject matter of the present Petition to another Court.

The founders of FanDuel

2. FanDuel operates a web-based fantasy sports game, with approximately 7 million registered users. Its platform allows sports fans to compete in fantasy sports leagues, often based around NFL American Football, NBA basketball, MLB baseball and NHL ice hockey. Users pick fantasy sports teams using a fantasy budget, and play head-to-head or multi-player contests online. Players pay an entry fee for each contest and compete for cash prizes.
3. FanDuel was incorporated in Scotland in 2007 as a start-up company. FanDuel has over 40% market share of the US daily fantasy sports market, with 7 million registered customers across 40 States. In 2017, it had revenue of \$124 million and 1.3 million active customers. The business has built-up a leading US sports brand with approximately \$400 million cumulative marketing spend to date supported by innovative proprietary technology.
4. The Petitioners are the founders of FanDuel. The First Petitioner was formerly the CEO of FanDuel, until his resignation as a director in November 2017. The Second Petitioner was formerly Executive Vice President of Marketing and a director until her resignation in August 2017. The Third Petitioner was formerly the Chief Product Officer, until leaving in December 2017 (and was a director until his resignation from the board in August 2017). The Fourth Petitioner was formerly the Executive Vice President of Design until his resignation in December 2017.
5. The Petitioners, as founders, hold approximately 6.8% of the ordinary shares in FanDuel and 0.007% of the preference shares in FanDuel. The First Petitioner is the registered holder of 162 preferential shares of \$1 each, 282,302 ordinary shares of £1 each and 539 ordinary shares of \$1 each. The Second Petitioner is the registered holder of 51 preferential shares of \$1 each, 72,566 ordinary shares of £1 each and 167 ordinary shares of \$1 each. The Third Petitioner is the registered holder of 85 preferential shares of \$1 each, 154,698 ordinary shares of £1 each and 281 ordinary shares of \$1 each. The Fourth Petitioner is the registered holder of 22,500 ordinary shares of £1 each and 59,739 options.

FanDuel's board composition and share structure

6. The current members of the board of directors of FanDuel are Andrin Bachmann of Piton Capital, Andrew Cleland of Comcast, Matt King (CEO), Michael LaSalle of Shamrock Capital Advisors, David Nathanson of Falcon Waterfree Technologies, Edward Oberwager of KKR and Carl Vogel, adviser to KKR. Matt King was appointed CEO of FanDuel in November 2017, following the resignation of the First Petitioner.
7. Following several rounds of funding and investment in the growth of FanDuel, the company has two main classes of issued shares: preferential and ordinary. The Petitioners' shares are, in the main, ordinary shares. In addition, all current employees of FanDuel hold options to acquire ordinary shares in the company. Finally, certain current and former employees hold ordinary shares purchased at their own expense through the exercise of options.

8. The other class, being preferential shares, are held, in the vast majority, by institutional investors. The four investor directors on the board represent institutions whose weight of interest is disproportionately in the preference class of shares. One of the directors, Carl Vogel, is an advisor to KKR and new CEO, Matt King, is a former KKR employee. In addition, the new CEO, Matt King, is in line to receive around 1.835% of the value of the preference class of shares in golden parachute payments in any transaction. The First Respondent is called upon to disclose any economic interests and benefits the board of directors is due to receive as a result of the purported share transaction. In the whole circumstances, no one on the current board of directors represents the interests of ordinary shareholders. The current FanDuel board of directors is completely aligned with the interests of the preference shareholders.

The purported share transaction

9. In December 2017, the FanDuel board of directors appointed Moelis & Company, a global investment bank, to seek a buyer for, or new investor in, FanDuel. In March and April 2018, the board of FanDuel entered into discussions with Paddy Power Betfair to combine FanDuel with their US assets. The Paddy Power Betfair group is a UK sports betting market-leader. The said combination will be achieved by forming a new company called PandaCo Inc, which will then own and operate both FanDuel and Paddy Power Betfair's US assets. The existing FanDuel preferential shareholders will own 39% of PandaCo Inc, the balance being owned by the Paddy Power Betfair group. The purported share transaction will create a market-leader in the US online gambling industry. For the purposes of this purported share transaction, FanDuel will be valued at \$465 million. This valuation was agreed prior to May 2018. Reference is made to the Summary of Background of Material Terms, as produced herewith and referred to for its terms.
10. The Petitioners have learned that, as part of this purported share transaction, their ordinary shares will be transferred utilising Drag Along provisions in the Articles of Association of FanDuel. The ordinary shareholders of FanDuel, including the Petitioners, will receive nil value for their ordinary shares. The Drag Along provisions were amended by resolution on 20 June 2018 to introduce new article 78.8A. Article 78.8A was introduced with the purpose to purportedly remove any basis of objection from the ordinary shareholders for nil payment of their shares in the event of Drag Along. These changes were made without informing the Petitioners. Subsequently, FanDuel issued information pertaining to the purported share transaction to certain, but not all, shareholders on 3 July 2018. At the date of presentation of this Petition, the purported share transaction was believed to be due to complete at 12.01 Los Angeles time (GMT-7) on Tuesday 10 July 2018.

The decision of the US Supreme Court

11. From the 1920s, following a scandal in the baseball World Series (where one team had been bribed to lose by some bookmakers), the United States of America has had a long history in prohibiting sports betting, other than in the case of horse racing and some other minor exceptions. The Professional and Amateur Sports Protection Act ("PASPA") of 1992 prevented US States from expanding legalised sports betting (with the exception of a small number of States, such as Nevada, where it was already legal).
12. On 14 May 2018, the US Supreme Court ruled in the matter of *Murphy v National Collegiate Athletic Association* that PASPA was unconstitutional. This means that each individual US State will now be able to regulate online sports betting as it wishes. Since then, the States of New Jersey,

West Virginia, Mississippi, Delaware and Rhode Island have all legalised sports betting within their States. Many other States such as New York, California, Michigan, Illinois, Kentucky, Missouri, South Carolina, Kansas, Louisiana, Indiana, Oklahoma, Maryland and Massachusetts have introduced bills that would enable regulation. Historically, the illegal sports betting market in the US has been estimated to be between \$150-200 billion. The result of this change in the law means that there is a vast new market for legitimate on-shore operators opening up. FanDuel is one of only two main operators in the paid sports gaming space who operate legally in 40 US States. Additionally, FanDuel has over 7 million registered users, and after investing around \$400 million in cumulative marketing spend, has over 80% brand name recognition in the sought-after sports betting target demographic. FanDuel is therefore in a unique prime position to capitalise on changes in the law, following the US Supreme Court ruling.

13. This change in market circumstances creates a dramatic increase in FanDuel's valuation. In the 14 days, following the decision of the US Supreme Court concerning PASPA, Paddy Power Betfair's valuation increased by over 28% (adding \$2 billion), despite only 6% of its revenues coming from the United States. Similarly, William Hill saw its valuation increase by 16% (adding \$500 million) despite only 3% of its revenues coming from the United States. Ascribing all of the \$2 billion increase in Paddy Power Betfair to its US assets (which were valued prior to the US Supreme Court decision concerning PASPA at \$537 million) infers the value of their US assets increased by 400%. By contrast, other European online sports betting competitors with no US operations, such as Unibet and LeoVegas, saw no similar uplift in valuation. The First Respondent is called upon to produce all information it holds pertaining to the valuation of its shares.
14. By comparison, mobile sports information and daily fantasy company, The Score, saw its valuation soar 200% immediately after the US Supreme Court decision concerning PASPA. The Score share price moved from approximately \$0.16 USD per share to \$0.44 USD per share. Reference is made to the Bloomberg Markets graph produced herewith. Respected industry commentator and FanDuel investor, Bradley Tusk, of Tusk Ventures, commenting immediately after the US Supreme Court decision concerning PASPA, told ESPN the decision doubled the value of their equity stake in FanDuel and "*...once States start legalising sports betting and it becomes common practise it could be more like five times*" (Fortune, May 18th 2018).

The unfairly prejudicial conduct

15. Following the US Supreme Court decision in May 2018, the board of FanDuel elected to utilise the "waterfall" provisions regulating the distribution of value upon liquidation, contained within the company's Articles of Association (Articles 83 and 84). The board was not, in the circumstances of this transaction, obliged to utilise these provisions to distribute the value of FanDuel among its shareholders. It has elected to do so. These provisions have the effect of converting the shares in FanDuel to a single share class upon completion of the purported share transaction.
16. Having elected to so utilise the "waterfall" provisions, the board was then required to pick a price on which to base the conversion. The board of FanDuel considered whether the US Supreme Court ruling and its impact upon the market value of FanDuel should cause the company to be revalued. It has chosen not to do so. The board of FanDuel elected to use the valuation obtained prior to the US Supreme Court ruling, without seeking any current and sound valuation of the company. The board's decision to use the "waterfall" provisions and in conjunction with the valuation sought prior to the US Supreme Court ruling, is to the detriment and prejudice of ordinary shareholders.

17. As a result of proceeding in this way, only preferential shareholders will receive value for their shares in the purported share transaction. The ordinary shareholders (who include the Petitioners as FanDuel's founders) will receive nil value for their ordinary shares. The preferential shareholders benefit (to the detriment of the ordinary shareholders) in FanDuel having a lower valuation, due to the "waterfall" provisions resulting in them owning a greater percentage of the shares available in the new company, PandaCo Inc. Were any increase in the valuation of FanDuel post the US Supreme Court ruling applied, the consequent entitlement of the ordinary shareholders to value has the effect of diluting or reducing the percentage of the equity ascribed to the preferential shareholders in the new company, PandaCo Inc. Furthermore, non-participation of the ordinary shareholders in the equity of PandaCo Inc denies them any future uplift in valuation, pursuant to the US Supreme Court ruling. That future uplift in valuation accrues solely to the preference shareholders.
18. The board of directors, which is *de facto* controlled by institutional investors, who stand to benefit from the purported share transaction as a result of their large holdings of preferential shares, has acted unfairly and has caused prejudice to the Petitioners. The decision of the board (whose interests are aligned with preference shareholders), not to seek and act upon a new market valuation in the face of a material event, which is likely to have significantly increased the market valuation of FanDuel, is a breach of its fiduciary duties.
19. The board has additionally acted contrary to its fiduciary duties, in failing to provide information to the Petitioners on the purported share transaction, its negotiation and its decision not to revalue FanDuel, in light of the US Supreme Court decision, from which board members stand to benefit as representatives of preference shareholders, to the detriment of ordinary members. To date, the board has failed to provide any information relating to the recent changes to the company's Articles of Association or the purported share transaction to the First, Second and Third Petitioners, despite such information being provided to other ordinary and preference shareholders. The First Respondent is called upon to produce any and all minutes, resolutions and ancillary documents informing their decision making not to obtain a revaluation of FanDuel and to propose changes to FanDuel's Articles of Association.
20. The Petitioners reasonably estimate that they are being denuded of value for their ordinary shares, amounting to at least \$120,105,408 USD, as at the date of presentation of this Petition.
21. *In cumolo*, FanDuel's affairs have been conducted in a manner that is unfairly prejudicial to the Petitioners' interests.
22. Section 994(1) of the Companies Act 2006 provides as follows:

"(1) A member of a company may apply to the court by petition for an order under this Part on the ground—

 - (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or*
 - (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial."*

23. Section 996 of the Companies Act 2006 provides as follows:

“(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may–

(a) regulate the conduct of the company's affairs in the future;

(b) require the company–

(i) to refrain from doing or continuing an act complained of, or

(ii) to do an act that the petitioner has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;

(d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.”

24. The First Respondent is called upon to refrain from effecting the transfer of the ordinary shares of the Petitioners. The Petitioners are under the necessity of applying to your Lordships for relief. In all of the circumstances, it is appropriate that (i) the company be ordered to purchase the Petitioners' ordinary shares at market value, reasonably estimated as 120,105,408 USD, as at the date of the presentation of the Petition or such other date as the Court may determine, or (ii) compensate the Petitioners for the loss of their shares as at the date of the presentation of the Petition or such other date as the Court may determine, or (iii) such other remedy as the Court thinks fit.

25. This application is therefore made under sections 994 and 996 of the Companies Act 2006.

Service of the Petition

26. In respect that this Petition has an effect upon the interests of all preference shareholders and ordinary shareholders, the First Respondent should serve this Petition on those parties for their interest. The First Respondent has current information as to the identity and location of all preference shareholders and ordinary shareholders. Accordingly, the Petitioners seek *inter alia* an order from the Court in terms of order (c) below.

MAY IT THEREFORE please your Lordships:

(a) to appoint this Petition to be intimated on the Walls and in common form and in such other manner as to your Lordships shall deem proper;

(b) to make an order for service upon the first and second respondents named and designed in the manner set out in the Schedule of Service hereto and to ordain them to lodge answers hereto, if so advised, within 42 days after such intimation and service; and

(c) to make an order appointing the first named respondent to serve the Petition upon all shareholders and interested parties falling within the third and fourth designs set out in the Schedule of Service hereto; and

thereafter upon resuming consideration hereof with or without answers and after such inquiry as your Lordships may deem necessary to make an order for:

(i) FanDuel Limited to purchase the Petitioners' ordinary shares at market value, reasonably estimated as 120,105,408 USD, as at the date of the presentation of the Petition or such other date as the Court may determine; or

(ii) FanDuel Limited to compensate the Petitioners for the loss of their ordinary shares as at the date of the presentation of the Petition or such other date as the Court may determine in the sum of 120,105,408 USD; or

(iii) to make such other competent orders as your Lordships may think proper with a view to providing the Petitioners with proper relief; and

(iv) to find the Petitioners entitled to the expenses of this Petition and the procedure to follow hereon against any person appearing to oppose it;

and to decern; and to do further or otherwise in the premises as to your Lordships shall deem proper.

ACCORDING TO JUSTICE, ETC.

SCHEDULE FOR SERVICE

Service of the Petition in common form is sought upon:

1. FanDuel Limited (Company Number: SC3337971), incorporated in Scotland and having its registered office at Exchange Crescent, Conference Square, Edinburgh, EH3 8UL.
2. Paddy Power Betfair Public Limited Company (Company Number: 16956), incorporated in Ireland and having its registered office at Power Tower, Belfield Office Park, Beech Hill Road, Clonskeagh Dublin 4, Ireland, D04V972.
3. All registered shareholders of FanDuel Limited (Company Number: SC3337971), having its registered office at Exchange Crescent, Conference Square, Edinburgh, EH3 8UL.
4. All interested parties having options to acquire ordinary shares in the capital of FanDuel Limited (Company Number: SC3337971), having its registered office at Exchange Crescent, Conference Square, Edinburgh, EH3 8UL.

PERIOD OF NOTICE

The Petitioners submit that a period of notice of 42 days would be appropriate.

SCHEDULE OF DOCUMENTS

1. Articles of Association of FanDuel Limited as at 22 June 2018;
2. Summary Background and Material Terms of FanDuel – Paddy Power Betfair Business Combination;
3. Offer by PandaCo, Inc to the shareholders of FanDuel Limited dated 30 June 2018;
4. Drag Along Notice by Fan Investors LP and Shamrock Capital Growth Fund III (FD), LP to FanDuel Limited dated 30 June 2018;
5. Draft consent of stockholders of FanDuel Limited;
6. Email from Christian Genetski to the shareholders of FanDuel limited regarding a shareholder resolution dated 12 June 2018;
7. Letter from FanDuel Limited to the shareholders of FanDuel Limited dated 3 July 2018; and
8. Bloomberg Markets graph in respect of The Score.