

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO. ANUHCv2025/0200

BETWEEN:

- 1. SINOVAC BIOTECH LTD. (a company registered in Antigua and Barbuda)**
- 2. ORBIMED PARTNERS MASTER FUND LIMITED (a company registered in Bermuda)**
- 3. 1GLOBE CAPITAL, LLC (a company registered in Delaware, United States of America)**

Applicants/Claimants

and

- 1. VIVO CAPITAL LLC (a company registered in California, United States of America)**
- 2. VIVO CAPITAL FUND VIII, L.P. (a limited partnership registered in Delaware, United States of America)**
- 3. VIVO CAPITAL SURPLUS FUND VIII, L.P. (a limited partnership registered in Delaware, United States of America)**
- 4. VIVO CAPITAL FUND IX, L.P. (a limited partnership registered in Delaware, United States of America)**
- 5. PRIME SUCCESS, L.P. (a limited partnership registered in Cayman Islands)**
- 6. CEDE & CO (a limited partnership registered in New York, United States of America)**

Respondents/Defendants

Appearances:

Mr. Edward Davies KC, with him, Anna Scharnetzky and Mr. Craig Jacas, Counsel for the Applicants

Mr. Alexander Cooke KC, with him, Dr. David Dorsett, Counsel for the 2nd, 3rd, and 4th Respondents

Mr. Stephen Gee KC, with him, Stacey Richards, Counsel for the 5th Respondent

2025: July 2nd, 3rd, 7th.

RULING ON INTERIM ORDER

This is the decision of this Court in respect to the interim order of injunction pending the determination of the jurisdiction of the Court.

- [1] **BAKRE, J.:** Subsequent to the Ruling of this Court dated the 3rd of July, 2025 wherein the Court decided that it has jurisdiction to make preservative Order pending the challenge of its jurisdiction, Parties addressed the Court on whether an interim preservative orders should be made in the case.
- [2] At this stage, this Court is asked to make a short preservative order on the subject matter of this case pending when it will be determined whether it has jurisdiction or not to hear the case. It is pertinent to state that the decision to defer the hearing on jurisdiction was based on the mutual agreement of the Counsel to the Claimants and the Counsel to the 2nd to 4th Respondents.

Summary of Facts

- [3] The first Applicant is an Antiguan company while the second and third Applicants are some of the shareholders of the company.
- [4] The Applicants as Claimants had filed this action before this Court to challenge the actions of the former directors of the company on the ground that the Privy Council decision dated 5th February, 2025 stated that they should not have been directors and thus their actions including issuing substantial shares (herein referred to as “the **PIPE Shares**”) to the Respondents while they were managing the company was invalid and the said PIPE shares issued by a private placement should be cancelled.
- [5] The Applicants had sought for an interim order of injunction to stop the Respondents from voting the PIPE shares at the shareholders meeting scheduled for the 8th day of July, 2025.
- [6] On the part of the Respondents, they filed an application under Order 9.7 of the CPR of this Court challenging the jurisdiction of the Court. The Respondents argued that in view of the application challenging jurisdiction, the Court could not make any order.
- [7] This Court by a ruling dated the 3rd of July, 2025 decided that in some special circumstances, the Court reserves the right to preserve the subject matter even when its jurisdiction is being challenged.

- [8] It is consequent to that order that the Applicants have now requested that a preservative order be made in this instance to prevent the Respondents not to vote the PIPE shares in controversy at the shareholders meeting scheduled for the 8th of July, 2025.

Submissions of Counsel

- [9] Counsel for the Applicants, Edwards Davies KC asked the Court to make an order to preserve the subject matter of this case pending the determination of the application of the Respondents with respect to the jurisdiction of the Court because the company is about to have a shareholders meeting on the 8th day of July, 2025 that may totally change the face of the case.
- [10] Counsel stated that all the parameters for the grant of an injunction are present. He relied on the locus classicus case of **American Cyanamid vs. Ethicon (1975) AC 396**.
- [11] Mr. Davies KC referred the Court to the facts of the case as stated in the documents filed in the substantive application and in the entire case. He urged the Court to hold that there are serious issues submitted to the Court for consideration. He also stated that the balance of convenience is in favour of the Applicants and that an award of damages would never be adequate to compensate the Claimants for the loss if the Court does not preserve the subject matter.
- [12] Claimants Counsel stated that the Respondents will use the meeting to change the management and control of the company and would invariably withdraw this case as the case will show that they are not supposed to be in the control of the company.
- [13] Counsel argued that the balance of convenience is in their favor. He stated that what they stand to lose is huge as the company will go back to the hands of the former directors adjudged to be wrong directors. Counsel argued that if the Respondents are not stopped from voting the PIPE shares and they change the management, the Claimants would suffer grievous damage.
- [14] It was argued that in the other hand, if the case is allowed to be determined and the Respondents are said to have valid votes, they could still go ahead to change the management in any subsequent meeting. Counsel stated that where dividends are paid subsequent to an order preserving the res, the Respondents share of dividends may be warehoused and subsequently given to them if they win eventually.
- [15] He said on their part, no amount of damage could possibly compensate for the loss that will arise if the order is not made. Counsel is of the view that once the Respondents are able to vote these PIPE shares (the votes are allegedly substantial enough to swing the company's decision at the shareholders meeting) on Tuesday the 8th of July, 2025 they will wrestle management and control of the company and make it impossible to ever challenge the validity of those shares.
- [16] He urged the Court to stop the use of the shares at the Shareholder's meeting coming up and to hold the reins until the validity of the shares is determined.

[17] The orders sought by the Applicants at this stage are that, pending the determination of the Court's jurisdiction:-

1. the chairman of any shareholders meeting of the First Applicant may adjourn the shareholders meeting if the chairman is unable to determine whether the interim injunction is being complied with; and
2. The PIPE shares in respect of which any of the respondents claim to have any interest (legal, beneficial, direct, indirect or otherwise)' shall not be counted towards a quorum at any shareholders meeting of the Company for the purpose of by-law 7.5 of the Company's by-laws.

Respondents' Submissions

- [18] Alexander Cooke KC, Counsel for the 2nd to 4th Respondents opposed the grant of the interim order. He is of the opinion that the application at this stage does not meet the threshold.
- [19] Mr. Cooke KC drew the attention of the Court to the fact that his client invested forty-three million dollars into the company. He submitted that this injunction has nothing to do with the decision of the Privy Council and it is only a ploy to deny his clients of their vested interest in the shares which they lawfully acquired.
- [20] He said his clients as registered shareholders have fundamental rights to be protected and the application will take this vested rights away unfairly. Mr. Cooke referred the Court to **Atlas Holdings vs. Allied Resources (2017) FCA 923**, **Maudore Minerals Ltd vs. The Harbor Foundation (2012) ONSC 4255** and **Catalyst Capital Group Inc. vs. Brandon Moyse and West Face Capital Inc. CV-14-507120**. All these persuasive authorities were to support the proposition that the Court will not ordinarily stop a shareholder with vested right in its shares from voting their shares at the Company's meeting.
- [21] It was submitted by Mr. Cooke KC that if the Respondents are prevented to vote their shares at the meeting of 8th July, 2025 the opportunity to vote at that particular meeting can never be regained.
- [22] It was further submitted that the interest of third parties will be adversely affected if the Respondents who are vested owners of the PIPE shares are not allowed to vote their shares as the resultant effect will be that the result of any vote will not reflect the true position of all shareholders and would thus be skewed in a particular way.
- [23] Counsel urged the Court to hold that the balance of convenience is in favor of the Respondents and also that the Applicants have not shown that damages would not be adequate compensation for them where the order of injunction is not made.

- [24] He stated further that the Applicants did not give an undertaken for damages in case it turns out that an order should not have been made in their favor.
- [25] On behalf of the 5th Respondent, Counsel Mr. Steven Gee KC submitted that the application is not particularly one to be considered under the case of **American Cyanamid** (supra). Counsel submitted that the Court would not be able to make any other at all in respect of this application in view of the arbitration issue pending.
- [26] Counsel referred the Court to various circumstances showing that Parties are bound by their agreement, especially one relating to the arbitration process.
- [27] Mr. Gee KC's position is that, to determine any issue at all relating to this subject matter, the venue is Hong Kong and not Antigua. He referred to the agreement between the company and the Respondents.
- [28] Counsel to the 5th Respondent referred the Court to several allegations of misdeeds of the current Directors of the company. He stated that it will be totally unsafe to continue to allow the current Directors who have no interest of the company at heart to continue to run the company.
- [29] Counsel narrated how the set of Respondents invested a huge amount of money into the company during covid which turned the company to a multi-billion dollar company. He stated that the only mission of the Directors who he referred to as miscreants, is to strip the company of its assets.
- [30] He also argued that the Court would not deny the shareholders of the use of their rights in the shares acquired.
- [31] Counsel subsequently argued that on balance of convenience, the Court would see that from all indications, any restrictions on the Respondents to use their acquired shares cannot be in the interest of the company. He urged the Court to refuse the application.

Reply

- [32] In reply to all these submissions, Counsel for the Applicants stated that this application meets all the requirements set out in the **American Cyanamid** case and urged the Court to hold that there are serious issues to be tried, that damages will not be adequate compensation and that balance of convenience is in their favour. He urged the Court to grant the application.

Analysis

- [33] As it was stated earlier, this is an application for a short interim order pending when the Court will hear whether it has jurisdiction to hear the substantive case. The decision to defer the hearing of the

issue of jurisdiction was agreed by Parties and thus the Applicants seeks that the Court preserves the subject matter of this case pending the determination of Court's jurisdiction especially in view of the shareholders meeting scheduled for the 8th July, 2025.

- [34] In the bid to determine whether a preservative order would be made at this stage, this Court will only consider issues relating to the grant of an order of injunction and not more.
- [35] I find the case of **American Cyanamid vs. Ethicon** (*supra*) very instructive in this exercise. It states what issues the Court would look at to either make or refuse to make such an order.
- [36] There are three main issues identified. They are whether there are serious issues to be tried or not. Secondly, on which side a balance of convenience tilts. Thirdly, would damage be adequate compensation instead of the injunctive relief.
- [37] On the first issue, I have listened to all the Parties to the action. I have also looked at the Claim of the Claimants. I realize that what is in issue in brief is that the Claimants are challenging the acts of the Directors of the company who entered into a Securities Purchase Agreement (SPA) to allot 5,900,000 shares to the 1st and 5th Respondents in this action.
- [38] It was alleged that, the Privy Council in the order made on the 5th of February, 2025 in the case of **1Global Capital LLC vs. Sinovac Biotech Ltd. (2025) UKPC 3** confirmed that the directors of the company that carried out the share allotment were not the proper directors. Upon the orders of the Privy Council, the said Directors were replaced.
- [39] The company has a requisitioned shareholders meeting fixed for tomorrow, the 8th day of July, 2025.
- [40] Now, this application seeks that the beneficiaries of the shares allotted by the alleged impostors be restrained from voting those shares. It is alleged that voting the shares would have significant effect on the voting pattern at the shareholders meeting.
- [41] It was submitted that it would be an irreversible act if it turns out that the said shares are not restrained from being voted as it will sway the resolutions made at the meeting in a skewed manner in favor of the alleged impostors or holders of the alleged wrongful shares.
- [42] The Applicants argued further that it is a reasonable apprehension that if this Order is refused and the alleged holders of wrongful shares are allowed to influence the resolutions, they will vote in directors that will be favourable to the defence of their allegedly wrongfully allotted shares which is the subject matter of this action. It was further alleged that this case challenging the validity of those shares will be withdrawn and thus cause an irredeemable loss.
- [43] On the part of the Respondents, it is their position that there are no serious issues to be tried in this action.

- [44] I have looked at the case brought before this Court; I do not have a doubt that there are serious issues presented to this Court for determination. The issue of whether the shares were properly allotted or not cannot be an issue to be glossed over. It is clear that the Court would have to look at this issue in the substantive case.
- [45] On balance of convenience, while the Applicants have put a case across that the balance should tilt in their favour. The Respondents Counsel argued vehemently that their vested rights should not be restrained.
- [46] Mr. Alexander Cooke KC, referred the Court to the following cases, **Atlas Holdings vs. Allied Resources (2017) FCA 923**, **Maudore Minerals Ltd vs. The Harbor Foundation (2012) ONSC 4255** and **Catalyst Capital Group Inc. vs. Brandon Moyse and West Face Capital Inc. CV-14-507120**. Although all these cases are persuasive authorities, they support the proposition that the Court will not ordinarily stop a shareholder with vested right in its shares from voting their shares at the Company's meeting.
- [47] I have had the privilege of reading the cases. As is stated, no two cases are exactly the same facts without a variation. In **Atlas Holdings vs. Allied Resources (2017) FCA 923**, a case from the federal court of Australia, the court stated :-

“Courts have long demonstrated an unwillingness to interfere with democratic processes of a corporation, except where it is necessary to do so, *Turnbull vs. national roads and motorists’ association Ltd* (2004) 50 ACSR44; per Cambell J. I have already determined that shareholders resolution 36 is not invalid and have declined to make a declaration in those terms. It follows that the defendant is prima facie entitled to vote its shares in LCK accordance with Shareholders Resolution 36.” (My Emphasis)

- [48] In **Maudore Minerals Ltd. vs. The Harbour Foundation (2012) ONSC 4255**, a case of the Superior Court of Justice in Ontario Canada, a request similar to the request of the Applicants here-in was made and the Court refused to stop a set of shareholders from voting their shares even though they were alleged to have acquired the shares wrongfully. The Court held at paragraphs 107 and 108 :-

“107. In support of its argument, the special committee makes the following points, which I agree with.

108. First, in the absence of demonstrated impropriety, court ought not to interfere in advance with the operation of the exercise of the shareholders’ right to design their own corporate constitution and electoral process.” (My Emphasis)

- [49] Also in **Catalyst Capital Group Inc. vs. Brandon Moyse and West Face Capital Inc. CV-14-507120**. It was made clear that unless the applicant offers an evidence of irreparable loss, the balance of convenience cannot be in its favour which will make a court make an order of injunction in its favour.
- [50] It is my view that all these cases are making a genuine point on when the Court will interfere in a shareholders right to vote its shares. It is clear that all the cases have a precondition for the applicant to follow before such an order may be made in its favour. The precondition is that the applicant must show that the balance of convenience tilts in its favor.
- [51] In the **Atlas** case, the Court had already made a determination on the validity of the shares. The Court refused to make an order to stop the shareholders after declaring that the shares are valid from voting the shares, thus the Court held at paragraph 10:-
- “I have already determined that shareholders resolution 36 is not invalid and have declined to make a declaration in those terms. It follows that the defendant is prima facie entitled to vote its shares in LCK accordance with Shareholders Resolution 36.”** (My Emphasis)
- [52] This situation is clearly not the same with the facts of this case where the validity of those shares is still in issue. The Court went on in the same case to hold at paragraph 30:-
- “There has been no suggestion that any relief that could be granted at the end of the day would somehow render otiose, in the event that I fail to provide interlocutory relief. Whichever way it is looked at, the balance of convenience strongly favours the dismissal of prayers 2 and 3 of the interlocutory process.** (My Emphasis)
- [53] It is my view, that the Applicants in this case unlike the cases cited have shown considerable evidence that the balance of convenience tilts in their favour. While a refusal would cause an irredeemable loss, the grant of the application may only cause a temporary setback for the Respondents if eventually their shares are adjudged to have been properly issued.
- [54] In this instance, damages would not be adequate if the Respondents are not restrained from voting the shares at the shareholders meeting scheduled for the 8th day of July, 2025.
- [55] I hold in this instance that the Applicants have made out a proper case for an interim injunction. Whenever an order of interim injunction is made, it is always to the disadvantage of one of the Parties. Such a party is only held back for a short period of time until the happening of a particular event.

- [56] In this instance, the Respondents are restrained from voting the controversial shares at the shareholders meeting fixed for the 8th day of July, 2025. This Order is only until the hearing and determination of the jurisdiction issue.
- [57] I hold further that each of the Applicants shall be individually bound by their undertaking in damages to the Respondents if it turns out that the interim order of injunction herein ordered should not have been ordered.
- [58] It is ordered as follows, that until the determination of the 2nd to 4th and 5th Respondents jurisdiction challenges or further order of the Court:-

1. **Each Respondent must not dispose of or in any way deal with the legal or beneficial interest in any of the PIPE shares.**
2. **Each Respondent must not dispose of or part with possession of any document which ostensibly relates to the transfer or receipt of any interest in any of the PIPE shares.**
3. **Each Respondent must not cause or permit any votes to be cast or counted in respect of any PIPE shares in respect of which it claims to have any interest (legal, beneficial, direct, indirect or otherwise) whether at any shareholders meeting of the First applicant or otherwise.**
4. **Each Respondent must refrain from purporting to exercise any right to requisition a shareholders' meeting of the First Applicant in reliance upon its purported ownership of any of the PIPE shares.**

Tunde A. Bakre
High Court Judge

By the Court

Registrar

