

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

In the matter of Heritage Plantation Condominiums Ltd ("HPC");

And in the matter of the issuance and reallocation of the shares of Heritage Plantation Condominiums Ltd. to give and register Doche & Doche Inc. as 90% majority ownership and Heritage Plantation Inc. 10% minority ownership of HPC pursuant to a Shareholders' Agreement dated November 20, 2014 between Heritage Plantation Inc. and Doche and Doche Inc.;

And in the matter of Doche & Doche Inc. being adjudged an unregistered majority shareholder entitled to 90% and Heritage Plantation Inc. being an unregistered shareholder entitled to 10% of the shares in Heritage Plantation Condominiums Ltd. pursuant to a judgment dated January 27, 2020 in underlying consolidated claims no. SKBHCV2017/0343 Mervin Grant and Heritage Plantation Inc. v. Heritage Plantation Condominiums Ltd. et al and SKBHCV2018/0186 Heritage Plantation Inc. v. Doche & Doche Inc. which judgment was affirmed by the Court of Appeal on April 29, 2021 in appeal no. SKBHCVAP2020/0006 Mervin Grant and Heritage Plantation Inc. v. Heritage Plantation Condominiums Inc. et al;

And in the matter of sections 25, 42(1) and/or 42(2) and 47 of the Companies Act Cap 21.03 of the Revised Laws of the Federation and/or the inherent jurisdiction of the Court.

Alternatively, in the matter of sections 23, 25 and 26 (1) and (2) of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act and/or for specific performance of Shareholders' Agreement dated November 20, 2014 between Heritage Plantation Inc. and Doche and Doche Inc.

And in the matter of an order of mandamus and/or injunctive relief.

SKBHCV2021/0088

BETWEEN:

DOCHE AND DOCHE INC.

Claimant

and

[1] HERITAGE PLANTATION CONDOMINIUMS LTD.

1st Defendant

[2] HERITAGE PLANTATION INC.

2nd Defendant

[3] MERVIN GRANT

3rd Defendant

Appearances:

Mr. Anthony Astaphan SC with him Mr. Sylvester Anthony and Ms. Rénal Edwards for the Claimant
Dr. Henry Browne KC with him Mr. O’Grenville Browne for the Defendants

2023: September 26;
November 21.

DECISION

- [1] **GILL, J.:** This is the court’s ruling on a request by the claimant that the fixed date claim filed herein be dealt with summarily pursuant to Rule 27.2(4) of the Civil Procedure Rules (Revised Edition) 2023 (CPR 2023).
- [2] By an amended fixed date claim form filed on May 12, 2021, the claimant Doche and Doche Inc. seeks an order that it has an existing legal right to be issued and allotted 90% of the shareholding in the first defendant Heritage Plantation Condominiums Ltd. (“HPC”) while the second defendant Heritage Plantation Inc. (“HPI”) has an existing legal right to be issued and allotted 10% of the shareholding in HPC pursuant to a Shareholders’ Agreement dated November 20, 2014 between the claimant and HPI. Consequent on this, the claimant seeks an order that HPI, as the registered shareholder of the one common share in HPC, shall rectify HPC’s register to reflect the respective shareholdings of the claimant and HPI. The third defendant Mervin Grant (“Mr. Grant”) is the managing director of HPC and the sole shareholder and managing director of HPI.
- [3] The claim is brought pursuant to sections 25, 42(1) and (2) and 47 of the Companies Act.¹ Section 47 gives the court the power to order the rectification of a company’s register. In the alternative, the claimant relies on the court’s equitable jurisdiction pursuant to section 23 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act.²
- [4] After several interim applications, the first hearing of the fixed date claim was scheduled for July 24, 2023. When the matter came on for hearing, the

¹ Cap. 21.03 of the Laws of Saint Christopher and Nevis

² Cap 3.11 of the Laws of Saint Christopher and Nevis

claimant made an oral request under CPR 27.2(4) on the ground that the issue of its entitlement to 90% of the shareholding in HPC has been settled. Therefore, the claimant contends that the only issue left for judicial determination is the procedural or summary requirement of the rectification of HPC's Register of Members. The defendants requested time to respond and the court made an order for written submissions on the request.

- [5] The defendants resist the request on the basis that there is no declaration or order or finding by the Court of Appeal that the claimant is entitled to 90% of the shares in HPC. Therefore, the defendants assert that the intitlement in the amended claim of such an affirmation by the Court of Appeal is misleading. They allege that the claimant has not paid for any shares or made any investment in HPC and is therefore not entitled to any shares. They are adamant that financial accounts are necessary for the disposition of this claim, and that the claim for rectification of the Register of HPC at this stage is premature. They further assert that the court is prohibited from granting the relief sought by the claimant in respect of the 90% shareholding in HPC.

Issues

- [6] In order to decide whether this is a matter that can be properly dealt with summarily, in light of the relief sought in the claim, the court must determine-
- 1) whether the issue of HPC's entitlement to 90% of the shareholding in HPI has been settled;
 - 2) whether the court can grant the relief sought by the claimant;
 - 3) whether the defendants are estopped from relitigating the issue of HPC's entitlement to 90% of the shareholding in HPC;
and
 - 4) whether the procedure for rectification is of a summary nature.

Dealing with summarily, not summary judgment

[7] This claim is brought by way of a fixed date claim form for which summary judgment is not available.³ The claimant's request is for the matter to be dealt with summarily pursuant to CPR 27.2(4).

[8] I set out CPR 27.2(1) to (4) as follows:

Fixed date claims – first hearing

27.2 (1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.

(2) On that hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.

(3) Subject to paragraph (4), the first hearing is the first case management conference for the purposes of Part 20.

(4) The court may, however, treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily.

[9] George-Creque JA (as she then was) in **Richard Frederick and Another v Comptroller of Customs and Another**⁴ addressed the procedure the court must follow in dealing with a matter summarily. At paragraph 46, Her Ladyship held:

“Dealing with a claim summarily does not mean entering summary judgment. The claimant must still prove that he is entitled to the relief sought. Therefore, a trial must be conducted albeit in a summary way.”

[10] The claimant informs that this dictum has been followed in subsequent cases of the Court of Appeal.⁵ It represents the established view of the Court of Appeal on the interpretation of CPR 27.2 that a trial must be held, albeit in a summary manner.

³ See CPR 15(3)(c)

⁴ SLUHCVP2008/0037

⁵ SLUHCVP2014/0002 Travis Augustin v. Choc Estates Limited; SLUHCVP2015/0009 Agnes Danzie et al v. Cecil Anthony; ANUHCVP2021/0014 Edson Lewis v. Hilary Ghansah

Whether the issue of HPC's entitlement to 90% of the shareholding in HPI has been settled

[11] In support of its claim, the claimant relies on certain findings of the Eastern Caribbean Supreme Court in the following cases (in chronological order):

- i. In the High Court, the judgment of Ventose J dated January 27, 2020 in **Heritage Plantation Inc. v Heritage Plantation Condominiums Ltd. and Doche & Doche Inc.**⁶
- ii. In the Court of Appeal, the judgment dated April 29, 2021 in **Mervin Grant and Heritage Plantation Inc. v Heritage Plantation Condominiums Ltd. and Doche & Doche Inc.**⁷
- iii. In the High Court, the decision of Ward J dated April 11, 2022 in the instant claim.⁸
- iv. In the Court of Appeal, the judgment dated November 25, 2022 in **Heritage Plantation Condominiums Ltd., Heritage Plantation Inc. and Mervin Grant v Doche & Doche Inc.**⁹; and
- v. The judgment of this High Court in the instant claim dated June 15, 2023.¹⁰

[12] The claimant quotes extensively from these judgments to refute the allegations of the defendants, HPI and Mr. Grant, that the claimant has not paid for any shares or made any investment in HPC and is therefore not entitled to any shares, and that financial accounts are necessary for the disposition of the claim. In my view, the judgments are clear on the issue of the shareholdings.

[13] At paragraph 34 of the judgment of Ventose J, His Lordship stated:

“The intention of the Parties as evidenced in the 2014 Agreement is that the shareholding in HPC should be 90% to D&D and 10% to HPI. HPI is

⁶ SKBHCV2018/0186 at paragraphs 29, 32, 34, 53 and 56

⁷ SKBHCVAP2020/0006 per Webster JA [Ag.] at paragraphs 5, 31-32, 55, 59, 60 and 65

⁸ SKBHCV2021/0088, delivered April 11, 2022, at paragraphs 17 to 25

⁹ SKBHCVAP2022/0009 per Price-Findlay JA at paragraphs 42 and 43

¹⁰ SKBHCV2021/0088, delivered June 15, 2023, at paragraph 19

the current holder of one common share in HPC. HPI must now pass appropriate resolutions to reflect the intention of the parties as evidenced in the 2014 Agreement and as outlined in the now void unanimous written resolution of the directors HPC dated 30 September 2014.”

[14] The claimant points out that the findings of fact made by Ventose J, including his finding that the claimant is entitled to 90% of the shares in HPC, were not overturned by the Court of Appeal. The Court of Appeal set aside the orders made by Ventose J consequent on his findings on the basis that he had no jurisdiction to make the said orders having found that there was no unfair prejudice.¹¹

[15] The defendants’ submissions, that the effect of the Court of Appeal setting aside certain orders of Ventose J was that the claimant was stripped of its 90% shareholding, were dealt with by Ward J (as he then was). At paragraphs 23 to 25 of his judgment, Ward J stated:

“[23] Clearly, the orders were set aside for want of jurisdiction to make them. That the Court of Appeal did not disturb the findings of fact made by the learned judge in relation to D&D's entitlement to a 90% shareholding in HPC is clear from the following paragraphs:

“[59] The history of the parties' agreements regarding the shares of HPC is that they first agreed to be equal shareholders as reflected in the 2010 agreement. In the 2012 Agreement, it was agreed that HPI would deliver all the shares in HPC to D&D but this was on a conditional basis and I do not regard it as an agreement to transfer the beneficial interest in all the shares to D&D. The entitlement to shares was changed in the 2014 Agreement when the parties' agreed that D&D would own 90% of the shares to D&D and HPI 10%. However, the shares were not issued to reflect the new shareholding and the records of HPC at the Companies Registry were not updated. I dealt with this issue in paragraph 31 above and noted that D&D owns either 90% or 50% of the shares of HPC. D&D's entitlement to its shares came about as a result of its financial contribution to and participation in the joint venture project. Its ownership is reflected in the Agreements, all of which were prepared by Mr. Grant. There is no suggestion that he did not understand what he was agreeing to.

[60] In the circumstances, I do not agree that D&D received the shares or reallocated them in a manner that was unfair to HPI

¹¹ SKBHC VAP2020/006 Mervin Grant and Heritage Plantation Inc. v Heritage Condominiums Ltd. and Doche & Doche, at paragraphs 67-69

or that HPI was prejudiced by the agreement for D&D to own shares in HPC."

[24] These paragraphs affirm the finding of Ventose J at paragraph 34 that D&D is entitled to a 90% shareholding in HPC pursuant to the 2014 agreement. The Court of Appeal did not expressly or by necessary implication set aside the findings of the learned judge at paragraph 34 relating to D&D's entitlement to a 90% shareholding; indeed they affirmed it.

[25] I therefore do not read the judgment of the Court of Appeal as disagreeing with or setting aside the conclusion of Ventose J that D&D were entitled to the reliefs he purported to grant them. The Court of Appeal simply held that he could only have made those orders if he had found unfair prejudice. Having found that there was no unfair prejudice he lacked the jurisdiction to make the orders and for that reason they were set aside. His findings of fact were not. Indeed, practically all of his findings of fact were found to be unimpeachable." (Emphasis added)

[16] In relation to the defendants' insistence that the claimant did not invest in HPC and that all monies used were from the sale of HPC's units, the claimant's investment in HPC was dealt with by the Court of Appeal on the findings of Ventose J.¹² At paragraphs 39 to 41 of the Court of Appeal judgment of April 29, 2021, Webster JA [Ag.] opined:

"[39] While the trial judge did not make an express finding that D&D invested the \$2.8 million, it is clear from the judgment that he treated the \$2.8 million as having been paid by or on behalf of D&D. At paragraph 48, he found that: '[t]he Claimant has failed to provide any evidence that D&D did not carry out its obligations under the 2010, 2012 or 2014 Agreements. They have also failed to substantiate any of the allegations made against the defendants.' More specifically, the trial judge found at paragraph 50, that: 'D&D was to be refunded its capital injection of US\$1m and an additional sum of US\$1m as its share of the 'profits. '

[40] The reference to a \$1 million capital injection is to the \$1 million mentioned in clause 9 of the 2010 Agreement and an obvious rejection of the appellants' position that D&D did not pay any cash into the project. The judge returned to D&D's capital injection in paragraph 52 when he noted that: '...the initial amount of US\$1m for construction increased to US\$2.8m to reflect the loans and payments made by D&D on behalf of or to Mr. Grant and HPI.'

[41] This is effectively a finding by the judge that D&D invested \$2.8 million into the construction of the units, and, by implication, a

¹² SKBHC VAP2020/0006 at paragraphs 37-41

rejection of the appellant's case that the construction money came from deposits or pre-sales of units. The finding is amply supported by the evidence and there is no basis on which this court should interfere with the trial judge's conclusions. The finding effectively disposes of the appellants' position that D&D breached clause 9 of the 2010 Agreement." (Emphasis added)

- [17] I will not reproduce the numerous other quotations set out by the claimant but I have considered them fully as I have also considered the defendants' submissions, and I reiterate that consistent with my oral decision of June 15, 2023, I am still satisfied that the issue of the shareholding in HPC has been determined. Notwithstanding the absence of specific orders or declarations to that effect, the findings of the courts in the various decisions are sufficient for a trial judge, on the amended claim, to conclude and make orders and/or declarations as to the relief sought in respect of the shareholding. Contrary to the defendants' submissions, I do not consider these conclusions and findings of fact to be *obiter dicta*. Therefore, there is no need for further evidence or submissions on the claimant's entitlement to 90% of the shares in HPC as prayed in the amended fixed date claim.

Whether the court can grant the relief sought

- [18] The defendants submit that this court cannot as a matter of law grant any of the reliefs claimed. They assert that to do so, the court would be ordering HPC to do an act prohibited by statute. Section 42(1) of the Companies Act provides as follows:-

Transfer of shares and registration.

42. (1) Notwithstanding anything in its articles a company shall not, except where it has been exempted from the provisions pursuant to subsection (6), register a transfer of shares in the company unless an instrument of transfer in writing has been delivered to it.

- [19] The defendants point out that HPC is not exempted pursuant to subsection (6). There is no instrument of transfer in writing that has been delivered to HPC. Therefore, this court cannot grant any of the reliefs claimed so that the amended claim is bound to fail.
- [20] The claimant counters that the defendants' assertion that the court cannot grant the reliefs sought as it would be contrary to section 42(1) of the

Companies Act, is misguided.

[21] First, the claimant submits that the 2014 Shareholders' Agreement, which reallocated the shares in HPC 90% to the claimant and 10% to HPI, satisfied the requirement of section 42(1) for the provision of an instrument of transfer in writing. Therefore, the third defendant Mervin Grant, as the sole director, and HPI, as the sole shareholder of record of HPC, having been provided with the said Agreement, was obliged to allot and issue the shares to the claimant to reflect the 2014 Agreement.

[22] Further, section 42(2) of the Companies Act provides:

(2) Subsection (1) does not prejudice a power of the company to register as a shareholder a person to whom the right to shares in the company has been transmitted by operation of law.

[23] As such, the claimant submits that once both the High Court and Court of Appeal resolved the substantive issues concerning the shareholding of HPC and found as a matter of fact and law that the claimant was entitled to 90% of HPC's shares, Mervin Grant ought to have allotted and issued the shares to the claimant and registered the claimant as a shareholder. On an appeal from the judgment of Ward J, Price-Findlay JA stated:

"The trial judge accurately found that both Ventose J and Webster JA [Ag.] had in fact decided that the respondent [Doche and Doche Inc.] was, as a matter of law, entitled to 90% of the first appellant's [HPC's] shares. This review in no way re-litigated the issues already decided between the parties nor attempted to overturn the decisions made by the previous tribunals. The trial judge was interpreting the decisions, not overruling them or deciding them afresh."¹³

[24] The claimant alleges that notwithstanding the 2014 Shareholders' Agreement and the decisions of both the High Court and the Court of Appeal, Mr. Grant and HPI have refused to issue and allot the shares as required. The court is therefore in these circumstances, empowered by section 47 of the Companies Act to grant the reliefs sought by the claimant.

[25] The court finds favour with the claimant's submissions on this point. The 2014 Shareholders' Agreement suffices as an instrument of transfer in writing for

¹³ SKBHC VAP2022/0006 Heritage Plantation Condominiums Ltd., Heritage Plantation Inc. and Mervin Grant v Doche and Doche (delivered November 25, 2022) at paragraph 40

the purposes of section 42(1). Further, given the court's finding on the claimant's 90% shareholding in HPC, and the shares not being allotted and issued, and the claimant not being accordingly registered, the court can grant the relief sought by virtue of section 47 of the Companies Act.

Whether the defendants are estopped from relitigating the issue of the claimant's 90% shareholding in HPC

[26] The claimant's reply submissions reveal great frustration that the defendants in their submissions continue to raise allegations on non-payment, which they argue ought to have been raised in the earlier cases, and therefore subject to the rigorous application of the principles of *res judicata*, in that: (i) they ought to have been raised at the earliest claim, or more importantly (ii) these matters, especially, the consideration for and ownership of the shares have already been unequivocally adjudicated upon and decided by the High Court, and unanimously confirmed, and reaffirmed by the Court of Appeal and more recently, this court.

[27] The claimant contends that the defendants' conduct, presumably on the advice of King's Counsel, in seeking to raise this allegation of non-payment for the shares, is a clear, manifest and aggravated abuse of the court's process because the defendants are misrepresenting the material facts and decisions of the long ongoing litigation, all of which they have lost.

[28] The claimant submits that the doctrine of issue estoppel is applicable in the case at bar. In **Powell et al v Powell**,¹⁴ Rawlins J (as he then was) opined:

"The principle of issue estoppel is intended to prevent parties from constantly re-litigating the same issues. In order to determine whether the plea succeeds in a case, the conditions or requirements for the operation of the principle must be considered. These are first, that the same issue that was determined in the prior litigation is raised again in the subsequent proceeding; second, the prior decision was final; and third, the Parties to the prior final decision or their privies are the same Parties to the subsequent proceedings, or their privies."

[29] The doctrine was applied by the Caribbean Court of Justice (CCJ) in **Belize**

¹⁴ NEVHCV2001/0026 at page 9

Bank Ltd. v Attorney General of Belize.¹⁵ In that case, the respondent was not allowed to raise any further issues in relation to the legality of a loan note as the issue had already been considered and determined. The court found that to allow the respondent to do so would expose the judicial process to the intolerable evil of litigation in increments and undermine the decision of the highest appellate court in Belize. The court further found that the court's determination settled the dispute litigated between the parties as to the legality of the loan note and the doctrine of issue estoppel precluded further litigation between them on that matter.

[30] The claimant submits that all of the requirements have been satisfied, that the judgment of Ventose J as affirmed by the Court of Appeal and confirmed by Ward J, Price-Findlay JA and this court, settled the issue of the claimant's entitlement to 90% of HPC's shares. Ventose J's decision is a final decision and the parties in that matter are the same parties herein. The defendants are therefore estopped from relitigating the issue of the claimant's entitlement to 90% of the shares in HPC on any other basis than that determined by the High Court and the Court of Appeal.

[31] This point is pellucidly brought home to this court when, in my decision of June 15, 2023, having clearly refused the defendants' application for an unless order, the defendants now submit that this court "has power to make a Conditional Order, compelling D&D to deliver the Audited Financial Accounts of HPC to HPI within a specified date and time, failing which the Amended Claim will be struck out and judgement be given in favour of HPI". Clearly, this is an abuse of the process of the court as there was no appeal of the decision against the defendants.

[32] Based on the matters set out earlier, I am of the view that the requirements have been met so as to bar the defendants from relitigating the issue of the claimant's 90% shareholding in HPC, including the issue of the claimant's investment in HPC. In the event that I am wrong, I have chosen to rule again, and I note the urging of Counsel for the claimant to order costs on an

¹⁵ 91 WIR 175

indemnity basis against the defendants, without prejudice to the claimant's right to move against Counsel for the defendants should this aggravated abuse of the process continue.

- [33] Notwithstanding the foregoing, it is understandably a sore point for the defendants that the claimant has failed to produce financial accounts to HPI even in light of statements by the High Court and Court of Appeal that it should. At paragraph 70 of the Court of Appeal of April 29, 2021, Webster JA [Ag.] stated:

"I commented in this judgment, as did the trial judge in his judgment, **that there is a need for proper financial accounts to be produced.** Both parties have said as much in their written and oral submissions. Based on the evidence of Rafik Doche in the lower court, such accounts should now be available. **These accounts should be produced and delivered to HPI, a shareholder of HPC, without further delay.**"
(Emphasis added)

- [34] Therefore, it is curious that to date, the claimant has not produced the accounts, and this court joins in the chorus for the claimant to produce and deliver proper financial accounts to HPI as a matter of urgency.

Rectification

- [35] Consequent on the issue of the claimant's 90% shareholding in HPC being settled, the claimant submits that the only issue left for determination is the summary requirement of the rectification of HPC's Register of Members.
- [36] The claimant seeks an order for HPI to rectify HPC's register to reflect the respective shareholdings of the claimant and HPI. The rectification of the Register of Members of a company by court order is provided for in section 47 of the Companies Act which reads:

Rectification of register.

47. (1) If—

(a) the name of any person is, without sufficient reason, entered in or omitted from a company's register; or

(b) there is a failure or unnecessary delay in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by a party aggrieved.

(3) On an application under subsection (1) the Court may decide any question necessary or expedient to be decided with respect to the rectification of the register.

(4) Where an order is made under this section, the company in relation to which the order is made shall cause the relevant act of the Court to be delivered to the Registrar for registration within fourteen days after the making of the order; and in the event of failure to comply with this subsection the company commits an offence and liable to a fine not exceeding one thousand dollars and in the case of a continuing offence to a further fine not exceeding one hundred dollars for each day on which the offence so continues. (Emphasis added)

[37] The claimant highlights paragraph 38 of the judgment of Ward J (as he then was) where His Lordship gave his view on the claimant's entitlement to rectification as follows:

"Here, there is a serious issue to be tried relating to the claimant's entitlement to and the procedural mechanism by which the claimant may effect the rectification of HPC's Register of Members to obtain legal title. In my view, the claimant has met the threshold of demonstrating that he has a real prospect of succeeding in its claim for rectification having regard to the fact that the High Court and Court of Appeal have found that it is the unregistered shareholder of 90% of the shares in HPC and that D&D did not receive the shares or reallocate them in a manner that was unfair to HPI or that HPI was prejudiced by the agreement for D&D to own shares in HPC."(Emphasis added)

[38] The claimant submits that this is a straightforward case and therefore the matter ought to be dealt with summarily pursuant to CPR 27.2(4) at the first hearing of the fixed date claim form.

[39] The defendants contend that a claim for rectification of the Register of HPC is premature. They rely on the judgment of Farara J [Ag.] (as he then was) in **Anjie Investments Limited and Another v Cheng nga Yee and Another**¹⁶

¹⁶ BVIHCV(COM)2015/0060

which followed the decision of the Privy Council in **Nilon Limited and Another v Royal Westminster Investments SA and Others**.¹⁷

[40] In **Anjie Investments**, the dispute between the parties was over the lawful ownership of the shares in the second defendant. The claimant alleged that it had paid for the shares and by its claim sought rectification of the Register of Members to reflect its ownership. This it did under Section 43 of the BVI Business Companies Act 2004, which is *in pari materia* with section 47 (1) of the Companies Act of Saint Christopher and Nevis. The court followed the Privy Council decision in the **Nilon** case which the learned trial judge described as the most recent and authoritative learning on a section 43 application.¹⁸

[41] In the **Nilon** case, the main issue before the Board was whether the claimant could bring proceedings under Section 43 for rectification of the share register of a BVI company, when the reason or basis for such rectification was an untried allegation that a defendant had agreed to allot shares in the company to the applicant/claimant. The defendants argue that this is a preliminary issue which cannot be ignored in the instant proceedings, having regard to the reliefs claimed in the amended claim.

[42] In delivering the opinion of the Board in the **Nilon** case, at paragraph 37, Lord Collins stated:

“There are two points which emerge from the cases. The first is that from the earliest days of the legislation, the courts have made it clear that the summary nature of the jurisdiction makes it an unsuitable vehicle if there is a substantial factual question in dispute...”

[43] At paragraph 40, Lord Collins went on:

“The great majority of the cases on the power of the court to order rectification involve a situation where a transfer has been executed but not registered, and the applicant seeks to be put on the register...”

[44] His Lordship laid down the ratio decidendi of the Board at paragraph 51 as follows:

¹⁷ [2015] UKPC 2

¹⁸ BVIHCV(COM)2015/0060 at paragraph 20

“In the view of the Board, proceedings for rectification can only be brought where the applicant has a right to registration by virtue of a valid transfer of legal title, and not merely a prospective claim against the company dependant on the conversion of an equitable right to a legal title by an order for specific performance of a contract.”

- [45] The defendants submit that the claimant has no present right to registration, which can only arise once the claimant is successful in its principal claim, that is, to be issued and allotted 90% of the shareholding in HPC. On the principle in the **Nilon** case, they maintain that this case is not a suitable one for the summary procedure.
- [46] The claimant alleges that the defendants’ submission that the claimant’s claim for rectification is premature, is misconceived. The claimant submits that the **Anjie** case relied on in support of this submission can be distinguished from the case at bar.
- [47] The claimant points out that in the **Anjie** case, there was a dispute between the parties over the lawful ownership of the shares in Tian Li Holdings Limited. There was therefore a substantive dispute involving questions of fact and law over the ownership of the disputed shares, whether legal or beneficial, to be determined. As such, the court found that rectification was not appropriate in that case and stayed the rectification claim until the substantive dispute had been determined.
- [48] The claimant reiterates that in the case at bar, there is no dispute at all over the lawful ownership of the shares in HPC. This has already been determined by Ventose J, and affirmed, confirmed and reaffirmed by subsequent judgments of the High Court including the more recent decision, and the Court of Appeal.
- [49] Likewise, the claimant submits that the case of **Nilon** can also be distinguished from the case at bar. The claimants in **Nilon** asserted that by virtue of an oral agreement (the Joint Venture Agreement), they were entitled to be allotted 57.5% of the shares of a new company to be incorporated in the BVI called Nilon. It was also agreed that the claimants and Mr. Varma, the respondent as joint venture partners, would remit an initial down payment to

a bank account to be opened in Jersey in the name of Nilon as capital for the joint venture. Each joint venture partner would be entitled to an equal profit share. The claimants alleged that they contributed funds to Nilon under the joint venture and received dividend payments pursuant to it. They claimed to be legal and/or beneficial owners in Nilon but that the respondent had failed to procure the allotment of shares in Nilon to them, or enter their names on the Register of Members, or issue share certificates to them. The claimants sought declarations (in the BVI) that they were owners of the agreed proportions of the issued shares in Nilon and an order that the shareholder register be rectified pursuant to section 43(1)(a) of the Act to give effect to the Joint Venture Agreement.

[50] One of the two central issues decided by the Judicial Committee of the Privy Council in this case was whether the summary nature of the jurisdiction to rectify the share register of a company was suitable, in light of substantial factual disputes which were not previously tried and determined in a court. The Board held that the claim which was before it was not suitable for rectification on its facts.

[51] However, the claimant maintains that in the case at bar, there are no factual questions in dispute which were not previously tried and determined in a court. The shareholding disputes have been previously ventilated and determined in the claimant's favour in the decisions of the Eastern Caribbean Supreme Court, which all concluded that the claimant is legally entitled to 90% of the shares in HPC, with the remaining 10% belonging to HPI.

[52] On the issue of rectification, the defendants have repeatedly ignored the findings of the various courts, including this court, on the shareholdings in HPC. To avoid repetition, I am compelled to agree with and adopt the submissions of the claimant on this issue. In light of the almost *ad nauseam* judicial pronouncements on the claimant's 90% shareholding in HPC, I am of the view that the only issue left to be resolved is the rectification of the Register of Members to reflect the respective shareholdings of the claimant and HPI.

Rectification – the procedure

[53] The claimant provides the court with guidance on how to proceed.

Paragraph 354, Volume 14 of Halsbury's Laws of England (2016) reads:

*The application to the court for rectification of a company's register of members may be made by the person aggrieved, by any member of the company, or by the company. Such an application must be made by the issue of a claim form. **The jurisdiction of the court is summary in nature with affidavit evidence and ought not to be invoked where there is a substantial dispute as to fact.** ...*

The proper respondents to an application to rectify the register are the company and the registered holder or holders of the shares whose registration is in question, if not the applicant. (Emphasis added)

[54] Again, the claimant maintains that in the case at bar, there is and can be no dispute of fact as it relates to the claimant's legal entitlement to 90% of the shares in HPC and its entitlement to the rectification of HPC's register. This dispute has repeatedly been ventilated and determined in the claimant's favour by the High Court and the Court of Appeal.

[55] In addition to the jurisdiction of the court on a rectification claim being summary in nature, by virtue of CPR 27.2(2) and (4), the court is empowered to deal with this claim, which was brought by fixed date claim form, in a summary manner. In conducting the trial in a summary manner, the court is obliged to take evidence whether orally or on affidavit in relation to the current state of HPC's register so as to satisfy the court that the procedural and summary remedy of rectification that is sought by the claimant is required.

[56] I have already determined that the claim for rectification is not premature. Being satisfied that the issue of the claimant's entitlement to 90% of the shareholding in HPC has been settled, I find that this is a proper case for the application of CPR 27. 2(4), and the matter will be dealt with summarily. I will order the necessary affidavit evidence.

Order

[57] In light of the foregoing, I make the following orders:

- 1) The claimant's request that the matter be dealt with summarily pursuant to CPR 27.2(4) is granted.

- 2) The parties are to file affidavit evidence on the state of HPC's register on or before December 5, 2023.
- 3) The matter is adjourned to December 11, 2023 for summary trial on the rectification of HPC's register.
- 4) The defendants shall pay to the claimant costs of the request proceedings agreed in the sum of \$750.00.

[58] I am grateful to Counsel for their most useful submissions in this matter.

Tamara Gill
High Court Judge

By the Court

Registrar