

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

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

CLAIM No: BVIHC (COM) 2020/0160

BETWEEN:

PAVEL SAZONOV

Claimant

and

(1) TRINITY MANAGEMENT AND CORPORATE SERVICES LTD

(2) ELENA SILKINA

Defendants

Appearances:

Mr. Andrew Emery of Emery Cooke for the Claimant

Mr. Dan Wise and Ms. Asha Johnson Willins of O'Neal Webster for the First Defendant

The Second Defendant did not appear and was not represented

2021 February 22 (Oral Judgment)
April 26 (Written Judgment)

JUDGMENT

- [1] **JACK, J [Ag.]:** This is an application for rectification of the register of shares of a BVI company, Emery Capital Limited. There is a bitter dispute between two parties, Mr. Sazonov, who is representing by Mr. Emery, and Ms. Elena Silkina, who is resident in Russia. The proceedings have not yet been served on Ms. Silkina because of the delays involved with service of documents by the Hague Convention. However, the current application has been served on her both electronically and I am told two days ago in hard copy. So Ms. Silkina is aware of the matter.

- [2] There has been litigation in Russia in related proceedings which has been ongoing for a considerable time. There is a particular urgency about the current application because on the 2nd March, the Russian Court will take steps which are extremely adverse to Mr. Sazonov if he cannot before that date be recognised as the shareholder of Emery Capital Limited. In those circumstances I have to decide how to hold the ring. The issues which will ultimately have to be determined is who the beneficial owner of the shares in Emery Capital Limited is. Mr. Sazonov says it is he. Ms. Silkina says there are various forgeries. None of that is a matter which I can determine summarily. However, I do have to take some step, in order to protect the interest of Mr. Sazonov, because at Ms. Silkina's instance, as I have said, the Russian Court will take steps to prevent Mr. Sazonov preserving his financial interest in the company unless rectification is ordered.
- [3] Mr. Wise, who appears for the registered agent, takes the point that the remedy which is being sought is in the nature of a final remedy and that the Court cannot and should not make that order unless and until there is a trial of the matter or there is a properly formulated application for summary judgment. He says that if one is going to have any remedy, it would be via the appointment of a receiver who would then hold the ring. The difficulty is that appointing a receiver is expensive and that it is something which may not be able to be affected before the 2nd March.
- [4] The application which Mr. Emery makes is under section 43 of the **BVI Business Companies Act 2004** (rectification of register of members).¹ This provides:
- “(1) If
- (a) information that is required to be entered in the register of members under section 41 is omitted from the register or inaccurately entered in the register, or
- (b) there is unreasonable delay in entering the information in the register,

¹ No 16 of 2004, Laws of the Virgin Islands.

a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register be rectified, and the Court may either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

(2) The Court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of members, whether the question arises between

(a) two or more members or alleged members, or

(b) between members or alleged members and the company,

and generally the Court may, in the proceedings, determine any question that may be necessary or expedient to be determined for the rectification of the register of members.”

[5] Mr. Wise submits that granting an order for rectification is a final order and that, therefore, the Court cannot make it on an interim basis. I do not agree with him. It seems to me that the Court is, in those last words I have cited, given a wide power to determine any question that may be necessary or expedient, and I emphasise *expedient*. That, it seems to me, is sufficiently wide to allow the rectification of the register on what I might describe as an interim basis. So I can make the order rectifying the register but providing that this is subject to a determination at the trial of the underlying proceedings.

[6] This is not actually very different to what traditionally has happened with proceedings for the possession of land. If somebody is evicted from land and shows an arguable case that they have been unlawfully evicted, then the Court will normally restore them to the land *pro tem*. That form of proceeding goes back to the assize of novel disseisin, a procedure of the early common law.

[7] So in my judgment, it is appropriate to make an order rectifying the register but making it clear that this is on an interim basis, not a final basis.

[8] I would invite Mr. Emery and Mr. Wise to discuss the terms of the order. The costs, it seems to me need to be reserved. In principle, it is likely that the registered agents are going to be entitled to their costs from somebody, but it seems to me that it is premature to be determining whether that ought to be Mr. Sazonov or whether it is Ms. Silkina. In particular, Mr. Sazonov says that the registered agent ought to have taken more care. That is not a matter which I can investigate at this point.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar