

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Royal Westminster Investments S.A and Bhagwan Mahtani and Sunder Dalamal and Nari Dalamal -v- Nilon Limited and Manmohan Varma

COMPANIES - RECTIFICATION OF REGISTER - BVI BUSINESS COMPANIES ACT S.43 - SCOPE OF JURISDICTION

The issue on appeal was primarily whether the scope of the Court's discretion under Section 43 of the *BVI Business Companies Act* (the "Companies Act") permitted the Court to order the rectification of the register of members where the Applicant could not demonstrate that it clearly had a present right to be registered. The Judge, at first instance said it did not because the purpose of Section 43 of the Companies Act was to enable the court to ensure that the Company's register of members accurately reflected the state of its membership and was not there to establish title to shares. The Court of Appeal disagreed.

The case concerned a joint venture agreement entered into by the Second Appellant, Third Appellant, Fourth Appellant and Second Respondent whereby it was agreed that they would carry on the business of importing and selling rice in Nigeria, carried out through a company to be incorporated. It was agreed that each joint venturer was to contribute to the capital of and subscribe for shares in that company in agreed proportions.

The Second Defendant caused the First Defendant to be incorporated and procured that the shares would be allotted to himself only. The Claimants sought, *inter alia*, rectification of the register in order to reflect the terms of the joint venture arrangements. The Court of Appeal held applying *Re Hoicrest Ltd* [2000] 1 BCLC that the discretion conferred on the court by Section 43(2) of the Companies Act to determine any question relating to the right of a party to rectification proceedings to have his name entered in or omitted from the register of members was wide enough to permit inquiry into the substantive cause for the inclusion or omission, even if that question arises between the

members or alleged members and does not involve the company. The court is required in such proceedings to have regard to the equitable as well as the legal rights vested in such a party. The Court also held applying *Re Starlight Developers Limited* [2007] B.C.C 929, that it was not obliged to strike out an application for rectification of the register where the party, claiming such relief, is unable to assert a present entitlement to registration.

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