

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Chemtrade Limited -v- Fuchs Oil Middle East Limited and Fuchs Petrolub AG Claim **No. BVIHCVA 2013/004**

UNFAIR PREJUDICE - BVI BUSINESS COMPANIES ACT, 2004 (THE "ACT") AS AMENDED - WHETHER THE LEARNED JUDGE CORRECTLY EXERCISED HIS DISCRETION IN ORDERING THAT THE COMPANY'S ARTICLES OF ASSOCIATION BE AMENDED —BUSINESS ADMINISTRATION ORDER - WHETHER PURCHASE ORDER WAS MORE APPROPRIATE REMEDY

Since enactment of the Act, this is the first Appellate Court decision in a claim for unfair prejudice under Section 184I of the BCA. On 18 September 2013, the Court of Appeal dismissed the appeal by Chemtrade Limited ("Chemtrade") against the decision of the High Court, which granted relief for Chemtrade's successful claim in unfair prejudice against the Second Respondent in the form of a Business Administration Order (the "BAO"). That Order amended the *quorum* requirement for board meetings contained in the Articles of Association of the First Respondent. The Court of Appeal upheld the trial Judge's decision that the BAO was the appropriate remedy.

The main issue on this appeal was whether the Appellant (as 50% shareholder in the First Respondent), having succeeded in its claim for unfair prejudice against the Second Respondent (the other 50% shareholder), was entitled to a Purchase Order rather than a BAO. In arriving at its decision, the Court of Appeal held that the High Court has an unlimited discretion under Section 184I of the BCA (albeit a judicial one to be exercised when the Court considers it just and equitable to do so, with restraint and in an appropriate manner), to make such orders as it thinks fit, with a view toward bringing an end to the matters of which they complained.

The Court held that the Appellant did not show that the trial Judge's decision was clearly or blatantly wrong or that his discretion was exercised erroneously. The Court also opined that

the fact that trust and confidence between the shareholders had probably been irreparably damaged was not determinative. The Appellant has obtained conditional leave to appeal to the Privy Council.

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