

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Microsoft Corporation -v- Vadem Ltd Claim No. BVIHCVAO2013/007

INTERLOCUTORY APPEAL - DERIVATIVE PROCEEDINGS - WHETHER THE JUDGE ERRED IN LIMITING THE SCOPE OF THE LEAVE WHICH HE GRANTED TO THE APPELLANT TO BRING PROCEEDINGS IN THE NAME OF AND ON BEHALF OF THE RESPONDENT COMPANY

Microsoft Corporation (“Microsoft”), a minority shareholder of the Respondent Company Vadem Ltd (“Vadem”), was granted leave to bring claims derivatively in the name of Vadem under Section 184C of the *BVI Business Companies Act, 2004*. The Learned Judge, however, also made statements in his written judgment that Microsoft had no authority to prosecute, here or elsewhere, claims vested in Vadem California, which is Vadem’s wholly owned subsidiary. These statements effectively limited the scope of the leave granted to Microsoft. Microsoft appealed seeking an order that the permission previously granted be extended to include claims involving causes of action vested in California.

Allowing the Appeal in part, the Court held, *inter alia*, that it was not necessary, in granting leave pursuant to Section 184C(1) for the Learned Judge to offer his interpretation of what that section means because such interpretation had no bearing on any of the matters he was required to satisfy himself about or take account of and that leave should have simply been given to Microsoft to bring proceedings in the name of and on behalf of Vadem without the limiting word expressed in the Judgment. Further, the Court held that whether the leave to bring derivative action in the name of and on behalf of Vadem would enable Microsoft to bring proceedings vested in a wholly owned subsidiary of Vadem will be determined by the *lex fori*.

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