

BRITISH VIRGIN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

Sport Financier SA -v- Olympic Gold Holdings Limited (Claim No. BVIHC (Com) 0452 of 2009)

SECTION 179A BUSINESS COMPANIES ACT, 2004 (THE "ACT") - SCHEME OF ARRANGEMENT - WHETHER SCHEME TERMS SUBJECT TO VARIATION AT THE OPTION OF THE COMPANY

This case concerned an application by Sports Financier SA a creditor of the Respondent Olympic Gold Holdings (the "Company") in relation to a scheme of arrangement entered into between the Company and Creditors and sanctioned by the Court pursuant to Section 179A of the Act. Sports' complaint was that the Scheme was not being administered according to its terms and sought various declarations and orders pertaining to the administration of same. After considering the terms of the Scheme, the Court held that the Scheme once sanctioned could not be amended in the absence of an express provision contained within the Court sanctioned Scheme for variation after sanction and that no scheme approved under Section 179A of the Act could be varied otherwise than through a further scheme sanctioned by the Court.

Further, the Court found that the Scheme Administrator was not a party to the application, nor was he subject to the, *in personam*, jurisdiction of the Court and, in those circumstances, he could not be bound by the Court's order. The Court also refused to make an order that the Scheme be administered under the supervision of the Court citing the absence of precedent and the machinery to enable it to do so.

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