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OFFSHORE CASES

JUNE 2016

BERMUDA

SUPREME COURT

***Capital Partners Securities -v- Sturgeon Central Asia Balanced Fund* [2016] SC (Bda) 68 Com**

APPLICATION FOR RECTIFICATION OF REGISTER - COMPANIES ACT, 1981 SECTION 67 - NOMINEE SHAREHOLDER - REFUSAL BY COMPANY TO REGISTER CHANGE OF LEGAL OWNERSHIP - RELEVANCE OF NEED TO INVESTIGATE IDENTITY OF BENEFICIAL OWNERS AS GROUNDS OF REFUSAL - CONSEQUENCES OF FAILURE TO GIVE NOTICE OF REFUSAL TO REGISTER TRANSFER WITHIN STATUTORY TIME PERIOD - COMPANIES ACT, 1981 SECTION 50

The Plaintiff sought the substantive relief of a declaration that a transfer of shares in the Defendant Fund to the Plaintiff from its nominee was a valid transfer of the Participating Shares, and an Order that the Fund's Directors should rectify the share registers and give all necessary approvals to reflect that valid transfer. The background of litigation to this case was that the Plaintiff had previously sought to petition for the winding up of the Company as a contributory, and this transfer of shares from its nominee was intended to facilitate that process. The Defendant claimed that it needed time to consider whether the transfer could be registered, pending further investigation into the beneficial ownership of the relevant shares under recent stringent anti-money-laundering legislation. However, in the process, it exceeded the proscribed time for giving notice of refusal to register a transfer pursuant to Section 50 of the *Companies Act, 1981*. The central question was therefore whether the Defendant's regulatory concerns were sufficient grounds to refuse to register the transfer, in light of the fact that no beneficial ownership had apparently changed in the transfer of shares and of the Plaintiff's ultimate goal in pursuing the transfer.

Kawaley CJ found that the Defendant, in failing to send a notice of refusal within the statutory three month time limit, had subsequently lost the right to refuse to register the transfer after that date. He found that as a matter of law a company may not ordinarily refuse to register a transfer of shares after the time for giving notice of refusal has expired, and exceptional circumstances would be required to depart from this standard. In the present case, he found that because the Defendants did not take the steps available to them within the statutory framework, such as the issuance of an interim refusal notice if they required further time to investigate beneficial ownership of the shares, that there was not sufficient justification for their derogation and that they had therefore lost the right to refuse to register the transfer.

Kawaley CJ also considered the Plaintiff's application on the alternative hypothetical basis of a, *prima facie*, valid refusal decision having been made, considering whether the decision to refuse to register the shares in that scenario would have been lawful pursuant to the Bye-laws of the Fund. He found that under the Bye-laws, the Plaintiff's refusal to comply with the Defendant's Client Due Diligence information request did not amount, on the unusual facts of the case (particularly regarding the intention of the Plaintiff to petition for the winding up of the Defendants), to sufficient grounds for refusing to register the Share Transfer because the anti-money-laundering concerns relied upon by the Defendant were insufficiently connected to the transfer itself.

He therefore found that the Plaintiff was entitled to the relief sought, adding the provisional view that the Plaintiff should comply with the Defendant's requests for information regarding beneficial ownership.