



Case Alert: Court of Appeal Reaffirms Dissenting Shareholder Valuation Mechanism under BVI Law

We previously reported on the [BVI Commercial Court judgment](#) back in January 2016. Last week the Eastern Caribbean Court of Appeal dismissed an appeal brought by Olive Group in a welcome underlining of when a Court can interfere in the appraisal mechanism and its role in determining minority discount. Conyers' BVI litigation team acted for the successful Respondent.

Having been forcibly redeemed, Olive Group wanted the Court to intervene in the appraisal process and declare that a minority discount should be applied. The Court below refused, citing the appraisers as akin to an expert adjudication and that it was not for the Court to interfere in such process. The Court of Appeal agreed. Webster JA delivering judgment held in three main parts:

1. once any dispute falls within the expert's mandate, then the Court should not intervene. If the dispute is jurisdictional, such as an interpretation of the mandate, then the Court will determine that either before or after the expert completes the work, whichever is more convenient;
2. the Court has jurisdiction to determine if a minority discount can apply, but not whether it should apply in any one case and
3. Section 179(9) of the *British Virgin Islands Business Companies Act, 2004* (the "Act") is silent on the application of minority discount. Thus, the appraisers need to decide whether one should be applied, and if so how. Further, it is for the parties, when agreeing the mandate of the expert to agree to mechanisms for how determination of value, under which the expert is to operate. Absent that, the expert is free to conduct the process as they see fit, save only for allegations of fraud or collusion.

The Court further clarified the use of Section 246 and its attempted use to create jurisdiction in allowing directors to bring matters of the Act before the Court, as subsidiary only to jurisdiction being established elsewhere in the statute. Section 246 is a procedure, not a cause of action imposing jurisdiction where the statute does not already so provide.

Partner, Mark Forte, who appeared along with Tameka Davis, Counsel, was led by Richard Millett QC on the appeal.



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