THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2014/0005

BETWEEN:

MR. ALPHONSE FLETCHER, JR

Appellant

and

SOLON GROUP, INC.

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE — Chief Justice
The Hon. Mde Gertel Thom — Justice of Appeal [Ag.]
The Hon. Mr. Paul Webster, QC — Justice of Appeal [Ag.]

On written submissions

Mr. Robert Nader of Forbes Hare for the Appellant
Mr. Robert Christie of Ogier on behalf of the Respondent

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2014: September 3.

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Interlocutory appeal – Summary judgment – Member's resolutions passed by appellant to remove respondent as director of BVI companies – Whether valid – Director's resolutions subsequently passed by respondent to remove appellant as director of same BVI Companies – Whether valid – Whether learned judge erred in granting respondent summary judgment – Exercise of powers of directors by shareholders in circumstances where no or no effective board of directors exists

In 2012, six companies[1] incorporated and carrying on business as mutual funds under the laws of the British Virgin Islands ("the BVI Funds") were experiencing financial and operational problems. The appellant, who, at the time, was in control of the BVI Funds, sought the assistance of the respondent, which specialises in working with distressed funds. In order to facilitate the process, the boards of directors of all the BVI Funds were

[1] The 4th-9th defendants in the proceedings in the court below.

reorganised so that the respondent was one of the two directors of each of the companies. The appellant was the other director on each of the boards of the BVI Funds.

The relationship between the two parties deteriorated and in June 2013, two significant events occurred: (1) on 12th June 2013, the sole voting member of each of the BVI Funds, a company called Richcourt Capital Management Inc. ("RCM"), purportedly passed resolutions removing the respondent as a director of the BVI Funds ("the June 12 Member's Resolutions"); and (2) the following day, the respondent purportedly passed resolutions of each of the boards of the BVI Funds, removing the appellant as a director of the BVI Funds ("the June 13 Director's Resolutions"). The appellant is an indirect owner of, and controls RCM, since RCM's sole shareholder, Richcourt Holding Inc. ("RHI"), is a company that is controlled by the appellant.

On 31st July 2013 the respondent commenced proceedings seeking declarations that it was the sole director of the BVI Funds and the only person entitled to act as or hold itself out as their director, as well as injunctions restraining the appellant from acting or holding himself out as a director of the BVI Funds or dealing with their assets. The appellant filed a defence opposing the relief sought by the respondent and a counterclaim seeking similar relief to that sought by the respondent. On 18th November 2013 the respondent applied for summary judgment, seeking the relief set out in its July 2013 claim. The learned judge found in favour of the respondent, holding that the June 12 Member's Resolutions passed by RCM were invalid and ineffective in removing the respondent as a director of the BVI Funds since RHI had no authority to execute them on RCM's behalf. He found that the fact that RHI was the sole owner of RCM did not make it RCM's agent or give it authority to execute documents on its behalf. There was no evidence that RHI had actual authority to execute the resolutions on RCM's behalf and there was no suggestion that such evidence might become available at trial. The learned judge further held that the June 13 Director's Resolutions passed by the respondent were valid and removed the appellant as a director of the BVI funds. The appellant appealed to this Court.

Held: allowing the appeal and, subject to paragraph 2 of the order set out at paragraph 32 of this judgment, setting aside the learned judge's order, that:

The appellant has a reasonable prospect of defending the validity of the June 12 Member's Resolutions. RCM, as the owner of the voting shares in the BVI Funds, had the power under its articles to remove a director of its subsidiaries. Since RCM did not have a director in June 2013 and could not vote its shares in the BVI Funds, RHI, as RCM's sole shareholder, was entitled to exercise RCM's right to remove directors of the mutual funds. RHI was not relying on any authority conferred on it by RCM or otherwise but rather, was simply exercising its right as the voting shareholder of RCM to do something that RCM had the power to do but itself could not do. The learned judge erred by treating the validity of the resolutions signed by RHI as being based entirely on issues of agency and authority, and finding that RHI's ownership of RCM did not make it RCM's agent nor give it authority to execute the resolutions on RCM's behalf.

Barron v Potter [2001] 1 All ER 91 applied.

JUDGMENT

[1] WEBSTER JA [AG.]: The appellant and the respondent were at all material times the only two directors of certain BVI companies. This appeal concerns an attempt by the appellant to remove the respondent as a director of the companies, and a counter-attempt by the respondent to remove the appellant as a director of the same companies. The dispute ended up before the Commercial Court. On 10th February 2014, Bannister J made an order on a summary judgment application by the respondent confirming the removal of the appellant from the boards of the companies, declaring the respondent as the sole director of the companies, and granting injunctive relief against the appellant. This is an interlocutory appeal against that order.

Parties

[2] The parties involved in these proceedings are:

(i) The 4th to 9th defendants in the court below are companies incorporated and carrying on business as mutual funds under the laws of the British Virgin Islands (together "the BVI Funds").

(ii) The second defendant in the court below, Leveraged Hawk, Inc., a Delaware corporation. This company plays no part in this appeal.

(iii) The respondent, Solon Group, Inc. ("Solon"), a New York corporation which was appointed to boards of the BVI Funds on 3rd April 2013.

(iv) The 1st defendant in the court below, Mr. Gerti Muho ("Mr. Muho"), a former director of all of the BVI Funds except the 7th defendant, Richcourt Allweather B Inc. ("Allweather B.").

(v) The appellant, Alphonse Fletcher, Jr. ("Mr. Fletcher"), who was at all material times a director of the BVI Funds. He was the 3rd defendant in the court below.

(vi) Ms. Deborah Hicks Midanek ("Ms. Midanek") who is the sole owner and sole director of Solon.

(vii) Richcourt Capital Management Inc. ("RCM") which is and was at the material times the investment manager of the Funds. Mr. Fletcher is an indirect owner of and controls RCM.

(viii) Richcourt Holding Inc. ("RHI") and RPGP Limited ("RPGP"), companies controlled by Mr. Fletcher. RHI is the sole shareholder of RCM and RPGP is the sole shareholder of RHI.

(ix) Stewart Turner ("Mr. Turner"), a former director of RCM and other companies in the Richcourt Funds group of funds.

Background

[3] The BVI Funds and other companies under the Richcourt umbrella doing business as funds under the laws of the Cayman Islands are together part of a group of funds known as the Richcourt Funds. By the end of 2012 the BVI Funds were experiencing financial and operational problems. In February 2013 Mr. Fletcher, who was then in control of the BVI Funds, approached Ms. Midanek with a view to engaging Solon to serve as an independent director of the BVI Funds as a part of a rescue plan for the funds. Solon specialises in working with distressed funds.

[4] The boards of the BVI Funds, except Allweather B, then consisted of Mr. Fletcher and Mr. Muho. In order to achieve the appointment of Solon as a director it was necessary to create a vacancy on the boards of each of the companies. To achieve this Mr. Muho resigned in April 2013 and Mr. Fletcher, as the remaining sole director, appointed Solon to fill the vacancies created by Mr. Muho's resignation. The position with regard to Allweather B was different. Mr. Turner was then the sole director. He appointed Solon and Mr. Fletcher as directors and then resigned. These resignations and appointments are not disputed.

[5] Unhappy differences developed between the new board members and there were two significant events in June 2013:

(a) On 12th June 2013 the sole voting member of each of the BVI Funds purported to pass resolutions removing Solon as a director of the BVI Funds ("the June 12 Member's Resolutions").

(b) On 13th June 2013 Solon purported to pass resolutions of each of the boards of the BVI Funds removing Mr. Fletcher as a director ("the June 13 Director's Resolutions").

[6] Following the passing of the purported resolutions Mr. Fletcher's position is that Solon was removed from the boards of the funds by resolutions of their respective sole voting member, RCM, and is no longer a director of the BVI Funds. Therefore, Solon did not have standing as a director to pass the June 13 Directors' Resolutions removing Mr. Fletcher as a director of the BVI Funds, nor to commence this claim. Solon's position is that the June 12 Member's Resolutions were a pre-emptive step by Mr. Fletcher to prevent his imminent removal as a director of the BVI Funds, and in any case they are invalid. Further, that Mr. Fletcher was removed from the boards of the BVI Funds by the June 13 Director's Resolutions and has not been a director since then.

[7] On 31st July 2013, Solon commenced these proceedings in the Commercial Court by fixed date claim form seeking declarations that it is the sole director of the BVI Funds and the only person entitled to act as or hold itself out as their director, and injunctions restraining Mr. Fletcher and the 1st and 2nd defendants from acting or holding themselves out as directors of the BVI Funds or dealing with their assets. Mr. Fletcher filed a defence opposing the relief sought by Solon and a counterclaim seeking similar relief to that sought by Solon.

[8] On 18th November 2013 Solon applied for summary judgment seeking the relief set out in the fixed date claim form. The summary judgment application was heard

by Bannister J, who delivered an oral judgment on 10th February 2014 in which he found that :

(a) the June 12 Member's Resolutions passed by RCM are invalid and ineffective in removing Solon as a director of the BVI Funds; and

(b) the June 13 Director's Resolutions passed by Solon are valid and removed Mr. Fletcher as a director of the BVI Funds.

Accordingly, he declared that:

(i) Solon is the only person entitled to be registered as a director of the BVI Funds and the only person entitled to act or hold itself out as a director of the funds; and

(ii) Mr. Fletcher is not a director of the BVI Funds nor presently entitled to be registered or to act as such.

The learned judge also granted the injunctions sought by Solon restraining Mr. Fletcher from acting or holding himself out as a director of the BVI Funds, instructing lawyers to act on behalf of the funds, dealing with the assets of the funds and interesting himself in the management of the funds. The learned judge produced a seven page note of his judgment giving reasons for his decision ("the Decision").

Issues

[9] The main issues on this appeal are:

(a) whether Solon was removed as a director of the BVI Funds by RCM by the June 12 Member's Resolutions; and

(b) if not, whether Mr. Fletcher was removed as a director of the BVI Funds by the June 13 Director's Resolutions.

The grounds of appeal are limited to these issues.

Test for summary judgment

[10] The test for summary judgment on a claimant's application is stated simply in Part 15.2 of the Civil Procedure Rules 2000 as being available to the claimant when 'the defendant has no real prospect of defending the claim… .' The learned judge reminded us at paragraph 7 of the Decision that these words have a plain and obvious meaning without the need for judicial embellishment. We agree and would only add the caution suggested by Judge LJ in Swain v Hillman and another[2] that to give summary judgment on paper without permitting the litigant to advance his case is a serious step.

The June 12 Member's Resolutions

[11] Fletcher's case is that on 12th June 2013 all the voting shares of each of the BVI Funds were owned by RCM. There was evidence to the contrary before the learned judge and he found that any attempt to resolve this issue on a summary judgment application would be wrong. He proceeded on the assumption that RCM was the sole voting shareholder of each of the Funds for the purpose of the summary judgment application. We will proceed on the same assumption.

[12] Mr. Fletcher wished to remove his fellow director, Solon, from the boards of the BVI Funds. The procedure for removing directors is set out in the articles of association of each of the Funds. To take one example, article 58 of the articles of the 5th defendant in the court below, Optima Absolute Return Fund Ltd. ("Optima"), provides:

> "The office of director shall be vacated if the director:
> (a) Is removed by a resolution of members"

In normal circumstances the directors of RCM would cause that company to vote its shares to pass the required shareholders' resolutions under the relevant article (article 58 in the case of Optima) to remove Solon from the boards of the BVI Funds. However, on the 12th June RCM did not have a board of directors that

[2] [2001] 1 All ER 91 at 96.

could cause the company to vote its shares and so could not pass the resolutions in the usual way. But the matter did not stop there. What actually happened is that RHI, which is controlled by Mr. Fletcher and is the sole shareholder of RCM, purported to exercise the power that the directors of RCM could have exercised and caused RCM to pass resolutions of each of the Funds removing Solon as a director. This would only have been possible if the principle in Barron v Potter[3] were to apply to this case. The principle allows the shareholders of a company to exercise the powers that the directors could exercise but cannot because there is no or no effective board. More will be said about Barron v Potter below.

[13] The resolutions are written resolutions in identical form for each fund. In addition to removing Solon as a director they purported to appoint George Ladner in its place. It is important to examine the form of the resolutions. They are entitled 'Written Resolutions of the Sole Voting Member of [name of fund]'. As stated above, the sole voting shareholder, RCM, did not have a director and so its sole voting member, RHI, passed the resolutions to do what RCM, its subsidiary, was entitled to do – remove a director of the funds. The signing format is:

> *"By: Richcourt Holding Inc.*
>
> *for and on behalf of Richcourt Capital Management Inc.*
>
> *By: _____* *By: ___*
> *_____ Alphonse Fletcher Jr.* *George Ladner*
> *On behalf RPGP Limited* *Title: Director*
> *Title: Director* *Date: 12 June 2013"*
> *Date: 12 June 2013*

It is apparent that RHI signed the resolutions by its director, RPGP Limited. The register of directors of RHI is exhibited to the affidavit of Marianne Rajic, a partner in Walkers, BVI lawyers for the BVI Funds.[4] It shows that RPGP was appointed as a director of RHI on 23rd September 2009 and is still a director. We are satisfied that the words "Title: Director" at the end of each resolution refer to RPGP, the entity signing the resolutions as the director of RHI. RHI in turn passed the

[3] [1914] 1 Ch 895.
[4] Record of Appeal Volume 4, tab 18, p. 40.

resolutions on behalf of RCM which had no directors in place to pass its own resolutions voting its shares in the BVI Funds.

[14] Mr. George Ladner is the incoming director of the BVI Funds proposed by RCM in the resolutions. His signature on the resolutions is superfluous except perhaps to show that he consented to being appointed. It does not affect the validity of the resolutions.

[15] The learned judge dealt with these resolutions at paragraphs 19-22 of the Decision and it is helpful to set out his findings:

> "[19] In support of his case that Solon was removed as director of each of the Companies by resolutions of their sole member on 12 June 2013 Mr Fletcher relies upon a series of purported written resolutions of RCM. They are identical in terms. Each describes itself as a written resolution of the sole member of the relevant one of the Companies and purports to resolve (among other things) that Solon be removed from its board forthwith. At the end of the text of each resolution is a statement that the document is 'by Richcourt Holding Inc. ('RHI') for and on behalf of [RCM]' and beneath that is the signature of Mr Fletcher 'on behalf of RPGP Limited, followed by the words 'Title: Director.' It is common ground that RHI owns the entire issued share capital of RCM and that the initials RPGP refer to RHI's parent.
>
> "[20] In his evidence, Mr Fletcher says that the resolutions were executed by 'RHI' in circumstances where RCM was without directors.
>
> "[21] In my judgment, the so-called written resolutions are invalid for the short reason that RHI had no authority to execute them, assuming that it can be said to have executed them at all, on RCM's behalf. The fact that RHI was the sole owner of RCM did not make it RCM's agent or give it authority to execute documents on its behalf. There is no evidence that RHI had actual authority to execute the resolution on behalf of RCM and there was no suggestion that such evidence might become available at trial.
>
> "[22] For these reasons the purported resolutions of 12 June 2013 were invalid and of no effect. The contrary is not arguable. It follows, in my judgment, that Mr. Fletcher has no prospect of establishing at trial that Solon was removed as director of any of the Companies on 12 June 2013."

[16] Counsel for Mr. Fletcher, Mr. Robert Nader, took issue with the judge's finding that RHI did not have authority to sign the resolutions and with his reason for so finding. His position is that Mr. Fletcher's case is not based on RHI having authority, actual or otherwise, to sign the resolutions. His case in the court below and before this Court is that RCM is the sole voting shareholder of the Funds with the power to remove directors, but RCM itself did not have a director to vote its shares to remove Solon. However, the doctrine in Barron v Potter allows the sole shareholder of RCM (RHI) to exercise the power that a director of RCM could exercise to vote the shares of RCM in the BVI Funds to remove a director of the funds.[5]

[17] In Barron v Potter the company had a board of two directors who were not getting along and were not holding meetings. The articles of the company vested the power to appoint additional directors in the directors which could not happen because of the impasse between the two directors. The company broke the impasse by holding a general meeting and passing a members' resolution appointing additional directors. The resolution was upheld by Warrington J who stated at page 903:

> "If directors having certain powers are unable or unwilling to exercise them – are in fact a non-existent body for the purpose – there must be some power in the company to do itself that which under other circumstances would be otherwise done. The directors in the present case being unwilling to appoint additional directors under the power conferred on them by the articles, in my opinion, the company in general meeting has power to make the appointment."

This principle, which as Warrington J observed is founded on plain common sense,[6] is not based on principles of agency and authority but on the position of a shareholder in a company that either does not have a board or a functioning board. The shareholders, *qua* shareholders, are exercising a right which the common law gives to them to break a deadlock in a company's board of directors and deal with the company's business directly. The

[5] See para. 8 of the appellant's submissions.
[6] At p. 903.

principle in Barron v Potter has been approved and followed in several cases including Foster v Foster[7] and Euro Brokers Holdings Ltd v Monecor (London) Ltd.[8]

[18] In this case RCM, as the owner of the voting shares in the BVI Funds, has the power under its articles to remove a director of its subsidiaries. RCM did not have a director in June 2013 and could not vote its shares in the BVI Funds. Under the principle in Barron v Potter, RHI, as the sole shareholder of RCM, is entitled to exercise RCM's right to remove directors of the Funds. It did this by passing the RCM resolutions on 12th June 2013 as the shareholder of RCM. RHI was not relying on any authority conferred on it by RCM or otherwise. It was simply exercising its right as the voting shareholder of RCM to do something that RCM itself could not do.

[19] In the circumstances the learned judge erred by treating the validity of the resolutions signed by RHI as being based entirely on issues of agency and authority,[9] and finding that RHI's ownership of RCM did not make it RCM's agent nor give it authority to execute the resolutions on RCM's behalf. The learned judge should have dealt with the principle in Barron v Potter insofar as it may, or may not, apply to the facts of this case.

[20] Counsel for Solon, Mr. Robert Christie, referred to the fact that the issue of RCM not having a director was contested, and that this may be another reason for impugning the resolutions removing Solon. Briefly, the evidence is that on 11th June 2012 Mr. Turner signed a letter resigning his position as a director of RCM and all the other companies in the Richcourt Funds group of companies of which he was a director or officer ("the multi-company resignation"). Delivery of the multi-company resignation to the companies from which he was resigning was necessary to make it effective. The learned judge found in respect of Allweather B, another company in the group of companies, that delivery is an issue that Mr.

[7] [1916] 1 Ch 532 at 551 per Peterson J.
[8] [2003] EWCA Civ 105 at para. 61 per Mummery LJ.
[9] See passages from the Decision cited at para. 15 above.

Fletcher will have to prove at the trial. In other words, he would not resolve the issue of delivery of the multi-company resignation to Allweather B on the summary judgment application. The same must be true for Mr. Turner's resignation from RCM which is specifically mentioned in the multi-company resignation. There should be no finding at this stage that Mr. Fletcher does not have a real prospect of proving that Mr. Turner resigned as a director of RCM, and that RCM did not have a director when the June 12 Member's Resolutions were passed. This is a complete answer, on a summary judgment application, to Mr. Christie's submission that Mr. Turner's resignation was not effective and that he continued to be a director of RCM. Whether or not he continued to be a director of RCM is an issue that should not be resolved on a summary judgment application.

[21] In all the circumstances it is difficult to say that Mr. Fletcher does not have a reasonable prospect of defending the validity of the June 12 Member's Resolutions. The learned judge should have analysed the Barron v Potter principle to see if it applies to the facts of this case, rather than relying entirely on the issues of agency and lack of authority. The other issues surrounding the validity of the resolution, such as whether or not RCM had a director when the resolutions were passed, should also be investigated and resolved at the trial.

The June 13 Director's Resolutions

[22] The articles of association of the BVI Funds contain the following provision regarding the removal of directors by resolution of the directors:

> "The office of director shall be vacated if the director:
> (a) ...
> (b) is removed from office for cause by a resolution of the remaining directors;
> … "

[23] Each of the articles of association of the BVI Funds, with the exception of the 4th defendant, contains the following definition of a resolution of directors:

> "(a) a resolution approved at a duly convened and constituted meeting of directors of the Company … by the affirmative vote of a simple majority of the directors present at the meeting who voted and did not abstain; or

(b) resolution consented to in writing by all directors ..."

[24] The articles of the 4th defendant do not contain a definition of a directors' resolution but Article 76 contains the same procedure for passing a written resolution of the directors, namely, it must be approved in writing by all the directors.

[25] The June 13 Director's Resolutions are *ex facie* a written resolution signed by Ms. Midanek on behalf of Solon, the director which is purporting to remove its fellow director, Mr. Fletcher. Mr. Nader contends that the resolution is invalid on two grounds, namely:

(a) a written resolution has to be signed by all the directors, and since the resolution was not signed by Mr. Fletcher it does comply with the requirements of the articles; and

(b) the resolution must be consented to in writing by two or more directors because the article requires a written resolution to be consented to in writing "by all the directors".

[26] The learned judge dealt with these two points in paragraph 26 of the Decision as follows:

> "[26] In my judgment there is nothing in these points. As Mr. Christie pointed out, what is required is not a resolution of directors, but a resolution of 'the remaining directors,' i.e. those directors other than the director whom it is intended to remove. So that the definition in the Articles of Association of a resolution of directors is inapplicable to a resolution which is *ex hypothesi* a resolution of part only of the board. I accept that submission. Secondly, the Articles of Association themselves provide that, where the context admits (or unless it otherwise requires), the singular includes the plural and *vice versa.* In my judgment, in the context of a two person board, context admits (and does not otherwise require) reading the word 'directors' as including the word 'director'. Otherwise, the validity of the provision is made to turn upon whether, in any given circumstances, the company's board consists of more than two members. Generally accepted rules of construction require documents to be construed, if possible, to give them validity rather than in a way which deprives them of sense in a context for which the document itself makes provision, that is to say, a board consisting of only two members."

[27] We agree with these findings. The remaining directors, or the remaining single director in a two member board as in the case of the BVI Funds, can pass a written resolution removing a fellow director for cause. If it was the intention of the draftsman that in a two person board one director could not remove the other director by written resolution he could have made provision for this in the removal article. For example, and by way of analogy, in the articles of the BVI Funds dealing with proceedings of directors, the quorum requirement is set out as follows:

> "The quorum for a meeting of directors shall be one-third of the total number of directors unless there are only two directors, in which case the quorum shall be two (2)."

The draftsman could have made a similar exception in respect of the article dealing with the removal of directors for cause by the remaining directors by stipulating that if there are only two directors, one of them cannot remove the other by written resolution.

[28] We would only add that if Mr. Nader is correct, the directors of the BVI Funds, regardless of their numbers, could not remove a director for cause by written resolution because it is unlikely that they would get the consent of the director being removed. That could not have been the intention of the draftsman.

[29] Finally on this issue, the June 13 Director's Resolutions set out the reasons for removing Mr. Fletcher as a director of the BVI Funds. In his skeleton argument in the court below Mr. Nader stated that: 'The question of whether or not Fletcher was properly removed for cause is very substantially a matter of contested fact that cannot possibly be determined at this stage.' The learned judge obviously took a different view and found at paragraph 24 of the Decision that:

> "Clause 1.1(a) of each resolution set [sic] out the grounds relied upon for removing Mr. Fletcher from office. I do not need to set them out. It is sufficient to say that, unless put forward *mala fide*, they could not be challenged as valid reasons for removing a director from office"

And further, at paragraph 27:

> "Mr. Fletcher has no prospect, in my judgment, of showing at trial that these resolutions were made maliciously and not *bona fide* in the interests of the relevant company. They cannot be shown to have been passed irrationally. In the absence of either *mala fides* (including deliberate abuse of power) or irrationality, the Court does not concern itself with the soundness of resolutions passed by commercial men in the exercise of powers conferred upon them by their principals."

Mr. Fletcher did not appeal against these findings and no mention was made of them in his written submissions before this court. They are therefore binding on him.

[30] To conclude on this issue we find that Mr. Fletcher has no real prospect of showing at trial that the June 13 Director's Resolutions would not have been effective in removing him as a director of the Funds. However, the entry of summary judgment will have to await the outcome of the trial on the validity and effectiveness of the June 12 Member's Resolutions.

Conclusion

[31] Mr. Fletcher has a reasonable prospect of defending the validity of the June 12 Member's Resolutions and this part of the claim should proceed to case management. If he succeeds on this issue at trial and the validity of the June 12 Member's Resolutions is upheld, he will be entitled to final judgment on all the issues because the finding would mean that Solon was not a director of the BVI Funds when the June 13 Director's Resolutions were passed and it did not have standing to initiate these proceedings.

Orders

[32] It is hereby ordered and declared as follows:

(1) The appeal is allowed and, subject to paragraph 2 below, the order made on 10th February 2014 is set aside.

(2) The injunctions set out in paragraph 1 of the Order shall remain in place for 21 days with liberty to the respondent to apply to the court below on notice to the appellant to continue them.

(3) The costs of the application in the court below are in the cause and the appellant will have his costs of the appeal.

(4) The further prosecution of the claim limited to the issues relating to the June 12 Member's Resolutions be listed for case management within 28 days.

Paul Webster, QC
Justice of Appeal [Ag.]

I concur.

Janice M. Pereira
Chief Justice

I concur.

Gertel Thom
Justice of Appeal [Ag.]