



Ruling Supports Validity of Shares Issued in BVI Companies

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In *Comodo Holdings Limited v Renaissance Ventures Limited*, the BVI Commercial Court has emphasised the value of *prima facie* valid share certificates in the face of opportunistic challenges by those controlling the Company.

Summary

This was a case in which shares in a BVI company, Comodo Holdings Limited (“the Company”), were issued in 1999 with a further share issue in 2000, to Renaissance Ventures Limited (“Renaissance”). Renaissance’s principal passed away in 2006 leaving very few records, apart from the share certificate, to show that the shares were paid for. In 2012 to 2013 the Company launched an opportunistic attempt to cancel Renaissance’s shares, stating that it had not paid for its shares, challenging Renaissance to prove that it had paid for them, and unilaterally removing Renaissance from the register.

The BVI Commercial Court has given Summary Judgment for Renaissance and ordered rectification of the register, ruling that where there was no direct evidence either for or against the proposition that the shares were paid for, and where the share certificate stated that the shares were issued fully paid, it would presume that Renaissance had paid for its shares.

The Issues

The share certificate (“the Certificate”), which consolidated the two different share issues, was impressed with the Company’s seal, signed by its (still current) director and secretary, and certified that Renaissance was the registered holder of the shares, fully paid.

The Company’s basic contention was that Renaissance had not paid for the shares, and because under the International Business Companies Act 1984 (“IBC”) shares could not be issued until the consideration had been fully paid, the share issues were invalid.

The 1999 Share Issue

The Company's own evidence showed that in relation to the 1999 share issue, Renaissance had made the payments required under a subscription agreement. The Company sought to argue that Renaissance had received the money used for those payments from third parties (which was not disputed), and the money was intended by the third parties to be for the direct purchase of shares in the Company for those third parties (which was disputed). The Company asserted that the money was therefore impressed with a Quistclose trust which entitled to Company to treat the money as having been paid on behalf of the third parties, such that no money had been paid by Renaissance.

The 2000 Share Issue

This share issue was evidenced by a resolution allotting additional shares in equal amounts to all three of the then shareholders of the Company. The resolution did not expressly provide for any consideration to be paid. The secretary of the Company was instructed by the resolution to reflect these dispositions in the Company's register of members. The consolidated Certificate was issued on the same day.

The Company adduced no evidence whatsoever about the circumstances in which the shares were issued. The Company asserted that as there was no evidence of payment for the shares, the inference must be that they had been invalidly issued without consideration.

The Decision

The Court found:

- First, that a share certificate is a document issued by a company informing all the world that the holder is the registered holder of the stated shares. A person relying upon such a document as against the company which issued it does not have to plead the arrangements under which the entitlement acknowledged by the certificate came into existence. It is prima facie entitled to be registered as, and for all purposes treated as, the owner of the shares comprised in the certificate. It follows that it is for the Company to prove the existence of circumstances impugning the issue of the certificate.
- Second, in relation to the 1999 share issue, that the IBA made clear that shares could be issued in return for a promise to pay in the future. Such a promise, when accepted by the company, constituted payment (or part payment) for the shares (subject to any later attempt to forfeit for non-payment). It did not matter, therefore, whether or not the money had been paid by Renaissance, as there had never been an attempt to forfeit.
- Third, that in any case, even assuming that the Company's allegations relating to the use of

third parties' funds were true, any such resulting trust would be in favour of the third party and this would only give rise to legal rights vested in the third party. The Company received the money from Renaissance in good faith and for value, and is immune from any claim by a third party; as between the Company and Renaissance, the Company clearly appropriated the money to the obligations of Renaissance under the subscription agreement.

- Fourth, that as to the 2000 share issue, it is to be inferred, in the absence of any evidence to the contrary, that what should have been done was done. The Judge speculated as to the form in which payment might have been made, but ultimately he found that the Company was receiving expert professional advice and it was inconceivable (in circumstances where the Company had adduced no evidence that the shares were invalidly issued) that the Company would have any prospect of proving at trial that the shares were not paid for. In the absence of any such evidence, the presumption must be that they were fully paid.

The prospect of the defence succeeding was therefore fanciful.

Conclusion

The company statutory regime in the BVI is based on the premise that the register of members is definitive as to who are the members of a company. This decision, however, makes clear that that premise does not mean a shareholder who holds a valid share certificate can be excluded from the register of members and must then provide proof that the original transaction (in many cases long past) under which he obtained the share certificate was a valid one. The share certificate raises a presumption that the holder has title to the shares; the company must rebut that presumption, or register the holder of the certificate as a member.

This decision is being appealed to the Eastern Caribbean Court of Appeal.

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