

BERMUDA COURT OF APPEAL

IN THE MATTER OF THE COMPANIES ACT 1981, AND IN THE MATTER OF N-REN INTERNATIONAL LTD, BETWEEN ADRIA AKTIENGESCELLSCHAFT (A.K.A. ADRIA AG) -V- GOVERNMENT OF THE REPUBLIC OF SUDAN AND SUDAN-REN CHEMICALS & FERTILIZERS LIMITED

[2018] CA (Bda) 16 Civ (22 June 2018)

This is an appeal to the Court of Appeal from a [ruling made by Hellman J on 25 January 2018](#) in which he refused an application made by Adria on an *ex parte* basis, seeking an order under section 240(4) of the *Companies Act 1981* (the 1981 Act) read in conjunction with section 263, for the vesting in Adria of property owned by a Bermuda company N-ReN International Ltd before N-ReN's dissolution.

Upon dissolution, the property along with N-ReN's other assets had become *bona vacantia* and accordingly had passed to the Crown. At Adria's request, the Crown formally disclaimed all of its rights, title and interest in such property.

Background

The Court of Appeal considered that the application before Hellman J was made on an *ex parte* basis despite the fact that the interests of the Interested Parties were clearly likely to be affected, and affected adversely, if Hellman J were to make the order which Adria was seeking.

Hellman J identified the problem which had led to the application being made before him, which arose following the commencement of ICC arbitration proceedings by Adria against the Interested Parties, in which Adria sought to enforce its purported rights in relation to the Property.

N-ReN had been struck off the Bermuda Register of Companies on 30 September 1994. Upon publication of the notice of such striking off, N-ReN was dissolved by operation of law. Section 262 of the 1981 Act provides that "all property and rights whatsoever vested in or held on trust for the company

COMPANIES ACT 1981 – APPLICATION UNDER SECTION 240 FOR ORDER VESTING PROPERTY WHICH HAD PASSED TO CROWN AS BONA VACANTIA IN THE APPLICANT – THE TEST FOR THE REQUISITE INTEREST - WHETHER APPLICANT HAD A PROPRIETARY INTEREST IN THE DISCLAIMED PROPERTY – WHETHER PROPRIETARY INTEREST ESTABLISHED SUFFICIENTLY FOR THE JURISDICTION TO BE EXERCISED

immediately before its dissolution... shall be deemed to be *bona vacantia* and shall accordingly belong to the Crown."

It followed that the subsequent Deed of Transfer (dated 24 February 1995) and the Share Transfer Contract (dated 19 August 1995) were ineffective to transfer the Property of N-ReN to Adria, and Adria had no standing to seek relief in relation to the Property.

Hellman J then set out circumstances under which a Bermuda company, following dissolution, can be restored to the Register. However, none of these availed Adria due to time limits having passed: more than five years had passed since the dissolution of N-ReN and more than 20 years has passed since the publication of the notice of dissolution in an appointed newspaper.

Adria made an application for an order pursuant to section 240 of the 1981 Act that the property be vested in it as 'disclaimed' property'. There is no time limit for an application under this section, but the applicant must be both a person who claims an interest in the disclaimed property, and a person who is entitled to that property.

Hellman J concluded that the court had jurisdiction to make a vesting order in favour of Adria, provided that Adria could establish that it had a proprietary interest in the property. However, the learned judge was not persuaded that Adria did have a proprietary interest in the property and dismissed Adria's application.

Judgment on Appeal

The Court of Appeal concluded that Hellman J was correct to rule as he did and to reject the contention that Adria had a proprietary interest sufficient to justify the making of a vesting order under section 240(4) of the 1981 Act. Adria's appeal was dismissed.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.