Neutral Citation Number: [2021] EWHC EWHC 359 (Ch)

Case No: CR-2021-001322

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF CHARLES STANLEY GROUP PLC
AND IN THE MATTER OF SCHEDULE 4 OF THE SMALL BUSINESS ENTERPRISE AND EMPLOYMENT ACT 2015

Rolls Building
London
EC4A 1NL

Date: 20/08/2021

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

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CHARLES STANLEY GROUP PLC **Claimant**

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Stephen Horan (instructed by **Norton Rose Fulbright LLP**) for the **Claimant**

Hearing dates: 20 August 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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CHIEF INSOLVENCY AND COMPANIES COURT JUDGE

Chief ICC Judge Briggs:

Introduction

1. It has long been the law that a company may, if authorised by its articles, issue share warrants where the shares are fully paid up. Section 779 of the Companies Act 2006 adopted the same language as that used in section 122 of the Companies Act 1985. However, the provision was amended by section 84(1) of the Small Business Enterprise and Employment Act 2015 (the "Act") to prohibit the issue of new share warrants. This case concerns the effect on share warrants that existed at the time of the introduction of schedule 4 to the Act.

2. Before the introduction of the Act, once issued the bearer of the share warrant was a shareholder but not a member of the company as the bearer's name was not entered on the register. The name of the shareholder was "struck-out" of the register of members. The register recorded the fact of the issue of the warrant; a statement of shares included in the warrant and the date of the issue. If the bearer surrendered the warrant his name could again be entered as a member.

3. The Court of Appeal recently reminded us that holders of shares have property rights. In *BTI 2014 LLC v Sequana S.A.* [2019] EWCA Civ 112 David Richards LJ explained: "rights are conferred on shareholders as regards dividends by the terms of issue of the shares or by the articles, and it is pursuant to those rights that shareholders receive dividends. Those rights are attached to the shares for which consideration was provided by the original holders. Dividends are both commercially and legally a return on the investment". The process of collecting a dividend as a holder of a share warrant was slightly nuanced in that when a dividend had been declared, the company would normally advertise the number of the coupon, which would need to be presented by the bearer to the company in order for the dividend to be paid to the bearer. Other than the commercial return a holder of share would usually have the right to vote. The bearer of the share warrant could similarly exercise voting rights by depositing the warrant with the company before a general meeting and receiving a certificate or voting form in his name.

4. This case concerns 84,988 fully paid-up bearer shares of 25p each issued by Charles Stanley Group Plc (the "Company") in or around 1929. The bearer shares remain unregistered in any holder's name. In context, the bearer shares represent only 0.16% of the Company's issued share capital of 52,120,285 ordinary shares.

5. By a Part 8 Claim Form dated 17 August 2021 the Company seeks a suspended cancellation order ("SCO") pursuant to Schedule 4 to the Act.

Background

6. Sir David Howard is the non-executive chairman of the company. In supporting evidence he explains that the company was incorporated in England and Wales and listed on the London Stock Exchange. He describes the Company as one of the UK's leading wealth management firms, providing investment portfolios and financial advice to individuals, charities, institutions and professional advisers.

7. The Company has a rich history as described by the non-executive chairman:

"The Company was incorporated on 16 July 1896 as The Oceana Consolidated Company Ltd (Oceana) and its shares were admitted to the London Stock Exchange in parallel, where they have remained listed ever since. The Company was established to acquire a number of newly formed mining businesses in southern Africa following the discovery of gold deposits in that region. There was an initial subscription for shares in the Company in London, New York, Paris, Cape Town, and later Johannesburg. In 1909 and again in 1915, the court records show a significant reduction in the Company's capital, to reflect a loss of assets. The directors sought other business opportunities, including securing a contract with a local chief to mine in West Africa. These all eventually proved fruitless.

The founders of the Company ultimately failed to find the gold and diamonds they were searching for and for many years Oceana was a listed "shell" company, that is to say, with little or no business of its own. I assume that Oceana was still generating an income as late as 1928 as it paid a dividend that year. However, it seems that, apart from some apparently worthless mining concessions, Oceana had little or nothing left in the way of assets following the Great Crash in 1929. No further dividends were paid until the post-1960 restoration of its fortunes.

Between 1909 and 1960, the Company underwent a series of capital reductions and share reconstruction schemes in an attempt to place the business on a better footing and/or to revive it. In 1959, my late father, Edward Howard, purchased the Company as a quoted shell and reversed his principal investment into the Company. This was a large part of his holding in a small quoted pharmaceutical company called Eucryl Ltd, of which he was the Chairman and the principal shareholder. The Company was operated as a listed investment company for some 29 years.

In 1960, following the Company's acquisition by Edward Howard, the Company underwent a further reduction in share capital, In consequence of the major capital reduction in 1960 new share certificates were issued to all registered shareholders, and all existing share certificates were declared invalid. Subsequently, there have been a number of capitalisations, taking the share capital back some of the way to where it started.

In time Eucryl Ltd became part of the major listed manufacturing company London International Group PLC (LIG) and the holding in LIG remained almost the sole asset of the Company until the mid-1980s. By this time, my father and I (also as a director of LIG) had severed our connections with LIG and the Company sold its holding of LIG shares. (LIG is now part of the Reckitt Benckiser group.)

> In 1988/89, following the lifting of restrictions on external ownership of stockbroking firms, the Company sold its stock market investments and acquired the old-established stockbroking partnership of Charles Stanley & Co, which my family controlled and of which I was the Managing Partner. The partnership was re-structured to allow its acquisition by a listed company, becoming a wholly owned subsidiary to be called Charles Stanley & Co Ltd. The Company retained some minor subsidiaries such as a small investment-holding company, but almost the whole of its business now was the ownership of Charles Stanley & Co Ltd. On 16 July 1996 (the 100th anniversary of incorporation) the Company changed its name from The Oceana Company PLC to Charles Stanley Group PLC".
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> Bringing the matter up to date the board of the company made an announcement on 29 July 2021. The announcement was that a company known as Raymond James Financial, Inc, a U.S. company with headquarters located in St Petersburg, Florida ("RJF"), had reached terms for a recommended acquisition by Raymond James UK Wealth Management Holdings Limited (a wholly owned subsidiary of RJF) of the entire issued and to be issued share capital of the Company.
>
> RJF is an investment bank and financial services company, providing financial services to individuals, corporations, and municipalities through its subsidiary companies that engage primarily in investment and financial planning, in addition to capital markets, banking and asset management services."

8. The preferred method of acquisition is by way of a court sanctioned scheme of arrangement. At some point, the evidence does not disclose when, the board discovered that the bearer shares had not been cancelled under the procedures in the Act. After some investigation the board reached the conclusion that there was a real possibility of insufficient warrant holders "turning up and seeking conversion to registered shares". Mr Horan, counsel for the claimant, has calculated that a minimum of 1600 Share Warrants would need to be surrendered for the holder to have any entitlement to be entered in the Company's share register in respect of any bearer shares.

9. It is with that background in mind that the Company seeks relief under the Act to deal with the bearer shares.

Relief under the Act

10. The introduction explaining the remit of the Act states:

> "An Act to make provision about improved access to finance for businesses and individuals; to make provision about regulatory provisions relating to business and certain voluntary and community bodies; to make provision about the exercise of procurement functions by certain public authorities; to make

> provision for the creation of a Pubs Code and Adjudicator for the regulation of dealings by pub-owning businesses with their tied pub tenants; to make provision about the regulation of the provision of childcare; to make provision about information relating to the evaluation of education; to make provision about the regulation of companies; to make provision about company filing requirements; to make provision about the disqualification from appointments relating to companies; to make provision about insolvency; to make provision about the law relating to employment; and for connected purposes."

11. It can be observed at once that the Act has a wide-ranging effect on most companies. The explanatory note states (where relevant):

> "64. At the G8 summit… in June 2013 the UK, alongside the rest of the G8, committed to a number of measures to enhance corporate transparency in order to tackle the misuse of companies. The Government published a discussion paper on these proposals in July 2013, and published the Government response to the views received on the discussion paper in April 2014. The measures included in …the Bill are intended to deliver these G8 commitments. These include the commitment to introduce a register of individuals who exercise significant control over a company; the removal and prohibition of the use of bearer shares; the prohibition of corporate directors, except in certain circumstances and measures to deter opaque arrangements involving directors and make individuals controlling directors more accountable." (my emphasis)

12. Schedule 4 to the Act concerns the aim to remove the use of bearer shares. Paragraphs 1, 2 and 3 are important as they provide the commencement and completion dates and consequences for failing to comply within the statutory timeframe:

> "1 (1) This paragraph applies in relation to a company which has issued a share warrant which has not been surrendered for cancellation before the day on which section 84 comes into force (the "commencement date").
>
> (2)During the period of 9 months beginning with the commencement date (the "surrender period") the bearer of the share warrant has a right of surrender in relation to the warrant.
>
> (3)For the purposes of this Schedule, if the bearer of a share warrant has a right of surrender in relation to the warrant, the bearer is entitled on surrendering the warrant for cancellation—
>
> (a)to have the bearer's name entered as a member in the register of members of the company concerned or…"

13. Paragraph 2 states:

> "(1) A company must, as soon as reasonably practicable and in any event before the end of the period of 1 month beginning with the commencement date, give notice to the bearer of a share warrant issued by the company of—
>
> (a)the bearer's right of surrender,
>
> (b)the consequences of not exercising that right before the end of the period of 7 months beginning with the commencement date (see paragraph 3),
>
> (c)the fact that the right will cease to be exercisable at the end of the surrender period, and
>
> (d)the consequences of not exercising the right before the end of that period (see in particular paragraphs 5, 6 and 9 to 12).
>
> (2)If a company fails to comply with this paragraph an offence is committed by every officer of the company who is in default."

14. The purpose of these provisions was to provide a quick time frame enabling a fast and efficient removal of bearer shares and thereby increasing transparency. It achieved this purpose by notice, under para 2(1), requiring the company to explain the consequences under para 3 of not exercising that right within 7 months of the commencement date.

15. Paragraph 3 limited the rights attaching to the share warrants and related shares. This paragraph provides:

> "(1)This paragraph applies in relation to a share warrant of a company which has not been surrendered by the bearer for cancellation before the end of the period of 7 months beginning with the commencement date.
>
> (2)Any transfer of, or agreement to transfer, the share warrant made after the end of that period is void.
>
> (3)With effect from the end of that period, all rights which are attached to the shares specified in the warrant are suspended (including any voting rights and any right to receive a dividend or other distribution)".

16. As is apparent a purposive construction of these provisions when read together with the other relevant parts of Schedule 4, and on a plain reading of the language, any transfer, of a share warrant made after the end of the 7 month period (26 December 2015) is void, and all rights attaching to shares specified in the warrant are suspended. This will include rights to receive dividends and rights to vote. Any dividends or other distributions paid by the company in respect of the bearer shares are required to be paid into a separate bank account.

17. Paragraph 5 of the Schedule concerns cases where a company which has issued a share warrant which has not been surrendered for cancellation before the end of the surrender period:

> "(2)The company must, as soon as reasonably practicable and in any event before the end of the period of 3 months beginning with the day after the end of the surrender period, apply to the court for an order (referred to in this Schedule as a "cancellation order") cancelling with effect from the date of the order—
>
> (a)the share warrant, and
>
> (b)the shares specified in it.
>
> (3)The company must give notice to the bearer of the share warrant of the fact that an application has been made under this paragraph before the end of the period of 14 days beginning with the day on which it is made; and the notice must include a copy of the application. (my emphasis)

18. Where this procedure has been followed under paragraph 6 the court "must" make a cancellation order:

> "6 (1) the court must make a cancellation order in respect of a share warrant if, on an application under paragraph 5, it is satisfied that—
>
> (a)the company has given notice to the bearer of the share warrant as required by paragraphs 2 and 4, or
>
> (b)the bearer had actual notice by other means of the matters mentioned in paragraph 2(1).
>
> (2) If, on such an application, the court is not so satisfied, it must instead make a suspended cancellation order in respect of the share warrant".

19. Accordingly, the company must have given notice under paragraphs 2 and 4, unless the bearer had actual notice, to merit a paragraph 6(1) cancellation order and such a cancellation must be made if an application is made within 3 months beginning with the day after the end of the surrender period.

<u>Can the bearer shares be cancelled under the Act?</u>

20. I understand from Mr Horan that the fact that the Company made the present application to see whether it was compelled to seek to use the specific procedures mandated by Schedule 4 of the Act, notwithstanding the time periods specified in schedule 4. His argument is that the suspension of rights is not dependent on the notice under paragraph 2(1) having been given to bearers of share warrants. In circumstances where a company has provided a paragraph 2(1) notice and an application is made under paragraph 4 the Court is obliged by paragraph 6(1) to make a cancellation order.

21. If, it is argued, the Court is not satisfied that the company has given the relevant notices, paragraph 6(2) provides a safety net so that the purpose of Schedule 4 can be implemented by the mandatory language used in the paragraph: the court must make a suspended cancellation order. It follows, says Mr Horan, that the failure to give notice

under paragraph 2(1) or paragraph 4 (1) does not preclude the Court from making a suspended cancellation order under paragraph 6(2).

22. The arguments are well-made, but I reach the conclusion that the effect of the terms of schedule 4 to the Act is that the availability of its procedures expired in 2016. It is accepted by the Company that the share warrants had not been surrendered by 26 February 2016: before the end of the surrender period. It is equally accepted that a notice pursuant to paragraph 2(1) was not issued within one month of the commencement date, nor was notice given pursuant to paragraph 4(1) within 8 months of the commencement date. The consequence of a failure to surrender a share warrant by the bearer for cancellation before the end of the period of 7 months beginning with the commencement date is that any transfer of, or agreement to transfer, the share warrant made after the end of that period is void. This left the Company with share warrants at the end of the surrender period enabling it to use the safety net provided by paragraph 5 of Schedule 4 to the Act. The safety net was itself subject to a time limit as an application to the court for an order cancelling the share warrants had to be made within three months from the end of the surrender period (26 February 2016 to 27 May 2016). No such application was made.

23. On the late application Mr Horan argues that the three-month period "is better seen as promoting the need to be expeditious rather than preventing recourse to the purely ministerial functions of the Court in para 6". He argues: "the legislature envisioned a light, purely ministerial participation by the Court, akin to the role of a notary. If a company had given the notices required by paras 2(1) and 4(1), then the terms of para 6(1) compelled the Court to make a cancellation order". I reject these arguments. The court endorsement of a cancellation where the procedure has been properly and carefully followed does not affect the legislative imposed procedure that required compliance with set time limits. I do not accept that such time limits, specific as they are, can be so easily shaken loose from their moorings. I have been taken to Re Five Arrows Limited (CR-2016-003130), a decision of Registrar Derrett where she made a cancellation order under sch. 4 of the Act on 8 August 2016, and the application by Part 8 Claim Form was issued on 7 June 2016, after the period set out in para 5(2) for making the application had ended. The transcript does not provide reasoning for the order made. Nor does it disclose whether she was taken to the provisions of Schedule 4 in the manner or depth that I have been today. In the absence of any authority providing reasons to the contrary I find that it is too late for the Company to take advantage of the simple and efficient procedure provided by Schedule 4 to the Act.

24. The Company is not without remedy. It may seek to cancel the bearer shares through a conventional court-approved reduction under ss.641, 645-649 of the Act.

25. The claim is dismissed.