

## Law Report

## Duty on shareholders when voting at a class meeting

Chancery Division  
Published March 21, 2017  
In re Dee Valley Group plc  
Before Sir Geoffrey Vos, Chancellor  
[2017] EWHC 184 (Ch)  
Judgment February 8, 2017

Members of a company voting at a class meeting directed by the court had to exercise their power to vote for the purpose of benefiting the class as a whole and not merely individual members only.

Sir Geoffrey Vos, chancellor, so held when granting an application by the company, Dee Valley Group plc, for the court's sanction of a scheme of arrangement under section 899 of the Companies Act 2006 between the company and its members. The purpose of the scheme was to enable Severn Trent Water Ltd to acquire the entire issued voting ordinary share capital of the company at a price of 1,825 pence a share. Seven individual shareholders, Huw Cashmore, John Williams, Stuart Owen, George Owen, Stephen Jones, Angela Blower and Johanna Cooke opposed the scheme. A compelling bidder for the company, Arcacla Fortna Ltd, also opposed the scheme. The nominee company of an independent stockbroker firm, James Sharp (Rulegate Nominees) Ltd, supported the scheme.

On November 30, 2016 the company was given permission to convene a meeting of the scheme shareholders. The scheme document was sent to scheme shareholders containing a notice convening the court meeting for January 12, 2017.

Mr Andrew Thornton QC for the company Mr James Potts QC for the individual shareholders: Mr Edward Davies for Arcacla Fortna, Mr Martin Moore, QC and Mr Stephen Horan for Severn Trent, Mr David Chivers, QC for James Sharp, The Chancellor said that section 899(1) of the Companies Act 2006 provided that "if a majority in number representing 75 per cent in value of the ... class of members ... present and voting ... agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement."

There were therefore two pre-conditions to the court sanctioning a scheme of arrangement. First a majority in number of the class of members present and voting had to agree to it and secondly, 75 per cent in value of the class of members present and voting had to agree to it. The present case concerned the first of those two pre-conditions.

The basic question that the court had to decide was whether the chairman of the class meeting directed by the court was right to disallow the votes of 434 individual shareholders opposing the scheme. He disallowed the votes because each of the individual shareholders had acquired one share by way of gift from the same transferee in "share-splitting" circumstances.

The result of disallowing the votes of the individual shareholders was that a majority in number of the shareholders in the class in question approved the scheme of arrangement. Had he allowed those votes, the scheme would have failed, because it would not have been approved by a majority in number of the class of members present and voting at the class meeting.

The case was the first in which a share-splitting exercise had been undertaken with the apparent object of defeating a scheme of arrangement between a company and its members.

The proponents of the scheme submitted that the chairman had an inherent power to reject the vote and had been right to do so because the power to vote at a class meeting directed by the court had to be exercised for the purpose of benefiting the class as a whole and not for any collateral purpose.

The opponents of the scheme submitted that both the manner in which the individual shareholders had acquired their shares and their motivations in opposing the scheme were permissible.

Issues for determination included: (i) What was the proper test to be applied to determine if the votes of members at a members' class meeting directed by the court were valid? and (ii) were the votes of the individual shareholders at the court meeting valid, and should they have been counted by the chairman?

The matter had to be approached from first principles. The test was made clear by the exercise that the court undertook at the sanction stage. That pointed clearly to the need for class members at the court meeting to be voting in the interests of the class and not to promote interests adverse to the class they purported to represent.

That approach tied in with that adopted in slightly different, but comparable, positions in *British American Nickel Corporation Ltd v J O'Brien* (1921 AC 369) and *In re Holders Investment Trust Ltd* (1971) WLR 583.

A class meeting ordered by the court was sui generis. Its objective was to determine fairly the views of the class as to the interests of the class. The objection based upon the need for the court to look into the minds of shareholders was ill-founded.

There were two main objections to the votes cast by the individual shareholders. First, it was said that the members were motivated by the protection of jobs at the company and by the interests of the local community and the environment, rather than the interests of the class of ordinary shareholders in the company.

Second, it was said that they had acquired their single shares from someone who was splitting his holding with the sole purpose of transferring the shares to persons who would vote so as to defeat the scheme in those circumstances, it was axiomatic that they could and would not be voting in the interests of the class.

The chairman's knowledge of the circumstances in which the individual shareholders had acquired their shares gave him sufficient evidence to conclude that the votes of the individual shareholders at the January 12 meeting were not being cast for the purpose of benefiting the class as a whole.

That was not specifically because they impudently or expressed motives fell outside the band of what was permissible. It was because the only possible explanation for the conduct of the individual shareholders was to further a share manipulation strategy to defeat the scheme by use of the majority in number jurisdictional requirement.

The actions of the individual shareholders in accepting the gift of a single share demonstrated that they could have given no consideration to the interests of the class of members which they had joined. They could only have joined that class with the preconceived notion of voting down the scheme.

There had been no other reason to acquire one single share in the company at that crucial time in the course of that crucial time directed. The chairman had been entitled to protect the integrity of the court meeting against manipulative practices such as share-splitting that would frustrate its statutory purpose.

Solicitors: **Travers Smith LLP**, **Walker Morris LLP**, **Berwin Leighton Palmer LLP**, **Herbert Smith Freehills LLP**, **Batcher Barlow LLP**.

**WINE** is a mocker, strong drink a brewer, and whoever is led astray by it is not wise. (Proverbs 20:1 (NRSV))

## Births

**BELL** On 14th March 2017 to Victoria (née Gray) and Edward, a son, Logan Edward. A healthy baby boy, brother to Bobby, born at the Princess Royal University Hospital, Oldlington.

**COCKER** On 8th March 2017 to Anna (née Osińska) and Daniel, a daughter, Maria Edith.

**HUNT** On 16th March 2017 to Iryna (née Korotseka) and Bruno, a son, Alfred George.

**PETRAS** On 13th March 2017 to Georgina (née Le Hardy) and Callum, a daughter. Sophie, sister to Max.

## Forthcoming Marriages

**THE HON G. BURNETT AND MISS R-A. DAUKES**

The engagement is announced between The Hon George Burnett, younger son of Lord and Lady Burnett of Winton, Winchester, Devon, and Rose Anna, daughter of Brigadier and Mrs Clendon Davies of Sibley, Oxfordshire.

**MR C.F. SANDLANDS AND MISS L.J. MCNULTY**

The engagement is announced between Christopher, only son of Gabriele Sandlands of Fulham, London, and the late James Sandlands, and Lucy, youngest daughter of David and Martina McNulty of Richmond, Surrey.

**MISS S.A. WATSON AND MR T.M. TOWNSHEND**

The engagement is announced between Sarah Alice, daughter of Simon and Lis Watson, and Timothy Michael, son of Michael and Amanda Townshend.

## Deaths

**BARON** John Murray (Tim) formerly of James Baron & Sons, Burnley and Rochdale, peacefully at home on 15th March, aged 93. Husband of the late Freda, father of Christina, John (deceased), Peter and James, proud grandfather and great-grandfather.

Funeral at St Thomas's Church, Wells, on Friday 31st March, at 1.45pm. The coffin will be in the care of the Rev Canon Roddington will be in the care of St Thomas's Church, Wells, 2017. The Rev Canon Roddington will be in the care of St Thomas's Church, Wells, 2017. The Rev Canon Roddington will be in the care of St Thomas's Church, Wells, 2017. The Rev Canon Roddington will be in the care of St Thomas's Church, Wells, 2017. The Rev Canon Roddington will be in the care of St Thomas's Church, Wells, 2017.

**BURGESS** Susan Mary (née Hayes) on 11th March 2017, aged 73 years peacefully at the 5th Floor Jervis Hospital, surrounded by her loving family of Lea, Matlock, Derbyshire. Much-loved wife of Alan and loving mum of Richard and Rebecca. Funeral service at Amber Valley Memorial Park & Crematorium, Swanwick, on Wednesday 5th April, at 11am. Family flowers only please. Donations for Macmillan Cancer Support may be sent to Thomas Greston & Sons Ltd, 29 Knowleston Place, Matlock, Derbyshire, DE4 3BU. Tel: 01629 582470. Kindly wear bright colours.

**FRANCKE** Donald Max passed away peacefully on 7th March 2017, aged 87, after a short illness in hospital. A singer and actor well known for his eight-year tenure as Old Deuteronomy in the West End production of *Cats* between 1986 and 1994. Much-loved husband of Margaret and father to Ezzie and Gerry and grandfather to Madeleine. Masses to be celebrated for the funeral will be held at St. Mark's, Heatherley Wood, Grayshott, Surrey, Family flowers only. Donations, if desired, to The Great Bedford Appeal. www.mariecurie.org.uk

**JARRETT** Louis Stephen Anthony passed away peacefully on 11th March 2017, aged 80 of Witney Antiques, 100 Corn Street, Witney, Oxon. The most dearly loved husband of Joy, and loving father to Rebecca and Justin. Stephen was a much valued friend to all. He will be missed by all who knew him. He will be buried at Greenacre Funeral Service, St Mary's Church, Church Green, Witney, Oxon. April 5th 2017. 1 pm.

**JOHNSON** Peter Benjamin Sands died peacefully on 13th March 2017, aged 81. Dear husband and best friend of Daphne, father of David, father-in-law of Magda and "Bumbar" to Willie and Lydia. Private family celebration with a thanksgiving service to celebrate his life at a later date. No flowers, but donations to Queenscourt Hospice, c/o Dean Brothers (Formby).

**LAMPPOST** Eric George died peacefully on 12th March 2017, aged 94, at Westhill House, Horsted Keynes, Bedfordshire. Funeral at Kent & Sussex Crematorium, Wotton, 2.30pm, 29th March.

**LASCALLE** PALLIN Jennifer Susan (née Griffith-Williams) died peacefully on 15th March 2017, aged 83. Much loved and missed by all her family and friends. Funeral on 30th March 2017, at All Saints Church, Crudwell, at 12pm.

**MATTHEWS** Ann Patricia (née Russell) on 3rd March 2017, aged 55. Graciously loved mother of Sarah, Christopher and Lucy, wife of Ian, daughter of Pat, sister of Michael and Peter. Funeral 29th March, Surrey and Sussex Crematorium, Crawley, 4.30pm. Donations to St Catherine's Hospice, Macmillan, Marie Curie Cancer Research UK, c/o B C Baker & Son, Caterham. Tel: 01883 343219.

**REGGIORIO** Jean (née Green) passed away on 14th March 2017, aged 95. Experienced analytic psychoanalyst. Funeral 11.30am, 27th March, Golders Green Crematorium.

## Births, Marriages and Deaths

## Register

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**CHARLES ROWLATT**  
Charles died peacefully at home, aged 83, on Monday 13th March. His wife Penelope was holding his hand as the spring sunshine streamed in through the window. Much-loved husband, father and grandfather.  
Funeral at Highgate Cemetery, at 2pm, on Friday 7th April. No flowers please.

**SHEPHERD** Vera Winifred (Fring) (née Ellis) died peacefully at home, on 13th March 2017, aged 105. Deeply loved wife of Robert, Elizabeth and great-grandmother. Funeral at Greenacre Crematorium, March, on Friday 24th March, at 3.30pm. Flowers welcome. Donations, if desired, to Baird Lodge Social Fund, care of R J Pepper & Son, 27 High Street, Soham.

## Legal Notices

**In the Matter of the Insolvency Act 2003**  
**INTELLIGENT ENGINEERING HOLDINGS LIMITED**  
Company number 28174 (the "Company"). Notice is hereby given pursuant to section 127(1) of the Insolvency Act 2003 (the "Act") that, upon the order of the High Court made on 16th February 2017, the British Virgin Islands has proposed a modification of the Company's Creditors' Arrangement. Notice is hereby given pursuant to section 39 of the Act that a meeting of the creditors of the Company will be held by teleconference at 10.00am BVT time on Monday 13th March 2017. Members of the above named Company are required to send in writing their name and address and the particulars of their claims, and the names and addresses of their solicitors, if any, to Yvonne Trow, HSW (BV) Limited, PO Box 3142, Road Town, Tortola, British Virgin Islands. The date of the meeting is 13th March 2017. The meeting will be held at such time and place as shall be specified in such notice. Members of the above named Company are required to send in writing their name and address and the particulars of their claims, and the names and addresses of their solicitors, if any, to Yvonne Trow, HSW (BV) Limited, PO Box 3142, Road Town, Tortola, British Virgin Islands. The date of the meeting is 13th March 2017. The meeting will be held at such time and place as shall be specified in such notice. Members of the above named Company are required to send in writing their name and address and the particulars of their claims, and the names and addresses of their solicitors, if any, to Yvonne Trow, HSW (BV) Limited, PO Box 3142, Road Town, Tortola, British Virgin Islands. The date of the meeting is 13th March 2017. The meeting will be held at such time and place as shall be specified in such notice.

## For Sale

**MORNING SUITS**  
**DINNER SUITS**  
**EVENING TAIL SUITS**  
SUPPLIES TO HIRE  
**LIPMAN & SONS**  
West End Tel: 020 7240 2310  
222 Charing Cross Rd WC2  
Near Leicester Square tube station

## Tia has never known a life without pain.

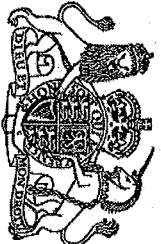
Every morning Tia wakes to new sets of wounds which are caused by her turning in her sleep. The lives with Etdermomylis Bullosa (EB) – a painful genetic condition which makes her skin blister and tear at the slightest touch. Tia's only hope is a cure – you can help.

Learn more about how EB affects Tia's life at [www.debra.org.uk/Tia](http://www.debra.org.uk/Tia)  
To donate £5 text CURE to 70500.

The online EB support network, with 100% of your donation will go to DEBRA. By sending you consent to further contact by text from DEBRA, including NO SPAM to stop further communications. DEBRA's registered charity number is 1058983. DEBRA's website is [www.debra.org.uk](http://www.debra.org.uk). DEBRA's telephone number is 0300 050 0252.



## Court Circular



**Clarence House**  
20th March, 2017  
The Prince of Wales, President, The Princess Trust and President, The Princess Trust International, this evening held a Reception at Windsor Castle for the International Leadership Programme.

**Kensington Palace**  
20th March, 2017  
Prince Henry of Wales this morning received a briefing on the Veterans' Gateway project from Mr Mark Collins (Project Manager, Royal British Legion). His Royal Highness, Royal

**Buckingham Palace**  
20th March, 2017  
The Countess of Wessex, Global Ambassador, International Agency for the Prevention of Blindness, this afternoon visited the Flying Eye Hospital at Stansted Airport, London, and was received by Her Majesty's Lord-Lieutenant of Essex (Lord Petre).

**Buckingham Palace**  
20th March, 2017  
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**Kensington Palace**  
20th March, 2017  
The Duke of Gloucester, Joint Patron, Thames Landscape Strategy, this afternoon unveiled the Poethonias Plaque at Syon House, Syon Park, Brentford, to mark the Four Hundredth Anniversary of the Death of Pochontas.

**Kensington Palace**  
20th March, 2017  
The Duke of Gloucester, Joint Patron, Thames Landscape Strategy, this afternoon unveiled the Poethonias Plaque at Syon House, Syon Park, Brentford, to mark the Four Hundredth Anniversary of the Death of Pochontas.

## DAY

**Robert Frederick**, British film director, passed away on 17th March 2017, aged 94, on Bainbridge Island, Seattle, USA. Known in the UK for his early films *The Green Man*, *Two Way Street* and *The Rebel*, and later for TV series. He leaves to mourn his passing, his son Rob, his daughter Roberta and his grandsons, Nicholas and Philip Simons.

**Buckingham Palace**  
20th March, 2017  
His Royal Highness, Commander-in-Chief, Portsmouth, this morning opened The Princess Royal Jetty, Queen Elizabeth Class Aircraft Carrier Complex, HM Naval Base, Portsmouth, and was received by Her Majesty's Lord-Lieutenant of Hampshire (Mr Nigel Atkinson). Her Royal Highness, Commander-in-Chief, Portsmouth, this afternoon visited Boat House 4, Main Road, HM Naval Base, Portsmouth, and was received by Mr Tom Floyd (Deputy Lieutenant of Hampshire).

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