

No BVI Law of Double Derivatives – Court of Appeal rules in Microsoft Corporation v Vadem Ltd

On August 8, 2013 the Eastern Caribbean Supreme Court Appellate Division issued its ruling in Microsoft Corporation v Vadem Ltd. In doing so, the Court of Appeal affirmed that “BVI law does not permit double derivative proceedings”. Microsoft Corporation was a minority shareholder of Vadem Ltd, a BVI company (“Vadem BVI”), which was the sole owner of Vadem Inc., a California company (“Vadem California”).

When the matter was heard in the Commercial Court, [Paul Webster Q.C.](#) of O’Neal Webster, appeared for Vadem Ltd. He argued that Microsoft Corporation could not be granted leave to bring proceedings on behalf of Vadem California, as the BVI legislation (section 184C of the BVI Business Companies Act) did not permit double derivative actions. Bannister J. agreed, and gave leave to Microsoft Corporation to bring a single derivative action on behalf of Vadem BVI, stating in his written judgment that Microsoft Corporation had no right to bring derivative proceedings on behalf of Vadem California, in the BVI or elsewhere.

Microsoft Corporation sought an order from the Court of Appeal for permission to bring proceedings on behalf of Vadem California. Justice of Appeal, Mario Michel, stated that whether Microsoft Corporation could bring claims on behalf of Vadem California was a matter for the lex fori to determine (i.e. the law of the jurisdiction in which any such claim is eventually brought). The judge went on to allow Microsoft Corporation’s appeal “to the extent that the limitation placed on the judge’s order to the effect that the appellant/claimant can only bring claims vested in Vadem BVI and not claims vested in Vadem California is removed”.

However, Justice Michel stated, validating the submissions made by Paul Webster QC in the Commercial Court, “in the present case, the court cannot do that which Microsoft asked in its notice of appeal, that is, for the court to give it leave to bring claims involving causes of action vested in Vadem California”, since BVI law does not permit double derivative proceedings.



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