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## **A PROBLEM FOR MINORITY SHAREHOLDERS**

*By Nicholas Woolf, Director and Principal of Nicholas Woolf & Co*

The case of Euro Accessories Limited [2021] recently heard in the High Court highlights the lack of protection minority shareholders can have. It is also a salutary reminder that the provisions in the Articles of Association of a company should be precisely drawn and preferably together with a suitable shareholders agreement, if minority rights are to be protected.

### **The Facts**

The company was incorporated by G on 15<sup>th</sup> September 2000. M joined the company in 2003 as a sales representative. On 22<sup>nd</sup> February 2008, G voluntarily transferred 24.99% of the then issued share capital of the company to M. On or about January 2010 the relationship between M and G broke down and on 31<sup>st</sup> January M tendered his resignation to the company. Negotiations in respect of the purchase of M's shares broke down. G then used his 75.01% share to pass special resolutions amending the Articles of Association of the company. The effect of the amendments were that M was obliged to transfer his shares to G at G's option. The consideration for the sale of shares on the exercise of the option was to be for a "fair value". The transfer date was at G's option. After the Articles had been adopted, G wrote to M giving him notice that he wished to exercise the option to purchase all his shares at value of £175,000. M refused. The parties jointly instructed a chartered accountant to value the company and to report on the discount to be applied, if appropriate, and to the value of M's shares on a discounted basis, to reflect his minority holding. The chartered accountant concluded the company was worth £2.8 million at the relevant date. M's shares were worth, on a pro rata basis, £545,000. The minority discount should be 55% resulting in a figure of £245,000. G offered M £245,000 in his Defence. M refused the offer.

### **The Court's Decision**

The Court concluded to determine the true meaning of "fair value" it should restrict itself only to reading the Articles of Association. Extrinsic factors could not be taken into account unless there were indications to the contrary in the Articles. It followed that the relationship of the parties and the circumstances surrounding the background to the dispute and the adoption of the new Articles were inadmissible. In the absence of contrary indication (in the Articles) the transferor M, could not insist on payment which the shares did not entitle him to and he did not own. M was restricted to the value of the property to be transferred not a proportionate part of the controlling stake or a pro rata value of the company or its assets.

The Judge made a declaration to the effect that consideration of £245,000 would have represented a fair value of M's shares in the company for the purpose of the amended Articles.

### **What do we learn from this case?**

1. That having control of 75% of the voting shares in a company and to be able to pass special resolutions to change the Articles of the Company is a very powerful position to be in and potentially dangerous to minority shareholders.
2. If minority shareholders wish to protect themselves, they must pay attention to the precise language used in the Articles of Association and consider the practicality and effect of them or their being changed, if either immediately or in the foreseeable future whether to their advantage or disadvantage.
3. The Articles of Association are a constitutional document, and the Court will not look outside it unless there is good legal reason to do so.
4. The importance of a shareholders agreement. The provision of a shareholders agreement may well have changed matters. A shareholders agreement, although not necessarily a constitutional document is a factor likely to have been taken into account and minority protection may have been secured.

### **If you are a minority shareholder what could you do now with a view to ascertaining and safeguarding your own position?**

1. Read your company's Articles of Association with a view to ascertaining your position under the constitutional documents.
2. If there is a shareholders agreement, read the shareholders agreement in conjunction with the Articles of Association to check the position.
3. If you do not have the time to do this or are unsure, instruct a suitably qualified solicitor to assist you.
4. Consider if it is reasonable to negotiate or renegotiate your position either via the Articles of Association of the company or a shareholders agreement or both.
5. If there is no shareholders agreement obtain professional advice about putting a shareholders agreement in place.

### **Assistance**

If you require help, assistance or wish to discuss any of the issues in this article please contact Nicholas Woolf [info@nicholaswoolf.com](mailto:info@nicholaswoolf.com) or +44 (0)7242 6018.

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