ABOLITION OF THE SHAREHOLDER PRIVILEGE RULE: *JARDINE STRATEGIC HOLDINGS V OASIS*

In *Jardine Strategic Holdings Ltd and another v Oasis Investments II Master Fund Ltd and 80 others No 2* [2025] UKPC 34, the Judicial Committee of the Privy Council abolished the 'Shareholder Rule', which had precluded companies from asserting legal advice privilege against their shareholders in litigation.

Martin Moore KC, Anna Scharnetzky and Andrew Blake acted for the successful Appellant (with John Wasty of Appleby), instructed by Marc Harvey of Linklaters.

The Board also made a *Willers v Joyce* direction so that the decision binds the courts of England and Wales, declaring that it:

"*should be regarded by courts in England and Wales as abrogating the Shareholder Rule for the purposes of litigation in those courts*".

The proceedings in Bermuda – in which Martin, Anna and Andrew continue to act for Jardine Strategic – concern the amalgamation of two companies within the Jardine Matheson group, and ensuing court appraisal proceedings commenced by 87 plaintiffs in April 2021 pursuant to s. 106(6) of the Bermuda Companies Act 1981.

The Shareholder Rule had formed part of the law of England and Wales for almost 140 years – since the decision of Chitty in *Gouraud v Edison Gower Bell Telephone Co of Europe* (1888) 57 LJ Ch 498, and had been applied at first instance and by the Court of Appeal of Bermuda in *Jardine Strategic Holdings*.

In allowing the appeal, Lord Briggs and Lady Rose, delivering the judgment of the Board, held at [82] that:

"*The status-based automatic Shareholder Rule is therefore now, and in truth has always been, a rule without justification. Like the emperor wearing no clothes in the folktale, it is time to recognize and declare that the Rule is altogether unclothed.*"

The judgment is available here: https://jcpc.uk/uploads/jcpc_2024_0077_judgment_701b311f53.pdf.

Martin, Anna and Andrew also acted (with Jonathan Crow KC) in a separate appeal in the same proceedings concerning the practice of 'appraisal arbitrage', by which shares in an amalgamating or merging company are acquired after the announcement of the transaction for the purpose of pursuing appraisal proceedings. In a judgment delivered on the same day (available here: https://jcpc.uk/uploads/jcpc_2024_0009_judgment_f2b2597965.pdf), the Board upheld the decision of the Bermudian court declining to strike out the claims of those plaintiffs which acquired shares only after the transaction was announced.

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