

Bermuda Court confirms personal right of action of company directors to end wrongful exclusion

Briefing Summary: In two notable recent judgments, the Bermuda Supreme Court ruled that a director of a Bermuda company was entitled to an interim injunction prohibiting the company and its other directors from improperly excluding him from involvement in important company decision-making. Carey Olsen Bermuda Limited acted for the successful applicant director in both *In the Matter of ASA Gold And Precious Metals Limited*, [2025] SC (Bda) 47 civ and [2025] SC (Bda) 54 civ.

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Content Authors: Keith Robinson, Matthew Summers

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Three key takeaways from the judgments of the Bermuda Supreme Court

1. The Bermuda Supreme Court (**Court**) adopted the legal principles set out in *Pulbrook v Richmond Consolidated Mining Co*, (1878) 9 Ch D 610 (Ch). Those principles stand for the proposition that, if improperly excluded from the board of directors (**Board**), a director can bring a claim in his own name against the other directors and the company because the exclusion constitutes an individual injury to the applicant as a director. The applicant's legal claim is for declarations of right supported by a permanent injunction prohibiting the exclusionary conduct as a violation of his rights.
2. The Court confirmed that individual directors do not have an equitable duty to provide shareholders with their own personal views on the business proposed at general meetings when those views are not supported by the full Board. In doing so, the Court adopted the reasoning in *Sharp v Blank*, [2017] BCC 187 (Ch). The Court made this finding in response to the argument that the interim injunction prevented the respondent directors from soliciting the company's shareholders in compliance with their general duty, and the lack of information provided to shareholders would invalidate the outcome of a hotly contested special general meeting (**SGM**). The Court found that no such general duty exists.

Key Contacts



Keith Robinson
PARTNER, BERMUDA
+1 441 542 4502

[EMAIL KEITH](#)



Matthew Summers
SENIOR ASSOCIATE,
BERMUDA
+1 441 542 4299

[EMAIL MATTHEW](#)

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY

CAPE TOWN HONG KONG SAR LONDON SINGAPORE

careyolsen.com

3. The Court took a firm line on the requirements imposed on applicants by the duty of full and frank disclosure when seeking an *ex parte* on notice injunction. The Court rejected the respondent directors' long list of purported breaches of the applicant director's duty at the *ex parte* injunction hearing. That rejection was coloured by the fact that, while the respondent directors did not formally appear on the record at the *ex parte* hearing, their legal counsel still attended the *ex parte* hearing and filed what amounted to written arguments and supporting legal authorities in advance with the Court.

Background

ASA Gold and Precious Metals Limited (**Company**) is a Bermuda exempted company which is publicly traded on the New York Stock Exchange and regulated by the US Securities and Exchange Commission. In December 2023, the Company's largest shareholder, Saba Capital Management, L.P. through various affiliates (**Saba**), submitted a statutory requisition which proposed a slate of director candidates for election to the Company's Board at its 2024 annual general meeting (**AGM**).

In response, the Company's then-Board instituted a limited-duration shareholder rights plan (**Poison Pill**) intended to prevent Saba from acquiring more shares in the Company. The then-Board also implemented mechanisms designed to entrench the Poison Pill by delegating certain fundamental powers of the Board to two new Board committees (**Litigation and Rights Plan Committees**). Additionally, the size of the Board was reduced from five to four directors which, depending on how the shareholders voted at the 2024 AGM, would create a two-to-two voting deadlock on the newly elected Board.

At the 2024 AGM, the Company's shareholders elected two director candidates from Saba's slate (**New Directors**) and re-elected two directors from the then-Board's slate (**Legacy Directors**). Carey Olsen acts for the New Directors. Following the 2024 AGM, the Legacy Directors used the Litigation and Rights Plan Committees to exclude the New Directors from involvement in various key Company decisions. The full Board remained deadlocked and could not agree on other key matters such as convening the 2025 AGM.

In April 2025, Saba submitted a new statutory requisition which sought to convene a SGM that would allow shareholders to expand the Board from four to five seats and then elect a new director candidate to break the ongoing Board deadlock. The Legacy Directors voted against the Board convening the SGM and, after Saba convened the SGM itself in accordance with its statutory right, the Legacy Directors used the litigation committee to solicit the Company's shareholders to vote against the SGM's proposed resolutions.

On 8 May 2025, the Court granted one of the New Directors an *ex parte* on notice interim injunction which prohibited the Company and the Legacy Directors from, among other things, using the litigation committee to improperly solicit shareholders or otherwise interfere with the SGM. On 2 June 2025, following an *inter partes* contested hearing, the Court extended the interim injunction until the final determination of the New Director's claim that he was being improperly excluded from the Board by the Legacy Directors.

On 13 June 2025, the Company's shareholders overwhelmingly voted at the SGM to approve both proposed resolutions. A new director was thereby elected to the Board which broke the ongoing voting deadlock.

A link to the Court's *ex parte* judgment can be found [here](#) and the *inter partes* judgment can be found [here](#).

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