



Neutral Citation Number: [2025] CIGC (FSD) 94

Cause No: FSD 2025-0213 (JAJ)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF BLUE GOLD LIMITED

AND IN THE MATTER OF THE COMPANIES ACT (2025 REVISION)

BETWEEN:

(1) RCF VII SPONSOR LLC
(2) S&R CAPITAL LTD

Plaintiffs

-and-

BLUE GOLD LIMITED

Defendant

Appearances: **Mr Andrew Ayres KC of counsel instructed by Mr Eric Bodden and Ms Nienke Lillington of Conyers Dill & Pearman LLP for the Plaintiffs**

Before: **The Honourable Justice Jalil Asif KC**

Heard: **5 September 2025**

Ex tempore judgment delivered: **5 September 2025**

Finalised judgment approved: **19 September 2025**

Civil procedure—whether to grant injunction to restrain extraordinary general meeting of company's members—whether to excuse party from requirement to provide undertaking as to damages

JUDGMENT

1. This is an *ex parte* application for an injunction to prevent the Defendant from going ahead with an extraordinary general meeting, which is planned to be held on Monday, 8 September at 10:00 am New York time, 9:00 am Cayman time, in other words, the next working day after today.
2. The Defendant is aware of the hearing but has not been given proper notice in accordance with the timetables laid down in the Rules, primarily because the need to apply for this injunction only became apparent to the Plaintiffs on 29 August 2025 when they received notice of the EGM. There may be an additional explanation for the Defendant not attending, even in the capacity as an observer, in that I understand that the Defendant has changed its attorneys yesterday from Mourant Ozannes (Cayman) LLP to Ogier (Cayman) LLP.
3. Very briefly, the factual background is that the First Plaintiff, RCF VII Sponsor LLC (“RCF”), entered into a securities purchase agreement with Perception Capital Corporation IV (“Perception”), as a result of which RCF sold 31.3% of its Class A shares in a SPAC vehicle to Perception. As part of that transaction, RCF retained shares and warrants in the capital of the SPAC. My understanding is that certain other members of the management team also retained shares in the SPAC directly or through corporate vehicles, including the Second Plaintiff.
4. The securities purchase agreement specifically set out in cl.5.13 that:

“... the management shares and all founder shares and private warrants retained by the sponsor shall be free of any contractual transfer restriction upon completion of the business combination.”

So, the securities purchase agreement provided that RCF’s shares in the SPAC would be freely tradable.
5. Shortly following the transaction with RCF, Perception announced a business combination with Blue Gold Limited, who is the defendant to these proceedings. During the course of the negotiations in respect of that transaction, there were a number of exchanges of emails in which it appears that it was

confirmed that the shares in the new vehicle which were owned by RCF and the management team would be free and tradable. That transaction was agreed in 2024, and it has recently been completed to the extent that the Defendant's shares have been tradable as of June 2025.

6. Around that time, it became apparent that there was a disagreement between the Plaintiffs on the one hand and the Defendant on the other as to whether or not the Plaintiffs' shares were freely tradable. The Defendant's position has been that they are not, whereas the Plaintiffs have been pressing to have their shares released from the Defendant's broker to the Plaintiffs' own broker so that they can engage in selling those shares as and when they wish to do so in order to promote their own interests.
7. All of this has led to the initiation of these proceedings, brought by the Plaintiffs against the Defendant by an originating summons issued on 28 July 2025. As I have indicated, on 29 August 2025, the Plaintiffs learned that the Defendant's board of directors had called an EGM to be held on 8 September 2025, in other words on Monday next week, at which the intention of the board of directors is that a resolution should be passed which would have the effect of determining, at least for future purposes, that all of the Plaintiffs' shares are henceforth to be treated as restricted. The Plaintiffs obviously wish to avoid that eventuality, and Mr Andrew Ayres KC, who has appeared on behalf of the Plaintiffs today, has argued that, essentially, the board of directors' actions involve four separate errors or wrongful acts.
 - 7.1 First of all, the process which the directors intend to operate on Monday at the EGM is a breach of Article 30 of the Defendant's Articles of Association. I can summarise Mr Ayres' argument very briefly as that, under the Defendant's Articles, the Plaintiffs have a class right which the board of directors is seeking to override without obtaining the express consent of the Plaintiffs and other shareholders who are in the same position as the Plaintiffs, who are the persons adversely affected by the intended change to the Articles. A vote of the Defendant's other shareholders, or indeed a majority vote of all the shareholders in the company, without the express agreement of the Plaintiffs and those shareholders in the same shoes as the Plaintiffs, is impermissible as a matter of law.
 - 7.2 Secondly, Mr Ayres argues that the calling of the EGM and the promotion of the resolution by the directors is itself a breach of duty by those directors in that they have called the EGM for an improper purpose, namely not for the benefit of the company as a whole but for the benefit

of the majority shareholders within the company and for the purpose of imposing a detriment on the Plaintiffs and the other shareholders in the same position as the Plaintiffs. In this regard, the Notice of EGM indicates that the directors are positively promoting the passing of the resolution, opening them up to this criticism.

7.3 Thirdly, Mr Ayres complains that the Defendant's actions, or the actions of the Defendant's board of directors, are either: a breach of contract, namely a collateral contract formed during the course of negotiations for the business combination, as evidenced by the emails which Mr Ayres has taken me to during the course of his submissions; or, alternatively, that there is an estoppel by convention, the representation being that the Plaintiffs' shares would be unrestricted, and the Plaintiffs relied on that representation in voting to proceed with the business combination in circumstances where, at that time, they were majority shareholders and could have voted against it so that it did not proceed.

7.4 The fourth complaint that Mr Ayres advances is that the Defendant's actions, or perhaps the actions of the Defendant's board of directors, in seeking to pass resolutions on 8 September 2025, are abusive of the outstanding originating summons in that it seeks to predetermine precisely the question which the Plaintiffs have brought before the court to be determined.

8. Mr Ayres says that, on an analysis of the current shareholdings, if the court does not grant an injunction to restrain the EGM from going ahead, then it is very likely that the resolution will be passed by the other shareholders in the Defendant company, with the result that the Plaintiffs' shares will become restricted and, as a result of that, either the Plaintiffs will need to amend the current originating summons or issue fresh proceedings in order to seek a declaration that the Defendant's action is invalid. He submits it is therefore strongly preferable for the court to intervene at this stage – essentially to hold the ring between the parties until the originating summons can be determined on its merits – and then to rule upon the status of the Plaintiffs' shares in the Defendant as freely tradeable or restricted, and what rights the Defendant has to change the Plaintiffs' class rights, and how any attempt to change those class rights should proceed procedurally.

9. Mr Ayres submits, and it seems to me rightly so, that there is no particular magic in the EGM proceeding on Monday. There is no indication before me of any particular time constraint that means

that the EGM needs to proceed then. There is no deal in the offing, so far as the evidence before me indicates, that means that the holding of the EGM is time sensitive in any way at all.

10. Finally, in terms of the question of prejudice, I should mention that Mr Ayres accepts that, even if the court does grant an injunction today, the Plaintiffs are still not going to be able to proceed to sell their shares until the originating summons has been heard and determined, and so he draws to my attention that the Defendant may well argue that the Plaintiffs have therefore not been prejudiced or will not be prejudiced if the resolution is passed. But it does seem to me that there is much more merit in the court intervening, as I have indicated, to hold the ring between the parties if that is an appropriate course for the court to take on the evidence and the law that is advanced, rather than allowing the resolution to be passed and then having to wind back the clock at some stage in the future.
11. Mr Ayres has helpfully taken me through the relevant corporate documents and correspondence, and I am not going to lengthen this *ex tempore* judgment by going through all of those documents. What I will just mention is that, of the authorities that were included in the bundle, Mr Ayres focused his submissions on Cumbrian Newspapers Group Ltd v Cumberland & Westmorland Herald Newspaper & Printing Co Ltd [1986] BCLC 286, a judgment of Scott J, as he then was. There are a few passages in the course of Scott J's judgment that I will read into this judgment.
12. The first is at page 21 in the judgment, where Scott J said at letter B to D:

"In my judgment, if it is right, as the defendant contends, that third category rights are not rights attached to a class of shares for the purposes of section 125..."

I interpose here that Scott J was talking about s.125 of the English Companies Act 1985, this judgment being an English judgment. Mr Justice Scott continued:

"... it must follow that articles containing such rights can be altered by special resolution pursuant to section 9 of the Act of 1985. This conclusion is, I think, relevant to the question of whether the defendant's contention is right. It would, in my opinion, be surprising and unsatisfactory if class rights contained in articles were to be at the mercy of a special resolution majority at a general meeting, unless they were rights attached to particular shares. If the articles of a particular company grant special rights to a special class of members, it would be odd to find that members not in that class could cancel the rights simply by means of a special resolution."

Reading on at page 22 in the judgment between letters C and D, Scott J said:

"In my judgment, if specific rights are given to certain members in their capacity as members or shareholders, then those members become a class. The shares those members hold for the time

being, and without which they would not be members of the class, would represent, in my view, a class of shares for the purpose of section 125.”

Then picking up just below letter F on the same page:

“In my judgment, a company which, by its articles, confers special rights on one or more of its members in the capacity of a member or shareholder thereby constitutes the shares for the time being held by that member or members, a class of shares for the purposes of section 125. The rights are class rights. I have already expressed the opinion that the rights conferred on the plaintiff under Articles 5, 7, 9 and 12 were conferred on the plaintiff as member or shareholder of the defendant. It follows that, in my judgment, the shares in the defendant for the time being held by the plaintiff constitute a class of shares for the purpose of variation or abrogation of those rights.”

13. The significance of that – and this is something that Mr Ayres addressed in his skeleton argument rather than in his oral submissions – is that whether or not a shareholder can properly be described as having the benefit of a class right is not something that is attached to specific shares which are owned but is really a question of substance rather than labelling. In other words, does the shareholder, by virtue of their position as a holder of shares in the company, enjoy certain rights which are different or separate from rights to which other shareholders in the company are entitled? It seems to me the appropriate way to approach this is that, if the answer to that question is yes, then that shareholder can properly be said to have class rights, whether or not the number of shares owned by that shareholder varies as a result of acquisitions or sales of shares whilst it remains, overall, a holder of shares within the company. I indicate at this stage that there is no suggestion that the Plaintiffs have not remained shareholders of at least some shares in the Defendant company at all relevant times.
14. I am therefore satisfied that there is a serious argument on each of the four areas that Mr Ayres has advanced as being potential breaches of duty, breaches of contract or wrongful conduct by the Defendant and its board of directors, and I am satisfied that there is a serious issue to be tried in relation to each of the four areas of complaint that the Plaintiffs raise.
15. Applying *National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Jamaica)* [2009] UKPC 16 and *Xie v XiO GP Limited* (unreported, 09/06/17), as indicated by Mangatal J in the latter case, the next questions are whether the Plaintiffs would be adequately compensated by damages for the loss they would sustain as a result of the Defendant going ahead with the EGM, and is the Defendant in a position to pay damages? I have listened to what Mr Ayres has said on that topic, and it seems to me

that there is a real question mark over the ability of the court to make an assessment of precisely what loss the Plaintiffs will have suffered.

16. It may be that a forensic accountant will be able to put together (a) some kind of time-weighted analysis of how the Plaintiffs may have gone about selling their shares from June 2025 onwards in order to maximise their return, and (b) a complicated counterfactual analysis, assuming that the shares are restricted, but bearing in mind that 5 per cent of the shares held by the Plaintiffs, if restricted, are to be treated under Article 39 of the current Articles as becoming unrestricted on a monthly basis. It may be possible for a forensic accountant to do that analysis of what the Plaintiffs would be likely to receive if the shares may be sold at 5 per cent of the Plaintiffs' shareholdings on a monthly basis going forwards. However, it does seem to me, at least for the purpose of today's hearing, that there are likely to be some really difficult questions about quantification of the Plaintiffs' loss.
17. On the other hand, it seems to me that there is almost no loss identifiable, or easily identifiable, from the Defendant's point of view if I were to grant the injunction that the Plaintiffs seek. As I have already indicated, there is no transaction in train. There is no magic at all to the EGM going ahead on Monday. It could quite easily go ahead in three weeks, six weeks or two months' time. Unless and until the Defendant indicates that there is some particular time pressure, it seems to me that I should accept the evidence that is put before me that there is none.
18. So, the question of adequacy of damages as a remedy is perhaps not clear cut, as far as the Plaintiffs are concerned. On the other hand, it is pretty clear that the Defendant is unlikely to suffer any significant damage from a grant of an injunction, other than costs that it may incur in making arrangements for the EGM to go ahead, which will be thrown away. For that reason, I am into balance of convenience territory. As I hope I have made clear already, bearing in mind the lack of any time constraint at all from the Defendant's point of view, it seems to me that the balance of convenience comes down very firmly in favour of granting an injunction in the Plaintiffs' favour.
19. The last issue is the question of a cross-undertaking as to damages. On this, I do have, as I indicated to Mr Ayres in argument, some concerns. The reason that those concerns arise is that RCF is willing to offer an undertaking as to damages; but the Second Plaintiff is not. I am told in the evidence that the reason for that is that the Second Plaintiff is a small company with limited assets. However, as I

said to Mr Ayres during the course of argument, there really is very little evidence on the question of the Second Plaintiff's assets beyond that assertion. Given that the Second Plaintiff is seeking an indulgence from the court, the normal rule being that a cross-undertaking in damages must be provided as the price for obtaining the grant of an injunction, I would have expected chapter and verse from the Second Plaintiff to explain why the court should grant it the indulgence which has been sought.

20. However, in this particular case, as I indicated during the course of argument, there are two reasons why, notwithstanding the paucity of the evidence today, I am willing to excuse the Second Plaintiff from having to provide a cross-undertaking as to damages for now. Those two reasons are, first of all, that RCF is willing to grant a cross-undertaking as to damages and, as I understand it, for the entirety of any damage that the Defendant establishes, if it establishes that the injunction should not have been granted, rather than limiting RCF's cross-undertaking to any damages which are directly attributable to its shares and not including within its cross-undertaking any damages that would be referable to shares in the Defendant company which are owned by the Second Plaintiff. The second reason – and this is a more weighty reason in the exercise of my discretion – is, as I indicated slightly earlier in this judgment, that it is very difficult to see what loss, if any, the injunction that I am going to grant will cause to the Defendant.
21. In those circumstances, it seems unlikely that any cross-undertaking on damages will be called on in favour of the Defendant. So, for that reason, I am willing in these unusual circumstances not to insist today on the Second Plaintiff providing a cross-undertaking. However, as I indicated to Mr Ayres, that question will need to be revisited at the return date. I would, first of all, listen carefully to whatever submissions the Defendant has to make, but, secondly, I would also want to see more substantive detailed evidence from the Second Plaintiff to explain what its financial position is and submissions on its behalf as to why, in those circumstances, I should continue to excuse it from having to provide a cross-undertaking.
22. I should say expressly that Mr Ayres, in his skeleton argument and in the course of his oral submissions, has taken me through a number of aspects of arguments that he says the Defendant might wish to draw to my attention, and I am content that he has addressed me on the most significant aspects of full and frank disclosure, and those are also addressed in Mr Shah's second affidavit.

23. Finally, I record that I have read today a letter sent by Ogier on behalf of the Defendant, who, as I have indicated, have within the last day or two been appointed as the Defendant's attorneys-at-law in place of Mourant. That letter seeks to argue why there is no necessity for the injunction to be granted today and seeks to explain from the Defendant's point of view why there would be no harm to the Plaintiffs' position resulting from a passing of the resolution intended to take place on Monday. However, it seems to me that Ogier's letter sidesteps at least three of the four arguments that Mr Ayres has advanced, and I am not satisfied on the basis of Ogier's letter that there is no merit in granting the injunction sought by the Plaintiffs. Indeed, Ogier's letter tends to support, in my view, the need for intervention by the court to hold the ring until both parties have a proper opportunity to put forward their arguments regarding the construction of the Defendant's Articles, the surrounding correspondence and the estoppel issues and for the court to determine those and to give all the parties a binding ruling on the questions raised in this case.

Dated 5 September 2025



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**