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Alpine Partners (BVI) L.P. and CMB Tech Bermuda Limited [2025] SC (Bda) 118 com

NOVEMBER 2025

Court: Supreme Court of Bermuda
Subject: Application for expedited trial, merger appraisal, s.106 Companies Act 1981, application of Overriding Objective to trial directions
Judges: Shade Subair Williams J

Summary

The Supreme Court of Bermuda refused a minority shareholder's application to expedite a section 106 appraisal trial arising from the Golden Ocean Group merger. The merger consideration took the form of a share-for-share exchange rather than the typical cash payment.

The Plaintiff argued expedition was required to avoid the wrongful conversion of its Golden Ocean shares upon completion of the merger, asserting a statutory right under section 106(2)(b) to be paid fair value in cash rather than in shares. The Court held expedition was neither necessary nor justified, as a shortened timetable would 'excessively' prejudice the defendant's ability to appear, gather evidence, and respond, given the ordinary 14-day appearance period. The Court therefore ordered a conventional but efficient timetable, with costs awarded to the defendant.

Further details

The merger consideration was a share-for-share exchange. On completion, Golden Ocean shares were cancelled and, in their place, shareholders would receive shares in CMB.TECH NV (the parent company of the surviving entity in the merger) rather than cash. The plaintiff commenced proceedings seeking a cash determination of the fair value of its Golden Ocean shares. It contended that the share-for-share consideration constituted a wrongful conversion and that section 106(2)(b) required dissenting shareholders to be paid in cash. Simultaneously, the plaintiff applied (by *ex parte* summons with notice) for an expedited trial to occur on or before the merger's effective date, arguing that, once the merger closed, its existing shares would be cancelled and replaced with the share-swap consideration, thereby causing complications and prejudice to the plaintiff.

The defendant opposed the application, noting that an expedited listing within a week would deprive it of the standard 14 day period to enter an appearance and file evidence. It also emphasised that, even with expedition, the Court could not realistically issue a final determination before the merger completed, especially given the potential for complex valuation issues.

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Applying the Overriding Objective, the Court stressed that expedition is discretionary and granted only where refusal would cause real and strong detriment. Urgency is an objective test, and commercial urgency or the size of the claim does not justify abridging procedural fairness. The Court held the plaintiff had not shown any prejudice that could not be addressed through a normal section 106 process, whereas the proposed timetable would have been 'excessively unfair' to the defendant. The Court therefore declined to expedite the normal timeframes and directed the matter proceed on a prompt but conventional timetable, with costs following the event in the defendant’s favour.

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