Background
Calan Healthcare Properties Limited had a corporate shareholder, CIML, who owned two-thirds of the shares in Calan and wish to acquire the rest. The rest were held by a family trust, the Crucible Trust.

Facts
The Crucible Trust appointed a new trustee and then one of the existing trustees retired. In order to bring the status on the register up to date the trustees executed a share transfer transferring the relevant shares from the old trustees to the new trustees.

The Constitution of Calan provided:

> "A shareholder intending to transfer any shares ('the Transferor') must give a transfer notice in writing to the Board. The transfer notice shall state the number, class and asking price of the shares to be offered for sale. The transfer notice shall constitute the Board the Transferor's agent (to the exclusion of the Transferor) for the sale of the shares."

CIML argued that the transfer from one set of trustees to the other was caught by the plain meaning of the pre-emptive provision.

Judgment
The High Court judge agreed. The judge considered the constitutional context, the company law context, and the purpose underlying pre-emptive provisions. The court noted a series of English cases that had consistently held the transfer of the beneficial interest in shares does not trigger pre-emptive rights in the constitutional provisions fundamentally similar to the Calan's ones. None of the cases dealt directly with the converse, but that would seem a necessary corollary.

The High Court held any transfer of shares was one trustee to another is caught by the pre-emptive provisions.

Commentary
The judge highlighted that if companies wish to avoid this "undesirable" consequence then it was in the hands of the draftperson to ensure that company constitutions did not catch such transfers if unintended.

JOINT VENTURE*

Opus International Consultants Ltd v Projenz Ltd (High Court of New Zealand, unreported, 12 August 2003 CIV-2003-485-1387)

Joint venture – Injunction application – Alleged breaches – Sale of alleged breaches interest

Background
Opus International Consultants Limited and Projenz Limited were parties to a joint venture agreement. The joint venture had been established to tender for and undertake a roading contract with the Manukau City Council. The joint venture agreement defined the terms of the venture as the roading contract with the Council and "associated work arising out of" that contract.

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Facts

The joint venture had been carrying out roading work for the Council under the contract since 1999. In 2003, a problem arose. Opus tendered for roading work for the Council, the "2003 Contract", the joint venture company had also tendered for the 2003 Contract but Opus' tender was successful.

Projenz alleged that by tendering for the 2003 Contract, Opus was in default of the joint venture. Projenz proposed to invoke the default procedure involving sale of Opus' interest in the joint venture. They sought an injunction to stop the forced sale.

Judgment

The key issue was whether Opus had shown it has an arguable case that it was not in breach of the joint venture agreement. This turned on whether the 2003 Contract is "associated work" under the joint venture agreement.

Opus argued that "associated" work was limited to work obtained by negotiation with the Council, as opposed to work that followed from a tender process. Projenz argued that there was an implied term in the joint venture that neither party would compete with the joint venture.

The High Court found that Opus' argument had at least met the threshold of showing there was an arguable case as to its interpretation of the joint venture.

Commentary

This case perhaps highlights that where a joint venture initially on a one-off contract is allowed to "run on" it would be helpful if the joint venture is "updated" as the time moves on.