

BRITISH VIRGIN ISLANDS HIGH COURT

Tawney Assets Limited -v- East Pine Management Limited, Guildron Trading Limited, SI Capital Partners Limited, Rudy Amirkhanian and Elena Lokteva (February 2012)

COMPANIES - UNFAIR PREJUDICE - BVI BUSINESS COMPANIES ACT S. 1841 - STAY

This case involved a Claim for damages for conspiracy/procuring a breach of contract by Tawney Assets Limited (the "Claimant") against East Pine Management Limited (the "First Defendant") arising out of a joint venture agreement between the Claimant and the First Defendant for the merger of two agricultural machinery businesses formerly carried on by them separately in the Russian Federation.

The Claimant and the First, Second and Third Defendants are BVI registered companies. The Court was asked to consider two applications. One brought by the Second Defendant for a stay of the proceedings in favour of courts in Russia, and the other on behalf of the First Defendant to strike out the amended statement of claim. The Court dealt with the strike out first and found that although it will usually be a hard thing to strike out a pleading of an implied term, it is not difficult where no basis for the need to make the implication could be found within the pleading and, where the term sought to be implied, was itself inconsistent with an express term of the agreement into which the terms were sought to be implied.

The Claims in contract and tort were consequently struck out. The decision to strike out made the forum argument redundant, however the Court heard argument as to whether the Third, Fourth and Fifth Defendants (who were not members, shareholders or directors) could be proper respondents to a claim for unfair prejudice under Section 1841 of the BVI Business Companies Act.

The Court, after considering the cases of *Re a Company No: 5287/85* (1985) BCC 915, *Re BSB Holdings Ltd* [1992] BCC 915, *Supreme Travels Ltd -v- Little Olympian Each Ways- Ltd* [1994] BCC 947, *Re Baltic Real Estates* [1992] BCC 629, *Re Fahey Developments Ltd* (1996) BCC 320, held that while it was very difficult to extract a unifying thread of principle from the authorities, a non-member respondent might be a party and could be compelled to provide relief in unfair prejudice proceedings.

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