

## BRITISH VIRGIN ISLANDS COURT OF APPEAL

### ***Tawney Assets Limited -v- East Pine Management Limited et al HCVAP 2012/07217***

### PROCEDURE - BVI APPEALS - STRIKE OUT

On 17 September 2012, the Court of Appeal took the opportunity to reassert the well-established principles in the test to be applied for striking out, and the breadth of power under case management powers in the discretion of the trial Judge. The Appellant based a claim on breach of contract, tort for unlawful conspiracy and unfair prejudice under S.184(i) of the *BVI Business Companies Act, 2004*. Having found no arguable case for breach of a shareholders agreement on construction of that agreement, nor any argument justifying a finding of implied terms the trial Judge proceeded to strike out the majority of the statement of claim. In doing so the trial Judge resisted the submission that despite there being some agreement that the facts pleaded in aid of the breach overlapped with relevant facts in support of the unfair prejudice claim, those facts would have to be re-pleaded in support of the only surviving cause of action for unfair prejudice.

The Court of Appeal held that the striking out of a party's statement of case, or most of it, is a drastic step which should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that the Claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the Court. The Court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial.

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