

## BRITISH VIRGIN ISLANDS

### COMMERCIAL DIVISION

#### ***Robert Tchenguiz -v- Mark McDonald (in his capacity as Joint Liquidator) et al (BVIHC (Com) 135 of 2016, March 2018)***

#### BVI LITIGATION AND RESTRUCTURING - COMMERCIAL LAW – EASTERN CARIBBEAN COURT CIVIL PROCEDURE RULES PART 3.14 - LIQUIDATION

In this BVI proceeding, Robert Tchenguiz (RT) made an application under CPR Part 3.14 (d) to inspect and take copies of a specific set of documents filed in relation to an Ordinary Application made under Section 273 of the *Insolvency Act, 2003* (“the 273 Claims”). The 273 Claims were issued by Vincent Tchenguiz (VT), Tchenguiz Family Trust (TFT) and other related entities. CPR Part 3.14 deals with the right of a party to inspect and take copies of a claim form, a notice of appeal, a judgment or order given or made in court and pursuant to CPR Part 3.14 subparagraph (d) “with the leave of the court, which may be granted on an application made without notice, any other document.”

RT was not a party to the 273 Claims and therefore relied on the following grounds for inspection under CPR 3.14:

1. To the extent that the filed affidavits contained imputations as to RT’s conduct he is a person interested in knowing what has been said, so that he can take steps to defend the allegations;
2. RT is interested as a beneficiary of the TFT with a *prima facie* right to disclosure of claims brought by the TFT to hold the Trustee to account.
3. RT is a member of the public with a right to take copies of (so far as is relevant) claim forms.

Counsel for RT also argued that the public right to inspect the claim form under CPR 3.14 (a) extended to filed documents which contained information that should have appeared on the face of the claim form or where applicable, was attached to the claim form.

Chivers J disagreed with RT and held that the right under CPR 3.14 (a) to inspect the claim form was not intended to extend to documents attached to the claim form. Considering the English case of *Dobson -v- Hastings* [1992] Ch 394 the Court also reasoned that as a matter of policy CPR Part 3.14 inherently draws a distinction between an application and its grounds on the one hand and filed evidence on the other.

In relation to the application made specifically under CPR 3.14 (d) the Court retains an overriding discretion to permit inspection of documents. The applicant would only be granted a right under CPR 3.14 (d) where there is a good or legitimate reason for inspecting the file and this must include being able to identify the documents or classes of documents in which he or she is interested (*Alfa Telecom Turkey Limited -v- Cukurova Finance International Limited* BVIHCV2007/0072 [delivered 12 July 2007]). The Court held that RT was entitled, in the exercise of its discretion, to the documents filed as against Rawlinson Hunter Trustees SA (“the Trustee”) as he has a legitimate interest in obtaining these documents for the purpose of holding the Trustee to account. Chivers J found that RT had shown a good reason and a legitimate interest in seeking inspection of the *affidavits* referred to on the face of the originating applications in the 273 Claims.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.