

BRITISH VIRGIN ISLANDS HIGH COURT

Nigel Gray -v- Allan Leddra and Pro-flex Packaging Co Limited

COMPANIES - UNFAIR PREJUDICE - BVI BUSINESS
COMPANIES ACT S. 841 - STRIKE OUT - NO
UNFAIR PREJUDICE WHERE DERIVATIVE ACTION
LIES

Here the Applicant, Allan Leddra, applied to strike out the Claimant's unfair prejudice Claim under Section 1841 of the *BVI Business Companies Act* (the "Act") on the basis that the claim as pleaded included claims in respect of a wrong actionable at the suit of the Company which amounted to an unauthorized derivative claim. The Applicant relied on the case of *Re Chime Corp Ltd (2004) 7 HKCFAR* where Lord Scott held that while the Courts of Hong Kong had jurisdiction in the strict sense to entertain within the confines of an unfair prejudice application a claim for relief in respect of a wrong actionable at the suit of the company in question such a claim would ordinarily not be allowed to be advanced unless the claim for recovery corresponded precisely with the company's claim and it was clear from the pleading that that quantification of the value of the claim could be made conveniently at trial.

The Court disapproved of Lord Scott's treatment of conflicting authority in the Chime case as "unsatisfactory" and found the case unhelpful. In his Judgment, the position in the BVI was clear. A derivative action requires permission under Section 185C of the Act and in light of the nature of the conditions which the court must be satisfied before granting permission it would be an abuse of process to attempt to mount, in the context of an unfair prejudice action, a derivative claim without the consent of the Court.

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