

CAYMAN ISLANDS GRAND COURT

Tempo Group Ltd. -v- Fortuna Development Corporation FSD 82 of 2011, per Henderson J (20 February 2012)

PROCEDURE - STRIKE OUT - DELAY - STANDSTILL AGREEMENT

The Plaintiff holds a minority interest in the Defendant Company. The action was commenced in June 2004 alleging a cause of action which arose at various times between September 2002 and April 2004.

A related proceeding was brought which involved various interlocutory orders and appeals, including an application for leave to appeal to the Privy Council, which was not finally dealt with until February 2011, at which time this action was revived. The Defendant has brought an application to strike out the Claim for delay. While the overall time period involved was at first glance excessive, there was in place a stand still agreement for a significant span of that time. No authority was cited in which a court has treated a delay which occurred during the currency of a stand still agreement as a reason for striking a claim.

The Court found that it is an implied term of the stand still agreement that any delay which occurs during the currency of the agreement cannot be relied upon in any application for want of prosecution. The Court went on to find that if it was mistaken, and the period of the stand still agreement ought to count, the delay was excusable based on the conduct of the parties and all the circumstances of the case.

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