

BRITISH VIRGIN ISLANDS HIGH COURT

Iu Chung A.K.A. Yao Yong -v- Greater Achieve Limited and Others Claim No. BVIHC (Com) 140 of 2015

APPLICATION TO STRIKE OUT CLAIM BASED ON CIVIL PROCEDURE RULES (“CPR”) 26.3(1)(B) AND INHERENT JURISDICTION - WHETHER TEST SAME FOR BOTH GROUNDS - ABILITY TO LOOK BEYOND STRICT LETTER OF PLEADINGS TO JUSTIFY STRIKE OUT - CLAIM BROUGHT BY SHAREHOLDER OF SHAREHOLDER IN COMPANY NAME - REFLECTIVE LOSS - EFFECT OF DELAY ON DOUBLE DERIVATIVE PERMISSION - EFFECT OF CONDUCT ON ABUSE OF PROCESS AND CONSEQUENTIAL DISCHARGE OF INJUNCTION FOR NON-DISCLOSURE

This was an Application by one of eight defendants that sought to strike out a Claim on two grounds; CPR 26.3(1)(b), and abuse of process under inherent jurisdiction. The Judge followed the CA decision in *Didier -v- Royal Caribbean Cruises Ltd (2016)* where the Chief Justice reaffirmed that such applications under CPR 26(1)(b) required consideration of the strict wording of the pleadings and no more. In this case, the pleadings failed to demonstrate any cause of action as pleaded, and blatantly did not when it concerned derivative relief without permission, as well as reflective loss.

On inherent jurisdiction grounds, the Judge considered the history of conduct by the Claimant including failure to obtain bankruptcy trustee permission to bring the claim; failure to pay ordered security for costs; failure to pay costs ordered for discontinuing; “egregious” and “deliberate” failure to give full and frank disclosure in the obtaining of the *ex parte* injunction; failure to attend hearings and generally a “series of flagrant breaches” of CPR.

On this basis, the Claim was struck out under the inherent jurisdiction of the Court.

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