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OFFSHORE CASES

JUNE 2016

BRITISH VIRGIN ISLANDS

COMMERCIAL COURT

John Shrimpton and Dominic Scriven et al
Claim No. BVI 2014/0171

APPLICATION FOR SUMMARY JUDGMENT IN RESPECT OF ONLY PART OF CLAIM - CLAIM UNDER SECTION 184I OF BVI BUSINESS COMPANIES ACT, 2004 - EXCLUSION FROM EQUAL STATUS IN MANAGEMENT (1) IN BREACH OF EQUITABLE CONSTRAINTS ARISING FROM QUASI-PARTNERSHIP - ALTERNATIVELY (2) BREACH OF SHAREHOLDERS' AGREEMENT - APPLICATION FOR SUMMARY JUDGMENT ONLY IN RESPECT OF ALLEGATION OF QUASI-PARTNERSHIP - CLAIM BASED ON BREACH OF SHAREHOLDERS' AGREEMENT LEFT TO GO TO TRIAL IN ANY EVENT - UNDESIRABILITY OF ATTEMPT TO ELIMINATE ONLY PART OF CLAIM - PARTICULARLY A FACT INTENSIVE ONE - UNDERMINING THE OVERRIDING OBJECTIVE OF EXPEDITION AND SAVING OF EXPENSE - SIGNIFICANCE OF "NO PARTNERSHIP" AND "ENTIRE AGREEMENT" CLAUSES IN SHAREHOLDERS' AGREEMENT - QUESTION WHETHER QUASI-PARTNERSHIP CAN EXIST IN A COMPANY THAT IS DEADLOCKED AT BOARD AND SHAREHOLDER LEVEL

This was Mr. Scriven and Mr. Pasikowski's (the First and Second Defendant's collectively the "Applicants") Application for reverse summary judgment on the issue whether a quasi-partnership existed between them in relation to the business of Dragon Capital Group Limited (the "Company"). In support of its summary judgment application, the Applicant's alleged that the allegation of quasi-partnership was so weak as to have no prospect of success because it was vague and unsupported by any relevant allegations of facts. In particular, the Applicant relied on the fact that the conduct of the parties was consistent with the terms of the articles of the association for the company and represented their equal shareholding and management control (i.e. the conduct of the Company's affairs) was referable to the Company's constitution and was nowhere near sufficient to establish an equitable partnership. The fact that the Claimant, Mr. Scriven and Mr. Shrimpton, had equal involvement in the conduct of the Company's business was purely reflective of the constitutional arrangements that had been in place and not of a quasi-partnership. The Applicant also argued that the pleaded conduct fell short of the particularity required because it did not

identify precisely the conduct out of which the understanding arose was not sufficiently pleaded.

The Applicant also relied on a *Shareholders Agreement, 2005* (the "SHA"), which the Applicant maintains the Respondents had no real prospect of establishing, that at trial the quasi-partnership survived the conclusion of the SHA because there were features of the SHA which did not support a quasi-partnership and further that the SHA covered all the matters (the "four understandings") pleaded as part of the quasi-partnership allegation.

The Court applying *Ebrahimi -v- Westbourne Galleries* confirmed that a quasi-partnership was deployed as a shorthanded way to describe a relationship in a company where equitable constraints arose in addition to those formally recognised by the company's constitutional documents. The Court, in refusing the application for summary judgment, held that he did not see why the conduct of the Company's affairs could not be underpinned by both the corporate form, as well as equitable understandings, even if they produce the effect. He considered that determining whether there was a quasi-partnership, was a fact intensive inquiry and would have to go to trial so that the evidence could be tested. In relation to the Applicants submissions to the Shareholders Agreement, the Court felt there was force in those arguments, but came to the view that it was arguable that the Agreement did not intend to sweep away the quasi-partnership and, even if it did, that it was by a "side wind".