

BERMUDA SUPREME COURT

East Bank Consultants -v- Livio Ferigo
[2016] SC (Bda) 88 Civ (31 October 2016)

STRIKE-OUT APPLICATION - CAPACITY TO SUE -
LEGAL PERSONALITY - VALIDITY OF ASSIGNMENT
AGREEMENT - NOTICE TO DEBTOR
REQUIREMENT - SUPREME COURT ACT, 1905
SECTION 19(D)

The Defendant in this matter applied to strike out the Plaintiffs debt claim on two grounds, firstly, that the Plaintiff lacked the legal personality to sue and secondly, the Deed of Assignment of the debt that formed the basis of the Claim (the "Assignment"), was a nullity.

In regard to the first point it was readily accepted that the Plaintiff was an unincorporated association which lacked the legal capacity to sue. In relation to the Assignment, it was argued by the Defendant that the assignor had not met the requirement to provide express notice, in writing, to the debtor, as set out in Section 19(d) of the *Supreme Court Act, 1905*. In considering this requirement, the Chief Justice found that the one fact beyond argument was that express notice, in writing, of the Assignment, was only given after the Writ was issued. In view of this, the Chief Justice struck out the Plaintiff's action stating that it was a "fatal flaw" that the Plaintiff did not possess the standing to bring proceedings when the Writ was issued.

Conyers Dill & Pearman is a leading international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. Conyers has over 130 lawyers in eight offices worldwide and is affiliated with the Conyers Client Services group of companies which provide corporate administration, secretarial, trust and management services.

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.