

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Yang Hsueh Chi Serena and Ors -v- Equity Trustee Limited and Ors BVIHC (Com) 59 of 2017 (Chivers J) (unreported, 28 March 2018)

ABUSE OF PROCESS – DOCTRINE OF *HENDERSON* -V- *HENDERSON*

This recent decision by Chivers J contains a useful summary of the legal position in the BVI in relation to abuse of process and, in particular, the doctrine of *Henderson -v- Henderson*.

The underlying claim was one for undue influence, with the claimants seeking to undo a series of convoluted transactions which had led to part of their shareholding in a valuable holding company being transferred (through the actions of the settlor) into a discretionary trust, of which they were mere objects. In response to that claim, the trustee defendants (and others) had *inter alia* sought to strike out the proceedings on the basis that the claimants' claim could and should have been brought within, or as part of, one of two sets of earlier proceedings that had been issued by them (or their privies) against the defendants in Hong Kong and the BVI (and which concerned the same transactions).

In striking out the claimants' claim in these new proceedings, Chivers J agreed that the claims could and should have been brought within the earlier BVI proceedings.¹

In reaching his decision, Chivers J referred to and summarised a number of the important decisions in this area, including *Aldi Stores Ltd -v- WSP Group plc* [2003] EWCA Civ 14, in which the English Court of Appeal had set out (what have come to be known as) the Aldi guidelines, whereby a party who intends to bring a subsequent action against existing parties or their privies must raise the issue with the Court in the current proceedings. Although Chivers J was invited to introduce the Aldi guidelines in the BVI, he chose not to, on the basis that it was already plain from the relevant authorities (which applied in the BVI) that a litigant was obliged to put their cards on the table at an early stage.

In light of his summary and analysis of the authorities in this area, Chivers J's decision in *Yang Hsueh Chi Serena and Ors -v- Equity Trustee Limited and Ors* is likely to be a useful starting point when considering future abuse of process applications.

¹ The Judge also determined that had he not struck the claim out as an abuse of process, then he would have struck the claim out on the basis that there was an unarguable defence to the claim of laches, in light of the claimants' delay in seeking to set aside the transactions in question.

Matthew Brown of Conyers appeared for the applicant led by Philip Jones QC.

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.