

Amend your Notice or Be Confined to your Application

This week, the BVI Commercial Court (the "Court") has handed down judgment in *Briefline Assets Ltd v Nikolay Falin and Anor*, where the Honourable Mr Justice Jack has clarified how the Court will interpret Civil Procedure Rule ("CPR") 11.7 on the requirements for an application notice in the territory.

CPR 11.7

This provision of the Eastern Caribbean CPR requires, among other things, that an application must state: (a) briefly the ground on which the applicant is seeking the order; and (b) what order the applicant is seeking.

On applications seeking strike out, reverse summary judgment or an amendment to pleadings, the Court was asked to consider the scope of CPR 11.7, and whether a holistic or purposive approach could be taken on its requirement for an applicant to set out the grounds of his application. Alternatively, whether that requirement should be applied strictly by the Court, such that an applicant would be confined to those grounds contained in his application notice.

The Judgment

The Court rejected the claimant's submission, made in support of taking a purposive approach, that *"the purpose of CPR 11.7(1)(a) is merely to avoid parties making applications in writing with*

the grounds explained solely as 'see affidavit in support'".

Instead, Justice Jack held that the requirements of CPR 11.7 *"are not onerous" and "require a party to set out – albeit briefly – his grounds for his application"*. In so finding, the Court confirmed that a party remains at liberty to seek to amend his notice of application to add or remove grounds but, where that has not been done, a party will be confined to his application.

Conclusion

This judgment stands as a warning to litigants, and those representing them, that an applicant's grounds for an application should be properly considered and all-encompassing of the reasons he seeks an order. The need for brevity is not an excuse for omitting grounds upon which an applicant might later wish to rely.

That said, the judge did not expressly rule out the possibility that an amendment to plead additional grounds will be allowed, even if made at the hearing, provided it does not cause prejudice.

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