

## Three strikes and out - Withers BVI succeeds in defence of \$300m claim

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PARTNER | US

**CATEGORY:**  
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Withers BVI has been acting for a group of BVI companies in connection with the worldwide litigation between former husband and wife, Martin Coward and Elena Ambrosiadou, the founders of the IKOS quant hedge fund.

The Claim was brought by Martin Coward, seeking inter alia a declaration that the assets of one of the companies were held on express trust for him. He also made additional claims relating to alleged fiduciary duties owed to him and an unlawful means conspiracy.

The companies defended the claims on the basis that the Particulars of Claim did not disclose the existence of an express trust, no fiduciary duties could be owed to the Claimant and there was no conspiracy. Consequently, they filed an application to strike out the Claim as failing to disclose a cause of action and/or having no realistic prospect of success.

The Defendants were represented by Elspeth Talbot Rice QC and Nicole Langlois at a two-day hearing before Mr. Justice Edward Bannister in the BVI Commercial Court. The Judge was plainly impressed by Counsels' submissions, stating during the course of argument that Ms Talbot Rice had conducted a "... first-rate hatchet job ..." on the Claimant's pleading. He struck out each of the three claims and the entire pleading, awarding the Defendants their costs of the action. He also refused the Claimant leave to appeal.

Unsurprisingly perhaps, the Claimant applied to the Court of Appeal for leave to appeal. In so doing, however, his lawyers seemingly ignored a provision that where application for leave to appeal had been made to the Court below and refused, application to the Court of Appeal may be made within 7 days of such refusal. When pointed out to them, the Claimant's lawyers argued that this rule could only apply to a paper application – nonetheless they then filed a 'protective' application for an extension of time for leave to appeal.

In a further reverse to the Claimant's case, the Single Judge in the Court of Appeal, clarifying the rules relating to appeals, held that the provision applied to both paper and oral applications and, although granting the Claimant sufficient extension of time to make their application for leave to appeal, awarded the Defendants their further costs. The outcome of the Claimant's latter application is presently awaited.

Withers BVI's team consisted of Niki Olympitis, Sara-Jane Knock and Sharada Shaw, who instructed Elspeth Talbot Rice QC and Nicole Langlois of XXIV Old Buildings, Lincolns Inn.

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