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COMMERCIAL DISPUTES **KNOW-HOW GUIDES**

STRIKE OUT APPLICATIONS

The purpose of an application to the court to strike out is the deletion of material from a party's statement of case so that it cannot be relied on in the proceedings. If a whole statement of case is struck out, this should lead to the court giving judgment for the applying party

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RESTRICTIONS ON STRIKE OUTS

An application to strike out a statement of case (for instance a Claim or a Defence) is made under the Civil Procedure Rules ("CPR") rule 3.4 or under the court's inherent jurisdiction but the courts use the power sparingly and an unsuccessful application to strike out will likely result in an order for costs of the application being made against the applicant.

Under CPR rule 3.4(2), the court can strike out a statement of case (or part of a statement of case) if it appears:

- that the statement of case discloses no reasonable grounds for bringing or defending the claim;
- that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
- that there has been a failure to comply with a rule, practice direction or court order.

Once the applicant has shown that one of the grounds for strike out exists, the respondent has to persuade the court that it would be inappropriate, or unjust, for the order to be made. The leading cases establish that strike out is only appropriate in 'plain and obvious' cases and that judges should not rush to make findings of fact on contested evidence at this summary stage.

Nor should judges hearing strike out applications conduct 'mini trials' involving protracted examination of the documents and facts (although sometimes a detailed analysis is appropriate).

STRIKE OUTS AND SUMMARY JUDGEMENT

There is a substantial overlap between the court's power to strike out under CPR 3.4 and its power to award summary judgment under CPR 24. An application for strike out focuses, however, on statements of case, whereas an application for summary judgment requires consideration of the evidence as well (as the test for summary judgment is whether it is arguable that a claim or defence has no real prospect of success and there is no compelling reason for a trial) -see our Know How Guide on Summary Judgment.

STRIKE OUTS IN FRAUD PROCEEDINGS

It is rare for a strike out to be granted in fraud proceedings, not least because fraud claims involve disputed allegations of dishonesty and generally the court will not decide them without a full trial. However, in three recent cases, the court has shown that it is prepared to strike out fraud allegations. These cases are a reminder that a strike out application is focused on the quality of the pleaded evidence alone, whereas the evidential ambit for a summary judgment application is wider under CPR 24.

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- (1) In *Jinxin Inc v Aser Media PTE Limited and others* [2022] EWHC 2988 (Comm), the judge said that the court should assume for the purposes of a strike out application that the facts pleaded are true, and that it should adopt a generous approach when assessing the pleadings of the party alleging fraud, given that the party does not have access to all of the evidence which pertains to their allegation at the pleadings stage.
- (2) In *Complete Facilities Solutions Ltd v Livingstone Consulting Ltd & Ors* [2023] EWHC 571 (Ch), the claimant accused directors of procuring a breach of contract, deceit, conspiracy to injure and joint tortfeasorship. The allegations were, however, struck out for the following reasons:
- The particulars of claim did not plead primary facts from which an inference of the relevant dishonesty or wrongdoing may be made.
 - The pleadings did not reveal primary facts sufficient to satisfy the necessary test in relation to any wrongdoing by the defendants.
 - There was nothing pleaded that was capable of tilting the balance on the question of dishonesty or wrongdoing.
- (3) In *Gupta & Anor v Shah & Ors* [2023] EWHC 540 (Ch) the claimant, Dr Gupta, was defrauded out of US \$14 million by Mr Shah. The claimant applied to strike out the only defence in law raised by the defendants, who alleged that:
- Dr Gupta's original money was the proceeds of crime.
 - Dr Gupta was a 'front-man for others' in a criminal organisation.
 - The defendants had information that a contract had been taken out to murder the first defendant and kidnap the other defendants.
- The judge described these allegations as "... so woefully short of particularisation in respect of a very serious matter that it should not be allowed to stand." Accordingly, these parts of the defence were struck out.

This is part of a series of practical know-how guides for those involved in commercial disputes whether the dispute has led to litigation or not. They provide basic information on a wide range of disputes topics but are not a substitute for specific legal advice.

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