

BRITISH VIRGIN ISLANDS HIGH COURT

Liao Chen Toh and Silverstate Enterprise Limited -v- Triple Dragon (March 2012)

COMPANIES - WINDING UP - STANDING - BURDEN OF PROOF - RELEVANCE OF INSOLVENCY WHERE PETITIONER HAS NO STANDING

This was an Application on behalf of the Applicants for the appointment of a liquidator over the Respondent Company on the grounds that it was insolvent. The Court refused the petition and held that an Applicant claiming to be a creditor of a Company over which he seeks the appointment of a liquidator has the burden of persuading the Court, on the balance of probabilities that he is a creditor of the company in question. If he is unable to do so he does not have standing to bring the application and the Court would not need to consider whether the evidence establishes that the Company is insolvent within the meaning of Section 8(1)(c) of the *Insolvency Act, 2003*. Although the Learned Commercial Judge did go on to consider whether the Company was insolvent, within the meaning of the Act, he only did so on the assumption that he was wrong about *locus standi*. The Court also observed that the general rule that, a debt is repayable on demand must be repaid within the time needed by the debtor to collect funds from the bank, would have no application to an alleged debt where a substantial part of the indebtedness was likely to have been statute barred when the demand was made.

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