

BVI Court demonstrates it will continue to aid creditors pursuing unpaid debts

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A recent matter which came before a strong Court of Appeal panel demonstrates that the BVI Court will continue to come to the aid of creditors pursuing unpaid debts and that they should not necessarily be deterred from pursuing a debt in the BVI even if the security over the debt is in issue.

The matter initially came before the Commercial Court in early 2020 when Chance Talent Management (**Chance Talent/Respondent**) made an application (the **Application**) to appoint liquidators over Novel Blaze Limited (**Novel Blaze/Appellant**). On hearing from the Parties, The Honourable Justice Jack made an order winding up Novel Blaze and appointed Roy Bailey of EY (amongst others) as joint liquidators of the Novel Blaze.

Novel Blaze appealed the Application on similar grounds to its opposition in the Court below. The most novel of which stemmed from an objection to the debt (upon which the liquidation application was grounded) (the **Debt**) being used to wind up the company when the Respondent held security for its Debt by way of secured charges in Novel Blaze's subsidiaries.

This grounds of appeal principally argued:

1. Chance Talent was not a "creditor" within the Insolvency Act, 2003 (the **Act**), rather it was a "Secured Creditor" and, as such, had no standing to bring the Application; and
2. As the Debt was secured (in Novel Blaze's subsidiaries), it would 'augment' the estate of Novel Blaze if the Applicant was both to wind up Novel Blaze and still be allowed to realise its security (citing the historical authority of *Ex parte West Riding Union Banking Company* (1881) 19 Ch D 105).

The full panel of the Appellant Court agreed with Justice Jack and dismissed Novel Blaze's appeal and awarded the Respondent its costs. The written judgment of the Court of Appeal confirms:

1. The statutory definition of creditor in the Act is clear and must be interpreted and given effect in keeping with its natural and ordinary meaning.
2. The security held by Chance Talent was in a subsidiary of Novel Blaze, which is a separate corporate entity to the debtor.
3. In support of this conclusion the Justices firmly stated that "there is no need to have recourse to any sort of purposive interpretation as advocated by Novel Blaze" – the wording 'over the asset of a debtor' is "clear and unambiguous". In so doing the Appellant Court, stated that if an authority was needed, the High Court case in Singapore, *Swiber Holding Ltd [2018] SGHC 180* (which was cited in the Court below) sufficed.

Partners Grant Carroll and Oliver Payne, Managing Associate Daniel Mitchell and Senior Associate Edwin Gomez, who successfully represented Chance Talent, are part of Ogier's multi-jurisdictional Restructuring and Corporate Recovery team and advise on all matters pertaining to corporate recovery, rescue and insolvency.

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