

BERMUDA SUPREME COURT

In The Matter of Agrenco Limited [2014] SC (Bda) 80 Com (10 October 2014)

STATUTORY DEMAND - SECTION 161 OF THE COMPANIES ACT 1981 - ADJOURNMENT OF PETITION

In this matter, the Petitioner was a creditor who had presented a Statutory Demand under Section 162 of the *Companies Act, 1981*. Section 162 provides, where a statutory demand is served and the company has not paid the debt within three weeks, the company is deemed to be insolvent. The Company appeared in opposition to the Petition, not contending the debt is disputed, but seeking the adjournment of the Petition for one week. The Company sought the adjournment to enable it to supplement an Affidavit filed, which expressed the very indefinite hope that some form of restructuring of the operating companies, which are in bankruptcy in Brazil, may yield monies which can be distributed upwards to Agrenco Limited and to its creditors on terms which would make a winding up unnecessary.

The Judge held the reality is that an unpaid creditor has an absolute right to a winding up order. In this circumstance it was far from clear to the Judge that the winding up of the holding company will have an adverse position on the operating companies. In the event there were to be some dramatic development which made a winding up order inconsistent with the interests of creditors, the relief, which could be obtained by the Company in those circumstances, no doubt with the support of the petitioning creditor, would be to apply to stay the winding up proceedings. As such, in light of the fact there was no substantive opposition to the Petition, the Judge held the correct Order was to make the winding up order sought and grant the related relief of appointing the official receiver as provisional liquidator.

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