

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Angel Wise -v- Stark Moly Limited

COMPANIES - INSOLVENCY - STATUTORY
DEMAND - DISPUTED DEBT - EVIDENCE

The Appellant company sought to appeal the decision to appoint liquidators over it following the Appellant's failure to set aside a statutory demand served on it. The grounds of appeal included an allegation that the Learned Judge misdirected himself by substituting his own opinion for that of the expert relied on by the Appellant in the court below. Applying the *dicta* in *Eng Mee Yong & ors -v- Letchumanan* [1980] A.C. 331, the Court held that although, in the normal way, it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that the judge is bound to accept uncritically every affidavit statement however equivocal and lacking in precision it may be as raising a dispute of fact which calls for further investigation. In order to determine whether a dispute was substantial, the Court had to carry out a preliminary assessment of the facts on which the injustice was raised. It was for the Judge to determine, in the first instance, whether statements contained in affidavits that are relied on as raising a conflict of evidence on a relevant fact, have sufficient *prima facie* plausibility to merit further investigations as to their truth. The Appeal was dismissed.

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