

BRITISH VIRGIN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

Vendort Traders Inc -v- Evrostroy Grupp LLC (Claim No BVIHCV (COM) 2012 of 0054)

STATUTORY DEMAND BASED ON LCIA
ARBITRATION AWARD - WHETHER AWARD
CREATING AN ENFORCEABLE DEBT - WHETHER
UNDERLYING DEBT DISPUTED - S. 10
INSOLVENCY ACT, 2003 (THE "ACT") - WHETHER
DEMAND TO BE SET ASIDE

Vendort Traders Inc ("Vendort") applied in the Commercial Court to set aside a statutory demand served on it by Evrostroy Grupp LLC ("Evrostroy") on the ground that it was unenforceable. The statutory demand was for a debt in the sum of RUR38 million (together with GB£36,000 and US\$3,474 by way of interest and costs of the arbitration) pursuant to a final award made in an LCIA arbitration. Vendort sought to argue that the fact that the award was not made enforceable as a judgment under Section 28 of the Arbitration Ordinance (the "Ordinance") rendered it unenforceable. As such, pursuant to Section 10(3) of the Act unenforceable debts are excluded from the definition of liability and, therefore, could not be a debt for the purpose of a statutory demand or a claim in the liquidation of the company.

The Learned Commercial Judge dismissed Vendort's submission and held that the effect of an order under Section 28 of the Ordinance is to make the award enforceable as a judgment and that the word "unenforceable" where it occurs in conjunction with the word "illegal" in Section 10(3) of the Act did not mean unenforceable as a judgment. The Court said that "*unenforceable*" in Section 10(3) meant not actionable (for example where the Claim was statute barred). Having found that the debt was enforceable the Court went on to consider whether there was a substantial dispute on the debt. The Court found that it would be wrong in principle to treat a debt established by a foreign award as disputed unless it could be argued on substantial grounds that the arbitral process was not properly followed or was inherently flawed or unless some evidence has subsequently emerged which shows that there is a substantial

argument that the arbitration proceeded on a fundamentally mistaken basis of fact.

Vendort did not seek to persuade the Court that there was an error of procedure and in respect of the other grounds the Court held that they could not be found to exist on those particular facts. The application to set aside the statutory demand was dismissed and Evrostroy was authorized to make an application for the appointment of a liquidator.

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