

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Jackson IP and James Wardell -v- Griffin Industries Limited (In Liquidation) Claim No. BVIHCMAP 2013/0006

CIVIL APPEAL - INTERLOCUTORY APPEAL FILED WITH LEAVE - ENTITLEMENT OF VOLUNTARY LIQUIDATORS TO FEES AFTER THEY FORM VIEW THAT COMPANY IS INSOLVENT - INSOLVENCY ACT, 2003, SECTION 182, 430 - BVI BUSINESS COMPANIES ACT, 2004, SECTION 209, 210 - APPEAL AGAINST JUDGE'S FINDINGS OF FACT

This case concerned an appeal by the former joint voluntary liquidators (the "Appellants") against parts of an Order made by Justice Bannister in the Commercial Court.

Following their replacement, the Appellants applied for their remuneration in the amount of HK\$6.4 million. The creditors committee fixed the Appellants remuneration at less than half of that, in the amount of HK\$3.1 million.

On application to the Court to fix their remuneration, the trial judge found that the appellants had realised the majority of the company's assets within the first 12 months of their appointment and further found that from 26 August 2007 the Appellants remuneration should be limited to work which fell only within the (limited) scope of Section 182 of the *Insolvency Act, 2003* (the "IA"). Section 182 provides for the voluntary liquidators to take the company's assets into their custody and control, dispose of perishable goods, and to doing all such things necessary to protect the company's assets.

The restriction on remuneration was imposed as the Judge found there to be clear evidence that the Appellants were aware that the company was insolvent by 26 July 2007 (the date of the statement of affairs which revealed the insolvency). Instead of sending a notice to the official receiver in the BVI 'forthwith' (as required by Section 209 of the *Business Companies Act*) years elapsed until notice was sent in November 2011.

The Judge noted that voluntary liquidation should effectively be frozen once the opinion was reached that the Company was insolvent, and it would be wrong to award the appellants remuneration for carrying out tasks other than those falling within Section 182 of the IA. The whole point of the scheme, as the Judge noted, was to ensure that no further expenses would be incurred by the voluntary liquidators other than the expenses in carrying out the limited functions prescribed by Section 182. The Court of Appeal agreed with the findings of the trial judge and dismissed the appeal with costs.

Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.