

BRITISH VIRGIN ISLANDS HIGH COURT

Zaria Global Limited -v- Pillar Securitisation Sarl
Claim No. BVIHC (COM) 0035 of 2013
(January 2014)

STATUTORY DEMAND - APPLICATION TO SET ASIDE - WHETHER FAILURE TO COMPLY WITH REQUEST FOR FURTHER EVIDENCE CAPABLE OF AMOUNTING TO DISPUTE - CREDITOR FAILING TO VALUE SECURITY AND CLAIMING FOR GROSS AMOUNT OF DEBT - WHETHER GIVING RISE TO SUBSTANTIAL INJUSTICE - SECTION 157(2) INSOLVENCY ACT, 2003 CONSIDERED - DEBTOR RELYING ON CROSS CLAIM - WHETHER MADE OUT ON FACT

This case concerned an application by Zaria Global Limited (Zaria) to set aside a statutory demand served on it by Pillar Securitisation S.a.r.l ("Pillar") on several grounds including the failure by Pillar to give further disclosure and a defect in the statutory demand itself. The Court said that it did not think that by challenging Pillar to give further disclosure of what was plainly asserted as a fact, Zaria raised a substantial dispute for the purpose of setting aside a statutory demand. Further, the Court held that although Section 157(2) gives the Court the power to set aside a statutory demand if substantial injustice would otherwise be caused by a defect in the demand including where a creditor failed to value any security held for the debt that on these facts substantial injustice had not been caused. The Court said he may have concluded differently if Zaria had indicated a readiness to pay the unsecured part of the debt and he could see no practical good coming from Pillar having to amend the statutory demand to take account of the security.

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