

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Vendort Traders Inc -v- Evrostroy Grupp LLP Claim No. BVIHCVAP 2012/0041

CIVIL APPEAL - COMMERCIAL APPEAL -
ARBITRATION PROCEEDINGS - SHARE AND SALE
PURCHASE AGREEMENT - APPLICATION TO SET
ASIDE STATUTORY DEMAND - WHETHER THERE
IS A SUBSTANTIAL DISPUTE AS TO WHETHER
DEBT IS OWING OR DUE

This was an appeal by Vendort Traders Inc (the “Appellant”) against an order of the Learned Commercial Court Judge dismissing its application for an order to set aside a statutory demand served on it by Evrostroy Grupp (the “Respondent”). The statutory demand was based on an unsatisfied arbitral award. The Appellant fully participated in the arbitral proceedings which gave rise to the Award. The grounds of the appeal were that (i) no debt was owing because the Award had not been enforced in the BVI and an unenforceable award could not form the basis of the statutory demand; (ii) there was a substantial dispute as to whether the Award was enforceable in the BVI because the Award was either procured by fraud or its enforcement was part of a fraudulent scheme to divest it of its assets; and (iii) the Judge erred in holding that it had accepted that the Award created an estoppel between it and the Respondent.

In dismissing the appeal the Court of Appeal, applying the decision in *Re International Tin Council* [1987] Ch. 419, held that it was not necessary for an award to be enforced before a statutory demand could be presented in reliance on it. The Court said that there were no statutory provisions or common law principles in the BVI prohibiting a person in whose favour an award had been rendered from serving a statutory demand or issuing a winding up petition based on an unenforced foreign award or judgment. The Court also held that Section 28 of the Arbitration Ordinance could not be read as compelling enforcement but merely prescribed the procedure for enforcing an award.

In relation to the second point of appeal, the Court held that for a court to set aside a statutory demand on the basis that there is a substantial dispute as to the validity of the debt “*there must be so much doubt and question about the liability to pay the debt that the Court sees that there is a question to be decided*”. On those facts the Court found that there was no substantial dispute that the debt was owing and due under the Award and on the third issue that the Learned Judge had been correct in acknowledging that the Appellant was estopped, save in exceptional circumstances, from re-litigating the issues which had already been decided by an arbitral tribunal of competent jurisdiction.

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