

# BRITISH VIRGIN ISLANDS

## COURT OF APPEAL

***Kevin Gerald Stanford -v- Stephen John Akers and Mark McDonald BVIHCMAP 2017/0019 (July 2018)***

LIQUIDATION - APPEAL TO REVERSE OR VARY GLOBAL SETTLEMENT AGREEMENT – WHETHER AN AGGRIEVED PERSON UNDER SECTION 273 OF INSOLVENCY ACT – WHETHER THE DECISION OF JOINT LIQUIDATORS WAS A COMMERCIAL ONE – WHETHER NEW EVIDENCE CAN BE ADMITTED ON APPEAL

In this case, liquidation proceedings were brought by Kaupthing Bank Iceland (“Kaupthing”) against Chesterfield United Inc (“Chesterfield”), a company owned by three BVI companies, one of the companies being Trenvis. The appellant Mr. Kevin Gerald Stanford (“Mr. Stanford”) maintains that he is a shareholder of Trenvis.

To settle the proceedings, a global settlement was entered into by the joint liquidators, Mr. Stephen John Akers and Mr. Mark McDonald, Kaupthing, Chesterfield and its bankers (the “Settlement Agreement”). The parties were granted permission to admit the claim from Kaupthing into Chesterfield’s liquidation. Thereafter, the appellant applied under Section 273 of the *Insolvency Act, 2003* to reverse or vary the decision. The application was denied on the basis that the liquidators did not act perversely in deciding to enter the Settlement Agreement nor was their agreement to admit and pay Kaupthing’s claim. In fact, Mr. Stanford could not be said to be an aggrieved person under Section 273 and did not have a legitimate interest in the Court’s decision.

The appellant appealed, challenging the decision and challenging that the joint liquidation decision is a commercial one and within their discretion, along with filing an application for disclosure of various documents and the Icelandic Judgement. The learned judge, dismissing the appeal, upheld that the appellant was not the proper person to make the application as he did not fall within the categories of an aggrieved person within the Act, rather, at most, he was merely a shareholder of a shareholder of Chesterfield, and therefore had no legitimate interest in the Court’s decision. The appellant also failed in his application to set aside the decision as he could not show how the Settlement Agreement was perverse. Without the liquidators acting perversely, the Court stated it has no jurisdiction to interfere or to substitute its opinion for that of the liquidators. It considered the decision of the liquidators to be a commercial one and one within their discretion. In so far as it concerned disclosure and seeking to adduce new evidence, the learned judge, applying the principles in *Ladd -v- Marshall* [1954] 3 All

ER 745 said that the appellant knew that the documents existed at the time of trial and did not seek to rely on them then. Since knowledge or lack thereof was one of the factors necessary for the exercise of the Court’s discretion to admit new evidence, the appellant could not succeed in his application.

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