

BVI Update: A Person Aggrieved – Prove Your Debt or Fall Short on Standing

A recent decision of the British Virgin Islands ("BVI") Commercial Court has seen The Honourable Justice Jack (Ag) clarify the 'aggrieved person' test for an interloper seeking to move an application under s273 of the Insolvency Act, 2003 (the "Act").

S273 of the Act provides that a person aggrieved by an act, omission or decision of an office holder may apply to the Court to confirm, reverse or modify said act, omission or decision.

In *Simon McNally and Anor v Carl Stuart Jackson and Ors* [BIVHC(COM) 49 of 2021], various issues were before the Court relating to a s273 application which sought, among other things, to challenge the actions of BVI joint liquidators.

By his judgment, Justice Jack held that, in order to move an application to be joined for the purpose of making submissions under s273 of the Act, the applicant had first to demonstrate that it was a creditor of the estate. It was not sufficient that the applicant had the benefit of a previous judgment of the Court within which it was referred to as a "relevant creditor". Instead, more was needed to show that it had been accepted as a creditor by either the liquidators or the Court.

The Court required of the interloper that it first submit a proof of debt to the joint liquidators, in order to trigger an adjudication process. If the joint

liquidators did not recognise the debt, the putative creditor would then have been at liberty to apply to the Court for determination of the issue. In the present case, the Court found that no such proof of debt was submitted, ergo the applicant was held to lack standing to make or be joined to an application under s273 of the Act.

This is a further example of the BVI Court taking proactive steps to clarify the 'aggrieved person' test to assist an individual to determine at the outset whether they have standing to make such an application. It follows the judgment in *Stanford v Akers*, heard by each of the BVI Court and the Court of Appeal, which found that a shareholder of a shareholder of a BVI company was an outsider to the liquidation with no legitimate interest entitling him to standing under s273 of the Act.

Further Information

If you would like further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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