

Recognition First: BVI Court Follows Drelle

Maples and Calder represented JJW Hotels & Resorts Holding Inc in these proceedings.

Introduction

In *JJW Hotels & Resorts Holding Inc v Rhodes and Another as joint liquidators of JJW Limited (in liquidation)* (BVIHC (COM) 2025/0296) ("*JJW Hotels*"), the BVI Commercial Court (the "Court") followed the English Court of Appeal's decision in *Servis-Terminal LLC v Drelle* [2025] EWCA Civ 62 ("*Drelle*") and set aside a statutory demand on the basis that an unrecognised foreign court judgment cannot found insolvency proceedings in the BVI. The judgment, delivered by the Honourable Justice Mithani KC (Ag), represents the first reported occasion on which a BVI court has addressed the interrelationship between insolvency law and private international law in this context, and provides important guidance for creditors and debtors alike.

The Court also held, *obiter*, that unlike in personal bankruptcy, there is no requirement under the BVI Insolvency Act 2003 ("IA 2003") for a creditor to serve a statutory demand before applying to liquidate a company.

Background

The Applicant, JJW Hotels & Resorts Holding Inc ("JJW"), is a BVI-incorporated company. The Respondents are the joint liquidators of JJW Limited, a Guernsey company in compulsory liquidation. JJW brought proceedings before the Royal Court of Guernsey seeking declarations that it was the beneficial owner of shares held by JJW Limited in certain subsidiaries. Those claims were dismissed at first instance, on appeal to the

Guernsey Court of Appeal, and permission to appeal to the Privy Council was refused, with costs orders made against JJW at each stage (the "Guernsey Costs Orders").

Bills of costs were subsequently served by the Respondents. JJW did not challenge those bills within the time permitted by the applicable Guernsey procedural rules and the costs crystallised as judgment debts. On 19 June 2025, the Respondents served a statutory demand in the BVI seeking payment of the Guernsey Costs Orders (the "Statutory Demand"). JJW applied to set aside the Statutory Demand pursuant to section 156 of the IA 2003, citing *Drelle* to argue that an unrecognised foreign court judgment cannot serve as the basis for insolvency proceedings.

The Decision in Drelle

The JJW Hotels decision turns substantially on the reasoning of the English Court of Appeal in *Drelle*, which addressed the question of whether an unrecognised foreign judgment can found bankruptcy proceedings.

In that case, Servis-Terminal LLC, a bankrupt Russian entity, sued its former chief executive, Mr Valeriy Drelle, for breach of fiduciary duty. The Arbitrazh Court of Yaroslavl Oblast awarded Servis-Terminal LLC RUB 2 billion in damages, a claim for unliquidated damages arising solely from a court order, not from any pre-existing contractual obligation. Without first seeking recognition of the Russian judgment in England, Servis-Terminal LLC served a statutory demand and presented a bankruptcy petition. ICC Judge

Burton made a bankruptcy order, which was upheld by Richards J on appeal.

The English Court of Appeal reversed those decisions. Newey LJ, delivering the leading judgment, held that where there is no statutory provision to contrary effect, a bankruptcy petition cannot be presented in respect of a foreign judgment which has not been the subject of recognition proceedings. An unrecognised judgment, he held, "*will have 'no direct operation' in this jurisdiction and so cannot be used as a 'sword', whether as regards 'direct execution' or as the basis of a bankruptcy petition*". Snowden LJ explained that "*in the same way as a person who relies upon a foreign judgment cannot invoke the individual enforcement mechanisms of the English court for his own benefit unless and until he obtains an English judgment, or registers the foreign judgment ... so also such a person should not be able to invoke the collective enforcement mechanisms of bankruptcy or winding up proceedings*". The Court also held that insolvency proceedings constitute collective rather than direct enforcement, and thus the deployment of the foreign judgment offensively as a "sword".

The BVI Court's Decision

The Court followed *Drelle* and held that the Statutory Demand should be set aside because it was founded upon foreign court orders which had not been recognised or enforced in the BVI. The Court held that absent such recognition, insolvency proceedings cannot lawfully be founded upon the Guernsey Costs Orders, and that to hold otherwise would permit insolvency proceedings to be deployed as a substitute for recognition proceedings, thereby circumventing the procedural safeguards which the law affords to a party against whom a foreign judgment is relied upon.

Vendort Distinguished

A central issue was the relationship between the decision in *Drelle* and the Privy Council's decision in *Vendort Traders Inc v Evrostroy Grupp LLC* [2016] UKPC 15 ("Vendort"), on appeal from and hence binding on the BVI courts. In *Vendort*, the Board held that a statutory demand could properly be founded upon a foreign arbitral award confirming a pre-existing contractual debt, even though enforcement proceedings had not yet been brought in the BVI. Lord Sumption explained that the source of enforceability was not the award but the underlying contract, and that the award was "conclusive evidence as between the parties that an enforceable debt was due in respect of the price of the shares".

The Court acknowledged that *Vendort* was binding, but held there was no true inconsistency with *Drelle*, as the two decisions addressed fundamentally different situations. The critical distinction was the source of the alleged debt. The Court identified two categories of case:

- First, where the underlying obligation constitutes a pre-existing debt, as in *Vendort*, where the obligation arose contractually and existed independently of the award, a statutory demand may be served without prior recognition. The debt exists regardless of the judgment, and the award merely confirms it.
- Second, where the only source of indebtedness is the foreign judgment itself, as in the present case and *Drelle*, the judgment must be recognised before it can found a statutory demand. Unless and until the judgment is recognised, there is no enforceable obligation capable of founding insolvency proceedings.

In *JJW Hotels*, the obligation arose solely from costs orders made by the Guernsey Courts and the Privy Council. Unlike a contractual purchase price confirmed by arbitration, a costs order is not

evidence of any pre-existing private law obligation. The Court emphasised that before the Guernsey Courts made the costs orders, there was no debt — the obligation to pay arose solely from the Guernsey Courts' exercise of sovereign authority. That authority does not extend outside the jurisdiction of Guernsey.

The Court reasoned that JJW must, at the very least, be afforded the opportunity to contest enforcement in the BVI before the alleged debt can be treated as undisputed and capable of founding a statutory demand or liquidation application. Formal recognition, the Court observed, is not a mere formality or administrative act: it is a court procedure requiring proper judicial scrutiny, and the Court could in principle decline to recognise the costs orders. To hold otherwise would permit insolvency proceedings to be deployed as a substitute for recognition proceedings, thereby circumventing the important safeguard which the law affords to parties against whom a foreign judgment has been obtained.

Section 296(2) and the Expressio Unius Argument

The Court identified an additional issue arising from the structure of the IA 2003. Section 296(2) of the IA 2003 expressly provides that an application for a personal bankruptcy order may not be made in respect of a liability incurred outside the BVI unless it is enforceable by execution in the BVI. However, section 296(2) does not expressly extend to corporate liquidation applications. The Court invited supplemental submissions as to whether, by reference to the *expressio unius* principle, this omission indicated that recognition was not required as a precondition of a liquidation application.

The Court rejected this argument. Adopting JJW's submissions, the Court held that the *expressio unius* principle is "ill-suited to this context": it is a canon of construction designed for closed lists and exhaustive expressions, not for inferring the

displacement of established common law rules from structural silence across different parts of a statute. The Court reasoned that the stronger and more orthodox starting point is the presumption that the common law continues to apply unless Parliament has clearly indicated otherwise. For the Court to "*derive a substantive change in the law — the removal of a fundamental private international law protection — from an absence of words rather than from their presence*", was precisely the kind of reasoning that the high threshold for implied disapplication of the common law is designed to guard against. Section 296(2) was most naturally read as having been included out of an abundance of caution, reflecting that the legislature has historically been more protective of individuals' interests.

The Court further agreed with JJW that section 296(2) is in fact wider in scope than the common law principle articulated in *Drelle*, since it applies to any judgment or award regardless of whether there is a separate basis (such as a contractual debt) for a statutory demand. On this reading, section 296(2) provides additional statutory protection for individuals rather than codifying or limiting the common law position applicable to companies.

Distinction Between Bankruptcy and Liquidation

The Court confirmed, *obiter*, that the procedural requirements for personal bankruptcy and corporate liquidation under the IA 2003 are materially different. In personal bankruptcy, a statutory demand is a precondition to a bankruptcy order. The position differs for corporate liquidation: the IA 2003 imposes no requirement that a statutory demand be served before a liquidation application. Under section 8(1), insolvency may be established by other means, including by demonstrating that the value of a company's liabilities exceeds its assets, or that the company is unable to pay its debts as they fall due. A statutory demand is commonly served to establish a debt and demonstrate

insolvency, but it is not the only route available to a creditor.

Practical Implications

The *JJW Hotels* judgment provides welcome clarity on a question of considerable practical importance for BVI insolvency practice. It should be noted that permission to appeal in *Drelle* has been granted to the Supreme Court, with the hearing listed for June 2026. The BVI Court declined to stay proceedings in *JJW Hotels* pending that appeal, observing that the appeal is unlikely to be heard swiftly and that it would be wrong for the Statutory Demand to hang over *JJW* for so prolonged a period. If the Supreme Court were to reverse the Court of Appeal in *Drelle*, that could have significant implications for the BVI position, given that *JJW Hotels* is substantially premised on the *Drelle* reasoning. Practitioners should monitor the *Drelle* appeal closely.

As of the time of writing, the judgment is pending publication. It will be made available on the website of the Eastern Caribbean Supreme Court in due course.

Further Assistance

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