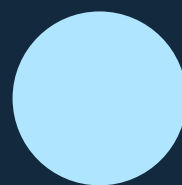


Insolvency and restructuring newsletter.

October 2026



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Kia ora tātou

Welcome to this quarter's insolvency and restructuring update.

This issue brings together ten significant decisions from New Zealand, Singapore, England and Wales, and Hong Kong.

We begin with four New Zealand decisions addressing recurring issues in construction and corporate insolvency: the treatment of retention funds in a contractor's liquidation, the interaction between the Construction Contracts Act's "pay now/argue later" regime and liquidation, the appointment of receivers under the Farm Debt Mediation Act, and the liquidation of deadlocked trustee companies.

We then turn to two decisions on auditor liability in large-scale corporate collapses, before examining two cases on the validity of out-of-court administrator appointments, and close with two decisions on cross-border debt recovery and liquidator conduct.

Keep an eye out for two further articles due to be published shortly by us on complex directions applications currently before the High Court, in which Buddle Findlay acts for the liquidators. The first upcoming article will cover the Tamarind case arising from the insolvency of the joint venture operating the Tui oil field, which raises issues of set-off, public nuisance, unjust enrichment and breach of statutory duty.

The second will cover the third substantive directions application in the Cryptopia liquidation, in which liquidators sought directions on completing distributions, dealing with unclaimed holdings, and whether the trusts should be terminated in favour of unsecured creditors (including hack victims) once distributions were complete. The liquidators also sought guidance on whether to admit a claim for hack related losses and, if so, at what value. The claimant sought for a Bitcoin-value assessment, rather than the Part 16 claim valuation process. These two additional articles will follow shortly.

We hope you find some useful takeaways from this edition.

Andrijana Milosavljevic

Editor



Treatment of retention funds in construction company liquidation: *Jones v Newcon Group Limited* [2026] NZHC 2115

Celia Olds

Jones v Newcon Group Limited clarified how the liquidators of a failed construction company should treat retention funds (sums withheld under construction contracts primarily as security for defective work).

Background

At the time that Newcon was placed into liquidation, it was head contractor of five large-scale commercial construction projects, most of which were nearing practical completion. The liquidators negotiated with the principals of the various construction projects to recover from them "upstream retentions" that had been withheld from Newcon pursuant to the relevant construction contracts.

At the same time, Newcon had a retentions account containing "downstream retentions" that had been withheld by Newcon from its subcontractors pursuant to the relevant subcontracts. When Newcon was put into liquidation, the subcontractors of Newcon made claims in Newcon's liquidation in respect of the "downstream retentions".

It was clear that Newcon held insufficient funds to pay all the retention subcontractors as well as Newcon's other secured and unsecured creditors. To ascertain their obligations in respect of Newcon's funds, the liquidators of Newcon sought directions from the Court on how to treat both the retentions account of "downstream retentions" held by Newcon and the "upstream funds" that the liquidators had recovered from the principals. In particular, the liquidators sought clarification from the Court as to whether any of the funds were held by Newcon as retention trusts or not. If the funds were held as retention trusts, subcontractors would have a claim as beneficiaries of the trust. Otherwise, the subcontractors would be unsecured creditors with claims ranking with all the other unsecured creditors in Newcon's liquidation.

The decision

The Court determined that the retentions account containing the "downstream retentions" was trust property to be paid pro rata to subcontractors that were owed retentions when Newcon was put into liquidation. Key to that finding was the fact that Newcon had transferred the funds into a dedicated account, which the company had characterised as a retentions fund with the intention that the funds transferred into that account be made available to all of its subcontractors owed retentions at the time of the transfer.

Conversely, the Court held that the upstream funds recovered from the principals were not automatically trust property held on trust to meet the downstream retentions due to subcontractors (in the absence of an express trust resolution to that effect). The Court distinguished *Burt v Grant* [2025] NZHC 2486 in which the High Court determined that upstream retentions recovered by liquidators were held on trust for subcontractors. The directors in *Burt* had passed an express resolution stating that all retentions payable were held on trust for the subcontractor from whom they were withheld. The directors of Newcon passed no such resolution. In the absence of an express resolution, the principals' release of funds to Newcon would not convert those funds into trust funds held for the subcontractors. The Court recognised the two retention regimes (upstream and downstream from Newcon) as entirely separate and distinct.

Implications

This decision concerns the pre-2023 Construction Contracts Act 2002 retentions regime (which applied when Newcon's construction contracts were entered). While head contractors were not required to hold retention money in a separate trust account under the pre-2023 regime, they could not use one subcontractor's retention funds to pay another.

This decision provides guidance for insolvency practitioners in assessing whether or not retention funds of a construction company that is in liquidation are held in trust for the benefit of subcontractors who are owed retentions or whether those funds form part of the general pool for distribution to the company's creditors.

The decision confirms that, under the pre-2023 regime, a trust over retention funds only arises once sums are separated or otherwise represented by an identifiable asset. In practice, this means liquidators will need to trace whether retention sums were actually deducted and set aside for subcontractors on each project before liquidation to ascertain whether the funds are held on trust.

In terms of "upstream funds", it will be important to check whether the directors passed any resolution expressly declaring funds recovered from the principals to be retentions held on trust for the subcontractors. If there is no such resolution, recovered upstream funds are likely to fall into the general pool available to creditors.

See a copy of the judgment [here](#).

Pay now/argue later – but not all the way to liquidation: *Complete Construction Canterbury Ltd v Garden City Civil Ltd* [2026] NZHC 1566

Jane Maltby

In *Complete Construction Canterbury Ltd v Garden City Civil Ltd*, the High Court resolved a tension between the interim "pay now/argue later" regime of the Construction Contracts Act 2002 (**CCA**) and the finality of liquidation, holding that the court may consider whether a debt under the CCA is disputed when deciding a liquidation application.

Background

Complete Construction Canterbury Ltd (**Complete Construction**) applied for an order putting Garden City Civil Ltd (**Garden City**) into liquidation, relying on six unpaid invoices relating to a construction contract. Declining the application, Associate Judge Taylor considered three issues.

Issue 1: was there a debt under the CCA?

The CCA creates a "pay now/argue later" regime, which is intended to protect cashflow in the construction industry. A party to a construction contract can serve a payment claim under s 21 of the CCA. If the recipient does not dispute the claim in a payment schedule under s 22, the amount claimed becomes due and owing under s 23.

The Court held that Complete Construction's invoices were valid payment claims under the CCA. Although Garden City argued that the invoices did not meet all the requirements of s 20 (eg some invoices did not identify the construction contract), the Court considered that these were "*technical quibbles*" that did not vitiate the "*substantive compliance*". It also rejected Garden City's argument that it had issued valid payment schedules by giving prior notice of a dispute in correspondence, since the correspondence did not sufficiently detail the basis for disputing each invoice.

The consequence was that Garden City was liable to pay the invoices as due and owing debts under s 23 of the CCA.

Issue 2: was set-off permissible?

Complete Construction argued that Garden City could not now claim a genuine dispute as to the debt when opposing liquidation. Complete Construction relied on s 79 of the CCA, which limits set-off or counterclaim to undisputed sums and judgment debts.

The Court disagreed. It accepted Garden City's argument that liquidation is an irreversible remedy with permanent consequences for the company and its directors, and that applying the CCA regime with full force at the liquidation phase would risk converting a cashflow-protection mechanism into an instrument capable of destroying a company before the underlying dispute is determined on its merits. The CCA's interim "pay now/argue later" policy eventually runs out and does not warrant an immediate liquidation order. Once liquidation intervenes, ordinary insolvency set-off principles take over.

The Court held that there was a genuine dispute regarding the payment claims, and it was not equitable to order liquidation before that dispute was resolved on its merits.

Issue 3: was Garden City insolvent?

Garden City had not applied to set aside a statutory demand served by Complete Construction, nor led evidence such as financial accounts or cashflow forecasts to rebut the presumption of insolvency. It had, however, offered to pay the claimed amount into court pending resolution of the dispute.

The Court held that this was sufficient to rebut the presumption of insolvency and declined the liquidation application on that basis.

Practical implications

This judgment shows that non-compliance with the CCA's payment provisions can give rise to a debt. However, such a debt is not determinative of whether the Court should put a company into liquidation.

See a copy of the judgment [here](#).



Udder chaos - Court sends in the receivers to save the herd: *McNamara Farms Limited v Lopez* [2026] NZHC 144

Calina Tataru

In *McNamara Farms Limited v Lopez*, the plaintiff, a farming company, lent money to the defendant to purchase a herd of cows that grazed the plaintiff's land as part of a sharemilking agreement. A general security agreement (**GSA**) was prepared but not signed by the defendant at the time the loan was advanced. After the relationship between the parties soured, the plaintiff executed the GSA as attorney on the defendant's behalf, using a power of attorney granted under the loan agreement.

Following difficulties with the sharemilking arrangements, there was concern that the defendant sharemilker was selling the herd purchased with the loan funds, without paying the proceeds back to the plaintiff under the terms of the loan agreement.

The plaintiff could not enforce its rights under the GSA and could not appoint a receiver over the herd until a farm debt mediation was held in accordance with the Farm Debt Mediation Act 2019 (**FDMA**). The plaintiff sought a without notice order under s 61 of the FDMA, which allows the appointment of a receiver by the court in the event of urgency, if it is necessary or desirable to safeguard the interests of the creditor.

There was evidence the sharemilker was uncooperative and had threatened to sell the herd. There was a risk that the cows would be sold on the "dairy cow black market" before mediation could be arranged.

The Court was satisfied that the farm property subject to the security interest had been or would be destroyed, removed, or sold, and an order under s 61 of the FDMA was warranted as this was a case of extreme urgency. There was a risk that the balance of the herd could be sold in the days following the hearing. To avoid the herd being dissipated, the Court granted the order but made it clear that this was an extreme step, as the defendant did not have the opportunity to be heard. Receivers were appointed to sell the herd and hold the proceeds pending farm debt mediation.

This was the first case decided under s 61 of the FDMA. Any future application will require clear evidence that the conditions of the section are met and that the situation is genuinely urgent, as it is a "last resort" provision.

See a copy of the judgment [here](#).



Deadlock, insolvency and family feuds – when the court will liquidate a trustee company: *Nakhle v Karaka Estate Limited & Ors* [2026] NZHC 2295

Eleanor Mishra

In *Nakhle v Karaka Estate Limited & Ors*, the High Court ordered the liquidation of two family-owned trustee companies. The judgment confirms liquidation remains the orthodox response when a trustee company is both deadlocked and insolvent, even when a shareholder proposes additional funding.

Background

Byerley Park Ltd (**BPL**) and Karaka Estate Ltd (**KEL**) are corporate trustees of two family trusts. Henriette Nakhle, a director of both companies, applied under s 241 of the Companies Act 1993 (**Act**) to place them into liquidation, supported by her husband Elias (50% shareholder) and two of the couple's three sons. Their eldest son, Daniel, the other 50% shareholder and co-director, opposed the application.

Henriette relied on two grounds:

- That the boards were deadlocked, making liquidation just and equitable (s 241(4)(d) of the Act); and
- Both companies were unable to pay their debts as they fell due (s 241(4)(a) of the Act).

Family relationships had broken down over disputes about control of the wider Nakhle Group. Unchallenged accounting evidence established that both companies were unable to pay their debts, with significant accumulated losses and a heavy reliance on ad hoc related-party funding.

Daniel accepted the companies were deadlocked but argued Henriette had engineered it and lacked clean hands. He proposed a court-appointed receiver under the Trusts Act 2019, funded by an entity he controlled.

A company associated with Daniel also took an assignment of Westpac's secured debt and purported to appoint receivers, prompting a separate injunction application.

The Court's findings

Powell J ordered both BPL and KEL into liquidation on both grounds.

On insolvency, the accounting evidence left no doubt that neither company could pay its debts without related-party funding. Daniel's proposal was inadequately detailed and unsupported by evidence of financial capacity.

On the just and equitable ground, the Court rejected the clean hands argument, finding no evidence Henriette had caused the breakdown. A receivership on Daniel's terms would entrench his informal control while doing nothing to address the insolvency.

The parallel proceedings did not change the analysis; liquidation would place the related-party dealings into the hands of independent liquidators.

Why this case matters

The decision offers useful reminders for those governing family and trustee companies.

Liquidation remains the default remedy. Proposals to avoid it face real scrutiny when they would let one faction continue controlling the company through ongoing funding.

A director will not have unclean hands merely for questioning past management decisions. As in *McGehan v Te Hoe Dairies Ltd* [2021] NZHC 1796, when blame cannot be clearly apportioned, the court focuses on the fact of the breakdown rather than its cause.

Related-party funding faces careful examination. In *Griffiths v Island Grace (Fiji) Ltd* [2023] NZCA 627, the Court of Appeal confirmed that solvency turns on present ability to pay, not hypothetical recoveries. *Yan v Mainzeal* shows the personal stakes: directors who allowed trading on unenforceable assurances of support were ordered to contribute NZ\$39.8m. Vague funding proposals will not displace insolvency, and directors who rely on them do so at their own risk.

Parallel proceedings will not necessarily prevent liquidation when deadlock and insolvency are established.

Conclusion

Nakhle is a reminder to review governance and funding documentation before a dispute crystallises. Further, an independent co-trustee can be a useful addition to help parties navigate disputes and guard against material breakdowns in relationships.

See a copy of the judgment [here](#).

Too remote to recover - Singapore's top court draws the line on auditor liability: *Deloitte & Touche LLP v Hin Leong Trading (Pte) Ltd (in compulsory liquidation)* [2026] SGCA 33

Calina Tataru

In *Deloitte & Touche LLP v Hin Leong Trading (Pte) Ltd (in compulsory liquidation)*, the liquidators of Hin Leong Trading (HLT) brought proceedings against HLT's former auditor, Deloitte & Touche LLP (**Deloitte**), for professional negligence for failing to detect and report irregularities in HLT's financial statements over some six years before HLT's collapse in April 2020.

On appeal, Deloitte's strike-out application was narrowed to two points:

- Whether Deloitte owed HLT's directors/shareholders (the Lim Family, who knew the true state of affairs) a further duty having regard to creditors' interests once HLT was insolvent (the "Creditor Duty Question"); and
- Whether, even assuming negligence, Deloitte should be liable for the US\$2.6b in trading losses HLT incurred between November 2015 and April 2020 (the "Trading Losses").

Generally, the Court observed that despite the numerous decisions and legal writing, litigants continue to grapple with defining the elements of a negligence cause of action. The Court set out the parameters of the negligence cause of action, given the different approaches adopted by the courts in defining the tort:

- There must be proof of actionable damage;
- A duty of care must be owed by the defendant to the claimant;
- The conduct of the defendant must have constituted a breach of duty of care;
- The defendant's breach of duty must be a factual cause of the injury;
- The injury is not too remote; and
- There are no operative defences.

The Court criticised the parties' submissions for conflating arguments seeking to define the duty of care with arguments about causation and remoteness. The Court's view was that the duty of care is one to take care to avoid harm generally, and not a duty defined by reference to specific acts or to specific types of loss. Whether particular conduct meets that standard goes to the question of breach, and whether a particular loss is recoverable is a question of remoteness.

The existence of a "creditor duty": The Court declined to answer this question, holding it academic. Both parties agreed that an auditor is judged against the objective yardstick of reasonable skill and care, not by whether it subjectively had regard to creditors' interests when the company was insolvent. The Court also found that the pleaded "creditor duty" and "reporting duty" are not separate duties owed by Deloitte, but arguments going to breach of Deloitte's single duty of care to HLT, which was not a question of law suitable for summary determination on a strike-out application.

Trading losses question: Deloitte's duty of care arose in both tort and contract and the Court applied the *Hadley v Baxendale* remoteness test to fulfil the same function that the *SAAMCo* principle had been set up to address. In the Court's view, there was no need to treat "scope of duty" as a separate step. Applying the principle in *Hadley v Baxendale*, the Court held that HLT's trading losses due to continued trading were too remote to be recoverable from Deloitte, even assuming negligence. An auditor performing a statutory audit could not be taken to have assumed liability for losses depending on market movements and management decisions over which it had no control, and Deloitte was not engaged to review HLT's trading activities.

The Court allowed Deloitte's appeal in part and struck out the pleadings relating to the trading losses claim.

See a copy of the judgment [here](#).



Arguable ground – Evergrande's US\$8.5b claim against PwC survives strike-out: *China Evergrande Group (in liquidation) v PricewaterhouseCoopers (a firm) & Ors* [2026] HKCFI 4845

Scott Barker

In our last newsletter we mentioned legal actions brought by the liquidators of collapsed Chinese property developer, Evergrande Group, including against local and international branches of the group's former auditors, PricewaterhouseCoopers (**PwC**). Damages claimed exceed US\$8.5b. PwC International was sued for its responsibility for the negligent conduct of PwC Hong Kong and PwC Mainland China. It is alleged that PwC International had supervisory control over those two affiliate firms in relation to the conduct of their audits of Evergrande.

PwC International applied to strike out the claim against it on the basis that it disclosed no reasonable cause of action and on the basis that PwC International owed no duty of care to Evergrande. The liquidators argued, amongst other things, that the level of control that PwC International was entitled to exert over its two affiliates, including powers of supervised remediation, was relevant to the existence of a duty of care. This was a developing area of law, such cases were also fact-sensitive and the liquidators did not have all documents yet available to them to make out their case.

Having considered a wide range of authorities and the pleaded claim, the learned Judge concluded that it was at least arguable that PwC International did owe a duty to the plaintiff on either of the two applicable tests. The claim against PwC International now continues to trial with the claims against its Hong Kong and PRC affiliates.

See a copy of the judgment [here](#).



Back from the dead – reversing a winding-up order through administration: *HSBC UK Bank Plc v Ethical Power Connections Ltd & Ors* [2026] EWHC 1695 (Ch)

Henry Murray

In *HSBC UK Bank Plc v Ethical Power Connections Ltd & Ors*, the High Court used its jurisdiction under paragraph 37 of Schedule B1 to the UK's Insolvency Act 1986 (**Act**) to put a company back into administration after it had been compulsorily wound up. The Court also validated transactions that would otherwise have been caught by s 127 of the Act (which concerns voidability).

Ethical Power Connections Limited (**EPCL**) was part of a renewable infrastructure group (**Group**). HSBC UK Bank Plc (**HSBC**) was a Group lender holding a debenture over all EPCL's assets, enforceable on any step being taken towards the liquidation of EPCL. On 9 January 2026, His Majesty's Revenue and Customs (**HMRC**), the equivalent of the IRD, petitioned to wind up EPCL and other Group companies. In response, the management of the Group developed a restructuring plan where parts of the business would transfer to a new, shareholder-owned company that would fund certain debts and provide working capital to complete contracts. This involved novating two battery storage unit contracts away from EPCL (**DIF contracts**) and novating nine further contracts to another Group company, in return for a share of the net cash receipts and a payment of £1.57m to EPCL's creditors. EPCL had paid over £60,000 to Interpath Limited (a restructuring advisor) to help create the restructuring plan (**Interpath Fees**). The Interpath Fees were funded by another Group company.

On 20 May 2026, Insolvency and Companies Court Judge Greenwood rejected EPCL's request for an adjournment of the HMRC's petition to allow EPCL to be placed into voluntary liquidation. Judge Greenwood made the winding-up order and subsequently appointed the Official Receiver as liquidator. This put the restructuring plan at risk as the DIF contracts were automatically voided by s 127 as post-petition dispositions. It also meant EPCL could no longer perform its obligations under the remaining nine contracts once it was in liquidation.

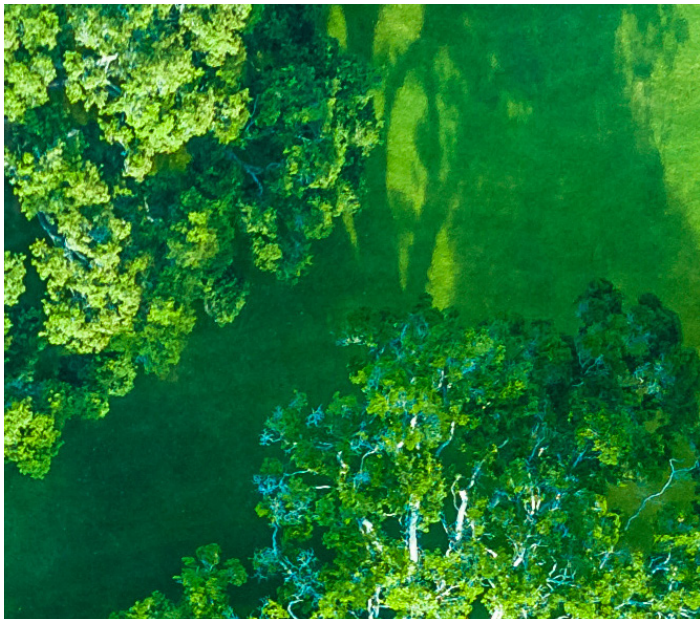
HSBC applied for an administration order under paragraph 37 of Schedule B1 of the Act to replace the liquidation with administration, plus an order validating the contract novations and the Interpath Fees. There was no opposition to the application from the prior ranking charge holders, HMRC, the supporting creditors, or EPCL itself.

A bank with a qualifying floating charge can usually appoint an administrator without going to court, but that route closes once a company enters compulsory liquidation. However, paragraph 37 allows the bank to apply to the court for an administration order, which discharges the winding-up order if it is granted. Cawson J was satisfied HSBC's debenture was valid and enforceable, that EPCL was insolvent once Group cross-guarantees were factored in, and that administration offered the real prospect of a better outcome for creditors. Cawson J made the administration order, in turn discharging the winding-up order.

Cawson J explained that discharging a winding-up order does not unwind it retrospectively. S 127 continues to void post-petition dispositions unless separately validated. Following *Re Albany Building Ltd* [2007] BCC 591, Cawson J held validation is available under s 127 or under the court's broader power in paragraph 37(3)(c). The key question is whether validation benefits, or at least does not prejudice, the interests of all the unsecured creditors as a class.

Applying that test, Cawson J validated the novations, since the contracts were onerous and creditors suffered no prejudice. He also validated the Interpath Fees, since the funds had been supplied by another Group company for the specific purpose of paying Interpath Limited's restructuring advisory fees.

See a copy of the judgment [here](#).



Purely improper – when wanting to buy the business invalidates the appointment: *Glint Pay Ltd & Ors v Baker & Rowley* [2026] EWCA Civ 1023

Lily Hosseini

The Court of Appeal's decision in *Glint Pay Ltd & Ors v Baker & Rowley* concerns the validity of an out-of-court administration appointment alleged to have been made solely for an improper purpose.

Background

Glint Pay Ltd and its subsidiaries (together, **Glint**) rejected a takeover offer from Niven Alpha Pte Limited (**Niven**), a special purpose vehicle established by a venture capital investment firm. Niven subsequently acquired a secured loan and debenture over Glint's assets from a pre-existing lender. Niven then made a series of information requests to Glint, purportedly pursuant to the security documents. Glint refused to comply, asserting it was under no obligation to do so.

Niven's solicitors wrote to Glint asserting that its failure to provide the information constituted an event of default, and that the outstanding loan was immediately due and payable. On the same day, Niven disclosed at a shareholder webinar that it was planning to acquire Glint through a pre-pack administration. Shortly afterwards, Niven appointed the respondents out of court as administrators as holder of a qualifying floating charge. The administration was short-lived: Glint secured alternative finance and repaid the loan in full. The administrators were discharged from liability following an order fixing their remuneration at just over £1.5m.

Glint commenced proceedings against the administrators, alleging, among other things, that the appointment had been made solely for the improper purpose of enabling Niven to acquire Glint's business through a pre-pack sale.

Decision

At first instance, the High Court dismissed Glint's claim, finding that although Niven had appointed the administrators with a view to acquiring Glint's business, this did not constitute an improper purpose. The court held that Niven's objective fell within the proper purpose identified in *Re Aartee Bright Bar Ltd* [2023] EWHC 606 (Ch), namely, "to enable an independent office-holder to take control of the assets". The High Court further held that, in any event, Glint was estopped by conduct from challenging the validity of the appointment.

On appeal, the Court of Appeal upheld the finding that an event of default had occurred but allowed the appeal on both improper purpose and estoppel.

On improper purpose, the Court of Appeal held that there was a realistic prospect that Niven's sole subjective purpose in appointing the administrators was to acquire Glint's business – and that it was arguable that this rendered the appointment invalid. The Court of Appeal rejected the High Court's reasoning, holding that an otherwise improper motive is not rendered proper merely because the administrators, once appointed, are required to act as independent office-holders.

On estoppel, the Court held that it was not unreasonable for Glint to have adopted a "pay now and litigate later" approach by bringing the administration to an end by consenting to what was necessary, whilst expressly reserving its right to challenge the validity of the appointment.

Implications for practitioners

This decision carries significant practical importance for insolvency practitioners, financial institutions and those advising them. Whilst the decision arises in the context of the English administration regime, it has broader resonance in New Zealand, where general law duties (including principles of good faith and proper purpose) govern the conduct of insolvency practitioners, including administrators and liquidators.

For lenders and financial institutions, the case reflects a growing trend in which contractual rights and powers under security documents are subject to an implied limitation that they must be exercised for legitimate commercial aims.

The case will proceed to trial on the improper purpose issue. Practitioners should watch this space closely.

See a copy of the judgment [here](#).

A debt by any other name – unrecognised foreign judgments and UK bankruptcy: *Valeriy Ernestovich Drelle v Servis-Terminal LLC* [2026] UKSC 29

Jasmine Pinfold

This was a UK Supreme Court decision that confirmed an 'unrecognised' foreign judgment (Russian in this case) was a 'debt' that could be used to petition for a debtor's bankruptcy.

Servis-Terminal LLC (**ST**) had advanced a RUB2b loan (approximately NZ\$41m) in 2011 to Fort-Steiton LLC, guaranteed by Mr Motylev, whose bank subsequently collapsed, causing ST significant losses and leaving its loan unpaid. Russian courts found that Mr Drelle (as Director General and shareholder of ST) had breached his duties in causing ST to advance the loan, and ordered him to pay ST RUB2b in May 2019.

The judgment was upheld on appeal through to the Supreme Court of the Russian Federation. ST then served a statutory demand and presented a bankruptcy petition against Mr Drelle, in England, based on the Russian judgment, and the English first instance insolvency court found the debt was not disputed on bona fide and substantial grounds, leading to a bankruptcy order in March 2023.

The central question was whether a creditor may present a bankruptcy petition under s 267 of the Insolvency Act 1986 (UK) (**Act**), based on a foreign judgment that has never been the subject of UK recognition proceedings and is not registrable under the Foreign Judgments (Reciprocal Enforcement) Act 1933. The High Court had held the creditor could indeed rely on such a judgment to precipitate bankruptcy, but the Court of Appeal disagreed, holding that an unrecognised foreign judgment cannot be used as the 'sword' founding a bankruptcy petition.

The Supreme Court unanimously allowed ST's appeal, holding that the obligation to pay a sum of money under an unregistrable, unrecognised foreign judgment is still a 'debt' within the meaning of s 267 of the Act. Key reasoning and discussions included:

- Bankruptcy proceedings are not properly characterised as 'enforcement' of an individual judgment (which requires an action on the judgment) but instead initiate a collective scheme for distributing a debtor's assets among unsecured creditors under a moratorium – so the 'sword' or enforcement objection to using an unrecognised judgment does not apply
- The Reciprocal Enforcement Act's registration regime for certain foreign judgments did not change the position at common law or under bankruptcy legislation for judgments falling outside that regime, and a creditor with a registrable judgment is not materially disadvantaged compared to one relying on an unregistrable judgment

- The Court rejected ST's argument based on Article 13 of the UNCITRAL Model Law on Cross-Border Insolvency, holding that 'foreign' in that context refers to the geographical location of the creditor, not the governing law under which the relevant creditor was owed its debt.

The case was remitted to the Court of Appeal to determine Mr Drelle's remaining grounds of appeal (whether the underlying Russian judgment debt was genuinely disputed on bona fide and substantial grounds).

We think a similar result would be likely if these facts came before New Zealand courts. There is discussion in our High Court that unregistered foreign judgments are indeed common law debts in New Zealand (*Yoonwoos C & C Development Corp v Jae Ho Huh* [2023] NZHC 1395). Therefore, there should be no reason such debts, if not met, should not lead to bankruptcy or liquidation, as applicable.

See a copy of the judgment [here](#).



Document review that never happened – Hong Kong liquidator jailed for contempt: *Li Xiao Yi v Tang Chung Wah* [2026] HKCFI 5045

Scott Barker

Hong Kong liquidator Alan Tang Chung Wah was found to be in criminal contempt of court on five separate grounds for making false statements; once in a declaration and four times under cross-examination in proceedings that he brought for recovery of an alleged loan made by the company to which he had been re-appointed.

During the course of his evidence, Mr Tang stated that he and his staff had searched through 350 boxes of company records for evidence of the loan that he was seeking to recover from Dr Li Xiao Yi. No such search had been undertaken. He also gave evidence that he had not read or could not remember reading company accounts, had misunderstood his discovery obligation when it was clear from other evidence that he did understand it, and had falsely stated that the company to which he had been appointed liquidator was not part of a corporate group that had been listed after the alleged loan. This was important as the loan should have been disclosed in the prospectus. Finally, he based his assertion of the company not being part of the corporate group on his staff having only shown him one company return.

In his liability judgment, Justice Harris found that Mr Tang had lied about one matter and then had to keep lying to keep his story consistent. In a subsequent penalty judgment Justice Harris gave his reasons for his order for Mr Tang to be imprisoned for four months. Mr Tang had been found in contempt of court a decade earlier for his failure to produce documents when acting as a trustee in bankruptcy.

See a copy of the liability judgment [here](#) and a copy of the penalty judgment [here](#).



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