

# Court decision illustrates impact of company law changes on winding-up petitions



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Litigation, Cyprus

- 📌 Facts
- 📌 Conditions of Section 212(a)
- 📌 Allegations
- 📌 Decision
- 📌 Comment

The Companies Law's winding-up provisions, **(1)** which had remained unchanged for many years, were amended on May 7 2015 to make them more efficient and effective. **(2)** A recent interim judgment by the Limassol District Court has provided insight into the impact of the amendments on pending winding-up applications issued before the amendments took effect. **(3)**

## Facts

The applicant for the interim order was a company against which a winding-up petition had been filed by a creditor under Section 212(a) of the Companies Law on the ground that the debtor company had neglected to pay the amount owed within 21 days of receipt of a letter of demand in the prescribed form. The debtor applied for an interim order setting aside, cancelling or staying the winding-up petition on the grounds that:

- the conditions set out in Section 212(a) of the Companies Law had not been met; and
- the presentation of the winding-up petition constituted an abuse of process.

## Conditions of Section 212(a)

When the creditor presented the winding-up petition, the conditions set out in Section 212(a) of the Companies Law were as follows:

- "1) The Winding-up Application must have been filed by a creditor, by assignment or otherwise, to whom the debtor company is indebted in a sum.*
- 2) The sum owed must have exceeded €854.*
- 3) The Letter of Demand must have been under the hand of the creditor, requiring the debtor company to pay the sum.*
- 4) The creditor must have served the Letter of Demand on the debtor company, by leaving it at the registered office of the company.*

5) *The debtor company must have had three weeks to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor.*

6) *The debtor company must have neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor."*

## **Allegations**

In its interim application, the debtor company disputed the amount claimed and alleged that the letter of demand had been:

- signed by a lawyer and not the creditor; and
- served on a director of the company at the District Court of Limassol and not at the company's registered office.

According to the debtor company, the amount demanded was not a 'liquidated amount' in line with the meaning attributed by the relevant case law. Consequently, the creditor could not be considered a creditor of the company entitled to petition for a winding-up order. The debtor company argued that the winding-up petition constituted an abuse of process, as the creditor had presented it to pressure the company into paying the disputed amount.

In opposing the application, the creditor contended that:

- the lawyer who had signed the letter of demand had been authorised to act on behalf of the creditor and her signature should have been deemed to be the signature of the creditor; and
- the letter of demand had been served on the director at the district court because the debtor company had abandoned its registered office and the sum demanded was undisputed and had not been disputed in good faith at any time before the presentation of the winding-up petition.

Further, the creditor contended that, under the amendment law, winding-up petitions presented before the amendment law had entered into force – but considered afterwards by the courts – must be decided on the basis of the amended provisions, including:

- an increase in the minimum debt to support the presentation of a winding-up petition from €854 to €5,000; and
- deletion of the requirement that the letter of demand must be signed by the creditor.

## **Decision**

The court declined to allow the orders that the debtor had requested. It found that:

- pending winding-up petitions should be decided on the basis of the amended provisions, unless this impaired their validity; and
- in the light of the recent amendments, the letter of demand met the Companies Law's requirements and was legally effective.

The court also noted that:

- the preamble to the amendment law explained that it had been enacted to:
  - remove obstacles and delays that had previously existed;
  - expedite the hearing of winding-up petitions; and
- the court's approach should facilitate these objectives.

Further, the court decided that the service of the letter of demand on the company director at the District Court of Limassol had achieved the fundamental purpose of the requirement for service – namely, securing a party's constitutional right to be informed about pending legal proceedings against it. There was no reason for the court to depart from first principles by applying the strict condition of the law requiring that the letter of demand be served at the debtor company's registered office. The court added that any other decision would be incorrect, as it would allow unscrupulous debtors to

frustrate the law by leaving their registered offices closed, thus making it impossible for a creditor to validly serve a letter of demand. Finally, the court decided that the question regarding the validity of the debt was a matter to be decided when the petition was heard and was not within its jurisdiction in the context of an interim order application.

## **Comment**

The decision is a welcome confirmation that the courts are prepared to take a practical and constructive approach to winding-up proceedings, rather than allowing an overly rigid adherence to formalities delay the administration of justice.

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## **Endnotes**

(1) Cap 113.

(2) By the Companies (Amending) (3) Law of 2015 – Winding-up 63(I) of 2015.

(3) In relation to Palatino Constructions Limited, Application 85/2014 dated July 20 2016.

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