

RE HAMLET INTERNATIONAL PLC (1998)



Catherine Newman QC 1979 (QC 1995)

Maitland Chambers

FACTS

Application under s.11(3)(a) Insolvency Act 1986 by Trident International Ltd ('Trident'), a freight forwarding and warehousing company for leave to enforce its security under a general lien over stock held for and on behalf of the two companies, wholly owned by Hamlet International plc ('Hamlet') in administration. The administrators contended that rights claimed by the applicant constituted a charge over the goods which ought to have been registered under s.395 Companies Act 1985 and was now void for want of registration.

HELD

The contractual power of sale and the possessory lien enjoyed by Trident did **not** constitute a charge. For a lien to amount to a floating charge enforceable against the administrators required registration under s.395 Companies Act 1985. The companies still enjoyed rights of ownership over the property subject to the lien, and all that Trident had was a possessory lien so long as the goods remained in its warehouses. The power of sale did not convert the lien into a charge, and its sole right was to retain possession of the goods. The basis on which the goods had come into the warehouses was for distribution to Hamlet's customers not as a security. Even if the power of sale converted the lien into a charge that did not invalidate Trident's right to retain possession.

Application granted.