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A FURTHER BLOW FOR COMMERCIAL LANDLORDS

It is well known that the combination of on-line trading and the COVID-19 pandemic has created a perfect storm for high street retailers. Those circumstances led New Look, a fashion retailer with more than 450 UK stores, to enter a Company Voluntary Arrangement (“CVA”) in September 2020.

A CVA provides an alternative to administration or liquidation for a financially distressed company and allows a company’s debts to be compromised over an agreed period whilst it continues to trade. The proposed terms of a CVA are voted on at a creditors’ meeting and if 75% of a company’s unsecured creditors by value accept those proposals (of which more than 50% must be unconnected), then all that company’s unsecured creditors are bound by those terms.

A significant feature of the New Look CVA was the change in rental arrangements with New Look’s landlords. Unpaid rent for stores was released in full. More than 400 stores were to move towards turnover based rent agreements, whilst the remaining stores were to enjoy a three-year rent holiday. Other landlord categories were unaffected. Over 81 per cent of creditors by value approved the proposals. However, some landlords opposed the proposals and on 10 May 2021 in *Lazari Properties 2 Ltd & Ors v New Look Retailers Ltd & Ors* [2021] EWHC 1209 (Ch) the Court gave judgment on the terms of the New Look CVA. The Court held that the landlords’ challenge to the CVA was on “three broad bases”.

The Jurisdictional Challenge

The landlords claimed that the New Look CVA did not constitute a composition or arrangement because it involved separate arrangements with groups of creditors.



The Court ruled that a CVA which provides different treatment for classes of creditors is not outside the ambit of the Insolvency Act 1986.

It was also argued that there was not enough leeway given by New Look within the CVA arrangements as there was no ability for the landlords to share in any upside. However, the Court held that the CVA offered landlords a better return than the relevant alternatives.

Thirdly, it was argued that as the CVA allowed New Look to surrender some of their leases, that interfered with those landlords’ property rights. The Court held that whilst surrender of a lease by New Look was an option for them, the landlord was not bound to accept it.

The Material Irregularity Challenge

A discount was applied to landlords’ claims in respect of voting on the CVA proposals. The Court found that the discount had no material effect on the outcome. Inaccuracies in the proposals were also not deemed material.

The Unfair Prejudice Challenge

The Court held that votes received from creditors who had been treated differently had not affected the outcome of the New Look CVA and were therefore not prejudicial. In respect of lease modifications potential prejudice was addressed by allowing landlords the right to terminate leases.

Editor’s note

The judgment in *Lazari* will cause further concern for embattled landlords although it should be noted that leave to appeal has been granted.

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