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Restructuring Commercial Leases under CVAs

What is a Company Voluntary Arrangement (“CVA”)?

- S.1 of the Insolvency Act 1986 - directors make a proposal to the company and its creditors for a “*composition in satisfaction of its debts or scheme of arrangement of its affairs*”.
- CVA takes effect if at least 75% of creditors by value approve and binds all creditors, including the minority who voted against or did not vote
- Time limited right to challenge under s.6 on grounds of unfair prejudice or material irregularity.

The Rise of the “Standard Retail CVA”



Can CVAs be used to reduce future rents?

Discovery (Northampton) Ltd v Debenhams Retail Ltd [2019] EWHC 2441 (Ch)

Ground 1 – Future rent and other contingent liabilities under a lease (such as a future dilapidations claim) can be included in a CVA.

Ground 2 – Not automatically unfairly prejudicial for a CVA to reduce future rents even where the company continues to use the demised premises

Can CVAs abrogate landlords' proprietary rights?

Debenhams Retail Ltd [2019] EWHC 2441 (Ch)

- Ground 3 - CVA cannot modify the right of re-entry or prevent a landlord from exercising a right to forfeit for breach of an insolvency condition

Re Instant Cash Loans Ltd [2019] EWHC 2795 (Ch)

- A CVA cannot be used to force a landlord to accept a surrender of a lease

How can landlords prevent or challenge CVAs?

- Calculation of Landlords' Votes
- Challenge under s.6 of the IA 1986 – on grounds of unfair prejudice or material irregularity
- Use of “vertical” and “horizontal” comparators in assessing unfair prejudice