

CVAs & Landlords in the Second Wave



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CVAs – A New Wave



The CVA in a nutshell

- 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 new A1 moratorium and CVAs

- New short moratorium introduced as Part A1 of the IA 1986 by the Corporate Insolvency and Governance Act 2020 effective from 26.6.2020 and exercisable by e-filing
- Could give directors of a distressed company valuable breathing space to propose a CVA.
- Moratorium imposes restrictions on a landlord's ability to forfeit
- But - the company must pay contractual rent in respect of the period of the moratorium

Future Rent



Can CVAs be used to reduce future rents?

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

- Future rent and other contingent liabilities under a lease (such as a future dilapidations claim) can be included in a CVA.
- Not automatically unfairly prejudicial for a CVA to reduce future rents even where the company continues to use the demised premises

Challenges to Turnover Rents



Can CVAs abrogate landlords' proprietary rights?

Debenhams Retail Ltd [2019] EWHC 2441 (Ch)

- 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

Forfeiting in the event of a CVA

- Basic – check re-entry provisions, comply with s.146 of the LPA 1925 and don't waive
- Waiver by voting for or against a CVA?
- To forfeit or not to forfeit?
- Will the company get relief and if so on what terms?

Thank you for listening

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