

## A New Look at Leasehold Restructuring



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## Lazari Properties 2 v New Look Retailers 2021

A Bruising Outcome!

A pragmatic response!

Deepens tensions

Tips the balance

Inevitable



## Circumstances

- Decline of High Street
- Pandemic
- Coronavirus restrictions

## New Look

- 400+ stores
- 10,000 people
- Sales down 32%
- No revenue



## CVA

Cat B – viable:

- Arrears released in full
- Rent replaced by turnover rent
- Right to terminate

Cat C – not viable:

- No arrears
- Two months rent only
- Right to terminate



## *A root and branch attack*

- Jurisdiction
  - Not a true CVA
- Unfair prejudice
  - Turnover rent
  - Unimpaired creditors voted in favour
- Material irregularities
  - Insufficient information
  - Discounting of votes

## Judgment

### *Jurisdiction:*

- It was a CVA
- Differential treatment of creditors not unfairly prejudicial
- Sufficient give and take
- Termination rights counterbalanced the reduced rent

### *Material irregularities:*

- None

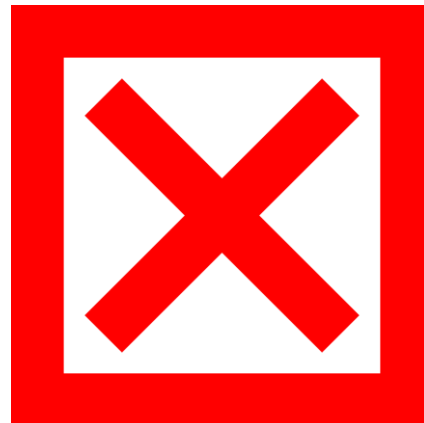
## Judgment (2)

### *How to assess unfair prejudice*

- Take into account all circumstances
- Horizontal comparator
- Vertical comparator

### *Unfair prejudice?*

- Different treatment
- Reducing rent
- Modifying leases



## The future?

Group of creditors swamped by votes of unimpaired creditors

Factors:

- Fair allocation of assets?
- Nature and extent of differential treatment?
- Position of other objecting creditors
- Same result achieved otherwise



# Conclusion



# Thank you for listening

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