

# **Carraway Guildford (Nominee A) Limited v Regis UK Limited [2021] EWHC 1294 (Ch)**



**Evie Barden**

## Terms of the proposal

- Usual provision preventing creditors taking or continuing processes for payment of liabilities outside of the CVA.
- “Critical Creditors” to the trading of the company were unaffected by the CVA and would be paid in accordance with existing terms.
- “Compromised Creditors’ Payment Fund” established for payment of “Allowed CVA Claims” and payment of costs, expenses and disbursements. The Company to pay £300,000 into the fund.
- “Profit Share Fund” established also: the Company to pay 20% of amount by which aggregate of net profit for the period of 2 years after effective date exceeded £250,000 up to maximum of £200,000.

## Who drew the short straw?

- Categories 2 to 5 landlords:
  - All arrears subject to a % reduction as well as future rent.
  - Right to terminate their leases, ranging between the right to do so on not less than 60 days' notice at any time within 90 days following the effective date and 90 days prior to 3<sup>rd</sup> anniversary for Category 2 landlords to the right to terminate at any time on 30 days' notice for the Company and the landlord for Category 5 landlords.

## Landlords' votes

Anticipated amount of  
future rent = 85% of  
contractual rent

Apply 75% discount

## Who were the winners?

### **Regis Corporation (Regis Corp)**

- Former ultimate parent until October 2017.
- Parent sold shareholding to IBL in October 2017.
- In the process, the Company transferred a number of assets to group companies which were the then subject to franchise agreements or licences to IBL.
- Debt of £1,097,136.

### **International Beauty Limited (IBL)**

- Sole shareholder.
- After purchase of shareholding, a dispute arose with Regis Corp.
- Dispute settled in August 2018 by IBL issuing a promissory note to Regis Corp, backed by a debenture from the Company.
- Debt of £594,035.

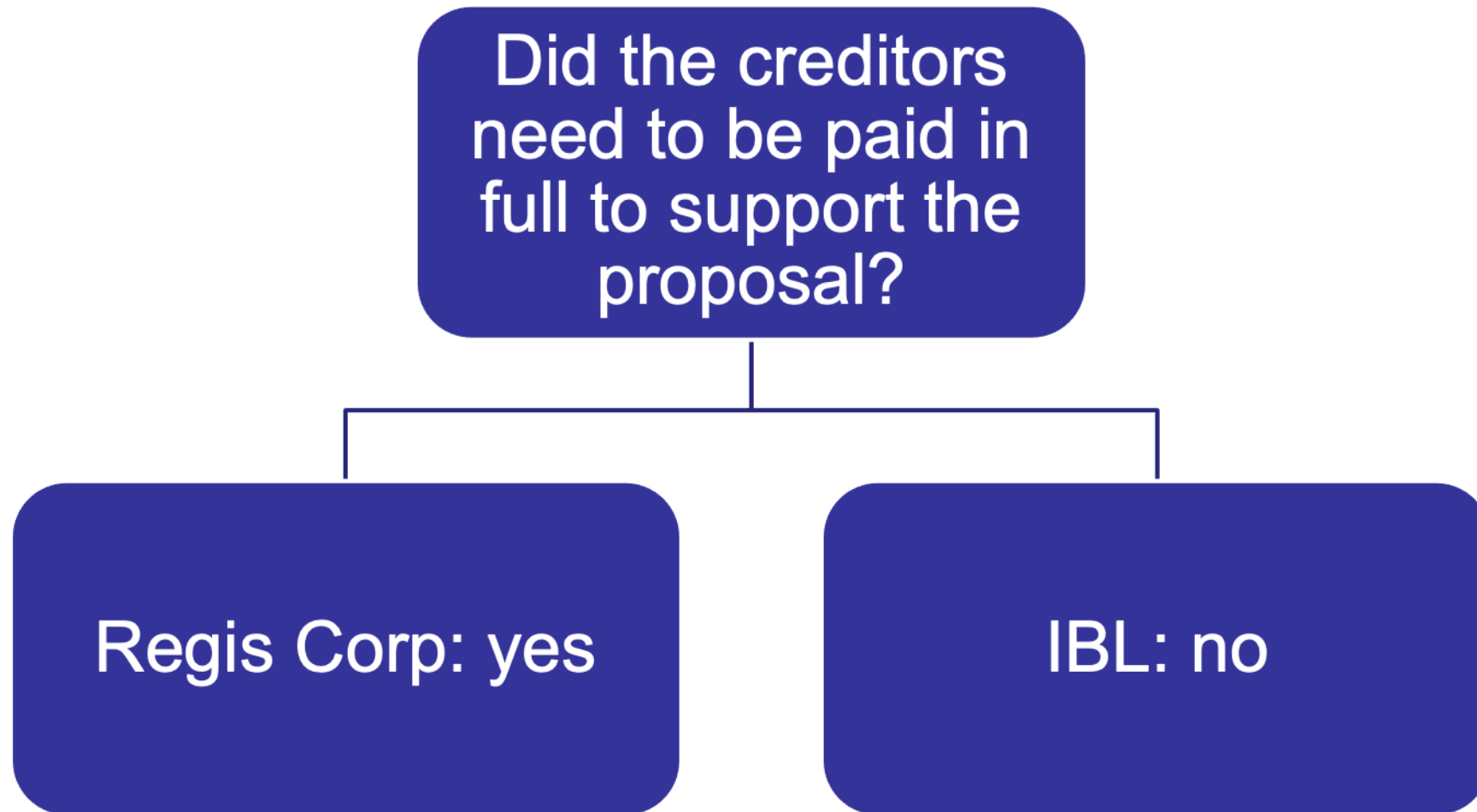
## What were the issues?

- Disclosure: was the disclosure to creditors adequate?
- Regis Corp and IBL: should Regis Corp and IBL have been admitted to vote and/or was their treatment as Critical Creditors unfairly prejudicial?
- Claims' discounting: was the calculation of landlords' claims for voting a material irregularity or unfairly prejudicial?
- Modifications to leases: were they unfairly prejudicial or were they mitigated by the new termination rights or profit-share fund?
- Nominees' conduct: were they in breach of duty and, if so, what were the consequences?

## Disclosure

- Non-disclosure only a material irregularity if there is a substantial chance that the non-disclosed material would have made a difference to the way creditors would have voted.
- No material irregularity in the way IBL and Regis Corp transactions were presented.
- Reasonable to present the alternative to the CVA as a shut-down administration in the circumstances.

## Regis Corp and IBL





## Claims' discounting

### Blanket formula

- Not appropriate because large variations in prospects of premises being re-let.
- Likely to be an overestimate of landlord's loss for better premises (Category 2) and underestimate for the worse ones (Category 5).

### Amount of discount

- Difficult to identify what % discount would be appropriate BUT some justification must be offered.
- The bigger the discount, the harder to justify and none offered here.
- Irrelevant that this discount had been used in other CVAs.

## Modifications

- Like *New Look*, critical that landlords had the option to terminate the leases.
- In the absence of the CVA, no real prospect that the landlords would have recovered rent from the Company at a rate higher than that offered by the CVA.
- BUT, would have been unfairly prejudicial for a landlord of multiple properties to be able to only exercise a termination for one lease if it exercised it for all leases, had this not been varied.
- Profit share fund illusory and shareholder stood to gain from profit, which might have been unfair.

## Nominees' conduct

- Duty: to take reasonable steps to satisfy themselves that debtor's position is materially what is in the proposal.
- More to be expected where company is large and the CVA is complex.
- Mr Williams' conduct fell below standard because there was no evidence he made any attempt to question the propriety of IBL being paid in full.

## Results?

- A pyrrhic victory?
- CVA revoked, but it had already terminated.
- Held that the Court could order the nominees' costs to be repaid, but nominees should not ordinarily be deprived of their fees. Only where conduct is egregious e.g. bad faith or fraud. Not such a case.

# Thank you for listening

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