

Newman & Partners

Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at insolvency@newmanandpartners.co.uk

High Court revokes CVA in a symbolic victory for landlords

A group of landlords who challenged the Company Voluntary Agreement (CVA) for the company Regis have celebrated their victory, even though the firm's subsequent administration means it will have little practical effect for them. The action in the High Court had been taken against the parent company of the brands Supercuts and Regis and sought to revoke a CVA taken out in 2018.

Despite the CVA already being terminated, the landlords continued to challenge it in terms of disclosure, arguing that the nominee had been in breach of their duties. Having heard the evidence from both parties, Mr Justice Zacaroli ruled to revoke it on the grounds that it was prejudicial to one creditor but ruled against the repayment of fees against the nominees of the CVA.

Writing on Pinsent Mason's blog, the solicitors representing the landlords, Amy Flavell and Stuart Taylor, said: "The applicants in the Regis CVA challenge were landlords of various properties where Regis UK Limited (in administration) operated its salon and beauty business under the Regis and Supercuts brands. Regis entered into a CVA in October 2018. The landlords raised a challenge against this in November 2018. The challenge raised was against both Regis and the nominees/supervisors of its CVA on the grounds that it caused unfair prejudice and material irregularity under section 6(1) of the 1986 Insolvency Act. A secondary claim was advanced against the nominees/supervisors for repayment of their fees."

Flavell and Taylor added: "The landlords' case against the CVA was based on two grounds of challenge: material irregularity and unfair prejudice. Other jurisdictional issues and grounds of challenge that were advanced in a recent case involving New Look were excluded in this case



after the landlords unsuccessfully applied to include them at an earlier stage. The landlords argued that if any of the grounds were successful then the nominees/supervisors had breached their duties in recommending the proposal to creditors, and so should be obliged to repay their fees because of the breach."

They said it was the treatment of this single creditor that caused the Court to revoke the CVA, but as there was no evidence of 'bad faith or fraud' the Court felt it was inappropriate to order the nominees to repay fees. Despite the rather diminished result for the landlords involved, the property sector sees this as a largely moral victory.

Melanie Leech, Chief Executive of the British Property Federation, said the

verdict was "welcome news for property owners up and down the country". She added: "Mr Justice Zacaroli is sending a very clear message to the market – CVAs cannot be about hurting property owners to simply increase value for your shareholders, discounts on property owners' claims must be reasonable and justified."

Despite these findings, CVAs continue to be an effective form of insolvency for all types of business, not only struggling retailers or landlords.

WHATEVER YOUR CLIENT'S BUSINESS, IT MAY BENEFIT FROM THE RELIEF WHICH A CVA CAN OFFER, AND WE MAY BE ABLE TO HELP. TO FIND OUT MORE ABOUT OUR INSOLVENCY SERVICES, PLEASE CONTACT US.

Preparing for the end of lockdown

With a timeline now set out for the end of lockdown, much of the previous support offered by the Government will soon either end or slowly be withdrawn. Although many sectors have reopened in recent weeks, many others effectively remain closed until 19 July, while others that have continued trading still face a difficult road ahead. While the end of lockdown is being celebrated by many, for some businesses a tough fight to survive and thrive remains.

Furlough

A key part of the Government's financial support package has been furlough, or as it is officially known the Coronavirus Job Retention Scheme. Although furloughed employees will continue to receive 80 per cent of their usual wages capped at £2,500 a month until the end of September, for employers the rules are set to change from next month.

From 1 July, employers will need to make a 10 per cent contribution to furlough payments and a 20 per cent contribution in August and September, as the Government reduces the amount of financial support on offer. For those still reliant on the scheme, this may mean that they start to incur additional employment costs at a critical time in their recovery. In some cases, where incomings and outgoings are imbalanced

and cashflow is affected, employers may need to consider redundancies.

Loans

Many businesses have been reliant on the Government-backed Bounce Back Loan, with around £48 billion of loans being taken out by eligible businesses. Similarly, the larger Coronavirus Business Interruption Loan Scheme, or CBILS, has also helped thousands of companies to access funding.

However, the initial 12-month interest and payment free period offered by these schemes is now drawing to a close for many businesses and they will need to start making repayments soon. This could have an impact on a company's ability to recover, which is why it is important to seek advice. Remember, it may be possible to arrange further interest and payment

holidays if you are struggling with loan repayments.

Tax Arrears

Many businesses and individuals have also benefitted from deferring the payment of VAT and income tax in the last year. Now many are finding that they have multiple tax payments to make in a single go, especially with the latest payment on account deadline for income tax in July just around the corner.

Each of these issues combined means that in the weeks and months ahead businesses and their owners may need to consider restructuring or taking insolvency advice.

IF YOU HAVE ANY CLIENTS WHO ARE STRUGGLING WITH THEIR RECOVERY, PLEASE CONTACT US.

True financial health of mid-sized firms hidden by insolvency rates

New evidence suggests that the current low insolvency rates in the UK may be hiding the financial position of many medium-sized businesses. Analysis of the latest data by alternative business lender ThinCats shows that only 0.61 per cent of the UK's 425,000 mid-sized firms became insolvent last year.

In comparison, during the 2009 financial crisis the rate of insolvency for businesses of this size hit 1.86 per cent and the rate for last year is even lower than the pre-Covid level of 0.76 per cent in 2019. To put this into perspective, last year 2,600 mid-sized companies became insolvent, but during the previous financial crisis in 2009, 5,400 businesses in this category failed.

Despite concerns about smaller businesses during the pandemic, by reviewing the Insolvency Service's figures between 2019 and 2020 ThinCats has revealed that large businesses were harder hit, with a greater rise in insolvencies. It

found that companies at the larger end of the mid-sized range, with £10 million or more in gross assets saw an increase in insolvency rates in 2020, while smaller businesses trended downwards in line with the overall reduced rate of insolvencies.

Those hardest hit within this category were businesses that were reliant on high footfall, such as retailers, pubs and restaurants, who experienced the sharpest rise in insolvency rates, going up from 0.76 per cent in 2019 to 1.52 per cent in 2020.

Ravi Anand, Managing Director at ThinCats: "While the impact of Covid on

businesses that rely on customer footfall wasn't a surprise, we hadn't expected large companies to be proportionally hardest hit. It may be that some of the larger multi-chain businesses have not responded as quickly to longer-term threats, such as online sales."

Various sectors of the UK economy and businesses of different sizes have been affected differently by the pandemic.

IF YOU ARE AWARE OF BUSINESSES THAT ARE STRUGGLING, PLEASE ENCOURAGE THEM TO SPEAK TO OUR EXPERIENCED INSOLVENCY TEAM.

Newman & Partners Insolvency
Lynwood House
373/375 Station Road
Harrow
Middlesex HA1 2AW

T: 020 8357 2727
F: 020 8357 2027

E: insolvency@newmanandpartners.co.uk
W: www.newmanandpartners.co.uk

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