

What have we been up to?

caught our eve

August 2020 Newsletter

The team have recently seen an influx of both contentious and non-contentious insolvency work. Particular highlights have been:

· Advising in respect of the proposed rescue of a "landmark" hotel building currently undergoing redevelopment.

- Acting for administrators of a number of other businesses in the leisure and hospitality sector which have been adversely affected by Covid-19.
- · Acting for a number of liquidators in respect of claims against directors for breaches of financial duties.

In the news - a summary of some cases that have



1 December 2020, HMRC's claims for unpaid employer NIC, PAYE and VAT will rank ahead of floating charge holder claims and unsecured creditors, reducing the monies available for distribution to lower ranking creditors.

The logic for doing so from HMRC's point of view is obvious, as it will give the government a better chance of reclaiming the £185m per year it loses from payments made by employees and customers, but not passed on by businesses before falling into insolvency. However the news is clearly not as welcomed by secured lenders with floating charges, or other creditors, as the impact is likely to mean lower returns from administrations or liquidations, in

circumstances where the UK is expected to face the worst recession it has seen in decades. Added to that is the expectation that asset-backed lenders will be forced to reduce or withdraw their levels of finance to companies, at a time of greatest need. Insolvency Service release monthly insolvency statistics

Following the Insolvency Service's announcement that it will produce monthly (as opposed to quarterly) company and individual statistics for England and Wales, to assist the Government and the insolvency sector in monitoring the impact of COVID-19, the results for July showed that:

• The overall numbers of company insolvencies in England and Wales fell by 23% when compared to the previous quarter, and by one-third when compared with the same quarter in 2019;

• While the overall number of company insolvencies remained low, the number of companies entering administration in July 2020 increased by 25 per cent when compared to July 2019. Whilst R3 welcomed the move for these figures to be reported "as these numbers will give more

- immediate feedback on how businesses, consumers and the wider economy are being affected", they have however warned that the figures should be approached with some caution. Court cases have greatly reduced due to the pandemic and as a result the volume of court-based
- are delaying the commencement of insolvency proceedings. It is also worth bearing in mind the knock-on effect which the financial support the Government has provided to employees, self-employed people, and businesses is having with the monthly

insolvency procedures has been affected. Further, Government restrictions on enforcement actions - including statutory demands and winding-up petitions issued to commercial tenants -

in insolvencies as might otherwise have been predicted. Virgin Atlantic propose first restructuring plan under CIGA 2020 As we discussed in our July newsletter, the Corporate Insolvency and Governance Act 2020 (CIGA

Arrangement. In essence a Court can sanction a restructuring plan which binds a dissenting class

On 14 July 2020 Virgin Atlantic was the first company to publicly announce its intention to use the

2020) has introduced a new Restructuring Plan, which is similar to existing Schemes of

of creditors, if that class would be in no worse a position than the most likely alternative.

statistics. Unsurprisingly, for example, the monthly statistics for April did not show a dramatic rise

new restructuring plan procedure to restructure its debts. The restructuring plan is based on a five-year business plan, and will involve shareholders Virgin Group and Delta, new private

company, and in particular a retailer, becomes insolvent.

where goods are not immediately handed over at the point of sale.

investors and existing creditors. It is expected to deliver a refinancing package worth around £1.2bn over the next 18 month, in addition to the self-help measures already taken, including cost savings of circa £280m per year and circa £880m re-phasing and financing of aircraft deliveries over the next five years.

At the convening hearing on 4 August 2020, Mr Justice Trower approved the proposed timetable (meaning the restructuring plan and recapitalisation will come into effect in late summer 2020) and the convening of four classes of creditors to vote at the creditors' meetings. BEIS announces proposed law change to benefit consumers buying pre-paid goods The Department for Business, Energy & Industrial Strategy (BEIS) has recently issued a press release regarding proposed changes in the law to better protect consumers in the event that a

Under existing law, if a company becomes insolvent but goods pre-paid for are still in its possession, they may be considered as assets belonging to the business and can be used by administrators to pay off the company's debts.

The proposed changes will update the law in this area, to reflect that consumers will legally own the goods for which they have pre-paid, thereby providing clarity for consumers as well as guidelines setting out ways of identifying the consumer as legal owner, including goods that have been labelled or altered for the buyer. The proposed changes will also apply to online shopping

Case Law Update **Corporate** Re: Tundrill Ltd - Unreported

The winding up petition had been issued on 1 May 2020, 8 weeks before CIGA 2020 came in to

The petitioner was however successful in arguing that coronavirus had no impact on the debtor company and that the grounds for ordering a winding up would have existed regardless of the

force, but after 27 April 2020, the date from which CIGA 2020 applies retrospectively. As a result, the petitioner could not have ensured that the winding up petition satisfied the requirements of CIGA 2020, as those requirements were not in existence at the time that the petition was presented.

financial impact of coronavirus. ICC Judge Mullen found that the debt was not disputed and accepted that the company's last

in the voluntary arrangement regime.

filed accounts showed it to be balance sheet insolvent as far back as 2018. Accordingly, he held that the creditor did have reasonable grounds for considering that coronavirus was not responsible for any financial effect on the debtor company, as the undisputed debt would otherwise have been paid.

Re North Point Global Ltd [2020] EWHC 1648 (Ch)

The Court has granted one of the first Winding Up Orders under CIGA 2020.

company. The liquidators appealed against the decision by the supervisor of the CVA to reject that proof. The court made a declaration that the liquidators were contingent creditors for the purposes of rules 14.1 and 14.2.1 of the Insolvency (England and Wales) Rules 2016, with a right to prove in

This case shows that the general policy in insolvency proceedings, that it is desirable to include as many liabilities as possible within the scope of 'provable debts', extends to CVAs. It also provides a further example of the court taking a purposive approach towards arguable gaps or anomalies

The liquidators of a subsidiary company had submitted a proof in the CVA of the parent company. The proof was based upon a claim under section 239 of the Insolvency Act 1986 (IA86) that certain payments by the parent to the subsidiary had amounted to unlawful preferences of the

This was an application by the administrators of Lehman Brothers International (Europe) Ltd for a direction under paragraph 63 of Schedule B1 IA86 that they be at liberty to consent to a request from the company's directors to distribute surplus funds to the company's sole shareholder. The court held that "the administrator should obviously not do anything that is directed at achieving

an objective that is inconsistent with the relevant statutory purpose. That does not, however, mean

Re Lehman Brothers International (Europe) [2020] EWHC 1932 (Ch)

Personal Re Juraid Anwer [2020] EWHC 1745 (Ch)

action they took and that objective. It was held that the proposed distribution was commercially

that every exercise of every power must be capable of being shown specifically to advance the statutory objective in a definable way." While the overall objective of the administrators' actions had to be to rescue the company as a going concern, they did not have to show a clearly defined causal relationship between every

sensible and it was appropriate to make the direction sought.

secured, to increase the interest payable to them.

making of an ECRO.

In an application for an extended civil restraint order ("ECRO") or limited civil restraint order ("LCRO"), the court granted relief against Mr Anwer, a litigant in person that had brought a total of seven applications which were totally without merit.

Central Bridging Loans Ltd ("CBL") had issued a statutory demand against Mr Anwer in respect of sums due under a loan. Mr Anwer applied to have the statutory demand set aside, and also brought proceedings against CBL in the County Court, both on the alleged basis that CBL had intentionally and fraudulently delayed the sale of his property, against which the loan was

The court held that CBL had demonstrated the necessary degree of persistence to warrant the

The case should act as a warning for individuals who wish to apply to set aside statutory

is different, it might be dismissed as totally without merit and become a factor justifying the imposition of an ECRO. Brake v Swift [2020] EWHC 1810 (Ch) This judgment provides some guidance in relation to the scope and application of s283A IA86, which gives a bankrupt's trustee in bankruptcy three years to take the necessary steps to realise

or secure the bankrupt's interest in the bankrupt's home failing which that interest will cease to

In this case the court was concerned with the meaning of the phrases (a) 'an interest in', (b) 'a

With regards to (a) the court found that proprietary estoppel has been held to qualify as an

be part of the estate and will automatically re-vest in the bankrupt.

dwelling-house' and (c) 'sole or principal residence' under s283A(1).

demands and issue more than one application to do so. Unless the basis for a second application

'interest' under s283A(1) and accordingly, such an interest is capable of being re-vested in a bankrupt pursuant to the operations of s283A. With regards to (b) when considering whether adjacent parcels of land are part of a 'dwelling

house', the evidence should focus on the relationship between the properties, including whether they were acquired together and whether they could be used separately. Simply demonstrating

With regards to (c) when parties consider the nature of evidence to bring forward for a 'sole or principal residence', the evidence should focus on objective, ascertainable factors, although

that adjacent parcels serve or are useful to the dwelling is unlikely to be sufficient.

And finally... August is typically the month that we see

year might be a little different but we hope you're all able to get a break, even if it if a "staycation". If you're lucky enough to be heading abroad we have our fingers crossed

to go in quarantine on your return!

that you are able to return without the need

our clients leaving the UK and heading to a sunnier destination for a week or two. This

subjective intentions may still have some relevance.

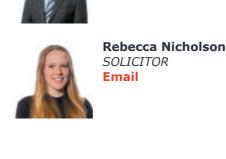
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