

Summary judgment stayed where part 26A restructuring plan pending

Landlords should reconsider summary judgment if a Part 26A restructuring plan is pending.

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Landlords should reconsider summary judgment if a Part 26A restructuring plan is pending. Here, the tenant, Virgin Active Health Clubs Ltd, had proposed a Part 26A restructuring plan and the Court was asked to consider competing applications for summary judgment and a stay.

There was a reasonable prospect that the restructuring plan would receive sanction; even if only as a result of the Court's discretion to override any dissenting class (or classes) of creditor because: (i) creditors would be no worse off; and (ii) at least one class would approve the plan by the requisite majority.

It was plain to see that summary judgment would undermine the restructuring plan since, if successful, the claimant landlord would receive substantially more than other landlords in the same class. As a result, the Court was forced to ask whether a stay would prejudice the legitimate interests of any relevant person and, if so, where the balance of convenience lay?

Ultimately the interests of the wider class of creditors trumped the private interests of the landlord and a short stay under CPR 3.1(2)(f) was imposed, until after the sanction hearing for the restructuring plan, to allow the process under Part 26A to proceed.

This case, whilst not surprising to insolvency professionals given the importance placed on creditors' interest as a whole, will be disturbing to those landlords who, having adhered to Government guidance, have deliberately held off taking enforcement steps and may now find themselves unable to do so, having their dissent disregarded and having those same debts compromised using this new restructuring regime.

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