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Recently the Supreme Court was asked to determine whether or not a landlord could continue to claim rent on an ongoing basis from a company that had gone into a deed of company arrangement (DOCA). A DOCA is an accommodation approved by the majority of creditors which binds all the creditors (apart from the secured creditor) to accept whatever the deed proposes. Generally the deed proposal allows for some cents in the dollar to be paid on claims.

The Facts

The tenant had gone into voluntary administration and the DOCA had been put up and approved by creditors. The landlord hadn't voted.

The landlord did not terminate the lease but sought declarations from the Court that the tenant was obliged to continue to pay rent regardless of the DOCA having been entered into (that is rent on a "go forward basis").

The Court focused on what the DOCA had to say for itself and determined that the deed bound all creditors, not only so far as concerns debt which had come due at the time of the appointment of the administrator but also future or contingent claims where the circumstances giving rise to that future or contingent claim had occurred before the date when the tenant went into voluntary administration.

In this case the lease had been entered into well before that date.

The Decision

The landlord argued that at no time had the administrator suggested that that was the intention of the DOCA but nevertheless the Court took the view that regardless, a proper construction of the DOCA meant that the tenant was not liable for ongoing rent. Ongoing rent was a contingent or future debt caught by the DOCA.

The Court went on to order that the landlord pay the tenant's costs of the proceedings.

It would be open to the landlord to apply to the Court (again!) to seek to set the DOCA aside on the basis that it is inherently unfair to the landlord and it might also be open to the landlord to terminate the lease (assuming there is a condition in the lease that allows for termination upon a tenant entering into voluntary administration).

Summary

Clearly, if any landlord finds itself presented with a deed proposal it should exercise what muscle it can (assuming the tenant wishes to remain in business) to demand that the deed proposal itself to be voted on by the creditors specifically provides that the landlord's claim for future rent is not caught by the DOCA.

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