

Background:

An Examiner was appointed to the company Linen Supply of Ireland Limited on the 30th September 2009. Pursuant to s. 24 of the Companies (Amendment) Act 1990, the Court was asked by the Examiner to approve a Scheme of Arrangement. The Scheme was supported by the majority of creditors; however it was opposed by a number of landlord creditors from whom the company had leased premises.

Their objections to the Scheme were two-fold; first, they claimed that the debts due to them were not subject to any impairment under the Act and that the court did not have jurisdiction in this regard. Second, they claimed that the proposals were unfair and inequitable and that they were unfairly prejudiced.

Has the Court power to approve the Scheme?

The Supreme Court overturned the ruling of the High Court, ruling that there was a statutory basis under s. 20 of the Act, to repudiate a lease, and remitted the matter back to the High Court to exercise its discretion under s. 24 of the Act, which allows it to consider the report of the Examiner.

S. 22 (5) of the Act suggests that the Scheme of Arrangement is only to apply to debts due at the date of presentation of the petition. Under the Scheme the landlords are to receive 30% of the damages owing due to the repudiation of the leases. However the landlords argued that any debts owing to them were post-petition debts and thus could not be written down unless there was express statutory authority to this effect. No reference is made in the Judgment to such statutory authority somewhat surprisingly as S 20(2) provides that "any person who suffers loss or damage as a result of such repudiation shall stand as an unsecured creditor for the amount of such loss or damage.

The Nature of the landlord's claim for future rent

The Court ruled the landlords were creditors, not contingent creditors, but prospective creditors.

The main issue as to creditors' rights was whether or not they included merely a present right to payment or a future right to rent under the leases. In this regard the court relied on s. 5 of the Interpretation Act 2005, which provides for ambiguous or obscure provisions. It states in such a situation the section ought to be constructed to reflect the plain intention of the Oireachtas.

The Court held the plain intention of the Oireachtas was to provide for the repudiation of certain contracts (including leases) and that the Court could appoint an Examiner who may present a scheme of arrangement that impairs the rights of a creditor, including a prospective creditor. In this instance the agreed debts including damages for repudiation due to the landlord creditors is subject to impairment under the Act, and the Court held it had jurisdiction to confirm a scheme which makes provision for such impairment. The Court was also satisfied that the proposals were fair and equitable in relation to the landlord creditors.

Should the Scheme of Arrangement be amended in any way?

The landlords are objecting to the Scheme on the basis that while investment funds are needed the Scheme provides for a loan being provided by the investors, which is

repayable on demand once the creditors are fully paid their compromised amounts pursuant to the Scheme. If the investors were then to immediately re-call the loan, the company would become instantly insolvent.

The Court agrees that this is a valid concern. It has instructed the Examiner to provide for the continued provision of funding from investors and for the Scheme to be amended to provide for this.

Conclusion:

The Court has since approved the Scheme of Arrangement put forth by the Examiner, which included a modification to the Scheme, sought by Mr. Justice Brian McGovern, regarding the provision of continued working capital by the investor. The examiner was able to negotiate with the investors and the Scheme was approved clearing the way for the company to emerge from Examinership in the not so distant future.

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