

An added bonus: A de facto moratorium Another reason why UK Plans are a little like Ch 11s

In another twist to the Virgin Active story, the mere existence of an in-progress Restructuring Plan procedure has resulted in a de-facto moratorium against action by creditors whose claims would be covered by it.

On 12 March a judge in the UK High Court granted a stay on proceedings against Virgin Active by one of its landlords, Riverside Crem, for non-payment of rent.

The judge decided to stay the application made by the landlord, being of the view that the application, if allowed, would frustrate the Restructuring Plan which was being pursued.

The judge explained that the decision to exercise his discretion was very fact-specific. The judge noted that the restructuring plan that was being proposed had taken a significant amount of time and work from advisors.

The judge did not give permission to appeal, however the claimant retains the option to be able to request permission to appeal directly from the Court of Appeal.

The decision is the first time that a company pursuing a Part 26A plan has successfully stayed an unsecured creditor from pursuing a summary judgment prior to putting its plan in place.

"Where there is a Restructuring Plan in place, and stakeholders have agreed what the company's capital structure should look like emerging from the Plan, then it may become very difficult for one stakeholder to then challenge that settlement," commented Mark Fine a finance and restructuring partner with McDermott Will & Emery in London, who is not connected with the case.

"The whole thesis behind CIGA was to move the UK closer to chapter 11 and this has been borne out with the restructuring plan and the moratorium. Whilst the plan does not definitively provide a moratorium against creditor action there is no reason why the

freestanding moratorium under CIGA could be used alongside a restructuring plan, if the company is eligible," said Fine.

"This topic will run and run as more Plans come onto the market."

"This decision from the High Court does not come as a great surprise and is in line with the modernisation of the UK's legislative regime around insolvency and governance which seeks to provide stability and work in tandem with public policy to protect companies as a going concern," said Fine.

"Cooperation of all stakeholders is seen as crucial in order to see some businesses come through difficult times and decisions, such as extending the temporary ban on commercial landlords issuing statutory demands and winding up petitions against commercial tenants who have not paid their rent during the pandemic, back-up this sentiment."