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Landlords' restructuring challenges thwarted

By Christopher Spink

LONDON, May 21 (IFR) - Landlords of commercial property in the UK, and their lenders, are bracing for a bloody period after challenges to the restructurings of retailer New Look and gym operator Virgin Active both failed.

New Look had used a company voluntary arrangement to cram down landlords and other unsecured creditors while Virgin Active proposed a similar strategy but by using a restructuring plan, a method only introduced last year under new insolvency legislation.

"Over recent years, the use of CVAs to bind commercial landlords to lease compromises has attracted much publicity. The new restructuring plan offers a similar purpose," said Mark Fennessy, partner at law firm McDermott Will & Emery. He said landlords may be left "feeling bruised" by these decisions. He said New Look's landlords can appeal too.

Restructuring lawyers said these were test cases that would determine whether tenants were able to wriggle out of financial obligations to landlords. "A number of other situations in the pipeline will be impacted by these cases," said Kon Asimacopoulos, partner at law firm Kirkland & Ellis.

He said CVAs would continue to be used as well as the newer restructuring plans. He said the plans are a more costly process and would be better suited to larger situations.

Moratorium end

Since the Covid-19 pandemic spread in March 2020, landlords in the UK have been prevented from demanding unpaid rent from tenants, or evicting them, under a government moratorium. That is due to finish at the end of June, meaning landlords could start to bring cases after that.

But as courts have backed companies that have forced losses on landlords through both these methods, tenants have a strong hand in reducing their liabilities. That could mean over-leveraged landlords might not in turn be able to pay their lenders, such as banks and bondholders.

The International Monetary Fund warned in April that the large size of the commercial real estate sector and its heavy reliance on debt funding meant that concerns in this area could have "potentially significant implications for financial stability".

"Nowhere else in the world has the property industry been subject to such punitive measures. The billions of pounds looking to invest in UK real estate will be watching closely as the moratoriums draw to an end," said Melanie Leech, chief executive of the British Property Federation, earlier this month.

Unfair prejudice?

In an analysis of the New Look judgement, Kirkland & Ellis said landlords had been given the right to terminate their leases with the tenant, allowing them the opportunity to relet properties to other tenants.

Kate Stephenson, partner at Kirkland & Ellis, said this was a "key answer to their complaints of unfair prejudice". Landlords had argued that without this they would be stuck having to accept lower rents from a tenant without the ability to end the contract early.

The rejection of the Virgin Active challenge by landlords, the first restructuring plan to be contested, was highly significant, Stephenson said.

"It is clear that the votes of out-of-the-money classes are likely to be given little to no weight by the court – unless they produce credible evidence that they are not in fact out of the money in the relevant alternative," she said.

(Reporting by Christopher Spink)

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---- Index References ----

Company: KIRKLAND AND ELLIS LLP; VIRGIN ACTIVE LTD; Look Holdings Inc; KIRKLAND AND ELLIS LLP; Mcdermott Will & Emery LLP; VIRGIN ACTIVE LTD; New Look Vision Group Inc

News Subject: (Bankruptcies (1BA08); Business Management (1BU42); Corporate Events (1CR05); Funding Instruments (1FU41); Real Estate Investments (1RE04); Corporate Bonds (1XO30); Debt Restructuring (1RE45); Corporate Events (1CR05); Corporate Governance (1XO27); Regulatory Affairs (1RE51); Corporate Restructuring (1RE42))

Industry: (Commercial Real Estate (1CO51); Financial Services (1FI37); Housing (1HO38); Real Estate (1RE57); Rental Real Estate (1RE07); Bonds (1BO97); Fixed Income Investments (1FI12))

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End of Document

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