

From Hollywood to the High Court – can a prior agreement exclude a creditor from a restructuring plan?



Cripps recently acted for an objecting party seeking an injunction to exclude it from Cineworld's proposed restructuring plans. The issue at hand concerned whether the Court should sanction the plans proposed by Cineworld, or if it should be modified to exclude the objecting parties who sought to rely on a previous written agreement, where Cineworld agreed that the objecting party would not be included in any restructuring plan for a specified period of time, in exchange for various rent concessions and other amendments to the terms of their leases.

It was common ground that a restructuring plan under part 26A of the Companies Act 2006 could compromise a contractual agreement, however, this is the first case to consider whether a contracting party could rely on a specific promise made by a plan company to exclude them from a future restructuring plan in exchange for concessions being made to their existing contractual arrangements.

Background

In the aftermath of the COVID-19 pandemic, the Cineworld group experienced significant financial difficulties which resulted in a group reorganisation under Chapter 11 of the US Bankruptcy Code in 2023. Following the Chapter 11 Plan, four companies within the UK branch of the Cineworld group (the UK Companies) have continued to struggle financially and are now unable to meet their payment obligations to creditors and have been reliant on intercompany loans from the US in order to stay afloat. The US branch of Cineworld, aware that this is not a sustainable solution, have agreed to provide additional funding to the UK Companies in the future on various conditions, one of these being that the UK Companies undergo a restructure and the UK Companies



sought orders from the court to sanction restructuring plans under part 26A of the Companies Act 2006 (the Restructuring Plans). Cineworld believe that, without the Restructuring Plans, the UK Companies would be forced into administration.

Under the proposed Restructuring Plans, leases which the UK Companies had entered into with particular landlords would be compromised. Cripps acted for one of the landlords objecting to the Restructuring Plans (the Objecting Landlord) on the basis that it had already entered into a private, consensual agreement with Cineworld in September 2023 whereby the Objecting Landlord agreed to substantial concessions in exchange for an agreement that any leases which the Objecting Landlord had with Cineworld would be excluded from any future restructuring plans for a period of three years. The Restructuring Plans were proposed within this period and the Objecting Landlord sought to enforce the terms of the contract.

At the sanction hearing, on 26 September 2024, the Objecting Landlord alongside another creditor, (together the Objecting Creditors) sought injunctive relief in the form of an Order excluding them from the Restructuring Plans on the basis that the Objecting Creditors had each separately reached private agreements with Cineworld as outlined above. Under the Restructuring Plans, the leases with the Objecting Creditors would be subject to significant amendments and further rent reductions.

The Court therefore had to rule on whether to sanction the Restructuring Plans despite the negative covenants contained in the private agreements entered into between the UK Companies and the Objecting Creditors, with judgment being handed down on Monday.

Decision

Sitting in the High Court, Mr Justice Miles (the Judge) held that the Restructuring Plans could go ahead and that the injunctions sought by the Objecting Creditors (to uphold their previous agreements with Cineworld) would be refused.

The Judge held that when considering whether to sanction the Restructuring Plans under part 26A of the Companies Act 2006, the relevant alternative must be identified and considered. The Judge, in agreement with Cineworld, held that in this instance the relevant alternative to the Restructuring Plans was the administration of the UK Companies. Where administration is the relevant alternative, the Judge concluded that the *pari passu* principle, as a fundamental principle of insolvency law should be applied and this will often justify plan companies in acting contrary to previous undertakings not to include debts within a restructuring.

Despite the prior agreements being struck in 2023 (i.e. shortly before the proposed Restructuring Plans) the Judge ruled that these agreements were not entered into in bad faith. It was unfortunate that the 2023 renegotiations did not achieve what was necessary to stave off the cashflow shortages that the UK Companies were now faced with and whilst the Objecting Creditors may have felt aggrieved, having struck a private deal with the UK Companies so recently, the part 26A procedure is a statutory, collective one, designed to stave off insolvency.

The Restructuring Plans were developed in the course of 2024 in response to the worsening financial situation of the UK Companies and the Judge held that it would not be fair for the Objecting Creditors to be treated preferentially by way of a contractual provision that was entered into before the common misfortune, which all of the creditors of the Company were now suffering from. The Judge concluded that if the Objecting Creditors were to be excluded from the Restructuring Plans, then they would be placed in a significantly better position compared to other landlords of failing cinema sites, who would rank equally to themselves as creditors. Accordingly, the Judge sanctioned the Restructuring Plans, notwithstanding the prior agreement entered into between the Objecting Creditors and the plan companies.



Although the Objecting Creditors were unsuccessful in their applications to exclude themselves from the Restructuring Plans, the Judge held that no order for costs should be made as it was appropriate for the Objecting Creditors to draw the Court's attention to the prior agreements and the potential impact of these agreements on the Restructuring Plans.

Permission to appeal has been granted and it is likely the Court of Appeal will be asked to consider this further, but as this case stands, the court is unlikely to allow a party to be excluded from a restructuring plan based on a prior written agreement.

How we can help

If you are involved in any commercial agreements that may have been breached, contact our [commercial disputes team](#) who can help to resolve these issues. We also have a specialist team of restructuring and insolvency lawyers who regularly advise creditors, insolvency practitioners and distressed businesses on issues relating to insolvency and corporate restructuring.



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