

Adjudication and Company Voluntary Arrangement (CVA) – the relevant principles

Mead General Building Ltd v Dartmoor Properties Ltd [2009] EWHC 200. Mead sought to enforce an adjudicator's decision, Dartmoor resisted the enforcement submitting that a stay should be granted on the basis that Mead was subject to a Company Voluntary Arrangement ("CVA"), and there was reason to believe Mead would not be in a position to pay any part of the judgment sum if, in subsequent arbitration, the arbitrator concluded it had been overpaid. In deciding whether to grant a stay, the court identified four relevant principles:

- (1) the fact that a claimant is the subject of a CVA will be a relevant factor for the Court to consider;
- (2) the existence of the CVA will not require the Court to infer that the claimant would be unable to repay sums paid out as a result of an adjudicator's award;
- (3) the CVA and claimant's current trading position will be relevant factors;
- (4) it is relevant whether or not a claimant's financial position is wholly or significantly due to the defendant's failure to pay the sums awarded by the adjudicator.

The Court refused to grant a stay, finding that on the evidence, there was no reason to believe that Mead would not be in a position to pay back any part of the judgment sum. The court accepted that the primary reason why Mead found itself in such financial difficulties was a result of Dartmoor's actions. The court held that it would not allow Dartmoor to take advantage of the financial difficulties it substantially caused, in order to avoid paying sums due under an adjudicator's decision.