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Insolvency: Court of Appeal hands down judgment in Doran v County Rentals

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In Doran v County Rentals Ltd (t/a Hunters) [2022] EWCA Civ 1376, the Court of Appeal clarifies the proper construction of the provisions of the Corporate Insolvency and Governance Act 2020 (CIGA 2020), in place until October 2021, which placed restrictions on the winding up of companies affected by coronavirus. The judgment also considers the extent to which a company can be deemed unable to pay its debts (under section 123(1)(e) Insolvency Act 1986) from the mere fact of non-payment.

Arnold Ayoo acted for the Appellants, instructed by Athena Solicitors LLP.

(1) Lady Justice Asplin, Lady Justice Thirlwall and Lord Justice Birss considered that even at the preliminary hearing where the Court was considering the 'coronavirus test' (under para 5(3) of Sch 10 CIGA 2020), it was proper to consider whether the substantive ground for winding up (under s.123(1)(e) IA 1986) applied at all. In doing so, the court was not required to take the petitioner's case at its highest but could consider all evidence relevant to the question of 'substantial dispute'.

(2) Section 123(1)(e) test: the Court reiterated that proof of a single specific default by a company is not necessarily conclusive of the general issue of its inability to pay its debts as they fall due. Whilst there does not have to be a pre-petition demand for a debt before the court concludes that a company is unable to pay, it should be slow to reach such a conclusion from the mere non-payment if the sums which have fallen due have not been demanded, and the company given an opportunity to pay. On the facts, the mere non-payment of sums which had fallen due over six years did not support an inference of 'inability' to pay in circumstances where the company believed (even if mistakenly) that it had been discharging the debts.