

Insolvency Insight

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Welcome to the next edition of the insolvency insight bulletin from the insolvency specialists at Quadrant Chambers. All cases link to the relevant judgments.

Case law

- » [Melars Group Ltd v East-West Logistics LLP](#) [2021] EWHC 1523 (Ch) – Former Chief ICC Judge Baister decided that the registered address of the debtor in Malta was a letterbox arrangement and that its COMI was England for the purposes of the Recast Insolvency Regulation. However, Miles J reversed this finding, holding its COMI to be Malta. It held *inter alia* that the ICC Judge had not sufficiently distinguished between the place where the company's interests were administered (which was relevant to COMI) and the conduct of its operations (which was irrelevant for COMI). Although, post-Brexit, such cases about COMI may be less common.
- » [Manolete Partners plc v Hayward and Barrett Holdings Ltd and others](#) [2021] EWHC 1481 (Ch) – The Court held that a fraudulent transaction claim under section 423 of the Insolvency Act 1986 should have issued under CPR Part 7 and not by an insolvency application notice. It held that s.423 claims were not an insolvency proceeding by examining the relevant parts of the 1986 Act. Despite examples of s.423 claims being brought by insolvency application notices, practice could not override statute. The Court, however, allowed the claim to continue upon payment of the (higher) Part 7 Court fee.
- » [Re All Scheme Limited](#) [2021] EWHC 1401 (Ch) – It can sometimes appear, from a glance at the Lawtel Daily Updates, that all schemes of arrangement are approved by the Court. Not here. A subprime lending group proposed a scheme seeking to compromise consumer claims in relation to questionable loans. The scheme had been approved by over 95% by number and value of voting scheme creditors. However, only 10% or less (by number and value) of scheme creditors had turned out to vote. The FCA issued a letter of objection and opposed it at sanction hearing. Miles J held that the scheme was not a fair one that the Court could reasonably approve because the scheme creditors had not been fully and fairly informed about the scheme.
- » [Nero Holdings v Young](#) [2021] EWHC 1453 (Ch) – The Court declined to strike out a creditor's challenge to a CVA, which was funded by a third party aspiring to take over the company. The Court could not be sure, at the interim stage, that the creditor did not have his own purposes for, and a legitimate interest in, challenging the CVA. The decision contains useful guidance on applications to challenge CVAs, which are becoming increasingly common.

Legislation

- » In June the Government announced that the restrictions, in the Corporate Insolvency and Governance Act in March 2020, on statutory demands and winding up petitions will remain for a further three months until 30 September 2021 to protect companies from creditor enforcement action where their debts relate to the pandemic.

MEET THE AUTHOR



Joseph England is ranked in the latest edition of Legal 500 as a Leading Junior in four separate categories: International Arbitration, Energy, Civil Fraud and Insolvency, where he is described as: *"Very conscientious, hardworking and enthusiastic, he is good on his feet and should go far"; "An up-and-coming star in civil fraud litigation. He has an intuitive feel for how the court will see cases. His grasp of the law and how to put legally complicated points is also excellent. He is a dangerous adversary, constantly looking for weaknesses in his opponent's position and clients love him"; "He is becoming a formidable opponent in court"; and "Joe is conscientious and has a deep knowledge of arbitration law - he's someone to watch and is going places."* Joe appeared in long-running insolvency proceedings concerning the founder of All Saints fashion chain including as sole counsel in the Court of Appeal (*Islandsbanki hf, HMRC, Shinclear Holdings Ltd v Kevin Gerald Stanford* - [2020] EWCA Civ 480).

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