



## LEGAL BRIEFING

### *Mead General Building Ltd v Dartmoor Properties Ltd*

[2009] EWHC 200, TCC, Mr Justice Coulson

#### **The Facts**

Mead General Building Ltd (“Mead”) sought to enforce an adjudicator’s decision. Dartmoor Properties Ltd (“Dartmoor”) had engaged Mead to carry out a development scheme in Devon. The adjudicator decided substantially in Mead’s favour and ordered Dartmoor to pay Mead £332,026.64 plus interest and a contribution to his fees.

Dartmoor resisted enforcement on the basis that, as Mead was subject to a CVA (a company voluntary arrangement), a stay should be granted on any judgment otherwise awarded to Mead. Dartmoor also alleged that the adjudicator was wrong and that it intended to pursue an arbitration claim against Mead although this claim had not yet been commenced. Dartmoor did not appear at the enforcement proceedings.

#### **The Issue**

Should, as Mead was subject to a CVA, a stay be granted against the court’s judgment enforcing the adjudicator’s decision?

#### **The Decision**

The Judge refused to grant a stay. The fact that Mead was in a CVA was not relevant to judgment being entered in Mead’s favour but only relevant to a stay of execution of this judgment. Dartmoor had not taken any jurisdiction points and therefore there was no basis that Dartmoor could seek permission to defend the claim.

There was no previous authority dealing with the position of a claimant who was the subject of a CVA and who sought to avoid a stay of execution. Mr Justice Coulson decided the following principles were relevant:

- (a) the fact that a claimant is the subject of a CVA will be a relevant factor for the court to take into account when deciding whether or not to grant a stay of execution of the judgment;
- (b) however, the mere fact of the CVA will not of itself mean that the court should automatically infer that the claimant would be unable to repay any sums paid out in accordance with the judgment, such that a stay of execution should be ordered;
- (c) the circumstances of both the CVA and the claimant’s current trading position will be relevant to any consideration of a stay of execution; and
- (d) it is also relevant as to whether or not the claimant’s financial position and/or the CVA is due, either wholly or in significant part, to the defendant’s failure to pay the sums awarded by the adjudicator.

In this case, Mead’s current financial position was that, despite the difficulties created by the non-payment of the adjudicator’s decision, Mead was continuing to trade successfully. There was clear and cogent evidence that Mead’s

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financial difficulties began when Dartmoor started to pay less than what was being claimed and in some instances made no payments at all. The Judge accepted Mead's evidence that Dartmoor's failure to pay was the principle reason for Mead's financial difficulties. Further, the CVA's supervisor provided evidence that he believed Mead could trade successfully out of their temporary difficulties. Therefore, there was no reason to believe that Mead would not be in a position to pay back any part of the judgment sum if, in a subsequent arbitration, the arbitrator concluded that they had been overpaid.

***Comment***

This case again demonstrates the court's willingness to enforce an adjudicator's decision and narrows the circumstances in which a defendant may avoid paying an adjudicator's decision because of financial peril. In this case, as the claimant's financial difficulties had been caused and/or contributed substantially to, by the defendant, the court was unwilling to grant a stay of execution on the basis of the claimant's financial difficulties.

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