**CLAIM NO. CR-2020-MAN-000850**

**APPEAL COURT REF. NO. M21C412**

**Neutral Citation Number. [2021] EWHC 3478 (Ch)**

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS IN MANCHESTER**

**INSOLVENCY AND COMPANIES LIST (ChD)**

Before His Honour Judge Cadwallader sitting as a Judge of the High Court

20 December 2021

**BETWEEN:-**

**ANNETTE DORAN and JAMES DONALD DORAN**

**Appellants**

**-and-**

**COUNTY RENTALS LIMITED t/a HUNTERS**

**Respondent**

JUDGMENT

Winding up - 'Coronavirus test' – relationship between CIGA Practice Direction and statute - attended preliminary hearing – strike out

*PGH Investments Ltd v Ewing* [2021] EWHC 533 (Ch)

*Re a Company* [2021] EWHC 2289

*Taylors Industrial Flooring Limited v M and H Plant Hire (Manchester) Limited* [1990] BCLC 216.

*Re Easy Letting & Leasing* [2008] EWHC 3175 (Ch)

*Re A Company (No. 006798 of 1995)* [1996] 1 WLR 491

*Re a Company (Application to Restrain Advertisement)* [2020] EWHC 1551 (Ch)

Introduction

1. This is my reserved judgment on the hearing of appeal on the part of the petitioning creditors against the decision of District Judge Richmond at a preliminary hearing on 9 February 2021 to dismiss the winding up petition presented against the company on 5 October 2020 on the ground that the Court found that it was not likely that it would be able to make an order under section 122(1)(f) of the Insolvency Act 1986 having regard to the 'coronavirus test'.
2. The learned District Judge was sitting in the High Court, and I am able to determine this appeal because, by the order of Snowden J. dated 18 June 2021 granting permission to appeal, he directed that the appeal would be heard before a High Court Judge or Deputy High Court Judge.
3. The petitioning creditors were represented by counsel, Mr Arnold Ayoo, and the company was represented by counsel, Mr Simon Passfield. I had the benefit of their skeleton arguments, including a supplemental skeleton argument on behalf of the petitioning creditors.
4. I also had an appeal bundle, including in particular the appellant's notice, the grounds of appeal and the witness statements referred to below.
5. I do not propose to rehearse all of the arguments raised, or all of the evidence referred to during the course of the hearing, but I record that I read and considered those arguments, as well as all the various documents referred to within the appeal bundle, and the joint bundle of authorities, as well as the supplemental skeleton argument, before coming to a decision.

Background

6. The respondent company ("the Company") operates a franchise of Hunters estate agents. The petitioners own four properties in Wallasey, Merseyside, at 10 and 10a Rowson Street and at 116 and 116a Mill Lane ("the Properties"), which they let to tenants. In or about 2009 the company and the petitioners agreed that the company should collect the rents for the properties and pay them (after deductions) to the petitioners. From about 2013 the Company started paying most, but not all, of the rent which it collected in respect of the properties into a Barclays bank account. On 13 March 2020, 7 years later, the First Petitioner told the Company that this account

was wholly unknown to her, and complained on 26 June 2020 that the petitioners had not received rental payments for the period 2014 to 2019 in the total sum of over £60,000. On 27th of August 2020 solicitors instructed on behalf of the petitioners wrote to the Company asserting that at least £65,442.55 was owed for unpaid rent and that if an immediate payment of £50,000 were not made within 7 days a winding up petition would be presented. The Company denied liability, and the petition was presented. In summary, the Company says the petitioners must have instructed the company to start making payments to the Barclays account otherwise it would not have done it; and on that footing, the debt is disputed.

The petition

7. The petition stated as follows:

> "Pursuant to Schedule 10 to the Corporate Insolvency and Governance Act 2020 the company is insolvent and unable to pay its debts and the petitioner has reasonable grounds for believing that coronavirus has either, not had a financial effect on the company; or had a financial effect on the company but the company would still have been insolvent and unable to pay its debts in any event.
> "The grounds relied upon by the petitioning creditor for the purposes of the coronavirus test are as follows:
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> "The Petitioners are the freehold owners of 10 and 10a Rowson Street, Wallasey CH45 5AT ((registered at HM Land Registry with title no. MS181985) and, they were freeholder owners of 116 and 116a Mill Lane, Wallasey CH44 3BL between October 2002 and February 2020 (both registered at HM Land Registry with title no. MS277433) ("the Properties"). In early 2014 the Petitioners appointed the Company as the managing agents of the Properties who dealt with, among other things, the collection of rents. The Petitioners only recently found that the Company has failed to amount to them for the rents needed.
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> "A demand for payment was sent to the Company on 27th August 2020, the demand required the Company to pay the sum of £65,442.55 being the amount the Petitioners believe has not been amounted [sic] for in respect as rents needed by the Company. The Company failed to pay the said sum or to secure or compound to the Petitioner's satisfaction for the same or any part thereof.
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> "The company is accordingly unable to pay its debts as they fall due."

Procedural history

8. The court listed the petition for a non-attended review on 9 November 2020. One Mark Valentine filed and served a witness statement dated 29 October 2020 on behalf of the company, of which he was a director. He asserted that the petition debt was genuinely disputed, and that the coronavirus test was not satisfied. The

petitioners responded with a witness statement of Mr Doran dated 6 November 2020 asserting that it was not disputed that the coronavirus might have had a financial effect on the company, but it would still have been unable to pay the amount owed because payments had been missed since 2014 and the entire indebtedness arose before coronavirus came into being. He disputed that the debt was genuinely disputed.

9. The matter first came before District Judge Obodai on 9 November 2020 who dismissed the petition on the ground that it purported to rely on a statutory demand, which as a result could not found a petition as the result of paragraph 1 of Schedule 10 to the Corporate Governance and Insolvency Act 2020 ("CIGA"), and appeared to be defective in any event because not in the prescribed form.

10. By application notice dated 23 November 2020, however, the petitioners applied to set aside that order on the basis of a witness statement of their solicitor, Paul Whelan, of the same date. That was on the basis that paragraph 1 of Schedule 10 to CIGA had no application, since the petition was not founded on a statutory demand at all; whereas paragraph 2 of that Schedule did apply and was satisfied: that is, the creditor had reasonable grounds for believing that coronavirus had not had a financial effect on the company, or the relevant ground would apply even if coronavirus had not had a financial effect on the company.

11. Satisfied that the demand referred to in the petition was not the basis for seeking the winding up order, on 27 November 2020 the learned District Judge set aside her previous order and reinstated the petition, directing it to be considered at an attended preliminary hearing listed for 2 hours at which the Court would determine whether it was likely that it would be able to make an order under section 122(1)(f) Insolvency Act 1986 having regard to the coronavirus test, and giving directions for further evidence.

12. That was the hearing which took place on 9 February 2021 before District Judge Richmond at which he dismissed the petition. At that hearing he had the benefit of a second witness statement of Mr Valentine on behalf of the company dated 14 December 2020 and a witness statement by Annette Doran dated 15 December 2020 on behalf of the petitioners.

<u>The decision of the District Judge</u>

13. Both counsel who appeared before me also appeared at the hearing before District Judge Richmond. It appears that in the event the hearing took 1½ hours. Unfortunately, no transcript of the judgment could be obtained because the recording of the hearing was incomplete. Counsel helpfully agreed a note of the substance of the judgment, but it was not put before the learned District Judge for approval or amendment.

14. The note of judgment is short, and I set out in full.

> "There is a strangeness to this Petition. The Petitioner has not queried any missing payments for 6 years. Had you asked Company in, for example, 2019, whether they had been discharging their obligations, they would have said 'of course'.
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> "For today's argument, the Respondent suggests that I should grasp the nettle and strike out the Petition because it is a debt which is disputed on substantial grounds.
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> "Parameters of the hearing
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> "I take note of what Mr Passfield says. Unless this was a no-hope Petition, I think it would not be appropriate to use this forum for me to dispose of this Petition on the merits. The evidence has not been directed as fully towards that question as it might have been. Of course, questions would have to be answered if we are at a final hearing of a winding up petition: where did the Barclays authority come from, why did the Petitioners not pursue the question earlier? Whilst I can see the questions, I'm not satisfied I have the answers. I am not minded to accede to his request on that front. It would have to be much clearer.
>
> "Coronavirus test
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> "This is an unusual factual situation. It is not a usual trading situation where a debt for goods/services has been incurred and invoices have been rendered. A fundamental and important differing factor, is that the Company was paying these debts as they went along, which is evidence of their solvency at the time.
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> "Why was it only in March 2020 that the [Petitioner's non-receipt of the money] was raised with the Company? There is precious little evidence from the Petitioner on that.
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> "The fact that the Company seems to have been paying rents into the Barclays account suggests they were able to pay debts as they fell due up to and including the commencement of the coronavirus pandemic. I ask myself the question, would they be unable to pay their debts without the covid pandemic? There is no evidence that is the case. Before the pandemic they were paying their debts - albeit paying into the Barclays Bank account.
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> "I should not allow the Petition to go any further. It does turn on this very unusual set of facts. However monies were being paid. On that basis I will dismiss the Petition."

15. Thus, he declined to strike out the petition on the merits; but dismissed it because it did not satisfy the coronavirus test.

The appeal and respondent's notice

16. The petitioners sought permission to appeal on the following grounds:

> "1. The Learned Judge considered the Company's pre-pandemic payment of rental monies to 'a Barclays account' (which did not belong to the Petitioners) to be evidence of 'payment of its debts' and/or 'payment of its debts as they fell due'. This was wrong in law and/or in fact as payments out to an account which did not belong to the Petitioners could not discharge the contractual obligation to the pay the Petitioners.
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> 2. The Learned Judge considered that the Company's pre-pandemic payment of rental monies to 'a Barclays account' was evidence of pre-pandemic solvency. This was wrong in law and/or in fact as (i) the mere fact of a transfer of money from one account to another is not necessarily representative of an ability to discharge specific debts owed to a creditor and (ii) there was no indication that the Barclays-received money could necessarily be recovered (whether immediately or at all) for the purpose of discharging the sums due to the Petitioners.
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> 3. The Learned Judge held that the Company could not be said to have been 'unable to pay its debts as they fell due' if it did not subjectively know the debts were due. This was wrong in law because the monies were due, owing and unpaid in an objective sense and 'inability to pay' should follow.
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> 4. The Learned Judge was wrong in law in his interpretation of s.123(e) Insolvency Act 1986; he conflated 'unable to pay its debts as they fell due' with 'unable to pay its debts when demanded'. The fact that the sums were not formally demanded until March 2020 does not mean that they did not fall due before this. The sums fell due pre-pandemic (irrespective of coronavirus), not in March 2020.
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> 5. In the circumstances the Learned Judge erred in his application of the coronavirus test. He erred in holding that the 'financial effect of coronavirus' could prevent a determination of insolvency where coronavirus had nothing to do with the indebtedness. In doing so the Learned Judge was wrong in law and/or in applying it to the facts."

17. Snowden J granted permission to appeal on the basis that there was a real prospect of success on appeal for the reasons stated in the grounds of appeal and in the skeleton argument filed by the Petitioners; and that in addition there was a compelling reason for the appeal to be heard, namely that it raised questions about the relationship between the coronavirus test and the test for insolvency that are not subject to clear appellate authority.
18. The company asked for the decision to be upheld for the additional reason that the petition was disputed on substantial grounds, and that the petition was therefore an abuse of process and bound to fail.

The law

Insolvency Act 1986

19. Section 122(1)(f) Insolvency Act 1986 provides that a company may be wound up by the court if it is unable to pay its debts. A company is deemed to be unable to pay its debts if, inter alia, it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due: s.123(1)(e) of the 1986 Act. That is the ground upon which this petition was presented.
20. In response to the coronavirus pandemic, the Corporate Insolvency and Governance Act 2020 ("CIGA") was enacted.

CIGA para.2 Sch. 10

21. CIGA provided that during the relevant period, a creditor might not present a winding up petition on the ground specified in s.123(1)(e) of the 1986 Act unless the creditor had reasonable grounds for believing that: (a) coronavirus had not had a financial effect on the company; or (b) the ground would apply even if coronavirus had not had a financial effect on the company: para.2(3) and (4) Sch.10 CIGA.
22. Coronavirus has a financial effect on a company if and only if the company's financial position worsens in consequence of, or for reasons relating to, coronavirus: para.21(3) Sch.10 CIGA.
23. By para.21(1) Sch.10 CIGA (as amended by the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No. 2) Regulations 2021)), the relevant period was 27 April 2020 to 30 September 2021 and accordingly has expired since the date of the decision of the District Judge.
24. Para.2(3) prohibits presentation of a petition in the circumstances in which it applies. Counsel for the Company described it as a restriction on standing to petition.

CIGA para 5 Sch.10

25. By para.5(1) and (3) Sch.10 CIGA, where a creditor presents a petition for the winding up of a registered company under section 124 of the 1986 Act in the relevant period, and the company is deemed unable to pay its debts on a ground specified in section 123(1) or (2) of that Act, and it appears to the court that coronavirus had a financial effect on the company before the presentation of the petition, then the court may wind the company up under section 122(1)(f) of the 1986 Act on the ground specified in section 123(1) (e) or (2) of that Act only if the court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.

26. Thus para. 2 is a restriction on standing of petitioners, while para.5 is a restriction on the jurisdiction of the court.

Para 19 Sch.10

27. When a petition is presented on or after Sch.10 came into force but before the end of the relevant period, any provision of the Insolvency (England and Wales) Rules 2016 which requires or permits (or authorises the court to require or permit) notice, publication or advertisement of the petition does not apply until such time as the court has made a determination in relation to the question of whether it is likely that the court will be able to make an order under s.122(1)(f) or 122(5)(b) of the 1986 Act: para.19(2) Sch.10 of the Act.
28. This provision does not refer explicitly, let alone exclusively, to the coronavirus test; but it is part of the scheme under which the coronavirus test was introduced.

Practice Direction – Winding up Petitions and the Corporate Insolvency and Governance Act 2020

29. The Practice Direction – Winding up Petitions and the Corporate Insolvency and Governance Act 2020 issued on 3rd July 2020 provided that in the case of a petition to wind up a registered company on a ground specified in section 123(1)(e) or (2) of the 1986 Act, the "coronavirus test" was whether the condition in paragraph 5(3) of Schedule 10 to the 2020 Act was met.
30. That condition was that where a creditor presented a petition for the winding up of registered company in the relevant period and the company was deemed unable to pay its debts on a ground specified in section 123 (1) or (2) of that Act and it appeared to the court that coronavirus had a financial effect on the company before the presentation of the petition, the court might wind the company up under section 122 (1)(f) of the 1986 act on the ground specified in section 123 (1)(e) or (2) of that Act only if the court was satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.
31. It is to be noted that "the coronavirus test" refers only to the restrictions on jurisdiction in para.5 Sch.10 CIGA and not to the restrictions on standing in para.2 of that Schedule.
32. The Practice Direction provided for a procedural innovation, a non-attended pre-trial review, to give directions for a preliminary hearing to decide whether it is likely that it will be able to make an order 'having regard to the coronavirus test'.

> "4.1 Upon presentation of a winding up petition, provided it is not rejected for filing under paragraph 2 above, the petition shall be listed for a non-attendance pre-trial review with a time estimate of 15 minutes for the first available date after 28 days from the date of its presentation.
> "4.2 The purpose of the non-attendance pre-trial review is to enable the court to give directions for a preliminary hearing in order for the court to determine whether it is likely that it will be able to make an order under section 122(1)(f) … of the 1986 Act having regard to the coronavirus test."

The words 'having regard to the coronavirus test' do not appear in the legislation.

33. Para.5.1 of the Practice Direction provides that the petition is to remain private (subject to qualifications) until the Court has concluded that it is likely to be able to make an order having regard to the coronavirus test.

34. If the petition is not opposed and the Court is so satisfied (that is, satisfied that the coronavirus test is passed) at the non-attendance pre-trial review, it is to list the petition for hearing. Otherwise, the court is to list a preliminary hearing and give directions accordingly: para.7 of the Practice Direction.

35. Paragraph 8 the Practice Direction provides

> "8.1 At the preliminary hearing:
> (1) if the court is not satisfied that it is likely that it will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act having regard to the coronavirus test, it shall dismiss the petition; or
> (2) if the court is satisfied on the evidence before it that it is likely that it will be able to make an order under section 122(1)(f) or 221(5)(b) of the 1986 Act having regard to the coronavirus test it shall list the petition for a hearing in the winding up list."

36. Thus, failure to pass the coronavirus test at the non-attendance pre-trial review is not to lead to the petition's being struck out and dismissed at that stage, and before the preliminary hearing. But plainly it is open to the Court, in exercise of its case management powers, to strike out and dismiss a petition on other grounds even at the non-attendance pre-trial review, just as the District Judge did in this case. It follows that, quite apart from the coronavirus test, there is no reason why the court should not in just the same way have considered other matters at the preliminary hearing as well, if it appears to be consistent with the overriding objective and a proper exercise of the court's case management powers in any given case, even if that were the purpose for which preliminary hearings were provided for under the Practice Direction.

37. A question raised before me, however, was whether the effect of CIGA and the Practice Direction was that the coronavirus test itself actually involved consideration of whether the grounds of the petition are likely to be made out. In my judgment, it did not. CIGA requires the Court to make a determination whether it is likely that the court will be able to make an order under s.122(1)(f) or 122(5)(b) of the 1986 Act before any notice, publication or advertisement of the petition – without which a petition cannot ordinarily proceed. In context, that means 'likely given the restrictions on winding-up petitions for which Sch.10 provides'. The gloss on the statute provided by the Practice Direction is therefore not inaccurate.

38. The restrictions in question are those for which para.5 of that Schedule provides. Under that paragraph an order may be if the court is satisfied that the relevant ground would apply even if coronavirus had not had a financial effect on the company. As a matter of construction, the words 'even if' direct the Court to the financial effect of coronavirus, not to the applicability of the relevant ground. The question is the effect of coronavirus on the company. The court is to assume that the ground applies, rather than determining whether it is likely to apply or not, when considering whether, on the assumption that it does apply, it would have applied even without the effect of coronavirus. That may involve some mental gymnastics in at least some cases, but the practical difficulty would be mitigated by the ability of the court as a matter of case management to consider whether the petition ought to be struck out on other grounds in any event, though for that purpose the test is not mere likelihood (or unlikelihood).

39. I am reinforced in my view by that last consideration. It is, in my judgment, unlikely that Parliament would have intended to raise the threshold for petitions on grounds unrelated to coronavirus. That would have required clear words to that effect, which are not to be found in the para.5. of Schedule 10.

40. In his submissions to the contrary, counsel for the Company relied on his own decision as a Deputy ICC Judge in *PGH Investments Ltd v Ewing* [2021] EWHC 533 (Ch). That was primarily an application by a company to dismiss a winding-up petition against it or, alternatively, to restrain the respondent from advertising the petition. *Obiter*, the Court concluded in that case that the debtor company had not established a prima facie case that coronavirus had had a financial effect on it

at all: by contrast, the petitioners conceded that point in the present case. In that case, while addressing the question whether an application to strike out the petition or have it summarily dismissed was premature and pointless, he stated (paragraph 34)

> "Moreover, as the court will necessarily have to consider any alleged dispute with the petition debt at the preliminary hearing listed in accordance with the CIGA PD in order to determine whether it is likely that it will be able to make an order under s.122(1)(f) of the 1986 Act, a company may simply wait until that hearing to determine the issue."

However, the question appears not to have been fully argued, and the Court turned to consider the merits. The case was referred to with approval in *re a Company* [2021] EWHC 2289, but this point was not considered. I therefore regard myself as at liberty to form my own view and respectfully to come to a different conclusion. I do not regard it as the case that the Court would necessarily have to consider any alleged dispute with the petition debt at the preliminary hearing the reasons I have already given.

The grounds of appeal

41. I preface my conclusions by observing that non-payment of a single undisputed debt may be sufficient to satisfy the court under s.123(1)(e) of the 1986 Act that a company is unable to pay its debts as they fall due: *Taylors Industrial Flooring Limited v M and H Plant Hire (Manchester) Limited* [1990] BCLC 216. However, normally it must be shown that the company was notified of the amount of the debt and given an opportunity to pay it: *Re Easy Letting & Leasing* [2008] EWHC 3175 (Ch). That is because it is a matter of inferring inability to pay from non-payment: ibid., para. [11]; and see *Re A Company (No. 006798 of 1995)* [1996] 1 WLR 491. The petitioners did not appear to dispute that the Company believed it was making payments to the Barclays account on instructions and there was no evidence that it was aware that it had any outstanding indebtedness to the Petitioners until March 2020. The fact that the alleged debt had accrued prior to the pandemic was not evidence that the Company was unable to pay its debts as they fell due before the pandemic.

42. I turn therefore to the grounds of appeal. It is wrong to say that the District Judge considered the Company's pre-pandemic payment of rental monies to the Barclays

account to be evidence of 'payment of its debts' and/or 'payment of its debts as they fell due'. On the contrary, he considered it as evidence that it was not unable to pay its debts as they fell due up to and including the commencement of the coronavirus pandemic. No doubt a failure to discharge debts when they fall due may found an inference that the debtor is unable to pay its debts as they fall due. But where, as here, there is a dispute about whether the debts had been discharged and, if they have not, the natural inference that it was only as a result of a mistake, it is impossible to infer from the failure to discharge debts an inability at the time the payments were made, to do so.

43. An attempt was made to suggest that since there was no evidence that the company would be able easily to recover sums paid into the Barclays account by mistake, it might therefore become unable to pay its debts as they fell due by reason of having paid the money out. That simply does not follow. That money might not be and might not have been needed in order to pay the petitioners: there was no evidence about that. The fact that it had not paid them was amply explained by the fact that the Company denied liability.

44. The District Judge did not hold that the Company could not be said to have been unable to pay its debts as they fell due if it did not subjectively know the debts were due. He rightly regarded it as relevant to the question whether non-payment could found an inference of inability to pay that it was only in March 2020 that the petitioners raised the matter with the Company. If the Company did not know that it was being said that the debt had not been discharged until then, then its failure to discharge it until then it did not support such an inference.

45. The District Judge did not conflate 'unable to pay its debts as they fell due' with 'unable to pay its debts when demanded'. It may well be that the sums fell due pre-pandemic (irrespective of coronavirus), given that the arrangement seems to have required an accounting, net of certain sums, for moneys received. But given that the petitioners did not tell the Company until much later that the money was going to, as they allege, the wrong account, the supposed failure to pay when the sums fell due does not go to the question of inability to pay.

46. It was common ground that coronavirus had a financial effect on the company before the presentation of the petition. The burden was therefore on the petitioners

to demonstrate that the Company would have been unable to pay its debts as they fell due even if coronavirus had not had a financial effect on the Company: *Re a Company (Application to Restrain Advertisement)* [2020] EWHC 1551 (Ch) at [45]).

47. There was ample reason for the Court to conclude that it was not likely to be able to make a winding up order because even if the Company was now unable to pay its debts as they fell due, the Court would not be likely to be satisfied that the Company would have been so unable even if coronavirus had not had a financial effect on it. The petitioners relied solely on the fact that the rental income allegedly not paid to them had fallen due for payment before the pandemic started and, as already indicated, this was far from sufficient to discharge the burden upon them for the reasons I have already given.

48. The final ground of appeal, that the judge erred in holding that the 'financial effect of coronavirus' could prevent a determination of insolvency where coronavirus had nothing to do with the indebtedness, is confused. It suggests that where coronavirus has nothing to do with the indebtedness, the coronavirus test ought not to prevent the petition from proceeding. But the coronavirus test has nothing to do with the effect of the coronavirus upon the indebtedness, only with whether the company would have been insolvent apart from the effect of the coronavirus.

49. I therefore dismiss the appeal.

<u>The respondent's notice</u>

50. The company asked for the decision to be upheld for the additional reason that the petition was disputed on substantial grounds, and that the petition was therefore an abuse of process and bound to fail. Had it been necessary to decide the appeal on this basis alone, I would have declined to uphold the decision of DJ Richmond on this ground since the decision of the District Judge not to deal with the matter on the merits at the attended preliminary hearing was a case management decision. That is particularly apparent from his reference to 'this forum' that is, to the preliminary hearing. That decision fell squarely within the ambit of his discretion.

51. I was asked as a matter of case management, to consider dismissing the petition on the merits myself, but in view of the decision to which I have come, I do not need to consider that invitation further.

52. This judgment will be handed down remotely. If the parties are able to agree consequential matters, an agreed form of draft order should be filed. If not, brief written submissions should be filed within 7 days of handing down. If either party contends an oral hearing is required to deal with consequential matters, they should set out that contention in those written submissions.