

## Notices of Intention : Two Issues Settled

Re Davis Haulage Ltd [2017] EWCA Civ 267

This was one of those frequent cases in which the company desperately needed a bit of breathing space and so chose to file a Notice of Intention in order to gain the benefit of the interim moratorium in para 44 of schedule B1. In fact the company filed four consecutive Notices of Intention but no administration appointment was ever effected.

Two issues arise out of this case in respect of a situation where a company files a Notice of Intention just to get the benefit of the moratorium:

- i) Can a company file a Notice of Intention where there is no Qualifying Floating Charge?
- ii) Can a company file multiple Notices of intention?

### 1) No Qualifying Floating Charge

In our view, the most significant aspect of this judgment is the clear statement that a Notice of Intention cannot be filed if there is no person to whom notice need be given under paragraph 26(1). In other words, if there is no QFCH, there can be no interim moratorium. Practitioners need to be alive to this as it has become common practice to file a Notice of Intention even where there is no QFCH just to get the moratorium. This practice has always sat rather awkwardly with us as it is a contradiction in terms. We respectfully suggest that, however awkward and however arbitrary the result it produces, this aspect of the judgment *must* be correct. If there is no-one to whom notice can be given, surely notice cannot be given. It does also rather confirm that the court's decision in *Re Minmar Ltd* was a massive clanger.

### 2) Multiple filings of Notices of Intention

The second aspect of this case concerned the issue of multiple, consecutive filings of Notices of Intention. The Court of Appeal held that, when filing a Notice of Intention, the company or its directors must actually intend to appoint administrators. Here, the director's primary intention had always been to try to get a CVA passed with administration seen only as a last resort. The Court of Appeal held that there had never been any *intention* to appoint an administrator and, accordingly, the Notices of Intention were infective.

We have often had to advise on the related issue of repeated filings of Notices of Intention and our advice has always been consistent: provided that the directors actually intend to appoint administrators at the time that each notice is filed, there is nothing abusive about multiple filings. Of course, the directors' credibility will get weaker with each successive filing and there may come a point at which the court calls 'Enough!'.

If you have any queries in relation to this, or any other, matter, please do not hesitate to contact us – [office@amblaw.co.uk](mailto:office@amblaw.co.uk) or 020 3651 5646.



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