



Setting aside statutory demands: the ongoing importance of the test in *Crossley-Cooke v Europanel (UK) Ltd* [2010] EWHC 124 (Ch)

Applications to set aside statutory demands are on the rise at the moment and given lenders current appetite for enforcement, it is likely that an increasing number of borrowers will be considering these applications.

The most commonly used grounds for making an application to set aside a statutory demand is Insolvency Rule 10.5 (5) (b) and (d) Insolvency (England and Wales) Rules 2016 i.e. that the debt is disputed on substantial grounds and that there are other grounds for setting aside the demand.

The case of *Crossley-Cooke* was an appeal by Mr Crossley-Cooke to the High Court of District Judge Gatter's decision in Oxford County Court refusing to set aside the statutory demand issued by Europanel for the payment of unpaid invoices on the above-mentioned grounds for set aside. In allowing the appeal Mr Justice Roth found that District Judge Gatter had applied too high a test in assessing the credibility of Mr Crossley-Cooke's explanation.

At paragraph 20 of his judgment, Mr Justice Roth set out the correct test as follows: *'It is not appropriate on an application to set aside a statutory demand to conduct anything approaching a mini-trial. The question, as I have said, is whether Mr Crossley-Cooke has raised a genuine triable issue or whether what he says can be dismissed as virtually incredible'*. The Court will be robust in assessing whether the facts put before it could constitute a genuine triable issue but it must not conduct a mini trial to determine what is likely to happen at trial and refuse an application where it finds that the issues are unlikely to succeed at trial.

This test was applied by District Judge Woodward in Bristol County Court today and it was the fundamental basis for him allowing my application to set aside the statutory demand on the grounds in IR 10.5 (5) (b) and (d) on behalf of a company director. The test set out by Mr Justice Roth in *Crossley-Cooke* therefore continues to be imperative for Courts in deciding whether to exercise their discretion to set aside statutory demands on these grounds.

It is also important to bear it in mind when assessing the merits of an appeal if a County Court decision has applied the wrong test as was the case in *Crossley-Cooke*. Another important factor to consider in launching an appeal is that a debtor deserves to have their evidence of a dispute over the debt considered even if it does not ultimately assist their application. In the event that this is denied, the Court may allow an appeal of a County Court decision as it did in the case of *Black v Sale Service & Maintenance Ltd* [2018] EWHC 1344 (Ch). In that case the matter was remitted for a re-hearing on the basis that 15 minutes had been allocated to the hearing of Mr Black's application to set aside the statutory demand served on him by Sale Service & Maintenance and that in the circumstances did not constitute a proper hearing.

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