

Bob Jones, Prytherch & Co Marts Limited

Company Number: 03286991

Dear Ann

Please find below information in relation to the recovery of rent arrears owed by Bob Jones, Prytherch & Co Marts Limited (BJP) to Carmarthenshire County Council (CCC) in respect of a lease of Carmarthen Livestock Market, Nantyci, Carmarthen.

The information is supported by Counsel's advice to the Council and focuses upon whether there is sufficient evidence of assets of BJP available to meet any Judgment that may be obtained by CCC or generally to meet its liabilities to CCC.

Background

Following the expiry of a previous lease during November 2009, the Company continued to occupy the Market under a new lease with a 10 year term expiring on the 9th November 2019. The Council was not prepared to grant a new lease to the tenant BJP on the grounds of persistent delay in paying rent which had become due. A Section 25 Notice of the L&T Act 1954 was sent to the tenant on the 4th December 2019 giving notice of its intention to end the tenancy on the 11th June 2020. The tenant failed to apply to the Court for a new tenancy and the Company remained in occupation until CCC took possession of the premises on the 9th December 2020.

There was an annual rent of £82,500 plus an additional payment calculated by reference to the Company's turnover from time to time. The Company failed to provide figures to enable the turnover rent to be calculated. Further, the Company failed to pay the annual rent payable quarterly according to the lease. Arrears are in the region of £390,773.56. Payments were sporadic.

CCC commissioned reports in July 2021 as to the Company's ability to meet its financial liabilities if the debt were to be enforced. (Dun & Bradstreet, Credit Safe and Experian). These reports reveal that the company has 11 unsatisfied County Court Judgments recorded against it registered between 2020 and 2021. In addition, the Company has two debentures registered to Barclays Bank plc, both are for "all monies." The last set of accounts filed for 2019 show

a deficit of £1,382,324. There is clearly no evidence that the Company has any assets to meet the debt owed to CCC.

CCC has been notified by Companies House of its intention to dissolve the Company. On the 9th July 2021, CCC made an objection to Companies House to the Compulsory Strike-Off/Dissolution of BJP. Companies House confirmed that the Strike-Off action had been suspended until 11th January 2022. On the 21st December 2021, the Council made an application to Companies House to maintain the objection to Compulsory Strike-Off beyond the 11th January 2022. On the 30th December 2021, Companies House confirmed that they had stopped the Strike-Off/Dissolution action until the 30th June 2022. On the 24th June 2022 Companies House informed that another Company had made an application to maintain the objection to Strike-Off action. Therefore, the new date for Strike-Off was the 7th December 2022. On the 15th August 2023 an enquiry was made to Companies House as to whether the Strike-Off action had been further extended as the Company status of BJP shown on Companies House is "Active proposal to strike off." Companies House would not confirm whether there had been an application to extend the Strike-Off action (owing to Data Protection). This may however, suggest that another company may have made an application to maintain the objection to Strike-Off and Companies House had extended the Strike-Off action for possibly 6 months? The suspension of Strike-Off action is to allow all creditors to consider their options as to whether to pursue the Company before it is closed.

Methods of Enforcement

The lease is with the Company. (no guarantees in respect of the Company's liabilities were required at any stage in the lease negotiations). Accordingly, the only party liable for the arrears is the Company.

If a claim were issued so that a Judgment could be obtained for the debt, CCC would join the other 11 Judgment creditors.

If a statutory demand were issued so that CCC could petition for the Company's insolvent liquidation CCC would fall into line with the other unsecured creditors. Bearing in mind that Barclays Bank is a secured creditor, any assets would be realised to meet the Bank's debts first. Although there is no evidence of the amount owed to the Bank, it is likely that there is to exist some debt and no evidence of any assets.

In consideration of the likely cost of pursuing potential causes of action. A claim in the County Court, if undefended, would amount to the cost of the issue fee (£10,000.00) and preparation of a claim form and Particulars of Claim plus a request for Default Judgment.

Pursuing a winding up petition would cost the preparation of the statutory demand, petition and a Court fee of £1,880.00.

In conclusion, there is little to suggest at this stage that any enforcement action would be proportionate to the expense involved. There is no evidence of the Company being able to meet the consequences of enforcement action. Given that it does not appear to be trading any longer and intends to dissolve itself, the threat of enforcement action does not appear of any benefit either.