Neutral Citation Number: [2015] EWHC 3681 (Ch)

Case No: 1978 of 2015

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BANKRUPTCY COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 18/12/2015

Before:

MR. REGISTRAR BRIGGS

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Between :

(1) AABAR BLOCK S.A.R.L	**Petitioners**
(2) EDGEWORTH CAPITAL (LUXEMBOURG) S.A.R.L	
- and -	
GLENN MAUD	**Respondent**

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- -

Mr. M Phillips QC and Mr. W. Willson (instructed by **Linklaters LLP**) for the **Petitioners**
Mr. P Arden QC, Mr. H Boeddinghaus and Mr. J Wigley (instructed by **Squire Patton Boggs (UK) LLP**) for the **Respondent**
Mr. S Davies QC and Mr. N McCulloch (instructed by **TLT Solicitors LLP**) for Navarro Ventures S.A.R.L
Mr. Brisby QC and Mr. A Tomson (instructed by **Paul Hastings (Europe) LLP**) for GA Capital (Europe) LLC

Hearing dates: 1 December 2015

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR. REGISTRAR BRIGGS

Mr. Registrar Briggs:

Introduction

1. The petitioning creditors seek an immediate bankruptcy order. The debtor asks for a second adjournment. The application to adjourn is considered in circumstances where the Spanish court has sanctioned a Liquidation plan in respect of a group of companies which hold a valuable asset. The debtor owns 50% of the share capital in the group's parent company. The debtor contends that if the Liquidation plan results in a sale of the companies his share capital will be of considerable value and he will be able to meet all creditor claims. The petitioning creditors contend that an adjudication of bankruptcy is needed to allow an independent office-holder to investigate the debtor's affairs. In weighing the various arguments this judgment considers the role of opposing creditors and the purpose behind the petition presented by the petitioning creditors.

2. The petition to bankrupt Mr. Glenn Maud ("Mr. Maud") was presented to the court on 15 June 2015 by Aabar Block S.A.R.L ("Aabar") and Edgeworth Capital (Luxembourg) S.A.R.L ("Edgeworth") (together the "Petitioning Creditors" or the "Petitioners"). Mr. Robert Tchenguiz ("Mr. Tchenguiz") is the chairman of R20 Limited who advises Edgeworth. He is a property and finance entrepreneur. Aabar is an investment company financed by the Abu Dhabi sovereign wealth fund. The petition arises out of an assignment to Aabar and Edgeworth of loans made to Mr. Maud and his business associate Mr. Quinlan by the Royal Bank of Scotland in September 2008.

The background

3. In order to understand the arguments advanced for and against making an immediate bankruptcy order, it is necessary to have a grasp of the background. Mr. Maud is a director and 50% shareholder of a Dutch company known as Ramblas Investments BV ("Ramblas"). The other 50% of the share capital is owned by his business associate Mr. Quinlan. Ramblas owns the entire shareholding of another Dutch company, Delma Projectontwikkeling BV ("Delma"). Marme Inversiones 2007 SL ("Marme") is a Spanish company wholly owned by Delma. Marme owns and holds Cuidad Financiera del Banco de Santander in Madrid. This is a valuable office complex situated in central Madrid. It comprises 2 million sq ft and is solely occupied by Banco de Santander (the "Bank"). The Bank leases the complex on a 40 year upward only lease. The complex is used as the Bank's global headquarters

("the Santander Asset"). The Santander Asset has a market value (according to Mr. Maud) of between €3.0-3.5bn.

4. Mr. Maud and Mr. Quinlan are experienced property entrepreneurs and rode the property market wave fuelled by easy to obtain credit in the years leading up to the Chapter 11 bankruptcy filing of Lehman Brothers Holdings Inc on September 15, 2008. In a judgment delivered earlier this year Mrs. Justice Rose dismissed an application made by Mr. Maud to set aside a statutory demand served by the Petitioners (the "Set Aside Judgment"): *Maud v Aabar Block SARL and another* [2015] EWHC 1626 (Ch). During the course of her judgment Rose J described how in September 2008 Mr. Maud and Mr. Quinlan acquired the Santandar Asset, and monetarised the cash-flow derived from the lease. They obtained from the Royal Bank of Scotland ("RBS"):

> "i) A five year senior loan of Eur1.6 billion to Ramblas through a syndicate of banks headed by Royal Bank of Scotland ("the senior loan"). The senior loan could be accelerated on the occurrence of certain events.
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> ii) A junior debt for Eur200 million from Royal Bank of Scotland to Ramblas ('the junior loan"). This was secured by, amongst other things, (a) a pledge executed by Mr. Maud and Mr. Quinlan over their shares in Ramblas in favour of RBS; (b) a pledge executed by Ramblas over its shares in Delma; and (c) a limited personal guarantee from Mr. Maud and Mr. Quinlan ("the personal guarantee"). This personal guarantee from Mr. Maud and Mr. Quinlan was secured by a number of instruments, the most relevant one for our purposes being a charge given by Mr. Quinlan in favour of RBS over shares and loan stock that he owned (directly or indirectly) in Coroin Ltd (his "Coroin stake").
>
> iii) A personal loan made to Mr. Maud and Mr. Quinlan by RBS for Eur75 million and then loaned on by them to the Marme Group ("the personal loan"). Mr. Maud and Mr. Quinlan were jointly and severally liable on this loan. This loan was also secured by a number of instruments, again the

> most relevant one for our purposes being the charge given by Mr. Quinlan in favour of RBS over his Coroin stake."

The reference to his "Coroin stake" is a reference to a company formed by Mr. Quinlan and Mr. McKillen to take over the Savoy Group of hotels and London properties (this is to state it simply). Mr. Quinlan and Mr. McKillen were both 35% shareholders and appointed directors of Coroin. Mr. Maud explains that Mr. Quinlan had provided security to RBS over his shareholding in Coroin (the "Coroin Charge") but Coroin was already subject to charges in favour of another bank. The Barclay Brothers obtained a minority shareholding in Coroin and wanted control. They acquired the earlier security over Coroin and made an agreement that Mr. Quinlan would vote according to their wishes. Mr. McKillen contended that the agreement with the Barclay Brothers triggered pre-emption rights contained in the articles of association entitling him to purchase the shares. The dispute was decided in favour of Mr. Quinlan by David Richards J. At the same time Aabar was pressing for a controlling interest in Coroin. Two agreements resulted. First, Mr. Quinlan was made a party to a deed of sale and adherence dated 23 September 2011 ("the Deed"). Second a deed of the same date known as the Barclay Aabar Agreement made between B Overseas Limited ("BOL")- a vehicle for the Barclay Brothers, Aabar and a Malysian investor known as JQ2 (the two agreements together the "2011 Agreements"). I shall return to the effect of the 2011 Agreements below.

5. In March 2010 Mr. Maud entered into three loan agreements with Eagle Holdings Limited, Propinvest Group Limited and Propinvest Holdings Limited whereby he borrowed £43,642,944. These loans consolidated earlier loans from Kaupthing Bank hf. A year later Navarro Ventures S.A.R.L (a company registered in Luxembourg) ("Navarro") purchased the debt. By 1 July 2015 the Navarro debt had reached £56,815,317.66 including interest. Alain Heinz ("Mr. Heinz"), a director of Navarro, is a trustee of a trust known as the Glenn Maud Family Trust. The beneficiaries of the trust include Mr. and Mrs. Maud. The evidence before the court is that Mr. and Mrs. Maud are estranged.

6. Default on the RBS loans in September 2010 triggered the accelerated sums under the personal loan. RBS subsequently assigned the personal and junior loans with the benefit of all securities to the Petitioning Creditors.

7. In January 2011 Aabar and Edgeworth issued a claim against Ramblas in respect of the junior loan and against Mr. Maud and Mr. Quinlan for recovery of the personal loan. On 17 June 2011 Mr. Justice Teare made an order, by consent, that Ramblas pay €216,582,038.05 inclusive of interest up to 13 June 2011. An order was also made by consent against Mr. Maud and Mr. Quinlan in the sum of €52,565,110.31. In the same proceedings Aabar and Edgeworth claimed in respect of an Upside Fee Agreement ("UFA") against Ramblas. Mr. Justice Hamblen found in favour of Aabar and Edgeworth and judgment was entered on 30 January 2015 against Ramblas in the sum of €105,201,095.89 plus interest. Permission to appeal the order of Hamblen J has been granted.

8. As mentioned above the Deed reflected in part the Barclay Aabar Agreement. The 2011 Agreements provided that the Petitioning Creditors would release the Coroin Charge in exchange for a payment by BOL of £9.4 million to Aabar, and Mr. Quinlan agreed:

8.1. to sell his shares in Ramblas to Aabar for one euro subject to the pre-emption rights of the other shareholders in Ramblas;

8.2. to co-operate with the Petitioners to the extent that he was able to prevent such pre-emption rights being exercised;

8.3. to complete the transfer of shares to Aabar as soon as it was possible under the Ramblas articles of association;

8.4. not to directly or indirectly challenge or in any way contest or otherwise seek to frustrate any enforcement action in respect of all or any of the shares in Ramblas;

8.5. not to provide any assistance to any person in relation to Ramblas other than as Aabar directed;

8.6. to provide evidence that the value of Ramblas shares is nil; and

8.7. in the event that he were unable to complete the transfer of his share to the Petitioners, exercise his voting rights and other rights in relation to Ramblas in accordance with the directions of Aabar.

9. The background to the Deed is explained by Rose J in the Set Aside Judgment (para 17):

> "[Mr. Maud's] belief is that terms were agreed between the Barclay Brothers, Mr. Quinlan and [Aabar and Edgeworth] that in consideration of Mr. Quinlan agreeing to hold the economic interest in his shares in Ramblas for the benefit of [Aabar and Edgeworth] (and exercising his shareholder rights in accordance with their instructions) [Aabar and Edgeworth] agreed not to enforce their security over Mr. Quinlan's Coroin stake or to exercise their right under the equity of redemption in relation to the security held by the Barclay Brothers over Mr. Quinlan's Coroin stake. As a result of this, he says, [Aabar and Edgeworth] have obtained "effective control" over half the shares in Ramblas without a formal transfer of the shares, thereby avoiding the triggering of the pre-emption rights in Mr. Maud's favour as the co-shareholder in Ramblas."

10. In his evidence Mr. Maud explains the significance to the Petitioning Creditors of acquiring "effective control" over Mr. Quinlan's shares in Ramblas:

> "It should be noted that the articles of association of Ramblas contain pre-emption provisions which provide that before any shareholder can transfer his shares he must first offer to sell them to the other shareholders and, further, that any shareholder who is made bankrupt must offer his shares to the other shareholders. This is significant because, as I explain below, the Petitioners' purpose in presenting the Petition is to try to trigger these provisions such that I am required to offer my shares for sale to [Mr. Quinlan] who has entered into agreements with the Petitioners under which they contend that he will then be forced to sell both his and my shares to the Petitioners."

11. Included in the Deed (at clause 9) is an undertaking by Petitioning Creditors not to present a petition in order to bankrupt Mr. Quinlan for as long as he complied with his obligations. Rose J observed (paragraph 19):

> "Thus it is clearly intended by the parties to the Deed that the constant threat of facing a bankruptcy petition in respect of his Marme debts should hang over Mr. Quinlan's head to encourage him to comply with his obligations under the Deed and not to switch his allegiance."

12. Between 17 June 2011 (the date of the consent order) and March 2014 Mr. Maud says he tried to negotiate an agreement for the repayment of the debts due. His evidence is that Mr. Tchenguiz made "substantial efforts to prevent me from discharging the debt on which the Petition is based". Mr. Maud suspects that Mr. Tchenguiz has a particular agenda which is to gain control of the Santander Asset. He refers to an interview printed in PropertyWeek on 8 March 2013 in which Mr. Tchenguiz does not attempt to disguise his ambition to acquire the Santander Asset:

> "There is plenty of debt around. Where there is support is for the sovereign wealth funds or the big corporates- financial institutions want to deal with these institutions. So I have been working on partnerships with governments, because they can bring the equity and stability. The first deal was Santander, and we did that with the government of Abu Dhabi, and we're looking for more."

13. The journalist interviewing Mr. Tchenguiz comments:

> "He is referring to the purchase of the Madrid headquarters of Spanish bank Santander which was executed in conjunction with Aabar, an Abu Dhabi investment fund. Entrepreneurs Derek Quinlan and Glenn Maud bought the property for €1.9bn in 2008 with €1.55bn of senior debt and €200m junior debt from the Royal Bank of Scotland. Tchenguiz and Aabar bought the

> junior loan and took advantage of covenant breaches to gain control of the asset last year….The deal with Quinlan and Maud was consensual."

14. Mr. Maud says that despite Mr. Tchenguiz's agenda and regardless of his attempts to prevent him from reaching a settlement with Aabar he managed to come to terms (the "Purchase Agreement"):

> "However, despite Mr. Tchenguiz's efforts I have had productive discussions with Aabar which resulted in my reaching an agreement with Aabar for me to purchase its claims against me and also certain debts owed to it by Edgeworth which would have enabled me to preserve my equity interest. However as a result of Mr. Tchenguiz's subsequent interference Aabar has reneged on this agreement and I have therefore brought proceedings seeking specific performance in the Commercial Court. If those proceedings are successful then I will be in a position to cause the Petition to be discontinued as I will own Aabar's claim and have a complete defence to Edgeworth's claim through my rights against it purchased from Aabar….."

15. On 4 March 2014 Ramblas, Delma and Marme filed for *concurso voluntario* in Spain. This Spanish insolvency process provides an automatic moratorium which, with some exceptions, prevents creditors from taking any judicial or extra-judicial enforcement action. The process places the companies under the scrutiny of the Spanish insolvency inspectors. The inspectors have the power to enter negotiations with creditors to reach an agreement but in the absence of such an agreement the company will enter into Liquidation. The *Concurso* expired and the companies entered Liquidation in February 2015. Liquidation requires the office-holder to file a Liquidation plan with the Court for its approval. Once approved the office-holder has sanction to carry the plan into effect. A Liquidation plan was filed with the Madrid Court on 30 April 2015 which provided a time table for the sale of the companies (I am informed by counsel that there is no concept of a group of companies in Spanish law).

16. In April 2014, after the filing for *concurso*, GA Capital Europe LLC ("GAC") purchased a debt of £19,000,000 owed by Mr. Maud to a company known as Incorporated Holdings Limited. The debt arose out of a guarantee given by Mr. Maud for sums borrowed in order to help finance the purchase of the Santander Asset in September 2008. Mr. Valani is a director of GAC and explains that GAC is an arms length private equity investor which bought its debt from Incorporated Holdings Limited after it had presented a petition for bankruptcy. The petition presented by Incorporated Holdings Limited was dismissed on purchase of the debt by GAC.

June to December 2015

17. The Set Aside Judgment was handed down on 8 June 2015. In her judgment Rose J explained the grounds relied upon by Mr. Maud:

> "The first is under r 6.5(4)(b) because he contends that the debt has already been satisfied in full by Mr. Derek Quinlan who was jointly and severally liable with Mr. Maud for the original debts which were the subject of the judgment. He argues that the evidence he has put forward raises an arguable case that his liability for the original debt and hence for the judgment debt has been extinguished. Whether this is in fact what has happened is a matter which, he submits, needs to be explored at a trial and for present purposes this constitutes a substantial dispute as to whether the debt is still due. His second ground is that the statutory demand ought to be set aside because the Respondents are pursuing a collateral purpose by serving this statutory demand. That purpose is to trigger pre-emption rights set out in the articles of association of a company which is at the moment jointly owned by Mr. Maud and Mr. Quinlan and of which the Respondents wish to gain control."

18. In respect of the first argument Mr. Maud argued that the agreement to transfer the Ramblas shares under the 2011 Agreements had far greater value than €1. The true value of Mr. Quinlan's shareholding should be taken into account at market value referable to the Santander Asset. The value received by the Petitioning Creditors would extinguish the debt. Mrs. Justice Rose found there was no substantial dispute about the judgment debt and in any event there was no evidence that the value of the Quinlan shareholding would be sold

for less than market value. As a result it was not arguable that the debt had been paid by Mr. Quinlan. She also found (paragraph 30) that the there was no abuse of process.

19. The Judge gave permission to present the bankruptcy petition.

20. The first hearing of the bankruptcy petition came before the Court on 7 July 2015. Mr. Maud argued for an adjournment so that he could have time to pay the Petitioning Creditors' debt in full. In support of his application for adjournment Mr. Peter Arden QC supported by Mr. Stephen Davies QC for Navarro and Mr. Richard Hill QC for GAC argued:

    20.1. The Liquidation Administrator was seeking to sell the companies in Liquidation on or before 30 September 2015. The timetable was tight but the sale needed to be concluded to avoid a significant tax liability of up to €60m if the sale did not complete by that date;

    20.2. There were two proposals put forward to the Liquidation Administrator. One by the Petitioning Creditors and one by Mr. Maud, GAC and Cruz (known as the Consortium). The proposal put forward by the Petitioning Creditors, if accepted, would mean that the Petitioners' debt would not be paid and Mr. Maud would not receive any value for his shareholding in Ramblas. On the other hand the offer made by the Consortium would require the petitioning debt to be paid in full and there would be surplus enough for Mr. Maud to pay all his creditors in full. In addition Mr. Maud would obtain significant value from his shares.

    20.3. Mr. Maud was pursuing the claim for specific performance against Aabar based on the Purchase Agreement which included sums owed by Edgeworth to Aabar;

    20.4. A bankruptcy order would not be in the best interests of creditors as a whole;

20.5. Other proceedings were on foot which should be permitted to continue including litigation concerning the liabilities of the Marme Group under a Swaps Agreement required to be entered into by RBS under the terms of the senior loan agreement, and the UFA which had to be entered into as part and parcel of the junior loan agreement.

21. As regards the abuse of process argument Mr. Maud in his supporting witness statement dated 24 June 2015 said:

> "The Petitioners are not seeking to have me made bankrupt because they believe it is in the interests of my creditors as a whole (or in their interests as one of my creditors) but rather because they intend to try to benefit from the triggering of provisions in the articles of association of Ramblas…and by preventing me from bidding for the assets owned by the Marme Group…….My interests in the Marme Group are my only significant asset and by seeking a bankruptcy order against me the Petitioners hope to obtain these for themselves to the detriment of my creditors. The Petitioners did not dispute that this was their purpose in the proceedings to set aside the Demand and it is plain that this is their purpose….."

22. It was submitted that the Court should adopt a wait and see approach. The Court should not second guess the Spanish sale process and 30 September 2015 was not a long adjournment in the context of the case. Mr. Valani made a witness statement opposing the immediate making of a bankruptcy order stating that if enough time were given to the Consortium in order that it may purchase the Santander Asset through the Spanish Liquidation, GAC would recover the whole of its debt with interest. Mr. Heinz for Navarro produced a witness statement stating that there was no disadvantage to the Petitioning Creditors and he supported a wait and see approach.

23. The July 2015 hearing was the first hearing of the bankruptcy petition and in an extempore judgment I adjourned the petition to the first open date after 30 September 2015. I found on the evidence that if the Liquidation Administrator completed the sale in the anticipated time period there would be a reasonable prospect that the

creditors of Mr. Maud would be paid. The Petitioning Creditors could identify no prejudice other than a delay in the triggering of the pre-emption rights to acquire Mr. Maud's Ramblas shares (and take control of Ramblas). I found Mr. Arden QC's submissions persuasive and adopted the wait and see approach.

24. The adjourned hearing was set down with a time estimate of a day. As a result of some counsel not being able to attend the adjourned hearing a further adjournment was granted until 1 December 2015. Accordingly Mr. Maud has had nearly 5 months since the last hearing to meet the Petitioning Creditors' debt.

25. Although much has happened between the bankruptcy hearing in July 2015 and the adjourned hearing, four events are argued to be of particular importance. First the Liquidation plan submitted by the Liquidation Administrator has been approved by the Spanish Court, but permission to sell pursuant to Article 43 was declined. Secondly on 30 November 2015 the Commercial Court handed down judgment finding in favour of Edgeworth and Aabar in respect of proceedings brought against Mr. Maud and Mr. Quinlan as joint and several guarantors of the junior loan. The guarantee has a financial limit of €40,000,000. The judgment on the guarantee has not been satisfied. Thirdly Mr. Justice Walker refused to strike out the Purchase Agreement claim. Lastly Mr. Maud has been subject to cross examination to obtain information pursuant to CPR Part 71. I shall deal with the effect these matters have on the application before the Court in more detail below.

The adjourned hearing of the bankruptcy petition

26. In support of his further application for an adjournment Mr. Maud has produced two witness statements the second of which runs to 116 paragraphs. In support of his application Mr. Heinz has produced three witness statements and Mr. Valani three statements. Aabar and Edgeworth oppose the application to adjourn and seek a bankruptcy order. In support of an immediate bankruptcy order Ms Roscoe, a partner in Linklaters LLP, acting for both Aabar and Edgeworth has produced a witness statement running to 153 paragraphs. In addition Adrian Thery Marti ("Mr. Marti"),

a partner of J&A Garrigues S.L.P in Madrid specialising in domestic and cross-border insolvency has filed a witness statement. He is the retained counsel of Marme.

(i) The Spanish Court proceedings

27. The governing legislation in Spain is the Spanish Insolvency Act (*Ley Concursal*), which was reformed by Act 38/2011, and came into force on 1 January 2012 ("SIA"). Article 43 of the SIA prohibits the disposal of an insolvent business's assets during the common phase. However if an Administrator deems the sale necessary to safeguard the viability of the company or there are cash-flow requirements the Court may sanction a disposal. On 16 July 2015 the Spanish Court refused permission to sell pursuant to article 43 on the basis that the sale did not fall within the parameters of an article 43 disposal and could not be invoked once Liquidation had been declared. The Administrator, together with Aabar and Edgeworth, challenged that Court order, but it was confirmed by a Court order dated 29 September 2015.

28. As the disposal did not complete by 30 September 2015 Marme was unable to gain a listing on a regulated market and as a result incurred a significant tax liability of around €21 million. Nevertheless the Liquidation Administrator continued the sale process by inviting interested parties to bid for the assets. The Court process paused during August soon after a third party known as Azora Capital, S.L. ("Azora") submitted a bid to acquire Marme together with the inter-company loan from Delma to Marme (the "Azora Bid"). The bid made by the Petitioning Creditors is said by them to have expired on 31 July 2015 but the Consortium bid remains albeit it requires modification for the purpose of the Liquidation Plan criteria. The Azora bid is greater than the bid made by the Petitioning Creditors.

29. On 29 October 2015 the Spanish Court approved the Liquidation plan (the "Liquidation Plan") and an individual Liquidation plan for Ramblas (which is supplementary to the Liquidation Plan). In his third witness statement Mr. Maud explains (the paragraph numbering does not match the quote):

"Yesterday, 29 October 2015, the ruling approving the Liquidation Plan and the Individual Liquidation Plan of Ramblas, (which is supplementary to the Liquidation Plan), was issued by the Spanish Court and notified to the parties. Further rulings approving the Liquidation Plan and Individual Liquidation Plans in the Delma and Marme proceedings have also been issued….. I understand that the ruling approves the Insolvency Administrator's Liquidation Plan proposal in its current terms and therefore approves the process [for sale] except for the following amendments or clarifications:

(a) As previously clarified by the Insolvency Administrator's writ, the term to submit bids or improve existing bids will be 15 Court days. The Court states that this term is reasonable and adequate to ensure the protection of all parties' interests, as well as in order to maximize the value of the Assets.

(b) For those that have to date already submitted bids in the Liquidation process ….they have 15 days to amend their offer to ensure that it complies with the terms of the Liquidation Plan.

However, I am advised that the ruling states that any terms of the Liquidation Plan that are contrary to the payment waterfall according to Spanish law will be disregarded. I understand from my Spanish advisors that the payment waterfall contained within the Liquidation Plan is not fully compliant with Spanish law, in that certain creditors who rank at the same level as other creditors would be paid in preference of those other creditors. I am advised by my Spanish and English legal advisors that this would be similar to one creditor being paid in preference of another where both of those creditors rank pari passu.

In addition, the ruling includes the following observations, that I am advised may be relevant for the purpose of the Petition:

a. The assets contained within the Marme Group are considered to be a "production unit" as a whole for the purpose of the Spanish Insolvency Law. I am advised that this is designed to ensure that

> the business continuity of the Marme Group, and in particular the lease arrangements with Banco Santander, are not adversely affected by the sale process……..
>
> b. The shareholders of Ramblas (i.e. myself and Derek Quinlan) shall be treated like any other creditor as regards their rights and obligations to submit offers and should not be discouraged to do so, given their interest in increasing and maximising the price of the Santander Asset.
>
> c. Aabar and Edgeworth are not entitled to credit bid with the contingent credits that they have within the finance structure of the Santander Asset (i.e. those relating to the UFA) until those claims have been the subject of a Court order and are therefore liquidated debts."

30. I add that the approved Liquidation Plan provides a sequential timetable so that the parties have 15 days (from publication of the Liquidation Plan) to submit bids or to ratify existing bids; the Administrator has 2 business days to review the offers; if more than one offer is received, bidders will be provided with two subsequent 15-day periods for them to improve their initial offers; if a tie exists between bidders then a third 15-day period will be given whereupon the final bidders will be invited within 3 business days to participate in a final auction at which only minimum improvements of €10 million will be admitted. The Administrator will have 45 days after the successful bid to complete the acquisition of the assets.

31. The Liquidation Plan may be appealed (as I understand it) by any interested party. The time for appeal is 20 days from publication. However time to appeal is stayed pending responses to any writs of clarification submitted to the Court. Clarifying writs (seeking further information regarding the bidding process) have been submitted by 5 different parties. The writs of clarification are public documents. Aabar has asked the Spanish Court to acknowledge that the offer it submitted jointly with Edgeworth is no longer capable of being accepted, as it lapsed on 31 July 2015.

32. The Liquidation Plan does not provide a specific time for completion but, as set out above, the time table provides pockets of time in which certain events have to be completed. Mr. Arden QC submits that the current pause should end before the end of December 2015.

(ii) Proceedings since July 2015

33. I need not go into too much detail with regard to the different proceedings that have been resolved since the first hearing of the bankruptcy petition. The significance of every small ('small' is used in the context of the overall size of the debt) triumph or failure for either party along the path to the adjourned bankruptcy hearing has no doubt taken on greater significance in the minds of the parties than would ordinarily be the case. The first in time to be resolved was the hearing before Mr. Justice Knowles. Although many interesting arguments were run about a debt arising under a contract governed by English law, the applicability of Insolvency Regulation (Council Regulation No 44/2001), the Judgment Regulations (Council Regulation No 44/2001 as well as a factual contention regarding submission to the jurisdiction of the Spanish Courts following *Rubin and another v Eurofinance SA; In re New Cap Reinsurance Corpn Ltd (in Liquidation) [2012] UKSC 46;* [2013] 1 AC 236, the key question was whether the joint and several Guarantee capped at €40,000,000 had been extinguished pursuant to Article 97.2 of the Spanish Act 22/2003. He found:

> "Having heard expert evidence on the issue whether Article 97.2 operates to extinguish the Guarantee as a guarantee granted by a third party I am fully satisfied that Article 97.2 does not so operate."

34. Mr. Phillips QC and Mr. Willson argue that this is significant as it increases Mr. Maud's liabilities yet further. Mr. Arden QC, Mr. Boeddinghaus and Mr. Wigley argue that it is insignificant as the debt will be paid in full upon completion of the bid process.

35. Proceedings seeking specific performance of the Purchase Agreement for €250 million were issued by Mr. Maud against Aabar. The claim also seeks damages from Mr. Tchenguiz for tortious interference. The Purchase Agreement included the benefit of all securities held by Aabar. If Mr. Maud is successful in his claim against Aabar he will become a creditor

of Edgeworth for €120million by reason of an on demand indemnity given to Citigroup and now assigned to Aabar. The on demand indemnity was required for a loan provided by Citigroup to Edgeworth, so that Edgeworth had the necessary funds to purchase 50% of the junior and personal loan. Mr. Maud contends that if specific performance of the Purchase Agreement is successful the petition debt will fall away, as the control of Aabar's claim against him arising from the Junior Loan and the Personal Loan will fall into his hands. As regards Edgeworth Mr. Maud will have a significant loan claim and in respect of which he will be able to make demand. Not surprisingly, Aabar contest that this will be the outcome if Mr. Maud were to succeed.

36. At the date of the first bankruptcy hearing in July 2015 Aabar, and Mr. Tchenguiz had applied for summary judgment or strike out of the Purchase Agreement claim. The hearing of the applications took place before Mr. Justice Walker on 11 and 12 November 2015.

37. Mr. Justice Walker has not had time to hand down judgment but has provided a note to the bankruptcy Court to inform it of the outcome of the summary judgment application heard on 11 and 12 November 2015. His note makes clear that he dismissed the Aabar application. Mr. Arden QC submits that this is significant as it shows that there is a real prospect that Mr. Maud will succeed and obtain specific performance of the Purchase Agreement. If that is the case the bankruptcy Court cannot be certain or satisfied on the balance of probabilities that the petition debt remains outstanding. Mr. Phillips QC and Mr. Willson say that the Purchase Agreement claim is unlikely to succeed. In any event, says Mr. Phillips QC and Mr. Willson, a significant debt is due and owing: the guarantee proceedings introduces a further €40,000,000 debt, HMRC have issued a statutory demand for £13m and the Libyan Investment Authority are contingent creditors for the sum of £17m. It is said that the significance of the strike out application should not be over-played.

The CPR part 71 information proceedings

38. Prior to the first bankruptcy hearing the Petitioning Creditors, as judgment creditors, issued an application pursuant to CPR part 71 for an oral examination of Mr. Maud. Ostensibly the procedure is designed to enable a judgment creditor to obtain information to better decide which method or methods of enforcement to use. Mr. Maud has been subjected to

two oral examinations and I am informed that a third is listed. It is said that the two examinations, one before Mr. Justice Leggatt, who cautioned against a third examination, and one before Master Kay, resulted in a purported failure of Mr. Maud to provide full disclosure of his assets and means. In particular the examinations have revealed or are said to have revealed that:

38.1. There is an agreement between Mr. Maud and the trustees of the Glenn Maud Family Trust Settlement 2010 dated March 2010, entered at a time when Mr. Maud admits he was "firefighting" to save his real estate business, pursuant to which Mr. Maud agreed to transfer his shares in Ramblas to the Trust "free from all Encumbrances" for a consideration of £100,000 (payable either in cash or by way of loan notes). The Trust has five beneficiaries: Mr. Maud, Mrs. Maud and their three children. In an email dated 1 August 2013 Mr. Maud informed Emma Zymanczk of Dentons (solicitors for IHL) that "In March 2010 (on advice from PwC) the 50% shareholding in the Banco Santander asset which I own was transferred to a family trust of which my wife, my 3 children and I are the named beneficiaries.";

38.2. Mr. Maud has or had a substantial property portfolio, all of which was transferred to his wife for valuable consideration. One property, the Wilton Crescent Property has recently been on the market for £32 million.

38.3. Mr. Maud is not divorced even though he has referred to himself as divorced. In 2006 and 2007 he entered into two deeds which gifted valuable property to Mrs. Maud as part of the matrimonial break down settlement. Ms. Roscoe in her witness statement states:

> "Mr. Maud has disclosed a decree nisi dated 24 May 2012, but finally confirmed during the July Examination that no decree absolute has been entered and therefore no financial settlement has been reached between him and Mrs. Maud. Until Mr. Maud was forced to disclose the fact that no decree absolute has been entered as a result of the CPR 71 proceedings, Mr. Maud had been continually referring to Mrs Maud as his "ex-wife" (see, for example paragraph 80(g) of Maud 2 and the email dated 1 August 2013 referred to

above). This is a mischaracterisation that is also adopted by Mr. Heinz where he describes Mr. and Mrs. Maud as being "divorced" in paragraph 7 of Heinz 1."

38.4. Mr. Maud admitted during the oral examination that after the transfer of Wilton Crescent he spent £6 million on improvements;

38.5. Mr. Maud said during his second examination "I have just said that through Maud & Newett investments alone last year I had £873,000….And that does not take account of any other income…….my tax returns are in a nearly completed form but I am not able to at the moment to discharge the fees that I need to pay Price Waterhouse Coopers to complete those accounts and file them" and that "during the period you refer to, yes, my expenditure…is 750,000, yes. But I can tell you that my income, my drawings from MNI during that period are, I believe, 873,000, so maybe that gives you some explanation [of my expenditure]";

38.6. Mr. Maud is the joint legal proprietor of Bents House in Sheffield, together with his wife;

38.7. Pursuant to the 2007 deed, Mr. Maud agreed, in full and final settlement of his financial obligations under the 2006 deed, to hold a property known as Chalet Grittihof in Switzerland on trust for Mrs. Maud. Ms. Roscoe in her witness statement states: "when it becomes legally possible for Patricia to own real estate in Switzerland he will…on demand transfer all his interest in Chalet Grittihof to Patricia". The property itself comprises an estate of 1838 square metres which Mr. Maud acquired in 2008 for CHF 2,227,100;

38.8. Mr. Maud had, until relatively recently an interest in a property known as 17 Earls Terrace, London located just off Kensington High Street. It was acquired by Mr. and Mrs. Maud in June 2000 but now forms part of the 2006 deed. The property appears to have been sold by Mrs. Maud in August 2010 for £8,100,000;

38.9. the reason for the third examination is said to be a failure by, it is said, Mr. Maud to provide straight forward information regarding his tax affairs (which on any level must be complex). During the first examination Mr. Maud said he had submitted tax returns in Switzerland and had agreed to provide copies. During the second examination he said that he had not filed tax returns in Switzerland but only ever paid local property tax.

39. Mr. Phillips QC and Mr. Willson contend that Mr. Maud's dealings reveal a debtor with a history of putting assets beyond the reach of creditors. The Court faced with such a debtor at the hearing of a bankruptcy petition should be mindful of the circumstances and assist the aim of the Petitioning Creditors, (where it can) to safeguard assets for creditors. The best form of assistance is the making of an immediate bankruptcy order. If the Court were to make an adjudication of bankruptcy Mr. Maud will be less able to dissipate assets and an independent and regulated office-holder will undertake a thorough investigation into Mr. Maud's affairs.

40. Mr. Arden QC, Mr. Boeddinghaus and Mr. Wigley contend that Mr. Maud has done nothing wrong, has given straight forward evidence during the course of the examinations and not hidden anything from the Petitioning Creditors. The fact that Mr. Maud's affairs are complex does not mean he is not providing full and frank disclosure and does not lead to a conclusion that he should be bankrupted. The suggestion that Mr. Maud has a history of putting assets beyond the reach of creditors is incorrect. The context and timing of the transactions point toward a different conclusion.

41. Mr. Brisby QC says that Mr. Phillips QC's submission is startling bearing in mind the, 2006 and 2007 deeds were all in play long before Mr. Maud borrowed money from RBS in order to acquire the Santander Asset, and long before the collapse of Lehman Brothers in 2008 which was the catalyst for debt difficulties. However the same cannot be said of Glen Maud Family Trust is dated March 2010.

The rival contentions

42. In summary Mr. Maud's position is that the Court should exercise its discretion and grant a further adjournment of the bankruptcy hearing as:

42.1. The offer made by the Consortium when modified and if accepted will discharge all the debts of the Marme Group and his personal debts;

42.2. If an order for bankruptcy is made the Consortium is likely to withdraw its offer. The consequence of its withdrawal are (i) Mr. Maud's creditors will not be paid (ii) Mr. Maud will not benefit from his shareholding in Ramblas and (iii) the pre-emption rights will be triggered permitting Mr. Quinlan to obtain Mr. Maud's shares and Aabar to exercise its right to compel Mr. Quinlan to transfer the shares for €1. In this scenario Edgeworth would also benefit;

42.3. Aabar and Edgeworth are not interested in the collective process of bankruptcy but pursue a collateral purpose, which is to acquire the shares in Ramblas;

42.4. There is a substantial body of creditors (GAC and Navarro) opposing the making of a bankruptcy order; and

42.5. Until the resolution of the Purchase Agreement claim there is real doubt whether Aabar is a creditor of Mr. Maud at all.

43. The Petitioning Creditors seek an immediate bankruptcy. Ms Roscoe says:

43.1. It is in the interests of all creditors that a bankruptcy order be made. In support of this she says that the Libyan Investment Authority and HMRC have "hitherto expressed an interest in supporting the Petition";

43.2. Mr. Maud has a history of providing misleading information or failing to disclose material information;

43.3. An urgent and independent enquiry into Mr. Maud's assets is now required;

43.4. There is no collateral purpose. Aabar and Edgeworth will both proceed with the petition whether or not the Consortium proposal is successful; and

43.5. The opposing creditors should be treated with caution due to their connection with Mr. Maud (GAC is a partner in the Consortium and Navarro is connected through the Glenn Maud Family Trust).

44. In addition to the above factors it has been submitted that there remains a substantial debt due and owing at the date of this the second hearing of the bankruptcy petition. The petition has been properly brought and is based upon a statutory demand that has not been set aside. As such the Court should approach the application for an adjournment on the basis that the Petitioning Creditors are entitled to obtain a bankruptcy order.

Legal principles

(i) the exercise of discretion

45. There is agreement that the court has a discretion to exercise at the hearing of a bankruptcy petition. The parties disagree as to how the discretion should be exercised, and what should or should not be taken into account. The governing legislative provision is agreed and it is agreed that the Court has a discretion to exercise.

46. The discretion is provided by section 266(3) of the Insolvency Act 1986 which provides:

> "The Court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a bankruptcy petition or to stay proceedings on such a petition; and where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit."

47. The Courts were exercising discretion at the hearing of a receiving order for well over a hundred years before the introduction of the 1986 Act. The Bankruptcy Act 1869

contained no mention of a discretionary power. In *Ex parte McCulloch* (1880) 14 ChD 716, James LJ explained that notwithstanding the mandatory language of s 8 of the 1869 Act:

> "the Court retains its old jurisdiction to refuse to make a man bankrupt for an improper purpose, and to annul an adjudication when the justice and the convenience of the case require it."

48. According to Muir Hunter (Nineteenth Edition) the old jurisdiction referred to by James LJ was used to refuse a receiving order in circumstances where the Court was satisfied that the debtor's sole asset would be destroyed: *Re Birkin* (1869) 3 Mans 291. A receiving order was also refused in the nineteenth century because the Court was satisfied there would be no value to creditors if an order were to be made: *Re Betts* [1897] 1 Q.B. 50

49. The first statute that formalised the Court's discretion was the Bankruptcy Act 1914. Section 5(3) of the 1914 Act gave discretion to dismiss a petition where the Court was not satisfied that there had been an act of bankruptcy or not satisfied as to proper service. Judicial consideration of the discretion introduced by section 5(3) of the 1914 Act shows that there were few limits other than it had to be exercised judicially. In *Re A Debtor* [1920] KB 432 McCardie J (sitting as part of a two-man Court) said that the judge appears to "possess the widest discretion in respect of granting adjournments" and that the limits imposed on the judge are that he "should exercise a judicial discretion". The wide nature of the discretion has arguably not changed in the intervening years. In an echo of McCardie J's judgment, Mr. Justice Peter Smith said that the discretion remained "quite unfettered": *Re Micklethwait* [2003] BPIR 101, 102. There is some doubt whether it is completely unfettered but Mr. Justice Peter Smith was merely explaining that the discretion was wide. In *Re A Debtor* [1920] KB 432 the Court identified at least three circumstances where an adjournment may be sought. First to enable any technicalities to be dealt with; secondly "to enable the evidence on either side to be fully heard and thirdly to enable the debtor in the event of his being able to do so, to satisfy [the Court] of his power to pay his or her debts in full."

50. The Court's discretion provided by section 266(3) of the Insolvency Act 1986 is supplemented by the Insolvency Rules 1986. Rule 6.25(1) provides that the Court "may make a bankruptcy order if satisfied that the statements in the petition are true and that the debt on which it is founded has not been paid, or secured or compounded for".

51. Accordingly the discretionary language in the 1986 Act and the Insolvency Rules permits the Court to adjourn a petition where there is a reasonable prospect of the petition debt being paid in full within a reasonable time. Whether or not the petition debt could be paid within a reasonable time was the subject of an appeal to Henderson J in *Ross & Holmes v HMR.C* [2010] BPIR 652 (whom, I note, was not taken to *Re A Debtor* (*supra*)):

> "[72] I come finally to the question of discretion, and whether the Chief Registrar should have granted a further adjournment. There is no doubt that the Court retains a discretion not to make a bankruptcy order, even where the petition debt has been clearly established and any grounds of opposition have been dismissed. However, the authorities establish that in such circumstances the discretion to adjourn should only be exercised if there is a reasonable prospect of the petition debt being paid in full within a reasonable period: see *Harrison v Seggar* [2005] EWHC 411 (Ch), [2005] BPIR 583, at para [7] per Blackburne J, and *Re Gilmartin (ABankrupt*) [1989] 1 WLR 513, at 516F–G, per Harman J. Furthermore, as Blackburne J said, "[t]here must be credible evidence to support such a prospect if the Court is to grant an adjournment for payment".
>
> [73] Accordingly, the first question is whether there was credible evidence before the Chief Registrar on 20 July to establish a reasonable prospect that the petition debts would be paid in full within a reasonable time. In my judgment there was not. In the context of the long-drawn out history of the petitions, and the adjournments which had already been granted, it seems to me that a reasonable time for payment in full of the petition debts could have been no more than a further 2 or 3 months at the most. There was no credible prospect of payment being received within such a timescale, because the offer of security contemplated

> that nothing would probably happen for at least 6 months, and the terminal loss claims were still inchoate and unsupported by any draft accounts. In view of the past history of delay and broken promises, it was in my judgment appropriate to take a fairly hard line and to accord priority to HMR.C's undoubted prima facie right to obtain bankruptcy orders over protestations that a further adjournment might finally yield the payment in full which had so signally failed to materialise in the past. Furthermore, the Court would in my opinion have been justified in harbouring a suspicion that the predominant purpose of the adjournment, from the debtors' point of view, was to enable them to realise their assets at a time of their choosing in a difficult property market."

52. It follows from the reasoning of Henderson J that in order to secure such an adjournment a debtor must be ready to provide convincing evidence that the debt will be paid within a reasonable period: see also *Anderson v Kas Bank NV* [2004] BPIR 685.

53. Mr. Phillips QC and Mr. Willson submit that the Court may, at the hearing of a bankruptcy petition, discount the views of creditors who are connected to the debtor, relying on *Applications to Wind Up Companies*: 3rd edition, French, 7.732. Mr. Davies QC and Mr. McCulloch not surprisingly take issue with the proposition submitting that there is no bankruptcy case which deals with discounting the view of a connected creditor at the hearing of a bankruptcy petition. Mr. Phillips QC relies on Rule 5.43 of the Insolvency Rules 1986 which deals with requisite majorities voting at a meeting of creditors in respect of a proposal put by a debtor for an individual voluntary arrangement.

54. In my judgment the analogy with voting rights at creditors' meetings is not apposite as the discount precludes the passing of a resolution. The proposition that the Court will pay less attention to parties who are connected than to independent parties however is different as it permits the Court to exercise its discretion according to the quality as well as the quantity of creditors. In my judgment the proposition is as relevant to determining a petition for bankruptcy where more than one creditor appears at the hearing as it is to determining whether to wind up a company. In *Re Lowerstoft Traffic Services* [1986] BCLC 81 Hoffmann J (as he then was) said (page 84):

> "It was suggested that there is an onus on the petitioning creditor to justify the making of a winding-up order, but I am not sure that the concept of an onus can easily be applied to a case in which the discretion requires a number of matters to be taken into account. One of these must certainly be the number, value and quality of the creditors who favour a winding-up order as against those who do not. In this case the numbers are equal, but the quantity of the debts of those who favour a winding-up is very considerably greater than those who do not. In addition, it is, I think, proper to discount the opposition of those opposing creditors who are clearly associated with the management of the company."

55. It may be said that this case is distinguishable on the grounds of the particular association with the management of the company. That may be so but the distinction merely goes to how much regard the Court should have to the views of the associated party. In circumstances where a wife is a creditor of a husband or a trust is a creditor and the debtor is a beneficiary of the trust, the Court should have less regard to those views than it would to the views of an entirely independent creditor such as HMRC. The quality and quantity of the creditors are factors the Court is entitled to take into account.

(ii) the purpose of bankruptcy- collateral-ulterior

56. Bankruptcy law goes back at least to the days of Roman law. According to "Acts of Bankruptcy: A medieval concept in modern bankruptcy law" by Treiman 52 Harv L. Rev 189 (1938), its name can be traced to statutes of Italian city states where it was called *banca rupta* after a medieval custom of breaking the bench of a banker or tradesman who absconded with property of his creditors. The laws of bankruptcy across the developed world have modernised in response to credit. The basics of the problem it addresses and why it is addressed has been explained by Thomas Jackson in "The Logic and Limits of Bankruptcy Law" by way of an example, which is worth repeating in full:

> "Imagine that you own a lake. There are fish in the lake. You are the only one who has the right to fish in that lake, and no one constrains your decision as to how much fishing to do. You have it in your power to catch all the fish and

> sell them for, say, $100,000. If you did that, however, there would be no fish in the lake next year. It might be better for you- you might maximize your total return from fishing- if you caught and sold some fish this year but left other fish in the lake so that they could multiply and you would have fish in subsequent years. Assume that, by taking that approach, you could earn (adjusting for inflation) $50,000 each year. Having this outcome is like having a perpetual annuity paying $50,000 a year. It has a present value of perhaps $500,000. Since (obviously, I hope) when all other things are equal, $500,000 is better than $100,000, you, as sole owner, would limit your fishing this year unless some other factor influenced you. But what if you are not the only one who can fish in this lake? What if a hundred people can do so? The optimal solution has not changed; it would be preferable to leave some fish in the lake to multiply because doing so has a present value of $500,000. But in this case, unlike that where you have to control only yourself, an obstacle exists in achieving that result. If there are a hundred fishermen, you cannot be sure, by limiting your fishing, that there will be any more fish next year, unless you can also control the others. You may, then have an incentive to catch as many fish as you can today because maximising your take this year (catching on average $1,000 worth of fish) is better for you than holding off (catching say only $500 worth of fish this year) while others scramble and deplete the stock entirely. If you hold off, your aggregate return is only $500 since nothing will be left for next year or the year after. But that sort of reasoning by each of the hundred fishermen will mean that the stock will be gone by the end of the first season. The fishermen will split £100,000 this year, but there will no fish- and no money- in future years. Self-interest results in their splitting $100,000, not $500,000. What is required is some rule that will make all hundred fishermen act as a sole owner would. That is where bankruptcy law enters the picture in a world not of fish but of credit……Bankruptcy provides a way to make these diverse individuals act as one, by imposing a collective and compulsory proceeding on them."

57. The class nature of bankruptcy and winding up is fundamental and has been often repeated by the Courts at all levels. In *Re a Company* [1983] BCLC 492 Harman J said:

> "…..on a petition in the Companies Court, in contrast with an ordinary action, there is not a true *lis* between the petitioner and the company which they can deal with as they will. The true position is that a creditor petitioning the Companies Court is invoking a class right…..and his petition must be governed by whether he is truly invoking that right on behalf of himself and all others of his class rateably, or whether he has some private purpose in view. It has long been the law that a petition presented for the purpose of putting pressure on the company is not properly presented….."

58. The Judge went on to explain that a petition brought for the benefit of the petitioner only is not properly brought:

> "The question, therefore, is not 'does the Petitioner genuinely wish to wind up this company', as counsel for the Petitioner . . . submitted. It would be hard for me to find that this Petitioner, which has taken all regular steps to prosecute its petition and which plainly has reasons to desire the winding-up of this company, since that must put beyond much cavil the future of the company's lease, does not in truth desire to wind up the company. In my judgment the true question is 'for what purpose does the Petitioner wish to wind up this company'. A judge has to decide whether the petition is for the benefit of the class of which the Petitioner forms a part or is for some purpose of his own. If the latter, then it is not properly brought.
>
> If the Petitioner can show that he and his class stand together and will benefit or suffer rateably, then his ill motive is nothing to the point. But here it is plain that no such even-handedness exists. If the petition is properly brought, then the Petitioner stands to get a valuable asset for itself and the rest of the class of creditors are likely to get nothing."

59. In *Re Leigh Estates* [1994] BCC 292 Richard Sykes QC (sitting as a Deputy High Court Judge) explained:

> "Although a petitioning creditor may, as between himself and the company, be entitled to a winding up order *ex debito justitiae*, his remedy is a 'class right', so that, where creditors oppose the making of an order, the Court must come to a conclusion in its discretion after considering the arguments of the creditors in support and of opposing the petition….."

60. Mr. Brisby QC emphasises that in *Leigh Estates* Richard Sykes QC took the view that creditors are entitled to vote in their own interests. I do not demur from that proposition but it needs qualification: the Court may decide how much weight to give to each creditor's position. The same judge said (page 294):

> "It is plain from the well-known authorities on the subject that, where there are some creditors supporting and others opposing a winding-up petition it is for the Court to decide as a matter of judicial discretion, what weight to attribute to the voices on each side of the contest."

61. In that case the Judge dismissed the petition because he found that the petition was not for the benefit of the class and on the facts there was a purpose collateral to the aim of the collective process. The local council presented a winding up petition on the basis of unpaid rates on an unoccupied premises owned by the company which was in administrative receivership. The banks appointed an administrative receiver. The council's view was that if a winding up order were made, the receivers or possibly the banks would become liable for the rates on the premises. The creditors opposing the petition argued that a winding up would damage the process of realisation of the company's assets by the receiver to the disadvantage of creditors generally. The Judge found that the reason for seeking to wind up was to gain for itself a preference over the other creditors.

62. In *Re Majory a debtor* [1955] Ch 600, [1955] 2 All ER 65, [1955] 2 WLR 1035 the Court was asked to dismiss a petition brought by a judgment creditor as the creditor had threatened bankruptcy proceedings unless he paid the due debt. The Court considered the characteristics of extortion as this was the ground relied upon to demonstrate abuse of process. During his consideration Evershed MR. said (70):

> "No doubt, anything done or proposed by the debtor designed to secure for him, in the bankruptcy, more than his proper share of the assets would be vicious and tainted."

63. The Master of the Rolls cited with approval *Re Debtor (No 883 of 1927)* in which Lord Hanworth MR. said:

> "The whole principle of bankruptcy is that when an act of bankruptcy has been committed there shall be a fair distribution between all creditors…."

64. The Court of Appeal (agreeing with an earlier judgment) endorsed the view that bankruptcy must not be used to obtain a collateral advantage. The outcome of the case, however, has to be read in light of the concession made by counsel in closing:

> "Counsel for the debtor conceded in his reply that the rule as to extortion which he sought to invoke did not rest on any such general proposition as above suggested, namely that a creditor invoking or threatening to invoke the bankruptcy jurisdiction was irrevocably committed to equal distribution in all circumstances."

65. When it came to the principle Evershed MR. said:

> "The so-called "rule" in bankruptcy is, in truth no more than an application of a more general rule that the Court proceedings may not be used….for the purpose of obtaining for the person so using…them some collateral advantage to himself, and not for the purpose for which such proceedings are properly designed and exist."

66. Arguments that there was an abuse of process preventing the making of a bankruptcy order did not succeed in *Hicks v Gulliver* [2002] BPIR 518 as the petitioning creditor had more than one purpose. However even if an abuse of process is not found the Courts may exercise their discretion. In *Re Ross* [2000] BPIR 636 Nourse J, suspicious of Miss Jeff's motives, was not confident that there was an abuse of process but exercised discretion (afresh) pursuant to section 266(3) of the Insolvency Act 1986 on the basis that an order for

bankruptcy would stifle a claim. The requirement of a sole purpose is to be contrasted with the requirement of an applicant to show a substantial purpose when bringing proceedings, pursuant to section 423 of the Insolvency Act 1986: *IRC V Hashmi* [2002] EWCA Civ 981. More recent authority shows that if the Court finds that a bankruptcy order is objectively likely to be of a substantial advantage to the petitioner in his capacity as a creditor, it matters not that the petitioner's principal purpose of petitioning was illegitimate: *Re Millenium Advanced Technology Ltd* [2004] 1 WLR 2177; *Ebbvale Ltd v Hosking* [2013] UKPC 1.

67. Leading on from this analysis springs a submission that where it can be shown on the facts that if a bankruptcy order is made the petitioning creditor stands to gain a substantial advantage over other creditors (will be able to take more fish from the lake for reasons that may be unconnected with the making of an order) that creditor needs to demonstrate that an order for bankruptcy is in the interests of a class as whole. The burden shifts. This is most likely to arise in rare cases where the facts are unusual and supporting and opposing creditors express a view.

68. I observe that to reach a conclusion, which has not been asked, that the only purpose of the bankruptcy petition is to gain a collateral advantage may be problematic due the findings and outcome in the Set Aside Judgment: although I have not heard full argument on estoppel. Mr. Davies QC and Mr. McCulloch rely on *Re Bula Limited* [1990] 1 I.R. 440 where the Court made the distinction between improper objective (leading to a dismissal) and "ulterior" object. McCarthy J said (at page 448):

> "I would hold that a creditor is prima facie entitled to his order so as to shift the initial burden to those who oppose the winding up; the petitioner does not have to demonstrate positively that an order for winding up is for the benefit of the class of 13 creditors to which he belongs, but, if issue is joined on the matter, and a case made that the petition is not for that purpose but for an ulterior, though not itself improper object, then the burden shifts back to the petitioner."

69. Mr. Davies QC submits that this line of jurisprudence is now firmly established or at least is highly persuasive. He refers to *Re Good Concrete (In Receivership)* [2012] IEHC 439 where Ms Justice Lafoy was asked to dismiss a petition to wind up a company because the petition was said to have been presented to prevent proceedings continuing against the petitioning creditor. The judge said:

> "23. In my view, the ratio decidendi of the judgment of McCracken J. in Re Genport Ltd. is to be found in the last paragraph (para. 10) of the judgment in which he stated:
>
> "Accordingly, while neither might in itself be decisive, in my view the combination of the ulterior, although not necessarily improper, motive and the fact that a winding-up may not be of any real benefit to the ordinary creditors are sufficient to persuade me to exercise my discretion in refusing to make the winding-up order."
>
> The basis on which McCracken J. concluded that a winding up might not be of any real benefit to the ordinary creditors was that the principal asset of Genport Ltd. was the hotel, which was held by Genport Ltd. under a lease which would be forfeited if a winding up order was made, which would be greatly to the benefit of Crofter Properties Ltd., the lessor, leaving little in the way of assets for the remaining creditors. Genport Ltd. was still trading successfully in the hotel. Four trade creditors who appeared on the hearing of the petition all opposed the making of a winding up order. McCracken J. concluded that it was in the interests of the ordinary creditors that Genport Ltd. should continue to trade. McCracken J. stated that he was also influenced by the fact that there was substantial litigation between Genport Ltd. and Crofter Properties Ltd. which was part heard and it would be difficult for the liquidator to take up such an action at the stage which it had reached. He expressed the view that a liquidator might not continue the action, viewing it as pointless if the principal asset, the hotel, was gone."

70. The judge used the term "motive" but on the facts nothing turned on the use of this language as it is clear she was not thinking about the past but the future purpose. She found "If the

ulterior motive was the only ground for not making a winding up order at this juncture I am of the view that the appropriate course would be to adjourn the petition rather than dismiss it". Not surprisingly Mr. Davies QC draws some parallels with the present case but submits that there is ample evidence before the Court to find an ulterior purpose and if the Court were to do so the burden shifts to the petitioners to demonstrate that an order is for the benefit of the unsecured creditors as a whole. Mr. Davies QC also submits that no case is the same; where it may be appropriate for a short adjournment for one case, it may be appropriate for a longer adjournment in another. This is especially so where there is a real prospect of the creditors being paid in full.

Conclusions

(i) Collateral purpose/Ulterior object

71. In reaching a conclusion as to whether the Petitioning Creditors have an ulterior objective in seeking an adjudication of bankruptcy I have regard to the following (i) the findings set out in the Set Aside Judgment (ii) the presence of an undisputed judgment debt (iii) the admission by the Petitioning Creditors that they wish to acquire the Santander Asset and (iv) that the Petitioning Creditors will obtain the Santander Asset by reason of a bankruptcy order, not as a class right in the bankruptcy, but in their capacity as a contractual party to the Deed.

72. As regards the Set Aside Judgment Mrs Justice Rose found that there was no abuse of process. She found that "even if the Respondents' motive in bringing this petition is to trigger, by Mr. Maud's bankruptcy, Mr. Quinlan's rights of pre-emption over Mr. Maud's shares in Ramblas, that does not mean that the petition is an abuse of process". On the question of fact before her she said the "Respondents do not really want to make Mr. Maud bankrupt - on the contrary Mr. Maud's case is that it is his bankruptcy that will trigger the pre-emption rights that will entitle either Mr. Quinlan or the First Respondent (depending on whether the share transfer of Mr. Quinlan's half has been completed) to get hold of his half of Ramblas' share capital. Secondly, it has not been suggested that the bankruptcy would damage the prospects of Mr. Maud's other creditors. There is no reason to suppose Mr. Maud's Ramblas shares will be sold under the pre-emption provisions of the Ramblas

articles of association at less than their proper price. Those monies will then be available for the general body of Mr. Maud's creditors."

73. The Judge drew on the authorities, and called upon "common sense", to caution against setting aside a statutory demand based on an undisputed debt on grounds of collateral purpose. She considered that the jurisdiction should be exercised "sparingly". I understand her to mean that the Court should be slow to accept that there is an abuse. The authorities referred to by Rose J demonstrate the difficulty of finding that the only purpose of a petitioning creditor is collateral to the bankruptcy scheme. I understand her judgment was that "common sense" should prevail during the search for an abuse if there is an undisputed debt. This is particularly so where an undisputed debt is the subject of a judgment made by consent.

74. Mrs. Justice Rose relied on, or did not doubt, the evidence of Mr. Maud to find that the petition was presented for the purpose of making Mr. Maud bankrupt. She accepted Mr. Maud's evidence that the reason behind the bankruptcy proceeding is to obtain "Ramblas's share capital". She also found that there was no abuse because there would be no detriment to creditors, as there was no evidence that the shares would be obtained by Aabar from Mr. Quinlan at anything less than market value.

75. In my judgment the inquiry as to purpose may continue at the hearing of a bankruptcy petition even where an abuse of process is not found to exist at the statutory demand stage. There may be more evidence before the Court at the hearing of the bankruptcy petition than at the hearing of the application to set aside a statutory demand due to intervening events. The continuing inquiry as to the object of the petition may, however, be made in order to determine not whether the petition should be dismissed, but whether an immediate order for bankruptcy should be made.

76. In my judgment the distinction between collateral purpose and ulterior object although fine is real even if the inquiry is similar. The collateral purpose inquiry searches for an abuse of process: where *the* purpose for the bankruptcy proceedings is to gain a collateral advantage and is not for the purpose for which the proceedings are properly designed and exist. The inquiry as to ulterior object is a search for anything done or proposed to be done which,

although the proceedings have been properly brought, is designed by the petitioner to secure an advantage over the class in addition to seeking an order for bankruptcy. If the Court is satisfied that an ulterior objective exists, the burden of proof switches to the petitioner to prove on the balance of probabilities that an immediate order is required in the interests of the class or it is otherwise necessary.

77. The following factors are in my judgment relevant in making a determination as to whether an ulterior objective is present in these proceedings:

77.1. The admission that the Petitioners wish to acquire the Santander Asset;

77.2. The open statement in interview given by Mr. Tchenguiz indicating he had acquired the Santander Asset in 2013;

77.3. Rose J accepted the evidence of Mr. Maud (supported by the 2011 Agreements), in the set aside application that an order for bankruptcy will trigger the pre-emption rights entitling Aabar to "get hold of his half of Ramblas' share capital";

77.4. Getting hold of the Ramblas share capital is significant in the bankruptcy of Mr. Maud as the shareholding represents his only known asset of value (demonstrated during the course of the CPR Part 71 proceedings);

77.5. The pre-emption rights enable Mr. Quinlan to be at the front of the queue in the race to obtain the shares from a trustee in bankruptcy and thus by reason of the 2011 Agreements, place Aabar in a favourable position;

77.6. As a result the Petitioning Creditors do not stand shoulder to shoulder with Mr. Maud's general body of unsecured creditors;

77.7. Negotiations for the sale of the shares may be drawn-out as an independent office-holder will wish to obtain the best price available whereas, I infer from the 2011

Agreements, the interview conducted by Mr. Tchenguiz in PropertyWeek, and the present expired bid put forward in Spain by the Petitioning Creditors, Aabar and Edgeworth will not share that ambition;

77.8. Any stand-off in negotiations between Mr. Quinlan and the appointed office-holder will favour Mr. Quinlan (behind whom will stand Aabar) as a result of the pre-emption rights. This may lead to a significant discount;

77.9. The reality of such a discount is reflected by the bids put to the Liquidation Administrator in Spain. The bid made by the Consortium prior to the approval of the Liquidation Plan, by the Spanish Court in October 2015, is for €2.8 billion ensuring that all creditors will be paid. The bid put forward by the Petitioning Creditors was considerably less. If the Petitioning Creditors were to succeed the equity in the Santander Asset would give them equity of between €350million and €850 million (depending on value). This is to be contrasted with the Petition debt of £51million;

77.10. The evidence supports the view (because the value of the Ramblas shares will be directly referable to the value of the Santander Asset) that if the Consortium bid is successful "the debts due to Aabar and Edgeworth will be settled in full and I shall be able to utilise the available equity to settle my other creditors' claims."

77.11. One would expect unsecured creditors to consider this a favourable outcome but the Petitioning Creditor insist they will proceed with the petition whether or not the Consortium proposal is successful;

77.12. This seemingly dogmatic approach fails to recognise the aim to pay the Petitioning Creditors in full;

77.13. Two major creditors (even if Navarro is connected: section 435 Insolvency Act 1986) support the view that all Mr. Maud's creditors will be paid if the Consortium bid succeeds; and

77.14. If an immediate order for bankruptcy is made there is at least some danger (which is highly contested) that the Consortium will not proceed with the bid.

78. In addition to these factors if an immediate bankruptcy order is made Aabar and Edgeworth are likely to be major beneficiaries of Mr. Maud's interest in the Purchase Agreement proceedings. The causes of action will vest in a trustee-in-bankruptcy who will seek to sell the asset giving the Defendants to the action the opportunity to stifle the claim which is dependent on Mr. Maud's evidence. This will relieve the Defendants to the action of the costs and time associated with defending the proceedings as well as the risk that a Court may find against them. In this way Aabar will benefit in its capacity as Defendant to an action, and Edgeworth will benefit by reason of securities not falling into hostile hands. In any event the Petitioning Creditors will not stand shoulder to shoulder in the class of creditors. This is relevant as *Re Ross* (supra) Nourse L.J. found that the Court had jurisdiction under section 266(3) Insolvency Act 1986 to dismiss a petition where a claim was being stifled.

79. There is also an outstanding appeal against the judgment of €116,338,807.97 against Ramblas concerning the UFA. I understand the Court of Appeal is due to hear the appeal in July 2016. If Aabar gains control of Ramblas the appeal is likely to be discontinued benefiting only Aabar.

80. It would often be virtually impossible, without cross-examination, for a Court to conclude that a creditor is using the bankruptcy process for purposes other than those connected to a class action. However there is no need for direct evidence. Its existence may be inferred from the circumstances of the case. In my judgment the factors I have set out above overwhelmingly lead me to infer that the Petitioning Creditors have an ulterior object in pursuing the petition. It may not be the only purpose and so improper, but the burden shifts to the Petitioning Creditors to show that an immediate order will benefit the class.

81. The same evidential factors as set out in paragraph 77 above lead me to conclude that an immediate bankruptcy order will not, on the balance of probabilities benefit the general unsecured creditors at this point in time. Mr. Maud has explained he has no assets to enforce against; the Petitioning Creditors have examined him in court and have no evidence of

available assets other than the Ramblas shares; and the realisation of the Ramblas shares at a proper price, under proper conditions could benefit all creditors. On the other hand an immediate bankruptcy order would not only give the Petitioning Creditors (Aabar, and Edgeworth more tangentially) an asset capable of repaying the petitioning debt, but an asset worth considerably more than the debt by reason of the 2011 Agreements. No other creditor would benefit.

82. It follows, for the purpose of the adjournment application, the Petitioning Creditors are not seeking an immediate order so as to administer the affairs of Mr. Maud for the benefit of all of who have fishing rights in the bankruptcy lake and all those fishing at the water's edge will not benefit in the same way: see *Re a Company* [1983] BCLC 492.

83. As a result I shall adjourn the hearing of the bankruptcy petition. I shall deal with the length of the adjournment below and at the same time deal with other arguments advanced.

(ii) Reasonable prospect of payment in full-

84. If the Court is going to adjourn the hearing of a petition it needs to consider whether or not there is a good reason to do so, the views of supporting and opposing creditors and the length of a reasonable and proportionate adjournment.

85. In my judgment the views of the opposing creditors outweigh those of the alleged supporting creditors. I take full account of GAC's connection with Mr. Maud (part of the Consortium) and Navarro's more intimate connection (Glenn Maud Family Trust) albeit through the device of a trust. I accept that Mr. Heinz is an independent trustee acting for the trust. I lend less weight to their views than I would give to a fully independent creditor such as HMRC, however they are creditors with an interest in the outcome and form part of the class. Further I have regard to the views expressed by the opposing creditors as their views correlate with views of any creditor who is faced with a choice between receiving no return if a bankruptcy order is made or the prospect of payment in full if time is given for completion of a bid process.

86. On the other hand HMRC (despite protestations to the contrary) is neutral as to the making of the order and in any event its debt is disputed. I invited the Libyan Investment Authority to make an application (initiated by Mr. Maud) for the determination of its status in these proceedings during the July 2015 hearing. Its application is stayed but it has made an application to appeal the judgment given by Mrs. Justice Rose. As matters stand the Libyan Investment Authority is without a voice.

87. Accordingly in terms of numbers, quality and quantity in value of creditors' the opposing creditors' views tilt the balance in favour, at this hearing, of an adjournment.

88. As regards the likely outcome if an adjournment is made, Ms. Roscoe takes the view that the Consortium proposal has great difficulties due to an inability to provide a deposit in the size or in the manner required by the Liquidation Plan, but in any event the proposal provides no certainty of outcome. As a result, she says, a further adjournment will not produce the result contended for by Mr. Maud (repayment of the petition debt within a reasonable time). As regards the deposit it appears that the Liquidation Administrator will accept the deposit tendered which comprises a credit bid in respect of Mr. Maud's residual shareholder loan and a €5m deposit provided by GAC confirmed by Mr. Valani.

89. Even if the Consortium proposal is successful Ms. Roscoe doubts the purchase will provide sufficient money to pay Mr. Maud's creditors in full. She says the total liabilities of the Marme Group are €2,787,311,931.21 and the Consortium proposal offers €2,798,500,000.00. The difference of €11,188,068.79 will be divided between Mr. Maud and Mr. Quinlan, giving Mr. Maud €5,594,034.39. This is insufficient to pay the petition debt let alone the other creditors which total £152,976,058. This is highly disputed and Mr. Maud contends that his undisputed debts are approximately €70million (Navarro, GAC and PwC) against a total equity outcome which, based on a (conservative) valuation of €3 billion for the Santander Asset, would be somewhere between €209million to €1.186 billion (depending on the outcome of the UFA and the Swaps litigation). After discharging the shareholder loans, Mr. Maud calculates he would be directly or indirectly entitled to €75 million.

90. The Consortium proposal provides:

> "Subject to the fulfilment of what is provided for in Section 10 above being satisfied and simultaneously with the completion of the Acquisition, and in addition to the Offer Price, the Consortium will procure that any sum required to discharge Glenn Maud from his liability under the Personal Loan is either paid to the Junior Lenders [now Aabar and Edgeworth] or is deposited in the High Court in England pending the conclusion of the litigation between Mr. Maud and the Junior Lenders as to the Junior Lenders' proper entitlement under the Personal Loan."

91. I accept Mr. Brisby QC's submission that the Consortium's intent and commitment appears serious: it cannot be described as flimsy or shadowy when a party makes a €153.5 million irrevocable deposit to the Administration Liquidator of which €5m is in cash. Some refinement is now required to make the bid compliant with the Liquidation Plan but I am informed that this is more technical than substantive. It is not possible to second guess the prospects of a future transaction taking place in a different jurisdiction: something unforeseen may happen to alter the position on the ground. It is possible to weigh in the scales the possibility of a serious and funded proposal that aims to pay all parties including those who have equity in one hand, and in the other the prospect that bankruptcy will bring little chance of a return for the class. If Mr. Maud is made bankrupt and the Consortium reverse out of the bid process (a question of fact I am unable to determine on this application) there will be certainty. Certainty that the creditors of Mr. Maud will not be paid in full.

92. In my judgment and doing the best I can based on the untested (by way of cross-examination) evidence before the Court, a further adjournment of a reasonable time is more likely than not to result in a payment in full of the petition debt and benefit to the unsecured creditors of Mr. Maud as a class.

93. The Liquidation Plan, supervised by the Spanish Court pursuant to the SIA, provides a time-tabled outcome. The outcome in terms of who succeeds in the bid process may be uncertain but there is a fully regulated process. The bid of the Consortium is funded and presents the highest bid to date. These facts are to be contrasted with the issues before the Court in *Re Mickelthwaite* [2003] BPIR 101 where Lloyds had obtained judgments against

three names and sought a bankruptcy order. The question for the Judge, Mr. Justice Peter Smith, was whether to make immediate bankruptcy orders or adjourn to permit claims to be made against the petitioning creditor which would, if successful, extinguish the petition debt. The Judge considered the claims speculative, without limit in time and without funding.

94. As the bidding process has certainty, is regulated by the SIA, approved by the Spanish Court and moderated by the Administration Liquidator, it is likely on the balance of probabilities to produce the best opportunity for the class; as the majority in value and number (even taking account of their connection) support an adjournment; and as the Consortium bid appears serious I find, even if I am wrong about the presence of an ulterior object, there should be an adjournment and an immediate bankruptcy should not be made. I test this against the submission made by Mr. Phillips QC that all his clients want is to be paid. If that really is the case they will see the sense of an adjournment at this point in time.

(iii) Reasonable time-

95. Any adjournment has to be for a reasonable and proportionate time.

96. Ms. Roscoe's evidence is that there is no certainty of timing and that a further adjournment is not reasonable because Mr. Maud has already had one adjournment. She says:

> "….on 3 November 2015, three parties filed writs in the Spanish Court requesting clarification of the ruling approving the Liquidation Plan. I understand that one of these parties, Stichting Administratiekantoor Olivo ("Stichting"), has requested a suspension of the time period to file binding offers i.e. the 15 working day period until the clarifications it has requested have been resolved. Stichting is a company incorporated and owned by GAC and is part of Mr. Maud's Consortium. It is therefore not presently known when the 15 day period for submission of offers will commence and/or expire. Further, a period of 20 working days exists following the notification of the approval of the Liquidation Plan in which any party can file an appeal if they are not satisfied with the Liquidation Plan as it stands. I understand this time period is currently suspended as an automatic consequence of the filing of the

> writs referred to at paragraph 19 above. In addition, a party filing an appeal can also request that the 15 day period to submit bids is stayed until their appeal has been resolved in order to avoid an irreversible situation. Considering the value of the Santander Asset, I understand from my Spanish colleagues that the Spanish Court may take a cautious approach and grant such a stay. I understand that the appeal process normally lasts between 8 to 12 months".

97. Although Ms. Roscoe mentions an 8-12 month period for an appeal Mr. Arden QC has explained in submissions that the time to make an appeal has already run three days and no appeal has been lodged. The 20 day period for lodging an appeal is presently stayed pending resolution of the clarifying writs. Mr. Marti's evidence is that the Court's ruling on the Liquidation Plan complies with Spanish law and as a result 'it is unlikely that a party would appeal the Ruling given". Ms. Roscoe says that it remains a possibility and "it may be many months, even years, before the sales process as set out in the Liquidation Plan may be carried out, and thus any theoretical funds flow to Mr. Maud's personal creditors are a long way off."

98. This evidence (and other evidence given in her witness statement) has been termed misleading but it merely forms a view advanced by Ms. Roscoe. In my view her evidence was not intended to mislead the Court. There are claims to inaccuracies in all the evidence before the court. It can be said without fear of contradiction that there are polarised views. But in any event Ms. Roscoe may be right on this issue. She may be wrong. Her view is supported in part by a letter dated 4 September 2015 from Kobre & Kim (UK) LLP acting as legal advisors to "the liquidator of Ramblas….". The letter is addressed to the Court of Appeal and concerns the UFA appeal listed for late July 2016. The author of the letter written on behalf of the Administrator (liquidator) wrote:

> "….our client filed a Liquidation plan in May 2015. However numerous stakeholders in the Liquidation (including Linklaters' clients) filed objections to the Liquidation plan. Definitive Court approval for a plan is therefore unlikely to be achieved for some considerable time, particularly considering that any Judge's decision approving the plan may be appealed."

99. In fact matters have moved on since that letter, but Mr. Phillips QC says that the evidence before the Court is that the process will be long or it is without certainty of timing. In reply he urged the Court to make any adjournment as short as possible.

100. I pressed Mr. Arden QC about the bid time and likely completion date. He had sought an adjournment for 6-8 weeks; no doubt partly driven by what he thought would be reasonable in circumstances where Mr. Maud had already received one adjournment for 5 months. It is apparent that the timetable for the bid process in Spain will not be complete before March 2016 and completion may take until June 2016.

101. I accept Ms. Roscoe's evidence that the timing is uncertain. I accept Mr. Phillips QC's submission that the process may be longer than anticipated by Mr. Arden QC. Much will depend on the number of bids and whether or not there is a tie, triggering further time and further bids. If however the bid process enters an improvement stage where the parties are bidding on the basis that the bids are greater than the Consortium proposal there may be a greater chance that all of Mr. Maud's creditors will be paid in full.

102. I do not disregard the previous adjournment as that makes up part of the background. It is common in the winding up Court for a company to seek a two month adjournment to put a proposal for an arrangement to creditors. It is common that an individual will ask for just over three months to sell a property to pay a debt. On the return date the Court will want to know what happened during the adjournment, and if the reason for the adjournment has not been achieved the reasons for the failure. That does not mean that the Court will not grant another adjournment for a reasonable time. In the case of the sale of an asset there may be complications which are readily explained. It will be reasonable and proportionate to adjourn for a period to reflect the difficulties as that will be in the interests of the class. The exercise is fact sensitive.

103. In this matter the failure of the article 43 procedure was unfortunate but apparently unforeseen at the last hearing. The approval of the Liquidation Plan which contains a time table with contingencies provides more certainty that the process will end and the result will be known by a long stop date. The Liquidation Plan and auction process has shape and form proportionate to the values at stake. In my judgment a reasonable amount of time to

adjourn this petition for a second time is the date when the final bids will be known in the first or second week of April 2016. This does not mean that there will not be another adjournment, but the Court should be re-appraised as to the likely outcome at that stage.

(iv) Need for an urgent investigation

104. I shall deal briefly with the submission made by Mr. Phillips QC that an independent trustee in bankruptcy needs to be appointed as a matter of urgency to investigate Mr. Maud's affairs. Since the July 2015 hearing Mr. Maud has been questioned before the Commercial Court about his affairs on two different occasions. He submits that the questioning has revealed that Mr. Maud cannot be trusted. He submits that the examination revealed he is or has been willing to hide assets or put them beyond the reach of creditors.

105. I accept Mr. Arden QC's submission that despite having conducted extensive researches into Mr. Maud's affairs and having had a free rein to examine pursuant to CPR Part 71 Mr. Maud for five hours and in correspondence, the Petitioning Creditors are unable to show any basis for an urgent and independent enquiry

106. The urgent need for an independent investigation diminishes, in my judgment, if a creditor uses CPR 71 to examine a judgment debtor. Although a judgment creditor is entitled to seek an oral examination the nature of such investigations should be borne in mind. Like proceedings under section 236 of the Insolvency Act 1986 they are prima facie oppressive because Mr. Maud is hauled into Court under threat of imprisonment or arrest if he is not compliant, and there he has to answer questions about his affairs on oath and under compulsion of the Court. In my judgment there is false logic in asserting that an independent investigation is required because an oral examination is on foot. Mr. Maud is obliged to co-operate and attend the examinations and there is no suggestion he had not done so.

107. I also find that the urgency for an immediate bankruptcy order is relieved by reason of the statutory protection afforded to Mr. Maud's estate triggered by presentation of the bankruptcy petition. Mr. Phillips has accepted that there may be timing issues for any recovery action that could be initiated by an office-holder but those timing issues are

unlikely to affect the remedies available to the Petitioning Creditors or an office-holder if Mr. Maud has made gifts of property for the purpose of putting assets beyond the reach of a person who is or was making or may at some time have made a claim against him.

108. I will hear counsel about the precise date for the adjourned hearing at the handing down of this judgment.