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BR-2020-000363

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF GLENN ANTHONY ARMSTRONG
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 24/03/2021

Before :

ICC JUDGE BARBER

- -

Between :

ANNI NAKAMURA

Petitioner

- and –

GLENN ANTHONY ARMSTRONG

Debtor

- -

Ms Nina Roberts (instructed by Blackhurst Budd LLP) for the Petitioner
Mr Antonio Nacca of DLS Law for the Debtor

Hearing date: 11 February 2021

- -

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10.00 a.m on 24 March 2021

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ICC Judge Barber

1. On 11 February 2021, I made a bankruptcy order against Mr Glenn Anthony Armstrong on the petition of Ms Anni Nakamura. I granted the order at the hearing on the footing that I would give written reasons at a later stage. I set out my reasons below.

Background

2. The debtor has been a property investor, developer and entrepreneur since 2004. For many years until their separation, he and his wife Amanda were in business together, purchasing and developing properties and operating a residential 'buy to let' portfolio in the Milton Keynes area. Some properties were held in the name of the debtor or Amanda; others were held through companies, including Sutherland Investment Property Limited ('Sutherland'), of which the debtor and Amanda were directors and shareholders.

3. A company known as G & A Property Management Limited was set up to manage the rental portfolio and to collect rental income. It later changed its name to Creative Lettings (UK) Limited and thereafter to Flynn Lettings Limited ('Flynn Lettings'). Amanda ran Flynn Lettings as sole director and sole shareholder. The registered office for both Sutherland and Flynn Lettings was located at the same address in Wolverton, Buckinghamshire. The Sutherland and Flynn Lettings bank accounts were, in the debtor's words, 'linked'. Money collected by Flynn Lettings was used to service Sutherland debt during the marriage. Amanda had sole access to both bank accounts.

4. The debtor also founded 'The Property Millionaire Academy' and ran a variety of property investment seminars and courses for would-be investors. The individuals attending such workshops were for the most part students and ordinary members of the public.

5. The debtor and Amanda separated in 2015/2016. The debtor maintains that shortly thereafter, Amanda stopped his weekly allowance of £2000 from Sutherland and also stopped servicing Sutherland's debts from rental income. Amanda issued divorce proceedings in February 2016. Decree Nisi was pronounced on 24 March 2017 and Decree Absolute was granted on 15 May 2018.

6. Since separating from Amanda, the debtor has continued to run a variety of property investment seminars and courses, often through a corporate vehicle which he set up for the purpose known as The Property Investment Training Company Limited. The individuals attending the courses include ordinary members of the public. The debtor charges significant fees for these courses, which are hosted from Carisbrook House, a large property with four acres in Sherington which the debtor purchased and redeveloped as his new home after separating from Amanda. Carisbrook House is worth between £2-3 million. In 2018 it was said by the debtor to be in negative equity.

7. For a number of years (prior to and since his separation from Amanda), the debtor has persuaded individuals attending his property investment courses to lend him money and to invest in projects proposed by him. Many of these individuals have been left unpaid. Some filed witness statements in support of the bankruptcy petition,

exhibiting loan documentation and contemporaneous correspondence evidencing the monies advanced and the trail of excuses and broken promises that followed. These statements make troubling reading. The debtor has not responded in his evidence to each of the individual statements filed by the supporting creditors, despite being given an opportunity to do so; by his evidence he has simply stated, in general terms, that he does not consider all the debts claimed by supporting creditors to be properly due. Whilst the rights and wrongs of these individual transactions are not matters for me to determine within the context of this petition, it is clear from the evidence before me that the debtor has continued to procure sums from investors since presentation of the petition, with no obvious means of delivering on promised investments or of meeting agreed terms of repayment.

The Petition

8. The petition was presented on 9 April 2018 to the County Court at Milton Keynes and was served personally on the debtor on 4 June 2018. It was based on a statutory demand dated 21 November 2017 and served on 16 December 2017. The debt of £80,874.96 claimed by the statutory demand represented the balance of the principal (plus interest) remaining due under a loan agreement dated 8 April 2016 ('the Agreement') between (1) the petitioner (2) Sutherland as borrower and (3) the debtor as guarantor.

The Agreement

9. Under the terms of the Agreement, the petitioner agreed to advance £120,000. Clause 3.3 provided:

> 'The Borrower shall repay the loan to the Lender on the Repayment Date as defined in Clause 1.3'

10. Clause 1.3 defined 'the Repayment date' as 'no less than 3 months and not exceeding 6 months from and including the date hereof'

11. By Clause 5.1, it was provided that

> 'The Guarantor irrevocably and unconditional [sic] guarantees that the Borrower will pay all sums due and payable under the terms and provisions of the Loan Agreement at the times and in the manner specified herewith and if the Borrower fails to do so then the Guarantor will do so and indemnify the Lender from and against all losses damages costs and expenses incurred by the Lender as a result of the Borrower's failure.'

12. Sutherland failed to repay the loan in accordance with the terms of the Agreement.

Grounds of Dispute

13. Neither Sutherland's liability, nor the debtor's liability under the terms of the guarantee, were disputed at the hearing before me.

14. At an earlier stage in proceedings on the petition, the debtor sought to argue that the petition debt was not 'for a liquidated sum' as required by section 267(2) of the Insolvency Act 1986 and so could not form the basis of a petition.

15. By the time of the hearing before me, however, the debtor had withdrawn his reliance on this argument. In my judgment he was right to do so. In context, the words 'and if the Borrower fails to do so then the Guarantor will do so', as set out in Clause 5.1, plainly impose a 'conditional payment obligation' on the Guarantor, within the meaning attached to that term in Norwich and Peterborough Building Society v McGuinness [2011] EWCA Civ 1286 at [7] and [42].

16. As put by Chief Registrar Baister in Dunbar Assets Plc v Fowler [2013] All ER (D) 02 (Jan) at [13]:

> 'One asks two questions: who pays, and what does he pay? If the answers are 'the guarantor pays' and 'he pays the principal debtor's debt', the guarantee gives rise to a conditional payment agreement.'

17. In this case, therefore. Clause 5.1 gives rise to a conditional payment obligation. The court treats a conditional payment obligation as a liquidated debt for the purposes of section 267(2)(b) IA 1986. The petition debt is for a liquidated sum.

18. No other grounds of dispute were raised.

Adjournment Application

19. At the hearing before me, the debtor sought a further adjournment of the petition, in order to allow him time to pay. His primary position was that the petition should be adjourned to allow him time to conclude his financial remedy proceedings in the Family Court. He blamed Amanda for the time it was taking to conclude those proceedings.

Principles to be applied

Bankruptcy as a class remedy: views of the creditors

20. Although a petitioning creditor, as between himself and the debtor, may be entitled to a bankruptcy order ex debito justitiae, his remedy is a 'class right'. Where creditors oppose the making of a bankruptcy order, the court must come to a conclusion in its discretion after considering the arguments in support of and opposing the petition: Re Crigglestone Coal Company Ltd [1906] 2 Ch 327; Glenn Maud v Aabar Block S.a.r.l. and Ors [2016] EWHC 2175 per Snowden J at [82].

Views of the petitioning creditor

21. The petitioner did not oppose a further 'short' adjournment if the Court thought fit, but expressed frustration at the delays and made clear that if the Court was not minded to grant a further adjournment, she would seek a bankruptcy order.

Views of other creditors

22. There were more than 35 creditors who gave notice to the petitioner of their intention to appear in support of the petition. Ms Robert informed me that the total value of supporting creditors exceeded £4.9 million. The debtor disputed some of these claims (Sutherland's debt of £500,000 odd, for example) but by no means all of them. There were no opposing creditors.

23. All creditors who had given notice to the petitioner of their intention to appear on the petition were given an opportunity to file evidence, attend the hearing and address the court. I read their written evidence ahead of the hearing and heard their oral submissions at the hearing.

24. No creditor spoke in favour of an adjournment. A number of creditors expressed frustration and concern at the length of time the bankruptcy proceedings had taken. Some expressed concern that the debtor was still persuading would-be investors who attended his courses to lend him money. Others expressed concern at the debtor's expensive refurbishment of Carisbrook House (which had been undertaken since the debtor's separation from Amanda) and queried how this had been funded. Others commented on the debtor's lavish lifestyle and expensive cars. At least one voiced concern that since presentation of the petition, the debtor had been setting up further companies in the name of his new wife. All supporting creditors who expressed a view supported the making of a bankruptcy order immediately.

Adjournment of the petition in the court's discretion

25. As helpfully summarised in Glenn Maud v Aabar Block S.a.r.l. and Ors [2016] EWHC 2175 per Snowden J at [99]- [101], a practice exists under which a judge may exercise his discretion to adjourn the petition rather than make an immediate bankruptcy order on the ground that there are reasonable prospects of payment of the petition debt within a reasonable period.

26. The practice was described by Lewison LJ in Sekhon v Edginton [2015] 1 WLR 4435 at [15]-[19] as follows:

> "15. [Insolvency] Rule 7.51A …. provides that, with some exceptions, the CPR apply to insolvency proceedings with any necessary modifications, except so far as inconsistent with the Insolvency Rules. It seems to me, therefore, that in the case of a bankruptcy petition the jurisdiction to adjourn is now found in CPR r 3.1(2)(b).
>
> 16. There are, however, differences between insolvency proceedings and an ordinary civil action. First, insolvency proceedings are class actions designed to secure distribution of an insolvent's assets pari passu between all his creditors. They are not merely a debt collection process. The primary purpose of proceedings is to enable an independent person to ascertain and preserve the debtor's assets and to achieve that pari passu distribution.

17. Second, the presentation of a petition has the effect that any disposition of property made without the consent of the court by a person who is subsequently adjudicated bankrupt is void: see Insolvency Act 1986, section 284. Accordingly, delay in dealing with a petition is liable to have adverse consequences for creditors generally: see In re a Debtor (No 72 of 1982); Ex p Mumford Leasing Ltd v The Debtor [1984] 1 WLR 1143 applied in Judd v Williams [1998] BPIR 88.

18. Against this background, the practice has evolved in relation to the grant of adjournments of bankruptcy petitions where the debtor asks for time to pay. The starting point is that, if the petitioning creditor establishes that the statutory conditions are fulfilled, he is prima facie entitled to a bankruptcy order: see In re a Debtor (No 452 of 1948); Ex p The Debtor v Le Mee-Power [1949] 1 ALL ER 652 and the In re a debtor (No 72 of 1982) case, both referred to in Judd v Williams.

19. The court, of course, has the power to adjourn the petition, but the practice is to do so only if there is credible evidence that there is a reasonable prospect that the petition debt will be paid within a reasonable time. There are many statements to this effect in the cases of which the following recent ones are representative:

"A debtor clearly has no right to an adjournment in these circumstances, although it may be that a court would grant one if he could produce convincing evidence that the debt would be paid within a very short period": Anderson v KAS Bank NV [2004] BPIR 685, para 23 per David Richards J.

"A petitioning creditor has the prima facie right to obtain a bankruptcy order on, as this was, a duly presented petition where the liability of the debtor for the petition debt is, as it is here, clearly established. Equally, the court hearing the petition has a discretion to adjourn the petition for payment if, but only if, there is a reasonable prospect of the petition debt being paid in full within a reasonable time. See In re Gilmartin (A Bankrupt) [1989] 1 WLR 513, 516 and much subsequent authority to similar effect. There must be credible evidence to support such a prospect if the court is to grant an adjournment for payment": Harrison v Seggar [2005] BPIR 583, para 7, per Blackburne J.

"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 … Furthermore…. 'There must be credible evidence to support such a prospect if the court is to grant an adjournment for payment'": Ross v Revenue and Customs Comrs [2010] 2 All ER 126, para 72, per Henderson J.
>
> If the debtor does not produce any evidence of his ability to pay, he takes the risk that the court will not accept his bare assertion as to his means and ability to pay: see Dickins v Inland Revenue Comrs [2004] BPIR 718."

27. As noted by Snowden J in Glenn Maud v Aabar Block S.a.r.l. and Ors [2016] EWHC 2175 at [101], this practice

> 'places the onus upon the debtor to produce evidence of his means and ability to pay, and requires the judge to form his own view of whether that evidence justifies giving the debtor a (limited) period of time to pay.'

Other aspects of discretion

28. In exceptional cases, the court may also exercise its discretion to decline to make a bankruptcy order at all: see s.266(3) IA 1986. This may occur where the court is satisfied that the order will serve no useful purpose, for example where there will be no assets available in the insolvent estate for creditors. The debtor faces a heavy burden in persuading a court not to make an order on that basis, however: Glenn Maud (loc cit) per Snowden J at [103]. Even if at first glance there are no assets, the issue of antecedent transactions and any assets capable of recovery under s.284 will invariably fall to be considered.

Adjournment History

29. The petition was presented 2 years and 10 months prior to the hearing before me. It was based upon a statutory demand served over 3 years ago.

30. By the time of the hearing before me, the debtor had been granted at least nine adjournments of the petition, over a period (from the first hearing) of 2 years and 7 months. Between the first hearing of the petition on 8 June 2018 and the transfer of the petition to this court on 3 March 2020, the County Court at Milton Keynes had granted six adjournments of the petition. Following the transfer of the petition to this court, a further three adjournments had been granted. For the most part, these adjournments had been granted for reasons related to the Family Court proceedings including (variously) adjournments to allow time for the next hearing in the family proceedings to take place, or to secure the permission of the Family Court to disclose to the bankruptcy court evidence filed, or orders sought or made, in those proceedings, or to conclude the family proceedings. The last hearing of the petition had taken place on 30 October 2020.

31. Notwithstanding the generous adjournments afforded to the debtor in the past, however, by the time of the hearing before me, his overall financial position

remained, at best, opaque and I was taken to no persuasive evidence of the debtor's ability to pay the petition debt within a reasonable time.

The debtor's evidence

32. In support of his application for a further adjournment of the petition, the debtor referred me to earlier witness statements which he had filed in the proceedings but relied in particular upon the witness statements which he had filed since the last hearing of the matter in October 2020, comprising his 11th statement dated 4 February 2021 and his 12th statement dated 10 February 2021. Partway through the hearing before me, the debtor produced a further statement, his 13th, dated 11 February 2021.

The 11th witness statement

33. The 11th statement provided an update on progress in the family proceedings. Apart from placing much of the blame on the debtor's ex-wife for delays in achieving a final order in the family proceedings (at the time of the statement, a 'holding order' was in place but the final order in the family proceedings had yet to be approved and sealed), it highlighted a further issue raised at a Family Court hearing on 14 October 2020; that a validation order under s.284 IA 1986 would be required. The position at the time of the 11th statement was summarised at paragraphs 10 to 14 as follows:

> '10. I have been awarded, what equates to largely, half of the matrimonial property portfolio; the equity from which will be adequate, not to mention the rental income from the same, to settle my debts. However, as recorded in the recital to the draft Final Order, there remain a number of issues between Ms Flynn [the debtor's ex-wife] and me.
>
> 11. Firstly, and of note, is Ms Flynn's deliberate attempts to obstruct me in receiving the rental income from my share of the matrimonial property portfolio. Ms Flynn asserts that after expenses, there are no funds due to me which, in my view is plainly wrong. Ms Flynn's approach has had a significant and unfair impact on the creditors in these proceedings, as those substantial rental funds could be used to help towards settling my debts and easing the burden on the creditors. I am advised by my legal team, and I accept, that in order to press ahead and resolve all of these ongoing issues, I must take separate legal action in respect of the rental income in short-course.
>
> 12. Secondly, there remains the question as to who should make, and also fund, the S.284 validation application in respect of the draft Final Order. I understand that Ms Flynn is the only beneficiary of such an application in that it protects her position over the other creditors should I be made bankrupt. As such, whilst I am awaiting approval of the draft holding order at the time of making this statement my Solicitors have been engaged with Ms Flynn's Solicitors in correspondence as to the costs of that application - particularly in light of both the delay in

> finalising the draft Final Order, caused by her in action over the last 12 months, and her position in respect of my rental income.
>
> 13. I appreciate that there are certain persons in these proceedings who will claim that I have not been awarded enough to settle my debts. I must stress; however, that a number of creditors claims in this bankruptcy matter are wholly misconceived. If the sums due to the supporting creditors is [sic] to be taken into account at the next hearing in these proceedings, then respectfully, consideration will need to be given to each and every alleged creditor. I respectfully submit that once my share of the matrimonial asset is received, I will be able to deal with the creditors whose debts are properly due.
>
> 14. In the circumstances, I respectfully request that the Petition be adjourned to enable the validation application issue to be resolved and my asset position finally crystallised by way of the final orders, and then for me to address and settle the debts of those creditors whose debts are properly due.'

34. Read as a whole, the 11th witness statement did not state, in terms, when, on the debtor's case, the petition debt would be paid, or how.

35. Whether a final order would be made at all in the family proceedings was uncertain, as it was dependent on s.284 relief being granted.

36. Moreover, even if s.284 relief was granted and the final order made, that of itself would not render readily available any cash assets for the debtor. It was clear from paragraph 11 of the 11th witness statement that, putting the debtor's case at its highest, further legal proceedings were envisaged before the debtor could hope to recover the rental income to which he claimed to be entitled.

37. The position with regard to realisation of the debtor's proposed share of the property portfolio was left entirely opaque. It was not said, for example, that any specific property in the debtor's proposed share of that portfolio was (or was about to be placed) on the market, or at what price, whether a buyer had yet been found, when exchange was envisaged, whether a completion date had been set, or what the net proceeds of sale available to the debtor would be.

38. Overall, the 11th witness statement, considered together with the earlier witness statements filed in these proceedings, did not comprise credible evidence of a reasonable prospect that the petition debt would be paid in full within a reasonable time.

The 12th witness statement

39. The 12th witness statement dated 10 February 2021 exhibited the 'holding order' which by then had been made by the Family Court. The holding order had annexed to

it the draft final order. The draft final order was a long and complex document spanning 22 pages.

40. Annex 1 to the draft final order set out a list of properties ordered to be sold, with net sales proceeds to be used to pay 'the matrimonial element of the outstanding HMRC liability' (of £1.05m plus interests and costs), with half of any balance to be paid to the debtor. No values were given, net or gross, for the properties listed in Annex 1.

41. Annex 2 to the draft final order set out a list of properties to be sold at such price as may be agreed between the debtor and Amanda, with net sales proceeds (after discharge of mortgages, conveyancing costs, and any sums reasonably expended by Amanda in obtaining vacant possession of the properties) to be used to pay off a loan of unspecified amount owed by the debtor under a facility letter dated 22 March 2018 and thereafter in payment of any deficit on the debtor's rental account at the date of sale, with any balance to be paid to the debtor. Again, no values were given, net or gross, for the properties listed in Annex 2.

42. Paragraph 28 of the draft final order provided for an undertaking to be given by the debtor not to raise any further loans or borrowings against any of the properties listed in Annexes 2 and 3 unless Amanda had been released from her mortgage covenants in respect of the properties concerned.

43. Annex 3 to the draft final order set out a list of properties which, in the debtor's words, the Family Court 'intends to award to me when making the draft Final Order final'. Annex 3 listed gross values for the properties totalling £.4.2 million. No net values were given, however, whether in Annex 3 itself or elsewhere in the debtor's 12th witness statement or the documents exhibited to it. During the course of the hearing, it became clear that the net figure was likely to be markedly lower than the gross. Figures exhibited to Mr Mitchell's 4th witness statement, (which had been produced by the debtor to the court at an earlier judgment debtor's questioning, in 2020), suggested that total equity in the Annex 3 properties may stand as low as £1.2 million.

44. On behalf of the debtor, Mr Nacca contended that on current values, total equity in the Annex 3 properties was higher than £1.2 million, but he did not take me to evidence in support of that contention.

45. Mr Nacca went on to argue that, even if equity was assumed to stand at £1.2 million, that would 'cover' the petition debt. There was no evidence before me, however. of how (or when) it was planned to realise any equity sufficient to pay off the petition debt.

46. From paragraph 41 of the draft final order, it was clear that the Annex 3 properties were jointly owned; and that the order requiring Amanda to transfer her legal estate and beneficial interest in the Annex 3 properties to the debtor was (in each case) conditional upon the debtor securing Amanda's release from the mortgages secured on the property.

47. There was no evidence before me confirming a willingness on the part of any mortgage lender to release Amanda from the mortgages secured on any Annex 3

property, or of the terms upon which such release would be granted, or of the debtor's ability to comply with any such terms. Given the debtor's drop in income and reduced credit rating, it could not readily be assumed that release would be forthcoming. The uncertainty surrounding such release was tacitly acknowledged in the draft final order itself. Paragraph 42 of the draft final order provided that, in default of the debtor securing Amanda's release within 12 months, the Annex 3 properties would be placed on the open market for sale, with the debtor and Amanda having joint conduct of the sales. Detailed provision was made in the draft final order for how the net proceeds of sale were to be applied in that event. After discharge of mortgages and conveyancing costs, the net proceeds were to be applied in payment *to Amanda* of any sums reasonably expended in obtaining vacant possession, in payment *to Amanda* of any deficit on the debtor's rental account at the date of sale, in payment *to Amanda* of any sums due to her pursuant to a capital gains tax indemnity provided at paragraph 30, with only any balance thereafter to be paid to the debtor.

48. Overall, on the evidence before the court, it was not possible to ascertain what, in reality, the debtor could hope to receive on a sale of the Annex 3 properties, or how long that process might take. Paragraph 28 of the draft final order also restricted the debtor's ability to raise finance on such properties pending Amanda's release: see paragraph 42 above. Raising finance on such properties in the short-term in order to pay off the petition debt was therefore not an option open to the debtor.

49. Annex 4 to the draft final order set out a list of properties which were to go to Amanda. Paragraph 44 of the draft final order provided for the debtor to transfer all his beneficial interest in the Annex 4 properties to Amanda within seven days of the date of the order. No gross or net values were given for any of the Annex 4 properties.

50. Paragraph 5 of the holding order laid down pre-conditions which would have to be satisfied before the final order would be made. These included validation under s.284 IA 1986 of all dispositions by the debtor in compliance with the orders and undertakings set out in the draft final order. As at 10 February 2021 (the date of the 12th witness statement), no application for a validation order had yet been issued, though the need for such an application had been flagged at a hearing in the family proceedings in October 2020. The debtor blamed his ex-wife for the delay.

51. Paragraph 7 of the 12th witness statement confirmed that the Family Court had listed a further 'Mention' in the family proceedings on 13 April 2021 and exhibited notice of hearing to that effect. The debtor stated that the hearing had been listed 'in anticipation that a validation application will have been made, heard, and the draft Final Order validated, enabling [the Family Court] to make the orders in the draft Final Order and seal the same…'

52. Against that backdrop, by paragraph 14 of his 12th witness statement, the debtor requested that the petition be adjourned until the first available date after 13 April 2021, 'being the date at which it is envisaged the family proceedings will be concluded.' The debtor continued:

> 'The adjournment will enable me and my legal team to give proper consideration to, and make, the validation application and for that application to be listed and heard before the next

> hearing in the family proceedings. An adjournment will also provide the Family Court with the opportunity to consider the outcome of the application and, if as envisaged, make the Final Order in those proceedings.'

53. At paragraph 15, the debtor continued:

> 'Once the Final Order is made and my financial position is crystallised, I will be able to deal with my creditors and settle the debts of those creditors whose debts are properly due.'

In the concluding paragraph of his statement (para 16), he offered an undertaking to make a validation application within 21 days.

54. As with the 11th witness statement, read as a whole, the 12th witness statement did not state when, on the debtor's case, the petition debt would be paid, or how. When I asked Mr Nacca to take me to any evidence of a reasonable prospect that the petition debt would be paid in full within a reasonable time, he took me to Paragraph 41 of and Annex 3 to the draft final order. For the reasons already explored, however, these of themselves do not comprise evidence of a reasonable prospect that the petition debt would be paid in full within a reasonable time.

55. From the terms of the holding order in evidence before me, it was clear that the making of a final order in terms of the draft was conditional upon this court granting s.284 relief validating all dispositions of property to be made by the debtor under the terms of the order. It was far from clear to me, on the evidence before me, that such dispositions would be validated; there were too many unknowns. Moreover even if validation was granted, and a final order made by the Family Court in terms of the draft before me, I was taken to no credible evidence setting out how long it would take, from the date of approval of the final order, for the petition debt to be paid. The bare assertion at paragraph 15 of the debtor's 12th witness statement, quoted at paragraph 53 above, was clearly inadequate for this purpose.

56. There was no evidence to suggest that the petition debt could be paid within a reasonable timeframe from rental income. By his 11th witness statement, the debtor had accepted that there was a dispute between the debtor and his wife over rental income which would have to be resolved in further proceedings. This dispute was also acknowledged in paragraph 21 of the draft final order.

57. There was no evidence to suggest that any sale of the Annex 3 properties would be straightforward either; see paragraphs 46 to 48 above.

58. Overall, the evidence of the debtor set out in his 12th witness statement was opaque on the issue of his financial position and on the question of how and when he proposed to pay the petition debt. As with the 11th witness statement, it was not said that any specific property was or was about to be placed on the market, or at what price, whether a buyer had yet been found, when exchange was envisaged, whether a completion date had been set, or what the net proceeds of sale available to the debtor would be. It was clear that any claim to rental income would have to be the subject of further proceedings.

59. Mr Nacca argued that the debtor was precluded by the Family Court from disclosing to this court a fuller account of his own financial position. I reject that explanation. As confirmed by Mr Mitchell's fourth witness statement, for example, the debtor had felt able to disclose net values of the Annex 3 properties when questioned as a judgment debtor in August 2020 without any difficulty. The Family Court had expressly permitted disclosure of the proposed final order. It was also clear from the terms of the holding order that the Family Court not only permitted, but *required,* a validation application to be made. Any validation application would require full disclosure of the debtor's financial position.

60. Overall, the 11th and 12th witness statement, taken with the debtor's earlier statements, did not comprise credible evidence of a reasonable prospect that the petition debt would be paid in full within a reasonable time.

61. During the course of the hearing, having been taken through the shortcomings of the 11th and 12th witness statements, Mr Nacca took further instructions from the debtor. He then stated, on instruction, that the debtor would settle the petition debt 'within 21 days of the final order in the family proceedings being made'. Absent any evidence of how the debtor would settle the petition debt within 21 days of the final order being made, this was clearly not a sufficient basis on which to grant an adjournment. For reasons already explored, the mere granting of the final order would not free up any cash assets for the debtor and any realisation of Annex 3 properties would plainly take considerably longer than 21 days.

62. At a later stage of the hearing, the debtor offered an undertaking to settle the petition debt within (variously) 28 or 21 days from funds borrowed from his father. On instruction, Mr Nacca stated that the debtor's father had previously been unwilling to lend funds to the debtor given the status of the matrimonial proceedings, but that he was now prepared to lend the debtor money to clear the petition debt. He said that the debtor's father had liquid funds which were readily available.

63. Over the course of the afternoon, the debtor then produced his 13th witness statement. This stated that the debtor's father, who is 86, had 'confirmed that he has approximately £160,000 available in a bank account'. It was clear from the 13th witness statement, read as a whole, however, that the debtor's father had not yet agreed to lend the debtor the funds required to pay off the petition debt. By his 13th witness statement, the debtor stated that his younger brother had telephoned his father that day, advising him not to lend the debtor any money and that the debtor would need to visit his father in person to explain matters fully. Whilst the debtor went on to state that he had 'no doubt' that his father would provide a bank statement confirming available funds and written confirmation of his willingness to assist, the reality was that the debtor wanted a further adjournment in order to allow time for him to visit his father *in the hope* of persuading his father to lend him the funds required to discharge the petition debt.

64. This was too little, too late. In my judgment, the 13th witness statement, considered against the backdrop of the debtor's earlier statements, did not comprise credible evidence of a reasonable prospect that the petition debt would be paid in full within a reasonable time.

65. I am fortified in this conclusion by an urgent message received over the course of the afternoon from the debtor's brother, Russell Armstrong. The message read as follows:

'To whom it may concern

> I, Russell Winston Armstrong, of the above address and brother to Glenn Armstrong makes this statement and is true my best belief and knowledge [sic] in the knowledge that as a sworn statement I am liable to court proceedings and perjury if anything I say is untrue.
>
> I have had a lengthy conversation with my father, Donald John Armstrong this afternoon, following on from this morning's hearing
>
> I have been told by my father that he has been asked by Glenn to provide a bank statement to Glenn.
>
> My father has told me that he would absolutely not be willing to provide Glenn with the funds to lend to him to pay off the lead petitioner, knowing that it does not end the matter of Glenn's bankruptcy and that due to other petitioners, merely delays further bankruptcy hearings
>
> I would wish the court to know that my father and mother are not in good health, my mother has Alzheimer's, and my father has his own health issues. Both myself, and my two sisters as signed Attorneys to my mother's and father's financial affairs, …. are of the opinion that 'lending' Glenn the money at this stage would impact on their ability to fund any future care for themselves, as such I would have no hesitancy in putting a motion that my father would have been coerced by Glenn or his wife or emotionally blackmailed into any decision in Glenn's favour.
>
> The money that my mother and father have, is for their future and final years and I must state that I most strongly object to Glenn putting my parents under such huge strain by asking them to lend Glenn the said money, when it is of Glenn's volition to not conduct himself in the correct financial manner
>
> For the last few years, it has been my observation that both Glenn and his wife have been spending lavishly without any due regards to the debts they have been amassing.
>
> I am available to address the court if they should so wish to this afternoon to give sworn statement verbally
>
> yours sincerely [etc]'

66. Naturally I am mindful of the fact that, given the timing of these developments, the debtor did not have an opportunity to file further evidence in answer to the points raised by his brother's letter. Even taking that into account, however, and putting to one side the allegations contained within it of potential elder abuse, the letter does confirm that any attempt by the debtor to borrow sums from his father to pay off the petition debt would be a matter of some controversy within the family and would be objected to by other family members. That opposition is in turn relevant to the likelihood of the debtor being able to pay off the petition debt within a reasonable time using funds borrowed from his father.

Other aspects of discretion

67. For the sake of completeness, I confirm that I have also considered whether this is an appropriate case in which to exercise my discretion to decline to make a bankruptcy order at all (s.266(3) IA 1986) and have concluded that it is not. There are clearly assets in the insolvent estate which may be realised by an office-holder for the benefit of the creditors. I was taken to no credible evidence suggesting a better outcome for creditors if a bankruptcy order is not made. Quite the contrary, the evidence which I have read suggests that the creditors as a whole are likely to benefit from the making of an immediate bankruptcy order and the investigation of the debtor's past dealings which will follow.

Conclusions

68. The petition debt is undisputed. All creditors who gave notice of intention to appear on the petition were given an opportunity to file evidence, attend the hearing and address the court. I have considered their written evidence and their oral submissions. There are no opposing creditors. No supporting creditor spoke in favour of an adjournment. All supporting creditors who expressed a view supported the making of a bankruptcy order immediately. I was taken to no credible evidence suggesting a better outcome for creditors if a bankruptcy order is not made. The evidence which I have read suggests that the creditors as a whole are likely to benefit from the making of an immediate bankruptcy order and the investigation of the debtor's past dealings which will follow. The debtor has been afforded ample opportunities to pay off the petition debt and has failed to do so. I was taken to no credible evidence of a reasonable prospect that the petition debt will be paid in full within a reasonable time.

69. For all these reasons, I refused the debtor's application for a further adjournment and made a bankruptcy order at 16.30 on 11 February 2021.

ICC Judge Barber

24 March 2021