Neutral Citation Number: [2020] EWHC 1469 (Ch)

Case No: BR-2014-002375 and BR-2015-001180

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Rolls Building
Fetter Lane, London,
EC4A 1NL

Date: 8 June 2020

Before :

MR JUSTICE SNOWDEN

- -

IN THE MATTER OF GLENN MAUD

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

(1) EDGEWORTH CAPITAL (LUXEMBOURG) S.A.R.L. **(2) THE LIBYAN INVESTMENT AUTHORITY**	**Petitioners**
- and -	
GLENN MAUD	**Debtor**

- -

Jonathan Nash QC (instructed by **Farrer & Co LLP**) for Edgeworth Capital (Luxembourg) S.A.R.L.
Stephen Robins (instructed by **Hogan Lovells International LLP**) for The Libyan Investment Authority
Joseph Wigley (instructed by **Bryan Cave Leighton Paisner LLP**) for Mr. Maud
Andrew Rose (instructed by **Joseph Hage Aaronson LLP**) for Navarro Ventures S.A.R.L.

Hearing date: 20 May 2020

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Approved Judgment

COVID-19: 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 10.30 a.m. on Monday 8 June 2020.

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MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

1. On 24 April 2020 I handed down a judgment on two bankruptcy petitions against Mr. Glenn Maud ("Mr. Maud"): [2020] EWHC 974 (Ch) (the "Judgment"). The petitions were brought separately by the Libyan Investment Authority (the "LIA") and by Edgeworth Capital (Luxembourg) SARL ("Edgeworth"). The background to the two petitions is lengthy and complex. It was set out in the Judgment and I do not intend to repeat it here in any detail. I shall, however, give a brief summary and shall use the same abbreviations herein as in the Judgment.

The Judgment

2. In my Judgment I noted that the LIA's petition was first in time, was presented as long ago as 2014, was in relation to an undisputed debt, and there was no suggestion that it has ever been pursued for an improper purpose. As such, I found that as against Mr. Maud, the LIA was entitled to a bankruptcy order *ex debito justitiae.*

3. As a bankruptcy order is a class remedy, I then considered the views of the creditors who appeared to support and oppose the making of an order. I determined that the views of the LIA and Edgeworth who wished to see a bankruptcy order made were rational, and that the views of Navarro, which had wished to give Mr. Maud more time to "monetise his position of influence" as a shareholder of Ramblas no longer carried any weight following sale of the Santander Asset to Sorlinda and distribution of the proceeds by the Insolvency Administrator.

4. I therefore decided to exercise my discretion to make a bankruptcy order on the LIA Petition in accordance with the wishes of the majority in number and value of the creditors who had appeared. I also rejected Mr. Maud's argument that it would be pointless to make him bankrupt because he claimed to have no material assets apart from his shares in Ramblas.

5. Although I did not intend to make an order on Edgeworth's Petition, which was later in time than that brought by the LIA, I had heard evidence and full argument on it. I therefore also dealt with Mr. Maud's and Navarro's main argument on that petition, which was that at all times Edgeworth had been seeking a bankruptcy order for an improper collateral purpose and that the petition should be struck out as an abuse of process.

6. Mr. Maud contended that at all times Edgeworth has not been interested in being repaid the debt that he owes it through the bankruptcy process, but has been seeking a bankruptcy order to trigger pre-emption provisions in Ramblas' articles. The relevant article in that respect is article 12.1(b) which provides that if Mr. Maud loses the right to dispose of his property (which it is common ground would be the effect of the vesting of his property in a trustee in bankruptcy) his shares must be offered to the other shareholder(s).

7. The procedure that will then be followed to determine the price is set out in article 11.6 which provides,

> "The price of the offered shares shall – unless all parties agree otherwise in joint consultation – be determined by one or more

> independent experts to be appointed by the offeror and the co-shareholders in joint consultation. If the offeror and the co-shareholders are unable to agree on this within fifteen days … the willing party shall request the local sub-district court at which the company has its corporate seat to appoint three independent experts to determine the price…"

8. Article 12.6 then provides that in a case under article 12.1(b) the offer cannot be withdrawn and the offeror may retain only the shares with respect to which the offer is not taken up. Article 11.9 also provides that the offeror may freely transfer the offered shares within three months of being notified that the offer has not been taken up, or has not been taken up in full, provided that the shares are not transferred for a lower price than the price determined in accordance with the articles.

9. Mr. Maud's argument was that the operation of the articles requiring his shares to be offered to the other shareholder of Ramblas (Mr. Quinlan) would be to the detriment of his creditors, either because it would enable his shares to be acquired by Edgeworth for less than their true value and/or because it would prevent him from "monetising" his position as a shareholder. The former contention depended in part upon an assertion that Edgeworth has various rights against Mr. Quinlan under the Deed of Sale and Adherence which would enable Edgeworth to require Mr. Quinlan to exercise the right of pre-emption and then acquire the Ramblas shares. The second contention was based upon assertions by Mr. Maud to the effect that he had the opportunity to earn money from his position as a shareholder. That contention has been made on various bases from time to time, first on the basis that he might participate in a rival bid for the Santander Asset in the Spanish insolvency, and more recently, after Sorlinda was declared the winner of the auction to acquire the Santander Asset, on the basis that he might participate in an attempt to forestall completion of that sale by taking the Marme Group out of insolvency by paying or reaching an agreement with all of its creditors pursuant to Section 176 of the Spanish insolvency law.

10. In my Judgment I rejected these arguments, finding (i) as a fact that at all times Edgeworth's purposes included recovering the debts which Mr. Maud owes it through the bankruptcy process (the "payment purpose") and (ii) that although Edgeworth admitted that one of its purposes in seeking a bankruptcy order had been to trigger the provisions in the articles of Ramblas so as to force Mr. Maud to offer his shares for sale, there was no credible evidence that this would cause any prejudice to Mr. Maud's creditors as a class, and hence it did not constitute an abuse of the bankruptcy process.

11. On these points, I noted that when Mr. Maud applied to set aside the statutory demand against him at the outset on the basis of abuse of process, Rose J rejected that challenge, observing, at [2015] EWHC 1625 (Ch) at [30],

> "…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."

Permission to appeal that judgment was subsequently refused by Gloster LJ.

12. I also observed that none of Mr. Maud's various plans to "monetise his position" had been supported at the relevant times by any substantial evidence of any rights to benefit from arrangements with a bidder for the Santander Asset or a potential participant in a Section 176 offer, and none of the various plans had in fact come to anything. Most recently, no bid involving Mr. Maud materialised under Section 176. Instead, the sale of the Santander Asset to Sorlinda pursuant to the court-approved auction was completed last year, and the proportion of the proceeds of sale allocated to Ramblas for payment of its creditors (in part) was distributed by the Insolvency Administrator in January this year.

13. In my Judgment I therefore refused to strike out or dismiss the Edgeworth Petition as an abuse of process, and indicated that if I had not been minded to make a bankruptcy order on the LIA petition, I would have done so on Edgeworth's Petition.

The Interest Claim

14. When I handed down my Judgment indicating my intention to make a bankruptcy order on the LIA Petition, I expressly did so subject to any arguments as to a stay pending appeal, and I adjourned all consequential issues to a further hearing which was fixed for 20 May 2020 (the "Consequentials Hearing").

15. Prior to that hearing, Mr. Maud prepared and circulated draft grounds of appeal and filed further evidence, including evidence relating to the Interest Claim. Edgeworth responded to that evidence.

16. The Interest Claim issue had first been raised by Mr. Maud in mid-2019, after I had reserved judgment on the petitions. The Interest Claim has been brought by Mr. Maud and Mr. Quinlan in Spain and is based upon two decisions of the Spanish Supreme Court in unrelated litigation as to the level of interest that can be claimed by secured creditors in a liquidation. Those decisions are said to have the result that there might be lower claims for interest in the Marme liquidation than had been admitted by the Insolvency Administrator in respect of various creditors. Since the bid from Sorlinda had been based on the premise that it would pay all of the admitted debts of Marme and Delma, Mr. Maud and Mr. Quinlan allege that this saving of interest will result in surplus monies from the purchase price which could be retained or recovered by Marme and passed up the corporate and debt ladder to Ramblas. My understanding is that this analysis is disputed by the secured creditors themselves. It is also disputed by Sorlinda, which asserts that if there are any surplus monies, they should be returned to it and not retained by the Marme Group.

17. Although the Interest Claim had not been addressed in argument or evidence at the hearing of the petitions in February 2019, it was addressed in subsequent correspondence between Mr. Maud and Edgeworth which was copied to me. In that correspondence, Mr. Maud also raised a number of other points concerning Edgeworth's status as a creditor following distribution by Ramblas of its share of the proceeds of the Sorlinda bid.

18. In my Judgment I considered and dismissed Mr. Maud's points relating to Edgeworth's continued status as a creditor. There is no appeal against my decision in those respects.

19. I also dealt briefly with the Interest Claim in the context of whether it might cause a creditor rationally to support a further adjournment of the LIA Petition. I thought that it would not, saying, at paragraph 110,

> "Thirdly, the Interest Claim is in any event simply a hard legal argument under Spanish law over the destination of a finite sum of money. As an independent office-holder, a trustee in bankruptcy can take an objective view of the claim on the basis of Spanish legal advice (cf. Ebbvale Limited v Hosking [2013] UKPC 1) and if it has any merit, can progress it and factor it into the sale price for Mr. Maud's shares in Ramblas pursuant to the pre-emption provisions in the articles, which if not agreed, is to be determined by three independent experts. As such, pursuit of the Interest Claim is quite unlike the suggestion that Mr. Maud should be allowed more time to "monetise his position of influence" as a shareholder of Ramblas in the more intangible manner which found favour with some of his creditors on previous occasions."

The draft grounds of appeal and/or review of my decision

20. Mr. Maud's draft grounds of appeal first assert that I was wrong not to strike out the Edgeworth Petition as an abuse of process (a) because I applied the wrong legal test, and/or (b) because I was wrong to conclude that Edgeworth's admitted collateral purpose was not likely to cause material detriment to Mr Maud's general body of creditors, and/or (c) because I was wrong to conclude that there was no evidence that Edgeworth had any further collateral purpose in pursuing its petition. Secondly, the draft grounds of appeal contend that my determination of the class question on the LIA Petition was flawed, primarily because I failed to take into account Edgeworth's allegedly improper collateral purpose in assessing the weight to be attached to its support for the LIA Petition, but also because it is said that I failed to take into account that there would be no obvious benefit to creditors of an immediate bankruptcy order.

21. I shall consider those draft grounds of appeal further below, reminding myself that the relevant test is whether there is a realistic prospect of them succeeding on an appeal. However, as an alternative to asking for permission to appeal, Mr. Wigley raised the further possibility that if I made a bankruptcy order on the basis of my Judgment, Mr. Maud would issue an application for a review of that order under section 375 of the Insolvency Act 1986 ("Section 375") which empowers a court exercising the bankruptcy jurisdiction to review, rescind or vary any order made by it.

22. In support of his proposal to invoke Section 375, Mr. Wigley submitted that such an application would have real prospects of success,

> "in light of the detailed evidence as to the nature, prospects and potential consequences of the Interest Claim, which is now before the Court and which the Court did not have the benefit of at the time of the 2019 hearing or at any time prior to the hand-down judgment".

23. Indeed, on analysis it is clear that some of the draft grounds of appeal really amounted to a request for consideration of new material before making a bankruptcy order. For example, the suggested ground of appeal summarised at paragraph 20(c) above – that I was wrong to conclude that there was no evidence that Edgeworth had any further collateral purpose in pursuing its petition – was advanced on the basis that,

> "Had the Judge taken proper account of [the matters alleged in relation to the Interest Claim and the security held by Edgeworth over Mr. Maud's Ramblas shares] he would and should have concluded that, notwithstanding the fact that the distribution of monies from the insolvency of the Marme Group had been completed, the emergence since the 2019 Hearing of the Interest Claim, which while not yet addressed in evidence the Judge had been informed of in updating correspondence received from Mr Maud's solicitors, at least potentially supported Mr Maud's contention that Edgeworth had a further collateral purpose in pursuing its petition, namely to obtain Mr Maud's Ramblas shares for itself, whether by means of Mr Quinlan's pre-emption rights and the terms of the Deed of Sale or by asserting its security over them and outbidding any third party bidder…"[1]

24. The power of a court under Section 375 to review, rescind or vary any order made by it under its bankruptcy jurisdiction presupposes that a bankruptcy order has actually been made. It also generally requires there to have been some material change in circumstances after the time at which the order was made. If there is no such change, the power under Section 375 is plainly not intended to be an alternative to, or to subvert the proper processes of an appeal: see e.g. Amhed v Mogul Foods [2007] BPIR 975 at [23] referring to Papanicola v Humphreys [2005] 2 All ER 418 at [25]-[28]. On that basis, in circumstances in which, before making any bankruptcy order, I have now been presented with what Mr. Maud contends is detailed evidence and submissions as to the alleged relevance of the Interest Claim, it would not seem appropriate for Mr. Maud to have subsequent recourse to an application under Section 375, as well as seeking to appeal.

25. Instead, it appears to me that this is an appropriate case in which, having indicated an intention to make a bankruptcy order, but not yet having done so, I should also exercise the so-called "Barrell" jurisdiction, named after the decision in re Barrell Enterprises [1973] 1 WLR 19. The jurisdiction was considered by the Supreme Court in re L (Children) [2013] 1 WLR 634, in which Baroness Hale confirmed that it has long been the law that a judge is entitled to reconsider a decision at any time before the order giving effect to it is drawn up and perfected by being sealed. She indicated, at

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[1] Although the draft grounds of appeal sought to support that argument by referring to paragraph 81(1) of Mr Maud's Skeleton Argument for the 2019 Hearing, that paragraph 81(1) was plainly referring to an earlier stage of proceedings at which it was contended that Edgeworth was seeking,

> "To obtain Mr Maud's Ramblas shares by means of Mr Quinlan's pre-emption rights and the terms of the Deed of Sale and Adherence and thereby to further their own prospects of acquiring the Santander Asset." (emphasis added)

paragraph 27, that there is no requirement that there should be exceptional circumstances before the judge should decide to do so, that each case would turn on its own facts, and that the overriding objective is to deal with the case justly. Some of the relevant factors that Baroness Hale indicated might feed into such a decision would be whether any party had acted to their detriment in reliance upon the judgment, and whether new facts had been discovered after judgment had been given.

26. In the instant case, no party can have acted in reliance upon my Judgment, the conclusion of which was couched in terms of an intention to make a bankruptcy order, but subject to argument at the Consequentials Hearing. There has also been a much fuller exposition of the background to the Interest Claim in the evidence filed than I had in correspondence prior to giving my Judgment, and the skeleton arguments address the potential relevance of the issue.

27. I am also very conscious of the need to avoid a situation in which there might be a parallel appeal and an application under Section 375. That would plainly be confusing, wasteful of the time and resources of the parties and the courts, and in an extreme scenario might even lead to inconsistent decisions. I therefore shall reconsider the relevant parts of my analysis in light of the new materials now placed before me relating to the Interest Claim, as well as considering whether there is a realistic prospect of success on an appeal against my decision.

(a) The law on abuse of process

28. Mr. Maud's contention that I erred in law in failing to strike out the Edgeworth Petition is based on an assertion that I should have applied a different legal test which Mr. Wigley suggested can be derived from paragraph 33(d) of the advice of the Privy Council in Ebbvale v Hosking [2013] UKPC 1. Apart from this point, there is no challenge in the draft grounds to my finding of fact that both before and after Ms. Martin joined Edgeworth in 2016, one of Edgeworth's purposes has been the payment purpose of recovering the debts owed to it by Mr. Maud through the bankruptcy process.

29. The legal test which it is said that I should have applied is said to be to ask the following questions,

    i) whether a bankruptcy order was objectively likely to be of substantial advantage to the petitioner in its capacity as petitioning creditor; and

    ii) if so, whether securing such advantage was at all times one of the petitioner's purposes.

    The draft grounds of appeal contended that if the answer to either question is 'no', the court must conclude that the petitioner does not have a legitimate purpose at all times in presenting and proceeding with the petition.

30. Although advanced in the grounds of appeal, this was not the legal test which was advanced in argument on behalf of Mr. Maud or Navarro. To the contrary, Mr. Wigley's skeleton argument for the 2019 Hearing expressly adopted my analysis of law from my earlier judgments (the Appeal Judgment and the June 2018 Judgment) and submitted that the correct approach in law was as follows,

> "(1) a petitioner abuses "the process of the court in seeking a bankruptcy order or a winding-up order for a purpose which is contrary or alien to the nature of the class remedy that he is purporting to invoke" (para 115 of the Appeal Judgment);
>
> (2) a petition will not be an abuse of process, however, if in addition to wishing to receive a dividend on his debt in the bankruptcy together with other creditors, the petitioner has a collateral purpose which is not shared with the other creditors but which will not cause them any detriment if achieved (see para 82 of the June 2018 Judgment);
>
> (3) however, if a creditor has such a collateral purpose which would operate to the detriment of the class, he cannot save his petition by protesting that he would still wish to receive a dividend upon his debt in the bankruptcy, because the effect of his achieving his collateral purpose would be to reduce that dividend for all creditors (see para 83 of the June 2018 Judgment); and
>
> (4) a petition would be an abuse of process if it was being pursued, not to recover the petition debt at all, but solely for an extraneous purpose, even though that did not harm the interests of creditors (see para 84 of the June 2018 Judgment)."

31. That approach was consistent with the analysis of the authorities by Rose J when refusing to set aside Edgeworth's statutory demand (for which Mr. Maud was refused permission to appeal by Gloster LJ). It was also essentially the test that I applied in my Judgment: see paragraphs 137-141.

32. I also do not consider that the test now proposed by Mr. Wigley was laid down in Ebbvale v Hosking. In that case, the petitioner, Mr. Hosking, was the trustee in bankruptcy of an individual who was thought beneficially to own a service station in England and who had attempted to hide it from his creditors. Mr. Hosking brought proceedings in England seeking a declaration that the service station was owned by the bankrupt, and joined as a defendant a Bahamian company, Ebbvale, which appeared to be making a rival claim to the property. Shortly before the English action was due to be heard, Mr. Hosking acquired a claim against Ebbvale from a third party and presented a winding-up petition against it in the Bahamas. Ebbvale unsuccessfully sought to have the petition dismissed as an abuse of process, and the Bahamian court made a winding-up order. The company appealed to the Privy Council, contending that the petition was an abuse of process.

33. In its advice, the Privy Council referred to a series of cases including, in particular, the decision of Harman J in Re a Company [1983] BCLC 492 in which the collateral purpose of the petitioner in presenting a petition was to enable the company's landlord to forfeit a lease which was the major asset owned by the respondent company: the petitioner then wished to obtain a new lease from the landlord for itself. As Harman J said, finding that the petition was an abuse of process,

> "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."

34. Having examined the law and given no indication of formulating any different test, Lord Wilson then stated in paragraph 33,

> "33. The conclusions of the Board are as follows:
>
> (a) It has no view about where the merits of the English action between Mr Hosking and the company lie.
>
> (b) There is no doubt that Mr Hosking's purposes in presenting the petition for the company to be wound up were intimately related to the English action.
>
> (c) It is indeed probably the case that Mr Hosking regarded a winding-up order as likely to be of advantage to him in his capacity as the claimant in the English action as well as in his capacity as the petitioning creditor. For the company's continued defence of the action was leading him to incur very substantial costs in its continued prosecution and was thus generating a potential increase in its total liability to him and a corresponding increase in the risk that such could not be met. In his capacity as claimant in the action Mr Hosking therefore probably considered it advantageous to secure a winding-up order which might lead to his saving of some such costs.
>
> (d) But a winding-up order was also, objectively, likely to be of substantial advantage to him in his capacity as the petitioning creditor; and to secure such an advantage was the other of his purposes. It is not necessary that it should have been his principal purpose: see In re Millennium Advanced Technology Ltd [2004] EWHC 711 (Ch), [2004] 1 WLR 2177 at para 42 (Michael Briggs QC sitting as a deputy High Court judge).
>
> (e) For Mr Hosking, as trustee, was a large creditor of the company; his debt was contingently unsecured and he was not even in receipt of interest. It was in the interests of the insolvent company, and in particular of himself in that capacity, that, before it proceeded, from some source or other, to incur yet further indebtedness with which to fund the maintenance of its defence at a trial estimated to last for seven or eight days, a professional decision should be taken on its behalf about the further conduct of the defence and, in the light of the latter's apparent strength or otherwise, about the terms of any

> compromise which it would be commercially sensible for it to propose to Mr Hosking.
>
> (f) In its defence of the winding-up petition the company therefore failed to establish that Mr Hosking's petition represented an abuse of the process of the court and failed to displace his entitlement to an order."

35. Having regard to the entirety of paragraph 33 of the Privy Council's advice, I believe that it is quite clear that at the start of sub-paragraph 33(d) Lord Wilson was not purporting to set out a new legal test based upon some objective assessment of substantial advantage as Mr. Wigley submits. It is inconceivable that in one short sentence, Lord Wilson intended to formulate a new legal test that he had not previously mentioned when considering the authorities, and which he did not either specifically identify as the relevant legal test, or explain further.

36. Rather, I believe that the Privy Council was simply identifying and commenting on two of the purposes for which Mr. Hosking had brought the petition, and was concluding on the facts that neither of them made the petition an abuse of process. The first purpose, identified in sub-paragraph 33(c), was that as claimant in the action, Mr. Hosking probably thought that a winding-up order would result in a saving of his own costs and expenditure on the English claim. In seeking to achieve this purpose, Mr. Hosking did not stand together with the other creditors: but neither was there any suggestion that it would prejudice the class of creditors in the way that the forfeiture of the lease would have done in Re a Company.

37. The second purpose which Lord Wilson identified in sub-paragraph 33(e) was to have a professional decision taken, in the interests of the company and hence of all its creditors, as to whether the company should continue to incur further costs in defending the English claim. In pursuing that purpose, Mr. Hosking stood together with the other creditors, and it is clear that Lord Wilson regarded it as a proper purpose. As such, when Lord Wilson observed in sub-paragraph 33(d) that this second purpose would, objectively, be for the substantial advantage of Mr. Hosking in his capacity as a creditor, I believe that he was doing no more than stating the Privy Council's view on the facts that it was a material purpose, before confirming that it did not need to be Mr. Hosking's principal purpose in order to rebut the suggestion that the petition was an abuse.

38. Indeed, when Mr. Wigley addressed me at the February 2019 hearing on sub-paragraph 33(d), he did not suggest that Lord Wilson was propounding a legal test rather than simply testing Mr. Hosking's statement of his purpose on the facts of the case. Mr. Wigley drew my attention to the fact that Mr. Hosking had claimed that his admitted purpose of trying to get the company wound up was not because a liquidator would be likely to be a weaker opponent in the English litigation, but because a liquidator would direct the company's defence of the action in a more responsible manner, which Mr. Hosking said would be for the benefit of all creditors: see paragraph 29 of the Privy Council's advice. Mr. Wigley then characterised sub-paragraph 33(d) as Lord Wilson saying, "well, in order to inform the court as to the reliability of that statement of that evidence that it was in the creditor's interest qua creditor, I look at the objective question as to whether there is a benefit in his private interests as a creditor".

39. For these reasons I do not consider that there is any realistic prospect of a successful appeal on the basis that I applied the wrong legal test in determining whether the Edgeworth Petition was an abuse of process.

(b) Detriment to Mr. Maud's creditors

40. Apart from the assertion that I applied the wrong legal test on abuse of process, all of the other draft grounds of appeal have one central common feature. That is set out in paragraphs 9 to 11 of the draft grounds, and criticises my conclusion that Edgeworth's admitted collateral purpose of using the bankruptcy petition to trigger the provisions of Ramblas' articles to cause Mr Maud to offer for sale his shares in Ramblas was not likely to cause material detriment to Mr Maud's general body of creditors.

41. In support of that contention, Mr. Maud relies on (i) the fact that Edgeworth continues to hold the Share Pledge over his Ramblas shares securing the outstanding balance of about €69 million owed by Ramblas to Edgeworth under the Junior Loan, (ii) what are said to be the prospects for success in the Interest Claim, and (iii) what is said to be the difficulty in valuing those prospects at this stage in the litigation under the pre-emption provisions of the Ramblas articles.

42. Paragraph 11 of the draft grounds of appeal summarises Mr. Maud's contentions as follows,

> "(1) in the event of a sale of Mr Maud's shares being forced by his bankruptcy, the price to be agreed and/or determined for the sale of such shares would be depressed and, in any event, all proceeds from any such sale would accrue to the benefit of Edgeworth not Mr Maud's general body of creditors; and
>
> (2) in the event of no bankruptcy order being made against Mr Maud and accordingly Mr Maud retaining his Ramblas shares, there was at least the possibility of:
>
> > (a) the security over Mr Maud's Ramblas shares being discharged in full and, therefore, the proceeds of any sale of such shares accruing for the benefit of Mr Maud's general body of creditors; and
> >
> > (b) the value of Mr Maud's Ramblas shares increasing and, potentially, increasing very substantially."

43. In his evidence and submissions, Mr. Maud contends, on the basis of evidence from his Spanish lawyer, that the maximum value of the Interest Claim to Ramblas (i.e. the interest savings which would flow up the group) would be about €426 million. His computation is that this would be available to repay the outstanding balance on the Junior Loan of about €69 million and the Shareholder Loans of €148.5 million (including €37.5 million to Mr. Maud), leaving a potential surplus of over €206 million available to him and Mr. Quinlan as shareholders (i.e. €103 million each). Mr. Maud thus calculates that he could receive a total in excess of €140 million (€103 million + €37.5 million) if he is not made bankrupt and the Interest Claim succeeds.

44. None of these detailed contentions relating to the Interest Claim had been made to me at the hearing in 2019 for the simple reason that the decisions of the Spanish Supreme Court upon which Mr. Maud bases the Interest Claim had not been made. Further, although some reference was made to the Interest Claim in the subsequent correspondence from Mr. Maud's solicitors after I had reserved judgment, this level of detail was not given. Moreover, none of these points were taken up in correspondence by Navarro, to which all of the relevant letters were copied.

45. As indicated above, the first point made by Mr. Maud in relation to the Interest Claim concerns the security which exists over his Ramblas shares in favour of Edgeworth. Mr. Maud contends that the existence of that security means that Edgeworth can outbid any other bidder by offering to release any payment from the security and that accordingly there will be no realistic competition for the shares and the price will be depressed.

46. I do not accept that proposition. The background to this contention is the procedure in the articles of Ramblas which I have set out above under which Mr. Maud would be forced to offer his shares in Ramblas for sale if he were to be made bankrupt and lose the power to dispose of his assets. It is also clear that following the sale of the Santander Asset and distribution of the proceeds, the Ramblas shares have no remaining strategic value in relation to that asset: their value depends entirely on the likelihood of success of the Interest Claim. As I indicated in my Judgment, a trustee in bankruptcy can take advice on that subject and if, following the pre-emption provisions being activated, negotiations with Mr. Quinlan (who may or may not be contractually obligated to Edgeworth in that respect) do not produce an agreed figure, there is a valuation mechanism in the articles of Ramblas for the price ultimately to be fixed by three independent experts appointed by a court. This figure will then be the minimum price for which the shares can be sold.

47. The fact that Edgeworth has a charge over the shares to secure a debt of €69 million may mean that if Edgeworth itself wishes to bid for the shares, it will more easily be able to afford to pay up to €69 million by offering to waive its security. But that does not mean that a third party bidder, who believes that the Interest Claim has significant value, cannot make a better offer for the shares in excess of that amount. Moreover, and in any event, the shares cannot be sold for less than Mr. Maud's trustee in bankruptcy agrees or the independent experts determine is their fair value. That figure is not defined by the amount of Ramblas debt still secured on them.

48. The second point made by Mr. Maud is that if he is not made bankrupt, any surplus monies flowing up to Ramblas will be used to discharge the balance of the Junior Loan before a distribution of the surplus to the two shareholders, so that the burden of satisfying Ramblas' remaining debt to Edgeworth would be borne equally by both shareholders. In argument, Mr. Wigley contrasted that with what he said would occur if Mr. Maud was made bankrupt and the proceeds of his shares alone would be used to discharge the remaining debt owed by Ramblas to Edgeworth.

49. I also reject that argument. If Mr. Maud is made bankrupt and the proceeds of sale of his shares are used to repay Ramblas' debt to Edgeworth, on ordinary principles of English law (which Mr. Wigley accepted I should apply in the absence of any evidence that the relevant foreign law would be any different) this would simply result in Mr. Maud's trustee in bankruptcy having a subrogation claim against Ramblas for an

indemnity. That creditor claim would then rank for full payment from any monies resulting from the Interest Claim in priority to any distribution to shareholders. In this way any inequality will be eliminated before any surplus proceeds of the Interest Claim are distributed to shareholders.

50. The third point made by Mr. Maud is that a trustee in bankruptcy would be likely to have difficulty "in ensuring that Mr. Maud's Ramblas shares are sold for fair market value at any time" because (i) "it is inherently difficult to value the potential benefit of any claim, in contrast to a tangible asset or one for which there is a recognised market", and (ii) "the Interest Claim is in its early stages and is brought on a novel basis .. [so] .. it is extremely unlikely that it would now be valued at anything approaching the potential value of the proceeds that would accrue were the Interest Claim to succeed".

51. I accept, at least in general terms, that valuing a contingent asset such as the Interest Claim is more difficult than valuing a tangible asset, but I do not accept the remainder of this argument. In particular, I do not accept that a trustee in bankruptcy would be unable to ensure that Mr. Maud's Ramblas shares are sold for fair market value.

52. The thrust of Mr. Maud's argument appears to be an assertion that any discount from the maximum amount claimed in the Interest Claim would undervalue the Interest Claim and hence the Ramblas shares. Taken to its logical conclusion, that would mean that the only way to get full value for the Ramblas shares would be to wait for however long it takes for the Spanish courts to resolve the Interest Claim to see if it succeeds or not. But that is not a determination of "fair market value", which is the price at which a willing buyer and a willing seller would agree to buy and sell an asset now. It is perfectly possible to fix the fair market value of an asset which is subject to a contingency by applying a discount which reflects the views of a willing buyer and a willing seller as to the likelihood of the contingency being satisfied. It is not necessary to wait for the outcome to attribute a fair value to the asset.

53. In this regard I should also repeat a point that I made in paragraph 110 of my Judgment. The Interest Claim is essentially a legal dispute, which turns upon the provisions of Spanish insolvency law and the terms of the Sorlinda bid. There is no obvious factual issue or investigation to be done which could add materially to the uncertainty of the outcome. Although the parties agreed that I could not reach a view of the merits of the litigation on the basis of the evidence of Spanish law put before me by lawyers instructed by Mr. Maud and Edgeworth, a trustee in bankruptcy would be in a position to take appropriate advice from independent Spanish lawyers and to reach a view on the prospects for the litigation as the foundation for a fair price to be fixed for the shares under the articles of Ramblas.

54. Mr. Maud's argument that detriment would necessarily or likely be caused to his creditors if his Ramblas shares are sold also appears to assume that the continued pursuit of the Interest Claim whilst he remained the holder of his Ramblas shares would be at no cost to his creditors. That is an unlikely assumption, and not one that I am willing to make in the absence of any evidence from Mr. Maud as to how the pursuit of the Interest Claim would be organised and funded.

55. When I raised the question of what role Mr. Maud would be required to play in the Interest Claim and as to how it was to be financed, I was simply told that Mr. Maud did not need to be actively involved other than to remain as a shareholder in Ramblas, and

that the Interest Claim could continue to be advanced by Mr. Quinlan without his input. I was also directed to a short statement by Mr. Maud in his evidence to the effect that, to the extent that they have been paid, the legal fees of the (extensive) litigation in which Mr. Maud has been involved in England and Spain since 2015 have exclusively been paid by (unidentified) third parties. Nothing was said, however, about how the costs of the Interest Claim were to be met going forward.

56. For my part I do not understand why or how Mr. Quinlan would simply be prepared to run and fund the Interest Claim on his own, and thus give Mr. Maud a free ride. Still less do I understand why any (unidentified) third party funder would put up money for that purpose without imposing any obligations upon Mr. Maud or seeking a share of the proceeds in return.

57. For these reasons, I do not consider that the bringing of the Interest Claim means that Mr. Maud has established that Edgeworth's admitted purpose of seeking to make him bankrupt to trigger his obligation to offer his shares in Ramblas for sale under its articles is likely to result in detriment or prejudice to his creditors as regards the realisation of his assets.

(c) Further collateral purpose

58. On the basis of the legal principles to which I have referred, the alleged further collateral purpose of Edgeworth of making Mr. Maud bankrupt in order to acquire his Ramblas shares would, assuming it to be true, nevertheless not amount to an abuse of process by Edgeworth unless it was coupled with at very least the likelihood of prejudice being caused to his creditors. But as I have indicated, there is no basis for such a finding in light of the provisions of the Ramblas articles which are designed to ensure that a proper price is paid. Moreover, the fact that Edgeworth might be in a position as a result of holding security over those shares more easily to raise the finance to outbid other interested parties cannot amount to an abuse of process provided that the price that it ends up paying is a fair price.

(d) The class question on the LIA Petition

59. Although Mr. Maud primarily sought to rely on the Interest Claim in support of an appeal against my refusal to strike out the Edgeworth Petition, it is important not to lose sight of the fact that I did not decide to make a bankruptcy order on the Edgeworth Petition. I decided to make a bankruptcy order on the LIA Petition.

60. As I have indicated, there is no dispute about the LIA debt, there is no suggestion that the LIA is pursuing its petition for anything other than proper purposes, and the draft grounds of appeal contain no challenge to my finding that Mr. Maud has failed to show that bankrupting him would serve no useful purpose.

61. Mr. Maud also does not challenge my finding that there is no reasonable prospect of him paying the LIA's debt (or his other debts) in full in a reasonable time. It is not at all clear that, even on his most optimistic projections, Mr. Maud could be in a position to pay all of his creditors in full (including interest on their claims), but in any event there can be no suggestion that the Interest Claim is likely to be finally resolved in Mr. Maud's favour for several years. The estimates for the several stages of the litigation

in Spain (including appeals) mean that, realistically, it could take well in excess of 2 years to resolve.

62. Hence there is no challenge to my finding that the LIA is entitled, as against Mr. Maud, to a bankruptcy order *ex debito justitiae*, and there is no basis for the court exercising its case management discretion to order a further adjournment under the principles explained in Sekhon v Edgington [2015] 1 WLR 4435.

63. As such, the only issue to which the more detailed evidence and arguments concerning the Interest Claim could be relevant on the LIA Petition is the "class question" of whether the court should make a bankruptcy order having regard to the value of debts and the views expressed by the members of the class of creditors for and against such an order.

64. It is also clear on the authorities that the only parties who have a voice on the class question are the members of the class who appeared, namely the LIA, Edgeworth and Navarro. Mr. Wigley nonetheless suggested that Mr. Maud had a legitimate interest in making sure that I considered the class question on the correct factual basis as to Edgeworth's purposes, which he contended extended to appealing against my decision if Mr. Maud considered that it had not been made on the correct basis. I reject that submission, for which Mr. Wigley was unable to cite any authority.

65. Mr. Maud is the debtor; he self-evidently is not a member of the class of his creditors and indeed is the object of the class right to a bankruptcy order. The exercise upon which the court embarks when considering the class question – and that which I shall apply on a review of my decision - was described by Richard Sykes QC in Re Leigh Estates (UK) Limited [1994] BCC 292 in the following passage which I set out in my Judgment and which all parties agreed correctly states the law,

> "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 of and opposing the petition: see Re Crigglestone Coal Company Ltd [1906] 2 Ch 327, in particular the statements of principle of Buckley J at first instance, and s. 195 of the Insolvency Act 1986…
>
> 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…"

66. Given that the task for the court is to decide as a matter of discretion what weight to attribute to the voices on each side of the contest between creditors, I consider that it would be illogical for the court to take heed of the voice of the debtor who is not involved in that contest. It would also be illogical for the debtor who had not been entitled to participate in the contest to be able subsequently to challenge, by way of an appeal, the factual or legal basis upon which the court had determined the contest. The

illogicality of Mr. Wigley's submission is further underlined by the point that if the appeal were to succeed and the discretion fall to be considered again, the debtor once more could have no voice.

67. Reviewing my decision in light of the further material, so far as the views of the creditors appearing on the LIA Petition are concerned, I first consider the views expressed on behalf of the LIA by the court-appointed receivers of the LIA's claim against Mr. Maud. The receivers are two independent insolvency practitioners who are, by their nature, experienced in assessing the value of, and maximising returns from assets in an insolvency.

68. As Mr. Robins explained, the receivers on behalf of the LIA have taken into account the fact that the LIA has waited a very long time without any payment of its undisputed debt by Mr. Maud. He also pointed out that the LIA is the only creditor which appeared which was an original lender to Mr. Maud and did not choose to buy into his debt after he had defaulted. Mr. Robins further relied on the fact that none of Mr. Maud's plans to find the money by some means or other have come to anything and, as I have indicated, there is a process under the articles to realise fair value for the Ramblas shares.

69. Mr. Robins was very clear that having considered the options, the receivers would strongly prefer to see a bankruptcy order made now and further inquiries instituted into Mr. Maud's affairs. Mr. Robins also pointed out that the draft grounds of appeal do not challenge my finding in the Judgment that the receivers' approach to this question on behalf of the LIA was entirely rational, and he submitted that nothing raised in the additional materials concerning the Interest Claim had caused the receivers to change their view of the commercial merits of the position.

70. I accept those submissions. In my judgment the views of the independent receivers of the LIA as to the class interest carry significant weight.

71. On behalf of Edgeworth, Mr. Nash QC indicated that Edgeworth's view was that the Interest Claim was speculative and unmeritorious, and that there were a number of significant issues that would have to be decided in favour of Mr. Maud and Mr. Quinlan before success might be achieved in the Interest Claim. He contended that Edgeworth was entitled to take the view that it should not be forced to wait for that litigation to play out, and that it was entitled to see Mr. Maud's assets sold to raise money to repay his debts sooner.

72. It again seems to me that those views are rational – or, more to the point, that Navarro has not persuaded me that those views are irrational. Nor has Navarro persuaded me that these views should be discounted because making Mr. Maud bankrupt also carries with it the prospect that Edgeworth may be able to obtain payment of some or all of the balance of the Junior Loan from the sale of the Ramblas shares subject to the security which it holds over those shares. That repayment may be a benefit which is only available to Edgeworth, but it is simply a product of the fact that Edgeworth holds pre-existing security over Mr. Maud's Ramblas shares.

73. Nor, for reasons that I have outlined, do I consider that Edgeworth's ability, should it so desire, to acquire the Ramblas shares for itself, amounts to an abuse of the bankruptcy process. In circumstances in which the provisions in the Ramblas articles

are designed to ensure that the shares are only sold if a fair price is paid for them, I cannot see that either possibility puts Edgeworth at odds with the interests of Mr. Maud's unsecured creditors as a class, who will benefit if and to the extent that the fair market value of the shares exceeds the €69 million balance of the Junior Loan debt secured on them.

74. So far as Navarro is concerned, there is considerable force in Mr. Nash QC's observation that it is trying to ride two (divergent) horses at once. On the one hand Navarro contends that a rational creditor should see that the Interest Claim has sufficient prospects of substantial benefit that it would make sense not to make Mr. Maud bankrupt so that he can continue to hold those shares. But on the other hand, Navarro contends that the Interest Claim is too novel and is at too early a stage, so that its prospects are too difficult for a trustee in bankruptcy or three independent experts to value reliably under the provisions of the Ramblas articles. I do not find it at all easy to reconcile those two propositions.

75. Nor am I persuaded by Mr. Rose's submission on behalf of Navarro that the prospects for creditors eventually to benefit from the Interest Claim, if they are prepared to wait, are obviously more attractive than getting nothing from an immediate bankruptcy. That submission appears to be based upon an assumption that Mr. Maud has no other substantial assets apart from his shares in Ramblas, or at least that a trustee in bankruptcy would be unlikely to fare any better in finding them than Edgeworth has to date. Navarro does not, however, seek to appeal my Judgment to the effect that Mr. Maud has not demonstrated that he has no other assets so that a bankruptcy would be pointless, and it gives no indication as to whether it has performed any independent verification of the position.

76. A similar point arises in relation to Mr. Rose's further submission on behalf of Navarro that Mr. Maud's continued involvement would not be essential to the pursuit of the Interest Claim, provided he could continue to hold his Ramblas shares. I have already referred above to my concerns regarding the potential costs of that exercise. When I pressed Mr. Rose on this, he acknowledged that there was no evidence addressing, and he could not tell me what, if any, inquiries Navarro had made as to how, by whom, and at what cost the continued pursuit of the Interest Claim was to be organised and funded. The lack of any information that Navarro had independently investigated the commercial practicalities of the pursuit of the Interest Claim was, to say the least, surprising.

77. Further, and as Mr. Robins pointed out, Navarro has at all times opposed a bankruptcy order and supported Mr. Maud at every point in seeking an adjournment to pursue his various plans. Likewise, Navarro simply adopted Mr. Maud's draft grounds of appeal and relied on his evidence in support of a stay at the Consequentials Hearing without explaining its own assessment of the position in evidence.

78. Taken together, these considerations all lead me to the conclusion that Navarro has not brought a truly independent and objective mind to bear on the current issues. I am driven to the conclusion that those who are influencing or making the decisions at Navarro are not supporting Mr. Maud's continued resistance to being made bankrupt for entirely commercial reasons as a member of the class of creditors. In my judgment, the weight to be accorded to Navarro's debt must be discounted accordingly.

79. Similar concerns exist in relation to the involvement of Incorporated Holdings Limited ("IHL") which wrote to me shortly before the Consequentials Hearings, stating that it was a creditor of Mr. Maud under a guarantee for a sum which originally stood at £19.6 million and which was now said to be about €28 million. IHL asserted that it sold its debt to GAC in April 2014, had then taken no part in the proceedings but had repurchased the debt from GAC in January 2019.

80. IHL indicated that it had been provided by Mr. Maud with copies of the applications and evidence, together with Mr. Maud's skeleton argument and draft grounds of appeal. The letter stated that IHL had come to the conclusion that it would not be in the interests of creditors for a bankruptcy order to be made. The reason given was that, having reviewed the documents given to it,

> "…were a bankruptcy order now to take effect and Mr. Maud's shares in Ramblas to be offered for sale … it appears overwhelmingly likely that creditors would receive no return from the realisation of such shares. In contrast, were no bankruptcy order to take effect and Mr. Maud permitted to retain possession and control of his Ramblas shares there is at least a real possibility that Mr. Maud's creditors may benefit very significantly from his ownership of such shares."

81. IHL did not appear at the Consequentials Hearing to explain why it had suddenly become motivated to write to the court, how it had reached its view that sale of Mr. Maud's Ramblas shares under the articles would achieve no value in excess of the €69 million owed to Edgeworth, and in particular whether it had done any independent work to justify its view that there was "at least a real possibility that Mr. Maud's creditors may benefit very significantly from his ownership of such shares". I therefore cannot place much weight on the debts or views of IHL.

82. In summary, weighing the debts and reasons given by the creditors for their support or opposition to the making of a bankruptcy order, I remain of the view that the balance of the class interest clearly lies in favour of the view advocated by the LIA and Edgeworth of making a bankruptcy order on the LIA Petition.

(e) Conclusion

83. For the reasons I have given I do not think that the further information and argument concerning the Interest Claim causes me to change the decisions which I reached in the Judgment in relation to either the LIA Petition or the Edgeworth Petition.

84. I will also refuse the applications for permission to appeal. I do not consider that there is any prospect of Mr. Maud or Navarro persuading an appellate court that I applied the wrong legal test in relation to abuse of process by Edgeworth. Nor do I consider that there is any realistic prospect of an appellate court taking a different view of the effect of the mechanism in the articles of Ramblas than any other court to date, or that there is any other basis for a finding that Edgeworth's admitted collateral purpose is likely to cause loss to Mr. Maud's creditors.

85. So far as any appeal by Navarro against my decision to make a bankruptcy order on the LIA Petition is concerned, as Mr. Robins and Mr. Nash QC pointed out, my decision

on the class issue is a discretionary one, with which an appellate court will less readily interfere. Applying the normal test for overturning a discretionary decision, I can see no reason to believe that there is any real prospect of persuading an appellate court that I have proceeded on the wrong basis in law, taken into account irrelevant matters or failed to consider any relevant matters which have been drawn to my attention. I also cannot see how my decision could be said to fall outside the range of discretionary decisions which would be available to a reasonable judge.

Preserving the status quo pending any appeal

86. Although I have refused permission to appeal, I recognise that Mr. Maud and Navarro are entitled to seek that permission from the Court of Appeal, and that for fairly obvious reasons there should be no steps taken in the meantime that would carry a risk of irretrievable prejudice to Mr. Maud or Navarro in case they were to succeed on an appeal.

87. One such step would be if the process for Mr. Maud's shares to be offered under the articles of Ramblas was irreversibly triggered as a consequence of an order being made for his bankruptcy. Mr. Nash QC sought to persuade me that even if I made an immediate bankruptcy order, this consequence could be avoided by the giving of various undertakings by the parties not to invoke the provisions in the articles of Ramblas. But he ultimately accepted that in such a case there would still be the possibility that the Insolvency Administrator (who is not a party to these proceedings) might cause Ramblas itself to activate that process, and the English court would have no control over that possibility. I am therefore satisfied that the appropriate course for me to take is to structure my order so as to avoid such a risk altogether pending final resolution of any appeal.

88. At an earlier stage in the proceedings at which I allowed an appeal against a bankruptcy order which was made by Mr. Registrar Briggs, the mechanism deployed for the same purpose was for me to grant a "pre-emptive" stay prior to the making of the bankruptcy order by the lower court. However, at the Consequentials Hearing Mr. Robins suggested what I think is a more logically satisfying technique, which involves me making a bankruptcy order but specifying pursuant to CPR 40.7 that it should only take effect at a later date. That date will be a specified date about 21 days after the handing down of this judgment if no application for permission to appeal against the bankruptcy order has been filed, or such later date upon which the application is withdrawn or disposed of by the Court of Appeal. Under that course, the vesting of Mr. Maud's property in the official receiver as first trustee in bankruptcy will only occur on the relevant later date: see sections 291A and 306 of the Insolvency Act 1986.

89. The wording of an order which is substantially agreed between the parties to give effect to these principles is as follows,

> "1. Glenn Maud is made bankrupt on the LIA Petition with effect from 4 p.m. on Monday 29 June 2020, unless by that date Mr. Maud or Navarro Ventures S.A.R.L. has filed an appellant's notice against this paragraph 1 with the Court of Appeal, in which case he will by this order be made bankrupt with effect from the refusal or withdrawal of all applications for permission

> to appeal so made against this paragraph 1 or, if permission is granted, with effect from the dismissal or withdrawal of all such appeals.
>
> For the avoidance of doubt, any bankruptcy order consequential upon the refusal or withdrawal of an application for permission to appeal or dismissal or withdrawal of an appeal (as applicable), shall take effect on the earliest of the date of any written notice to the Civil Appeals Office withdrawing the application for permission to appeal or the appeal, the date of any written notice from the Civil Appeals Office refusing the application for permission to appeal, or the date of the handing down of any judgment dismissing the appeal.
>
> 2. These proceedings will be main proceedings as defined in Article 3 of the EU Regulation.
>
> 3. The Official Receiver attached to this Court will be trustee of the bankrupt's estate."

The order on the Edgeworth Petition

90. Mr. Wigley and Mr. Rose sought to persuade me that as I was intending to make an order on the LIA Petition, the Edgeworth Petition should be dismissed. In the longer term, if the bankruptcy order on the LIA's petition is not disturbed as a result of any appeal, I think the correct order would simply be to make no order on the Edgeworth Petition. However, in the short term, since there is at least the possibility of permission to appeal being sought in relation to the making of the order on the LIA Petition, I consider that the appropriate course is to adjourn the Edgeworth Petition pending final disposal (one way or another) of any application for permission to appeal or (if permission is granted) any appeal in relation to the LIA Petition.

Costs

91. There is no dispute that the LIA is entitled to an order that its costs of its own petition should be paid as an expense of the bankruptcy (i.e. in priority to ordinary unsecured debts) in accordance with the normal practice which is encapsulated in rule 10.149(i) of the Insolvency (England and Wales) Rules 2016 (the "Insolvency Rules" and "Rule 10.149(i)"). Those costs will include the costs of the application to set aside the LIA's statutory demand and the costs of the LIA's successful appeal against Rose J's order. They will also include the LIA's costs of the hearing in February 2019. Likewise, there is no dispute that Edgeworth is entitled to its costs of supporting the LIA Petition to be paid as a bankruptcy expense under the same Rule 10.149(i). I shall make such orders.

92. The LIA also sought payment of its costs of appearing to support an earlier bankruptcy petition which was presented by IHL but which was then dismissed in 2014. The LIA did not seek its costs at the time for reasons that Mr. Robins was unable to explain to me. Given that I know little or nothing about the circumstances of the IHL petition or the LIA's involvement in it, I do not intend to make any order in respect of those costs.

93. The major area of contention was as to Edgeworth's costs of its petition, and the LIA's costs of supporting the Edgeworth Petition. Edgeworth and the LIA sought payment of such costs as an expense of the bankruptcy. This was resisted by Navarro (and Mr. Maud), who were prepared to accept (with one important reservation to which I shall return) that Edgeworth and the LIA should obtain an order for costs against Mr. Maud to be added to their unsecured claims, but who objected to an order that those costs should be payable as a bankruptcy expense in priority to other unsecured claims on Mr. Maud's estate.

94. For Edgeworth, Mr. Nash QC submitted that although no bankruptcy order would be made on the Edgeworth Petition, that was only because I had decided to make an order on the LIA Petition. He contended that Edgeworth had acted reasonably in the interests of Mr. Maud's creditors in pursuing its petition at all times given the uncertainties over the LIA's entitlement to pursue its own petition from time to time. That uncertainty existed after the LIA's statutory demand was set aside and the LIA Petition stayed pending the outcome of the appeal: and even after the appeal had succeeded there was then uncertainty over who was entitled to represent the LIA in the UK. Hence, said Mr. Nash QC, since both petitions had in effect been pursued in tandem for the benefit of creditors, it was just that the same priority should be given to Edgeworth's costs of its petition, as would be given to the LIA's costs of its petition under Rule 10.149(i). Mr. Robins supported that approach.

95. Mr. Rose resisted the application. He took me to two cases on corporate insolvency - Re New York Exchange Co [1893] 1 Ch. 371 and Re Bostels Ltd [1968] Ch. 346. He submitted that New York Exchange at pages 374-375 explained that the long-standing practice of the court in allowing one set of costs for the petitioner and one set of costs for supporting creditors was based upon the idea that when a winding up order is made, those parties can be seen to have acted successfully in obtaining a remedy in the interests of the class, and should therefore be paid their costs in priority to the claims of the members of the class who they have in effect represented.

96. Mr. Rose suggested that this principle was followed in Re Bostels, where the original petitioner had been paid and then an order had been made for substitution, and a winding up order made on the application of the substituted petitioner. In that case, the only costs of the original petitioner which were ordered to be paid as an expense of the liquidation were its costs of presenting the petition and advertising it, since those were the only costs which had contributed to the obtaining of the order.

97. It is, I consider, important to appreciate that the fundamental question that I am being asked to decide is not a simple question of the incidence of costs as between the parties to litigation which is governed by the CPR. I am being asked by Edgeworth and the LIA to award costs in their favour against Mr. Maud and to order that those costs should be paid in priority to the ordinary unsecured creditors of Mr. Maud in his bankruptcy. In that regard, the authorities to which Mr. Rose referred demonstrate that questions of the priority to be given to costs in an insolvency are governed by particular principles in the context of winding-up on the basis that it is a class remedy. The same principles must apply in the case of bankruptcy.

98. It should also be observed that it is most unusual for there to be two bankruptcy (or winding up) petitions pending simultaneously in respect of the same debtor. Consistent with the principle that a bankruptcy petition is a class remedy, the legislation, rules and

court practice are generally based upon the notion that there should only be one petition against a debtor at any one time. Bankruptcy petitions can be presented by one or more creditors under section 264(1)(a) of the 1986 Act, and they are required to be presented in a particular court by Insolvency Rule 10.11 so that an attempt to present a second petition should be detected. Further, although there is no requirement for advertisement of a bankruptcy petition in the same way as for a creditor's winding up petition, the rules provide for other creditors to give notice of an intention to appear to support (or oppose) an existing petition. There are also provisions for a supporting creditor to be substituted for the original petitioner under Insolvency Rule 10.27 (e.g. if the original petitioner wishes to withdraw the petition) or for a change of carriage of the petition under Insolvency Rule 10.29 (e.g. if the original petitioner neglects to prosecute the petition).

99. That general structure of the legislation and the principles set out in the authorities are reflected in the provisions of Rule 10.149(i) which provides that,

> "The expenses of the bankruptcy are payable out of the bankrupt's estate in the following order of priority,
>
> …
>
> (i) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court."

100. The natural reading of Rule 10.149(i) is that the costs of the petitioner and of any other person appearing on the petition which are given priority as expenses of the bankruptcy are those costs which relate to the petition upon which the bankruptcy order is made. Given the overall structure of the legislation, there is no obvious reason to read the rules more widely so as to enable the court to give priority in a bankruptcy to the costs of a petitioner in relation to a second petition upon which no order has been made. And although Mr. Nash QC submitted that I could make an order to that effect under Rule 10.149(i), he provided no example of a case in which such an order had been made.

101. Moreover, by analogy with authorities on the materially similar wording of rule 7.108 of the 2016 Rules in relation to company winding-up, I believe that the list of expenses in Rule 10.149 of the 2016 Rules must be taken to be an exhaustive list of those expenses which qualify for priority payment in a bankruptcy: see e.g. Toshoku Finance UK plc [2002] 1 WLR 671 at [10]-[13], [17] and [38]. The only head of expenses in Rule 10.149 which could conceivably be relevant is sub-rule (i), and Toshoku makes it very clear that the court has no inherent jurisdiction to enlarge the list of debts that qualify for priority payment as expenses.

102. As such, whilst it is undoubtedly the case that Edgeworth has been the main protagonist in seeking a bankruptcy order, and that it may have seemed reasonable to Edgeworth to pursue a second petition when the LIA's entitlement and ability to pursue its earlier petition was in doubt, that course of events does not sit easily with the structure of the Insolvency Rules to which I have referred. Nor does its application for the costs of its own petition fit the well-established concept of only allowing costs for those who have actually contributed to the making of the order on the relevant petition, which now appears to be reflected in the wording of the relevant Rule 10.149(i).

103. I therefore accept Mr. Rose's submissions that I should not make an order that Edgeworth's costs of its own petition, or the LIA's costs of supporting it, should qualify for priority payment over the claims of the ordinary class of unsecured creditors in Mr. Maud's bankruptcy. Indeed, for reasons that I have explained, I doubt that I actually have jurisdiction under the terms of Rule 10.149(i) to make such an order giving priority in the bankruptcy to the costs of a petition upon which no order has been made.

104. As indicated above, whilst I am prepared to make an order for costs in favour of Edgeworth and the LIA in relation to the Edgeworth Petition which will only rank for a dividend in the bankruptcy together with other unsecured creditors, there is one further point in relation to such costs. In my view, such order in relation to Edgeworth should not include the costs of preparation of the evidence upon which Edgeworth relied at the hearing before Mr. Registrar Briggs which led to him making a bankruptcy order, or Edgeworth's costs of that hearing itself. As I recounted in the Appeal Judgment, that evidence was subsequently accepted by Edgeworth to have been inaccurate, and the basis upon which the case had been put to the Registrar on abuse of process could not be sustained and had to be corrected before the hearing of the appeal.

105. Parties must take particular care with the basis upon which they put evidence and arguments to a court, and as such I see no reason why, even as an unsecured creditor, Edgeworth should be able to recover those costs, which undoubtedly contributed to the way in which the Registrar gave his decision which was overturned on appeal. The order made on appeal dealt with the costs of the appeal separately.

Conclusion

106. I shall therefore make a bankruptcy order in respect of Mr. Maud on the LIA Petition, such order to be in the form indicated above, to take effect at the relevant later date. I shall also make the usual costs orders that I have indicated under Rule 10.149(i) in respect of the LIA's and Edgeworth's costs of respectively pursuing and supporting the LIA Petition.

107. I shall make a further order that Edgeworth and the LIA shall be entitled to be paid their costs of respectively pursuing and supporting the Edgeworth Petition, subject to the exception in the case of Edgeworth to which I have just referred, but on the basis that such costs are not to be recoverable as an expense of the bankruptcy and shall rank as unsecured claims only.

108. I refuse permission to appeal.