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Case No: Case No: BR-2020-000450

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

7 Rolls Building
Fetter Lane
London EC4A 1NL

Date: 14 October 2020

Before :

MR JUSTICE ZACAROLI

IN THE MATTER OF EDWARD WOJAKOVSKI

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

Rachel Robertson	**Petitioning Creditor**
- and –	
Edward Wojakovski	**Debtor**

The petitioning Creditor, Mrs Rachel Robertson, in person
Muhammed Haque QC (instructed by **Candey Limited**) for the **Debtor**
Andrew Fulton and Sam Goodman (instructed by **Rechtschaffen Law**) for Tonstate Group Limited, Tonstate Edinburgh Limited, Dan-Ton Investments Limited and Mr Arthur Matyas, the **Supporting Creditors**

Hearing date: 2 October 2020

Approved Judgment

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

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MR JUSTICE ZACAROLI

Mr Justice Zacaroli:

1. This is a petition for a bankruptcy order to be made against the debtor, Mr Edward Wojakovski. The petition was presented on 18 August 2020 by Mrs Rachel Robertson and is based on an unsatisfied statutory demand served on Mr Wojakovski on 20 June 2020. The demand was in turn based upon a judgment debt, created by an order of mine dated 4 May 2020 requiring Mr Wojakovski to make an interim payment to Mrs Robertson on account of costs. The costs order was made upon the striking out of proceedings against Mrs Robertson as a result of Mr Wojakovski's failure to comply with an order to provide security for costs. The petition debt is in the sum of £135,244.90 plus interest at 8% per annum on the unpaid balance since the due date of 18 May 2020.

2. The petition was listed for hearing before deputy Insolvency and Companies Court Judge Agnello on 30 September 2020, but was adjourned to be listed before me on 2 October 2020. All parties were content for me to deal with the petition.

Background

3. The costs order giving rise to the petition debt was made in the context of three sets of related proceedings:

    i) Action number BL-2018-000544, a derivative action in which certain companies in a group known as the "Tonstate Group" (by which I mean Tonstate Group Limited ("TGL") and its subsidiaries, and TH Holdings Limited ("THHL") and its subsidiaries) sought the return of money wrongfully extracted from them by the first defendant, Mr Wojakovski (the "Main Action");

    ii) Action number BL-2019-000304, in which the claimants, Mr and Mrs Matyas, sought the rescission of transfers of shares in TGL made by them to Mr Wojakovski (the "Shares Claim"); and

    iii) Action number BL-2018-002541, an unfair prejudice petition in which Mr Wojakovski sought various orders against Mr and Mrs Matyas and others, including entities in the Tonstate Group and Mrs Robertson (the "Petition").

4. I provided a brief summary of the proceedings, as at that stage, at paragraphs 3 to 6 of a judgment dated 28 April 2020 ([2020] EWCH 1004 (ChD)) dealing with an application for a debarring order against Mr Wojakovski. For convenience, I set out those paragraphs in full:

> "3. By way of very brief background, the Tonstate Group is a group of companies that have been involved in the property investment business for over a quarter of a century. Mr Wojakovski was formerly married to Mr Matyas's daughter. The entire group is effectively deadlocked, as a result of the current dispute between Mr Wojakovski (who is the beneficial

owner of 50% of the group) and Mr Matyas (who, with his wife, is the beneficial owner of the other 50% of the group).

4. It is common ground that both Mr Matyas and Mr Wojakovski had, for some years, been extracting funds from the Tonstate Group without lawful authorisation. Mr Wojakovski contends that all of the extractions that he made were done with Mr Matyas' knowledge and consent. Mr Matyas denies this. In light of Mr Wojakovski's admission that the extractions made by him were done for the purpose of defrauding the revenue, I concluded (for reasons set out in a judgment dated 5 December 2019) that even if all the shareholders in the Tonstate Group had consented to the extractions, Mr Wojakovski's defence based on the Duomatic principle was bound to fail.

5. There being no other defence raised to the Main Claim, on 20 November 2019 I therefore granted judgment in the Main Action against Mr Wojakovski for the sum of £12,994,642.43, being the sum of the monies he admitted he had wrongfully extracted from the Tonstate Group companies. In addition an Account was ordered against him of all payments wrongfully extracted from the Tonstate Group companies. These orders were temporarily stayed.

6. Subsequently, Mr Matyas consented to an Account being ordered against him in the same terms as that ordered against Mr Wojakovski and consented to repaying such amounts as he accepted he had wrongfully extracted from the companies. This was formalised in an order dated 16 January 2020, recording various matters either agreed or determined at a case management conference on that date. Among other things, in that order:

i) I directed a trial of the Shares Claim, along with the trial of certain claims made by Mr Wojakovski in the Main Action (the "Additional Claims");

ii) The Petition was stayed pending determination of the above claims;

iii) The stay on payment of the judgment debt owed by Mr Wojakovski was extended until 31 March 2020;

iv) Mr Wojakovski was restrained from dealing with any of the funds extracted from the Tonstate or THH companies or their proceeds;

v) Directions were given in relation to the taking of the mutual Accounts by Mr Matyas and Mr Wojakovski, including directions for disclosure."

5. Subsequent to the date of that judgment, the Main Action and the Shares Claim were settled. As a result of that settlement, Mr Wojakovski is now the undisputed beneficial owner of 12.5% of the shares in TGL. He is also the beneficial owner of 50% of the shares in THHL. The Petition remains stayed, but the Account proceedings remain in existence. Mr Wojakovski had defaulted in numerous respects on his obligation to provide disclosure in respect of the Account proceedings. On 6 July 2020 I directed that the parties should attend an appointment before the Master, to list the trial of the Account proceedings, within 14 days of Mr Wojakovski complying with his disclosure obligations. He has only very recently purported to comply with those obligations, although the claimants in the Account proceedings do not accept that his disclosure is even now complete. Accordingly, the trial of the Account proceedings has not yet been listed.

6. In that same order of 6 July 2020 I appointed receivers over various assets apparently under the control of Mr Wojakovski which it was common ground had been acquired with the proceeds of the extractions made by Mr Wojakovski from the Tonstate Group.

7. On 27 August 2020 Falk J made a world-wide freezing order (by consent) against Mr Wojakovski.

Undisputed debt

8. Mr Haque QC, who appeared for Mr Wojakovski, accepted that a petitioning creditor who is owed an undisputed debt which remains unpaid is entitled *ex debito justitiae* to a bankruptcy order.

9. There is no opposition to the making of a bankruptcy order from any creditor. There are however substantial supporting creditors, namely the claimants in the Main Action: Tonstate Group Limited, Tonstate Edinburgh Limited, Dan-Ton Investments Limited and Mr Arthur Matyas (the "supporting creditors"). The total sum owing to the supporting creditors is approximately £16 million. This is the total of the sums which Mr Wojakovski has been ordered to pay to various companies in the Tonstate Group (i.e. the judgment debt of £12,994,642.43) together with additional sums (totalling approximately £3m) which Mr Wojakovski admits he received by way of wrongful extraction from those companies.

10. Mr Haque QC frankly accepted that there is no basis on which the petition can be opposed. He relies, however, on the jurisdiction (which Mr Fulton, who appeared for the supporting creditors, accepts exists) to adjourn the hearing of the petition to afford time to the debtor to pay.

11. The only authority cited to me in relation to this jurisdiction was a passage from Muir Hunter on Personal Insolvency, at 7A-156:

> "…where the petition debt is undisputed or clearly established, and the correct formalities have been complied with, in general the court will make an immediate bankruptcy order; the petition will generally only be adjourned, and for a short time, if there is a reasonable prospect of the debtor coming to terms with the petitioner by paying the petition debt (*Re Micklethwaite* [2002] EWHC 1123 (Ch); [2003] B.P.I.R. 101 and *Nottingham City Council v Pennant* [2009] EWHC 2437 (Ch); [2010] B.P.I.R. 430; following *Re Gilmartin (A Bankrupt)* [1989] 1 W.L.R. 513 Ch D). In order to secure such an adjournment, the debtor must be ready to provide "convincing evidence that the debt [will] be paid within a very short period" (*Anderson v Kas Bank NV* [2004] EWHC 532 (Ch); [2004] B.P.I.R. 685 at [23])."

12. In the paragraph which follows in Muir Hunter, the editors note that the Court of Appeal in *Edginton v Sekhon and Sekhon* [2015] EWCA Civ 816, approved the approach taken by the judges in those cases. In the *Edginton* case, Lewison LJ said the following at [15]-[19]:

> "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).
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> 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 the proceedings is to enable an independent person to ascertain and preserve the debtor's assets and to achieve that pari passu distribution.
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> 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.
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> 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.
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> "A petitioning creditor has a 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 a 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.
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> "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."

A preliminary point: which debts must be paid within a reasonable time?

13. Mr Haque QC contended that there was a reasonable prospect of Mr Wojakovski being able to pay the petition debt within a reasonable time. He accepted, however, that there was no reasonable prospect of Mr Wojakovski being able to pay the substantially larger debt due to the supporting creditors in a reasonable time.

14. His principal submission, however, was that Mr Wojakovski need only establish that there was a reasonable prospect of paying the petition debt within a reasonable time. Mr Fulton contended that to justify an adjournment of the petition, Mr Wojakovski would have to demonstrate a reasonable prospect of paying the petition debt and any undisputed debt owed to supporting creditors. The only authority cited by either party on this point was the passage in Muir Hunter quoted above. While that passage and each of the cases cited by Muir Hunter refer to an adjournment in the context of there being a possibility of repaying "the petition debt" within a reasonable time, the position where there are undisputed debts owing to supporting creditors does not seem to have been considered in any of them. Accordingly, those cases cannot be seen as authority *against* the proposition that it is necessary to take into account debts owed to supporting creditors when considering an application for an adjournment on the basis of there being a reasonable prospect of payment.

15. In my judgment, as a matter of principle, Mr Fulton's argument is to be preferred. Bankruptcy is a class remedy. Where a creditor wishing to pursue bankruptcy proceedings against a debtor discovers that another bankruptcy petition has already been presented, then the usual course is for that creditor to give notice of intention to support the petition (under Rule 10.19) rather than to present its own petition. The giving of such notice entitles that creditor to be substituted as petitioner, in the event that the petitioning creditor is found to be not entitled to present the petition, or consents to withdraw it, fails to appear or seeks an adjournment (see Rule 10.27). If a debtor was able to pay the petitioning creditor, but not the supporting creditor, then the inevitable result of an adjournment to allow payment to be made to the former would be that the supporting creditor would apply to be substituted at the adjourned hearing. At that point (assuming there was no other defence as against the supporting creditor) a bankruptcy order would likely be made because the debtor could not pay the newly substituted petitioning creditor. Such an outcome would conflict with the class nature of bankruptcy, as it would result in payment in full to one creditor in preference to the supporting (and any other) creditor. In the event that a bankruptcy order was indeed made on the adjourned hearing, the payment made to the petitioning creditor would itself constitute a void disposition, unless consented to or ratified by the court, under s.284 of the Insolvency Act 1986. For these reasons, I consider that in order to justify an adjournment of the petition in this case, Mr Wojakovski would need to provide credible evidence of his ability to pay within a reasonable time both the petition debt and the debt due to the supporting creditors.

16. In the alternative, Mr Haque QC contended that if it was necessary as a matter of law to show that there was a reasonable prospect of paying the debts due to the supporting creditors in addition to the petition debt, there were special factors which meant that Mr Wojakovski should be permitted such time (to pay the latter) as it would take to realise his investment in TGL and THHL. I emphasise that there is no question here of there being any defence, counterclaim or set-off to the debt owed to the supporting creditors. Nor did Mr Haque QC contend that there was any other basis (aside from an adjournment in order to afford time to pay) on which it could be said that the supporting creditors, if they were substituted as petitioning creditors, would not be entitled to a bankruptcy order *ex debito justitiae*. He submitted, however, that the balance sheet position of the Tonstate Group was such that "eventually" Mr Wojakovski would be entitled to receive by way of distribution (as shareholder) sufficient sums to discharge all his debts, and that the delay in reaching that point was the fault of Mr Matyas. It would be unfair to make Mr Wojakovski bankrupt, by reason of his inability to pay the debts due to companies in the Tonstate Group, when his inability to do so was a consequence of the wrongful behaviour of those who controlled the companies.

Reasonable prospect of payment

17. Even if it is necessary to take into account (as Mr Haque QC submitted) only the prospect of paying the petition debt within a reasonable time, in my judgment Mr Wojakovski has failed to establish a reasonable prospect of doing so.

18. Mr Wojakovski produced three witness statements in opposition to the bankruptcy petition, dated 23 September 2020, 30 September 2020 and 1 October 2020. The bulk of that evidence sought to establish that the total value of the assets over which the receivers were appointed and assets which he purported to hold personally was considerably in excess of the petition debt and the amount due to the supporting creditors. That, however, was relevant only to the submission that Mr Wojakovski would "eventually" be able to pay those debts (as Mr Haque QC accepted that there was no realistic prospect – save in respect of the artwork to which I refer below – of realising those assets within a reasonable time).

19. The only proposal advanced in his evidence for repayment of the petition debt was that KPMG would be instructed to review the information relating to THHL and its subsidiaries with a view to establishing that there was a surplus available for distribution to the shareholders in due course, and that the court should then direct that THHL advance a loan to Mr Wojakovski to enable him to pay the petition debt. That proposition was abandoned at the hearing, however. Mr Haque QC recognised that there was no realistic prospect of this occurring, if at all, within a reasonable time so as to pay the petition debt.

20. At the hearing itself, Mr Haque QC advanced a new proposal, namely that Mr Wojakovski be given a period of time within which to transfer to the receivers sufficient art work which he purported to own, or to sell the same, in order to pay the petition debt. Mr Haque QC relied on Mr Wojakovski's first witness

statement, which cross-referred to an affidavit provided by Mr Wojakovski in response to my order of 6 July 2020 requiring him to identify all of his assets exceeding £5,000 in value. In that affidavit he identified numerous artworks which he claimed belonged to him personally. He claimed that the aggregate value of these artworks was £2,426,356 and that this was derived from an insurance policy with Hiscox.

21. When pressed as to what steps had been taken to investigate whether this artwork could in fact be realised at a value sufficient to repay the petition debt within a reasonable time period, Mr Haque QC accepted that there was no evidence of any such steps being taken. He submitted that the petition should nevertheless be adjourned in order to allow time for such investigations to take place.

22. Mr Wojakovski's evidence on this point is to be viewed in the following context.

23. First, there is no evidence that Mr Wojakovski is the owner of the artwork, save for his statement in the affidavit of 3 August 2020 that "I consider this artwork belongs to me" (which was itself qualified during the hearing by reference to the fact that Mr Wojakovski had only a half-share in it in light of his pending divorce proceedings). The basis on which he "considered" that the artwork belonged to him was not explained in the evidence.

24. Second, it is inconsistent with the assertions made by Candey (Mr Wojakovski's solicitors) in letters dated 4 March 2020 to, respectively, Mr Wojakovski's ex-wife and Rechtschaffen Law (the supporting creditors' solicitors) in which it was claimed that all of the artwork had been acquired with funds extracted from TGL and/or THHL and thus belonged to TGL and/or THHL.

25. Third, Mr Wojakovski's bare assertion in his affidavit of 3 August 2020 that Candey's correspondence was "incorrect" carries little weight in the absence of any evidence to establish that Mr Wojakovski used his own funds in order to purchase any of the artwork. The absence of such evidence is all the more telling in light of the intense scrutiny (in the Account proceedings) on the source of funding for all assets in Mr Wojakovski' possession or purported ownership. Although Mr Wojakovski's affidavit of 3 August 2020 was sworn before the bankruptcy petition had been presented, it post-dated the statutory demands and followed shortly after Mrs Robertson had written to Candey indicating that she was about to file for bankruptcy.

26. Fourth, the costs order in favour of Mrs Robertson which underlies the petition debt has been in existence since May 2020. Prior to that, Mr Wojakovski had been under an obligation to provide security for costs, in a similar sum, in order to avoid the strike out of the unfair prejudice petition as against Mrs Robertson. He was also under an obligation to make payments to the supporting creditors, including various costs orders and the judgment debt itself. His evidence is that he was only able to discharge a costs order in favour of TGL (in order to avoid being debarred from defending the Main Action) by borrowing £200,000 from his brother's brother in law. If, as he

now asserts, he had ready access to artwork worth more than £2 million, then it is surprising that he made no effort to realise it (or even investigate whether it could be realised) in order to discharge the debt arising under any of these earlier orders. It is equally surprising that he made no effort to do so at any time since the bankruptcy petition was presented, waiting until the adjourned hearing before me before even mentioning this proposal.

27. In all the circumstances, I find that Mr Wojakovski has not discharged the burden of providing convincing or credible evidence that he has a reasonable prospect of realising the artwork so as to pay the petition debt within a reasonable time. His proposal that the artwork be transferred to the receivers takes the matter no further. It would neither produce cash to repay the debt due to Mrs Robertson nor resolve the question of ownership.

28. That conclusion is sufficient to dismiss the application for an adjournment of the petition. For completeness, however, I will address Mr Haque QC's submission that it would be unfair to bankrupt him by reference to debts owed to companies in the Tonstate Group until he was able to realise his investment in TGL and/or THHL, in circumstances where the delay in his ability to do so was due to wrongful conduct on the part of Mr Matyas.

29. The principal focus of Mr Haque QC's submissions in this regard was on the financial position of THHL (in which Mr Wojakovski holds a 50% shareholding). The only substantial assets in the THHL group are (1) a hotel in Cardiff (which Mr Haque QC submitted should be taken to have a value of £20m) and (2) £2.37m of cash. He contended that the only substantial liability of the THHL group was inter-company indebtedness to TGL of £10.135m and that the remainder of the inter-company indebtedness appearing in the various companies' accounts should be written off because it had historically been overstated by some £11.65m.

30. On the basis of these figures, Mr Haque QC contended that there was a clear surplus of £6.117m available for distribution to Mr Wojakovski. He accepted that there was no reasonable prospect of such a distribution being made within a reasonable time, but submitted that this was the fault of, in particular, Mr Matyas, who was privy to the wrongful overstatement of the inter-company debt to TGL.

31. There are a number of difficulties with Mr Haque QC's submissions as to the net asset position of the THHL group (and thus the likely value of distributions to Mr Wojakovski).

32. First, although I accept (based on the documents Mr Haque QC took me through) there is a prima facie case that the inter-company debt was overstated by approximately £4.17m (on the basis that it appears to include payments which Mr Matyas accepts (in the Account proceedings) were wrongful extractions), I do not accept that the documents to which I was taken demonstrate even a prima facie case that the debt was overstated by a further £4.68m.

33. The case, in this respect, was based on an entry dated 30 September 2014 in a spreadsheet of inter-company indebtedness between THHL and its subsidiaries and TGL. Mr Haque QC submitted that this evidenced a commitment to pay TGL but that because there was no other entry in the spreadsheet identifying the payment having actually been made, then no indebtedness had ever been created. The description for this entry read: "Being the accrued acquisition expenses on hotels as at 30.09.14".

34. An entry in TGL's consolidated accounts for the period ending 31 March 2014 stated that "Included in amounts owed by companies under common control are advances … to TPD Investments Limited reflecting amounts paid on behalf of that company in respect of hotel acquisition costs. The company [TGL] is committed to advancing a further £4,680,362 … under this arrangement." This makes it clear that the indebtedness from other group companies to TGL is created by payments made by TGL *on behalf of TPD Investments Limited* (a subsidiary of THHL).

35. As such, I do not accept the premise of Mr Haque QC's submission that had the indebtedness actually been incurred there would have to have been an entry in the relevant spreadsheet identifying an actual payment as between THHL (or its subsidiary) and TGL.

36. Second, I do not accept that the Cardiff hotel is to be taken as having a value of £20m. Mr Haque QC relied on an offer for the hotel that was made in September 2019, of £27m. He accepts that a valuation of the hotel in April 2020, at the height of the first wave of the Covid-19 pandemic, valued it at £12m, but suggests that I should assume that the value lies mid-way between those two points. I disagree. It may be that the value of the hotel has recovered since the outbreak of the pandemic, but it may equally be the case, given that the long-term nature of the pandemic and its economic consequences may be clearer now than they were in April 2020, that values have decreased further. In the absence of any evidence on the point, I can make no assumptions.

37. Third, Mr Haque QC's calculations ignore the tax position of THHL and its subsidiaries. In light of the way in which extractions were made by Mr Wojakovski and Mr Matyas over many years, with the purpose of disguising profits and evading tax, there are potentially large tax liabilities to be taken into account. Until the Account proceedings are finalised, the full extent of the liabilities cannot be known.

38. In light of these points, it is far from certain that there will be substantial funds available to be distributed, even eventually, from THHL.

39. Moreover, I do not accept that the delay in any distribution being made to Mr Wojakovski is the fault of Mr Matyas alone. Certainly any delay in disposing of the main asset (the Cardiff hotel) is not due to any actions of Mr Matyas. On the contrary, it was Mr Wojakovski's actions that delayed the sale of the hotel pursuant to the offer made in September 2019. The other principal cause of delay is the need to account for all wrongful extractions. It is Mr Wojakovski's case that he was involved in extractions (both to him and to Mr

Matyas), and that he was entitled (by agreement with Mr Matyas) to 50% of the extractions made by Mr Matyas (although it is Mr Wojakovski's case that he is not presently aware of the full extent of Mr Matyas's extractions). At best, therefore, responsibility for this aspect lies equally with both men (although I record Mr Fulton's submission that at the relevant time Mr Wojakovski was in day to day control of the Group and therefore bears primary responsibility). As to the current delay in finalising the Account process, the numerous instances of Mr Wojakovski's failure to comply with the court's orders in respect of disclosure are detailed in my judgments dated 3 October 2019 ([2019] EWHC 2902 (Ch)) and 28 April 2020 ([2020] EWHC 1004 (Ch)).

40. Mr Haque QC placed less emphasis on the difficulties in obtaining a distribution from TGL. In view of the fact that Mr Wojakovski is beneficially interested in only 12.5% of the shares in TGL, the potential distribution to him is that much smaller. In essence, the submissions made in relation to TGL were to the effect that the extractions made by Mr and Mrs Matyas from the TGL Group are significantly greater than so far admitted by them so that the size of the eventual distribution to Mr Wojakovski will be correspondingly larger. These are matters that are strongly disputed by Mr Matyas and are the subject of the Account proceedings. I am not in a position to determine those disputes. For similar reasons to those given in relation to THHL, however, the blame for the delay in making distributions from TGL is not to be laid solely at Mr Matyas' door.

41. Accordingly, I reject the contention that it would be unfair to bankrupt Mr Wojakovski on the basis of, or taking into account, the debts owed to the supporting creditors. Accordingly, even if the petition debt itself could be repaid within a reasonable period, I conclude that inability to repay the debt owed to the supporting creditors within a reasonable time would justify the refusal of an adjournment of the petition in order to afford Mr Wojakovski time to pay.

42. There being no other defence to the petition of Mrs Robertson, it follows that I should, on the handing down of this judgment, make a bankruptcy order against Mr Wojakovski.