Neutral Citation Number: [2023] EWHC 1605 (Ch) **Case No: BR-2022-000068**

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

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

Date: 28 June 2023

Before:

ICCJ Greenwood

- -

Between :

(1) JUDITH SUSAN PORTRAIT	**Petitioners**
(2) JOSEPH CHRISTOPHER BURNS	
(as Trustees of the Gatsby Charitable Foundation)	
- and -	
KHADIJEH MINAI	**Debtor**

- -
- -

Ms Madeline Dixon (instructed by Dentons & UK Middle East LLP) for the Petitioners
Mr Duncan Macpherson (instructed by Axiom DWFM) for the Debtor

Hearing dates: 3 March and 19 April 2023

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JUDGMENT

This judgment was handed down remotely at 11.30am on 28 June 2023 by circulation to the parties or their representatives by e-mail.

ICC Judge Greenwood:

Introduction

1. This is the trial of a bankruptcy petition ("**the Petition**") presented on 2 March 2022 against Miss Khadijeh Minai by Ms Judith Portrait and Mr Joseph Burns ("**the Petitioners**") acting in their capacity as the trustees of the Gatsby Charitable Foundation of The Peak, 5 Wilton Road, London SW1P 1AP ("**the Foundation**"). At issue is the Court's jurisdiction to make the order sought.

2. The Petition is based on an undisputed debt of £325,752.60 due to the Petitioners pursuant to the terms of an Order made by HHJ Monty QC in the County Court at Central London on 22 July 2021. That Order was made following the trial, on 19 July 2021, of a claim made by the Petitioners against Miss Minai for the return of a deposit paid on the terms of an "**Exclusivity Agreement**" made on 19 December 2017 in respect of the potential sale by Miss Minai of a property, of which she was, and remains, the registered owner, at Unit A, 4-12 Queen Anne's Gate, London SW1H 9AA ("**12 Queens Anne's Gate**"). Essentially, the Foundation had withdrawn from the potential purchase because it transpired (as the judge held) that there was "*no prospect of planning consent*" being given by the City of Westminster to a change in the property's use from residential to commercial (the Foundation's only interest being in the acquisition of office premises). Miss Minai was not present or represented at the trial, but has not appealed or challenged its outcome, albeit apparently reserving her right to do so. In any event, the judge found that her failure to attend was deliberate.

3. On 2 December 2021, the Petitioners served on Miss Minai their statutory demand dated 4 November 2021 (although not personally, but by virtue of the steps explained in the Certificate made by Mr Peter Brown, a process server, on 9 December 2021).

4. The Petition having been presented on 2 March 2022 and served on 18 April 2022 (by alternative means, in accordance with the Order of Deputy ICC Judge Curl QC made on 12 April 2022) a consent order was made on 26 May 2022 by ICC Judge Prentis which amongst other things, recited that Miss Minai reserved her rights in respect of the Court's jurisdiction, and directed her to file and serve evidence by 30 June 2022 in respect of her "*domicile*". A further order was made by the same judge at a hearing on 2 August 2022, directing further evidence in respect of the Court's jurisdiction from both the Petitioners and Miss Minai, and directing that the Petition be listed thereafter for the determination of that issue. In addition, Judge Prentis ordered that Miss Minai (but no other witness) was to attend for cross-examination, failing which her evidence was not to be admitted without the Court's permission. No formal application for a variation of that order in respect of cross-examination was subsequently sought by Miss Minai. It was pursuant to the Order of Judge Prentis that the trial before me took place on 3 March 2023, continued on 19 April 2023.

5. In support of their case, the Petitioners, represented by Ms Madeline Dixon of counsel, relied on:

   i) two witness statements made by Mr Amandeep Dhillon on 29 July 2022 and 6 September 2022; Mr Dhillon is a solicitor at Dentons UK Middle East LLP ("**Dentons**"), the Petitioners' solicitors;

   ii) a witness statement made on 6 September 2022 by Ms Gemma Hunter-Barnes, a Senior Associate at Dentons; and,

iii) a witness statement made on 6 September 2022 by Mr Burns, one of the Petitioners.

6. Miss Minai, represented by Mr Duncan Macpherson of counsel, relied on her own witness statements, made on 30 June 2022, 22 November 2022 and 24 February 2023 (her first, second and third statements) and on 18 April 2023 (her fifth statement).

7. At the trial, oral evidence was given by both Miss Minai and Mr Burns, both of whom were cross-examined, albeit that no prior order for Mr Burns' attendance and cross-examination had been made.

8. In addition, I should add (since apart from anything his name and alleged conduct was raised by Miss Minai several times in cross-examination referred to below) that the Petitioners also served in support of their case a witness statement made by a Mr Peter Fisher on 6 September 2022. Mr Fisher is a lawyer who has in the past been involved in giving assistance to Miss Minai. On the day before the trial, an argument was raised, on behalf of Miss Minai, that Mr Fisher's evidence was and/or contained materials that were, amongst other things, confidential and/or privileged, and which ought not to be relied upon. In the event, the Petitioners withdrew that evidence, and I rejected (for reasons set out elsewhere, in an *ex tempore* judgment given on 3 March 2023) Miss Minai's application for an adjournment in order to allow her to seek further relief, including the possibility of injunctive relief preventing Dentons and/or Ms Dixon from continuing to represent the Petitioners.

9. As to the Court's jurisdiction, by virtue of s.265 of the Insolvency Act 1986:

> "*(1) A bankruptcy petition may be presented to the court under section 264(1)(a) only if–*

(a) the centre of the debtor's main interests is in England and Wales, or

(ab) the centre of the debtor's main interests is in a member State (other than Denmark) and the debtor has an establishment in England and Wales, or

(b) … the test in subsection (2) is met.

(2) The test is that–

(a) the debtor is domiciled in England and Wales, or

(b) at any time in the period of three years ending with the day on which the petition is presented, the debtor–

(i) has been ordinarily resident, or has had a place of residence, in England and Wales, or

(ii) has carried on business in England and Wales."

10. If one or other of these conditions is not met, the Court does not have jurisdiction to make a bankruptcy order, and the Petition must be dismissed.

11. In the present case, the Petition states:

i) that Miss Minai's centre of main interests (her "**COMI**") is in "*the United Kingdom*" (although this was treated by the parties as an allegation that it was in England and Wales); and,

ii) that in the period between 3 March 2019 and 2 March 2022, Miss Minai had a "*place of residence*" in England, at 12 Queen Anne's Gate and/or at Apartment 2, 7 Cambridge Gate, London NW1 4JX ("**Cambridge Gate**"). Subsequently,

the Petitioners sought to expand their case to include a third alleged place of residence for some part of the same period, at Flat 11, 43 Wimpole Street, London W1G 8AE ("**43 Wimpole Street**"); and,

iii) that Miss Minai "*has connections*" with various English companies, namely, Paribas Commodity Limited, Niko Shipping Limited, Tara Property Management Limited, 4-12 Queen Anne's Gate Freehold Limited and Olewatt Limited. That allegation (subsequently expanded by reference to a number of other English companies) is said to be relevant both to the location of Miss Minai's COMI, and to the character of her connection with 12 Queen Anne's Gate and 43 Wimpole Street, in particular because the companies' filed records held at Companies House show her "*correspondence address*" and/or "*service address*" to be or have been at one or other of those places, and her "*Country of residence*" to be or have been the UK or England.

12. Those allegations, which it is for the Petitioners to prove, are denied.

13. In short, Miss Minai's case is that although she is an Iranian national, her COMI is (and in any event, more importantly, that it was, as at 2 March 2022, the date of the Petition's presentation) in Ukraine, where she is domiciled, where she has had residency since 2003, and where she has (or had) business interests on a very significant scale, employing over 6,000 people and trading in commodities such as grain, sunflower seed and steel, so that she became "*famous there*", known, so she said, as "*the Iron Lady*" and "*the Grain Lady*". Her case is that although she bought 12 Queen Anne's Gate for £7.18 million in 2002 as an "*investment*" and still owns it (despite efforts to sell it since about 2014, including of course to the Foundation) and that although she owned Cambridge Gate – again as an "*investment*" - until 2021

(when it was sold by a mortgagee which had taken possession in 2020) and that although she rented 43 Wimpole Street between about 1998/1999 and the end of 2014, none of those properties were her "*places of residence*" during the relevant three year period before the Petition was presented. Her evidence was that she came to England for medical treatment in October 2021, intending to return to her home in Kyiv in January 2022, but has been prevented from doing so because of the conflict in Ukraine. Essentially, her case is that her presence in England is not the result of a choice, freely taken, but is "*forced*" and temporary, substantially involuntary, a result of circumstances beyond her control. In cross-examination, of her possible return to Ukraine, she said, "*If they allow me, I go tonight!*", but that if she were to return, "*I will be kidnapped within a minute!*". In any event, it was not in dispute - in fact, it was accepted, unsurprisingly - that her immediate return, in the current unhappy circumstances of that country, is practically impossible.

14. The Petitioners did not allege that the Debtor is or was at a relevant time domiciled in England and Wales, or that she had been "*ordinarily resident*" in England and Wales, or that she had "*carried on business*" in England and Wales, for example, in respect of her two alleged "investment" properties – their case was confined to the allegations explained at paragraph 11 above. Furthermore, no case was advanced by the Petitioners that Miss Minai's COMI had changed as a result of her (admitted) stay in England since October 2021; that date was irrelevant to the way they put their case; they drew no distinction between the period before, and the period since; they advanced no positive case that if the Court were to conclude that Miss Minai's COMI was in Ukraine as at October 2021, it was nonetheless in England by and on 2 March 2022, when the Petition was presented.

The Witnesses

15. Miss Minai: It is not a simple matter to assess Miss Minai as a witness, or to assess the quality of her oral evidence; neither was it invariably a simple matter to cross-examine her. She is 75 years old, and not in good health; as a result, in the course of her examination (which lasted less than half a day) she needed a number of breaks and became noticeably tired; although she plainly understands and can express herself adequately in English, nonetheless it is not her first language, and I accept that this may have contributed something to the length and style of her answers. Moreover, she was highly and visibly emotional, and frequently became distressed, heated or distracted. For example, whether or not with any justification, she appears now to believe that the Foundation has acted dishonourably, and she blames it for her current predicament. As she said in her 2nd witness statement, "*For the majority of my life I have worked and lived with pride and dignity, I travelled the world. I dealt with governments, major corporations. After so many years of hard work I did not think Lord Sainsbury's company would go this far to the Bankruptcy court for an amount of money which is peanuts for Lord Sainsbury. My pride my honour my dignity has vanished as a result.*" Her answers often went far beyond or were irrelevant to the question that had been asked; they were frequently lengthy and somewhat disjointed; more than once I had to ask her to make a greater effort to listen more closely to what was being asked, and to try to answer only that question, albeit my various interventions met with limited success. Having said that, my impression was that to a large extent, these features of her evidence were products of her character, personal history, background and present circumstances, rather than a conscious desire to hinder the Court's process.

16. Against that background, Mr Macpherson submitted that none of the described features (all of which, essentially, he accepted to have been present) called into question or undermined the veracity of Miss Minai's evidence, once stripped of irrelevant comment. He said that she had not contradicted herself or given evidence that was inherently incredible, and that I should accept her evidence as substantially true. Against that, Ms Dixon argued that I should afford limited weight to Miss Minai's evidence where uncorroborated by contemporaneous documents, and that more generally, I should prefer, where available, documentary evidence as well as evidence from third parties independent of this dispute, for example, the evidence of Mr Peter Brown, the process server.

17. This question, concerning the weight to be given to the parties' evidence, is central to the dispute between them, and I shall consider it in greater detail below in the context of each factual issue. However, as a general point, I agree with Mr Macpherson that much, although not all, of Ms Minai's evidence was internally consistent and not inherently incredible. For example, as to her connections with Ukraine, centrally important to the determination of her COMI, she described in her evidence that she settled in Ukraine in 1989, and that (as she said in cross-examination) "*... I have also noted my family that I like to be buried in Ukraine. No matter where I die, they have to take my body to Ukraine* …". She said that her current main property in Kyiv, her "*home*", is at Lesi Ukrainki Blvd., Appt 89, 01133 Kyiv, Ukraine ("**the Kyiv Apartment**"), about 200m from a Military Training Centre, and before the war was worth "*around $6 million*". She described it in her 2nd witness statement as "*a substantial apartment on the 23rd floor. It has 3 bedrooms, a dining room, reception, huge kitchen and an office. It is a very large and comfortable property. It is fully furnished with a beautiful view, in a highly desirable location in central Kyiv. .... I*

have a car, a Range Rover with a driver and bodyguard and an office with my partner, 15 minutes from the centre of Kyiv. My office is on the third floor, in a very exclusive building on a huge plot of land, with our shredder factory nearby."

18. As to her business, Miss Minai said in her 2nd witness statement that (amongst other things) it comprised, "*Nikolaev Port, part of which since 1995, myself and my partners looked to upgrade. The warehouse, the silo, loading and discharging equipment and the office of forwarding agency, all have been affected by the bombing. The Russian army has already taken over ... some of our facilities in Luhansk and Donetsk for raw material* (sic) *for steel and grain. Some facilities in Odessa have been destroyed and Kherson, Kharkov, the facilities are destroyed.*" In cross-examination, she referred several times to her business "*empire*", with global connections - "*I was the main person in the company to negotiate with the foreign company for a sale, to sell. I dealt with the South Korean* [inaudible]*, the Government company, I dealt with Singapore, I dealt with Malaysia, I dealt with Thailand, Taiwan, I dealt with China ….*"

19. None of that evidence is, in itself, necessarily unbelievable or extraordinary, or contradicted by some known and evidenced fact; furthermore, Miss Minai came nowhere close to contradicting it, or in any degree departing from it; on the contrary, she took every opportunity to confirm and repeat it, in a style of absolute conviction.

20. However, against that - and this was central to the Petitioners' case, and suggested approach to the evidence - Miss Minai produced very little documentary evidence to support the description of her extensive life and business in Ukraine and beyond. In fact, in that respect, the only documents produced were copies of her Ukrainian residency card, three telephone/utility bills in respect of the Kyiv Apartment for the

period from 1 May 2021 to 31 July 2021, and her Iranian passport issued in Kyiv. So there are, for example, no bank statements, photographs or internet pages. Furthermore, there is no evidence from her (unnamed) business partner/s, colleagues or employees, or from those she dealt with, and no document, of any sort, generated in connection with her business "*empire*". Ms Dixon described this feature of the case, when set against the scale of that which was described, as "*extraordinary*", and described Miss Minai's supporting (documentary) evidence as "*astonishingly scant*". I agree that notwithstanding the circumstances in Ukraine, Miss Minai's failure to produce more is surprising.

21. Related to this point, Ms Dixon suggested that Miss Minai has failed to give clear and straightforward evidence about her addresses and about her whereabouts in the three years prior to the presentation of the Petition – matters which are of course wholly within her knowledge. She gave three examples.

22. First, on 23 February 2023, through Axiom DWFM, her solicitors, Miss Minai made an open offer in relation to the Petition – essentially, to pay the outstanding debt on completion of a loan secured on 12 Queen Anne's Gate. In support of that offer, a copy of a "*formal offer to refinance*" the property, signed by Miss Minai on 16 February 2023, was also provided. However, parts of that document were redacted, including her address. In cross-examination, Miss Minai at first said that the redaction was probably an "*accident*", and then suggested that it was deliberate, because the information might be used - including by Mr Fisher - to "*sabotage*" the loan (for reasons or by means that were not explained), and then said that the address was that of the Kyiv Apartment - "*Yes, of course, Ukraine, yes. It has to be Ukrainian address, because my lender knows where I live. He has my Ukrainian address*".

23. Between 3 March 2023, when she was cross-examined, and 19 April 2023, when closing submissions were made, Miss Minai made her 5th witness statement, in which she apologised and explained that her evidence in this respect had been incorrect, and that in fact the address was that of a friend with whom she sometimes stays, in Perivale. She said that "*as I explained I did not want the Petitioner, who has demonstrated a lack of principles with their treatment of my confidential and privileged information, to additionally harass my friends*".

24. I accept that the address on the document is that referred to in Miss Minai's 5th witness statement. Moreover, the redaction was plainly deliberate, not accidental. As to <u>why</u> it was redacted, that is less easily divined – I am inclined to accept that Miss Minai has indeed become highly suspicious of the Petitioners and the Foundation (I say that without to any extent suggesting that she has any rational justification for that belief) and concerned about revealing information to them, whether or not material to the dispute. Having said that, it follows that at least two aspects of Miss Minai's evidence in this respect were not correct, and that whatever her motives, her evidence reflects a reluctance to give a straightforward account of her whereabouts and her living arrangements.

25. Second, also before the beginning of the trial on 3 March 2023, again through Axiom, Miss Minai made another open offer in respect of the debt. She proposed that it be secured on various chattels, including items of furniture said to be stored at 12 Queen Anne's Gate. At Dentons' request, in order to establish Miss Minai's ownership of the property, Axiom DWFM provided certain documents, including what I understood to be a number of Delivery Notes made by St Louis, a renowned French glass manufacturer. Each of those Notes, dated 7 April 2016, contained a box, headed

"*Livraison*", which referred to Miss Minai, but from which her address had been redacted. In cross-examination she was asked about the redaction, and in the first instance said that the concealed address was that of the Kyiv Apartment. The examination continued:

"*Q Right. Why, given that we have your address in Ukraine, have you blanked this out on all of these documents?*

A No, no, no, no. The top of this, when I ordered these chandeliers if you look at them the time is a different time than today's, different time. That was about 17/18 years ago.

Q 2016 I think is the date on this document.

A Is it?

Q 7 April 2016 or 4 July, I do not know, but 2016.

A Yes.

Q Miss Minai, what I want to know is why have you-- I assume it is you. Why is your address concealed from us on these documents?

A I didn't do this to hide it from you.

Q Why did you do it?

A I just didn't want it to show the address of Ukraine at that time, but----

Q You say at that time. We were given these documents about two days ago.

A Let me explain to you. Let me explain to you. During the last----

Q Yesterday.

A --so many years I have purchased a lot of items, (inaudible), chandeliers, curtains, drapes, wallpapers, cabinets and if you see (inaudible) items and I intended to keep them all in one place in London, maybe Queen Anne's Gate and then ship them to Ukraine. This was done through the, let's say, three or four years that I intend to do that after I found out in 2016/17 there will be a war then I stop sending. All are sitting in the boxes without are open. The curtains are not open. The chandeliers are in the boxes. (Inaudible) are in the boxes. You saw the chairs. You saw the chairs. All are wrapped and sitting in the downstairs of the Queen Anne's Gate.

Q Miss Minai, I still do not understand. You provided----

A This is not a criminal offence.

Q Miss Minai, can I just----

A I just did it.

Q I am not saying it is a criminal offence.

A I did it! I did it!

Q What I am saying is that we are having a dispute in these proceedings about where your residence has been at various points in time. Yesterday you gave us these documents and you or the solicitors acting for you have chosen----

A That you said that I don't own this, there is no proof I own this stuff.

Q We are not talking about the ownership. What I am asking is why in these documents that you have provided----

A Because it shows the address of my agent and I did not want you to see the address of my agent in Paris.

Q The address of your agent?

A In Paris.

Q Right, I see. Okay. Is it actually because---- A Because I cannot trust you any more after what you did with Fisher.

Q Is the actual reason because it is an address----

A Yes, the only reason.

Q --in the UK that you do not want us to see.

A If you go back-- if you go back and look at the chairs unfortunately, which I didn't touch there, look at the chairs. The name of the agent is there. End of the story."

26. This evidence was not mentioned or corrected in Miss Minai's 5th witness statement, and so I assume is not known by her advisors to have been wrong. Again, it tends to show a reluctance to give a simple, uncomplicated account of Miss Minai's (and her agent's) various addresses – it is difficult to imagine a reason for wishing to conceal the address of Miss Minai's agent in 2016. In any event, her evidence changed in the course of cross-examination. Having said that, the evidence, as eventually given, has not been withdrawn and Miss Minai's approach is consistent with a genuinely held

view that the Foundation is not to be trusted (as I say, regardless of whether that view is in any sense justified).

27. Third, Ms Dixon referred to a hearing before Mr Recorder Cohen QC on 27 January 2021. This was the occasion of the first intended trial of the Foundation's case against Miss Minai, ultimately adjourned and subsequently decided by HHJ Monty QC in July 2021, as I have described. In his Judgment, which considered Miss Minai's application for an adjournment (which she made herself, without representation) the Recorder said that she had refused to disclose her present address (or at least, whereabouts) beyond revealing that it (and she) were somewhere in London. As to her complaint that she was not receiving documents or letters, he therefore concluded, "*If one party chooses to keep her address secret, then she must take the consequences of that*."

28. That hearing pre-dated the Petition (and of course, the Order of HHJ Monty QC) and it is unlikely that Miss Minai had in mind the issue now before the Court. However, Miss Minai's refusal to reveal her whereabouts in January 2021 tends to underline the point made above, that she is (and has been since before these proceedings, whether rationally or not) unwilling to deal openly with the Foundation in respect of her whereabouts.

29. In addition, Ms Dixon suggested that Miss Minai's evidence was "*often inconsistent*". As to that, she offered two examples.

30. First, that in respect of 43 Wimpole Street, in cross-examination, when asked if it was rented so that she could "*stay there when you were in London*", Miss Minai at first said no, and only after a number of further, direct questions eventually came to accept that "*for two or three nights, yes. It was a hotel for me*". As to that, I accept that Miss

Minai was slow and reluctant to give a single clear answer, or to get to the point of her eventual admission, which differed from the gist of her initial response, albeit that it seemed to me that at the outset she was perhaps more concerned to communicate that she was not often in London (or not often at the property) in contrast to other family members, rather than that she never used and had no access to the property.

31. Second, Ms Dixon suggested that in cross-examination, Miss Minai gave inconsistent evidence about whether or not she had stayed overnight at 12 Queen Anne's Gate, having said in her 2nd Witness Statement that because of several unlawful attempts to gain access to the property, "*On occasion various of my family members, including myself, have stayed overnight at the property in order to ensure it was secure.*" In cross-examination, the following exchange took place:

> "*Q You sometimes stay at Queen Anne's Gate to make sure that the property is secure, do you not?*
>
> *A No. As I explained before, because I heard recently there were squatters which they were trying to get into the property, the advice of my solicitor was that to make sure somebody will be there at least during the night and I have an agreement with friends to go there or my brother if he's here, but remember there is no facility there. There is a small bed at this side that my niece used in 2015/16 when she was going to university and if somebody tried to say there is the most uncomfortable place to be at, as I understand, but I go there during the day, yes, I do.*
>
> *Q And you sometimes stay there, do you not?*
>
> *A During the day I go there and I use the library and there are computers there and I use the library and if somebody wants to come and see the property they can go and if the caretaker is not there, somebody is not there to open the door, I go there, but I spend my time in the library a lot.*
>
> *Q Okay. Could you go to ... your second witness statement ...: "On occasion various of my family members, including myself, have stayed overnight at the property to ensure it was secure". So you do sometimes stay overnight at Queen Anne's Gate, do you not?*
>
> *A I stay there in the library always, because----*
>
> *Q In the library in the flat?*

A Next to the entrance door.

Q So you stay in the flat overnight?

A If I stay overnight I spend most of my time in library and not alone. I refuse to be there alone because of the incidents that has happened, tried to, some people get in, I got their pictures. One night I was there with my agent and we were talking, somebody tried to turn in and out the key and we run to the door, open the door, there were two people there and when I started to question them they start to run at that time. Then we decided that, you know, someone has to [inaudible] *there* [inaudible] *solicitors we have to guard the property.*

Q Right. I am just saying you do sometimes stay in the property overnight. That is correct, is it not?

A Once in a blue moon.

Q Okay."

32. Again, as in respect of 43 Wimpole Street, Miss Minai, in response to a direct question made by reference to her own written evidence, initially failed to accept the point at all, and then displayed a reluctance to reach the point of eventual acknowledgement.

33. It was plain to me that Miss Minai understood the purpose and relevance of these questions, and understood the use to which her replies might be put by the Petitioners in the context of this case. I conclude therefore that her obvious reluctance to give clear (but potentially unhelpful) answers was effectively deliberate, although again I acknowledge that in each instance, she did eventually concede that which might have been said more immediately, and more unambiguously, without the need for a series of further questions.

34. Finally in respect of the weight to be attached to Miss Minai's evidence, I should refer to proceedings that culminated in a trial and in the judgment of Field J. in November 2005 (at [2005] EWHC 2676 (QB)). Those proceedings provide some additional

context. The trial concerned Miss Minai's counterclaim against a firm of Solicitors, Roiter Zucker, in connection with the acquisition of 12 Queen Anne's Gate in 2002. Miss Minai was represented by Watson Farley & Williams Solicitors, and by Mr Andrew Onslow QC.

35. Miss Minai's case was that her solicitor had acted without authority in exchanging contracts for the acquisition and/or had acted negligently, and that she would not have bought the property but for those wrongs. Her claim was dismissed in its entirety, albeit the judge found that she "*deeply regrets*" the purchase. In assessing Miss Minai's evidence (Counsel for Roiter Zucker having submitted that she was a person "*who lies readily and recklessly and had lied in her evidence*") the judge referred to her evidence that she had bought the property as an "*investment*", despite having previously served a pleading endorsed with a statement of truth, which said that she had bought it as "*a pleasant home in which she could relax in her rare hours of leisure*". In that respect, he found her to have given untruthful evidence and overall, he considered her uncorroborated evidence to be unreliable, referring also to "*a pronounced tendency not to answer difficult questions but instead to make speeches*" – a tendency also sometimes displayed in her evidence in the present proceedings.

36. Overall, taking these matters into account, I must treat Miss Minai's uncorroborated evidence with some caution, but that is not to say that in every respect I afford it no weight, or that where I do not accept it, I necessarily consider that it was deliberately misleading. In particular, I bear in mind Mr Macpherson's submission that albeit in many instances given circuitously or with irrelevant elaboration, Miss Minai's evidence as, in substance, eventually provided was not generally contradicted by

some document or fact, or inherently incredible. I will consider its different aspects below, in the context of each allegation.

Mr Burns

37. I also heard evidence from Mr Burns, albeit briefly. In cross-examination he said that when the Foundation was considering the possibility of purchasing 12 Queen Anne's Gate (and therefore in or about 2017, but in any event, before the relevant period for the purposes of s.265) he visited the property. He was shown various photographs of its interior exhibited to Miss Minai's 3rd Statement and which she said had been taken recently. They show the property to be almost entirely unfurnished and empty, although one is of a room containing a number of sealed boxes, stacked upon one another, and a somewhat basic desk and office chair.

38. Mr Burns was asked whether the property was in a similar state when he visited it, and whether it was "*vacant and unoccupied*". His answer was that he could not recall. Given the significance of the contemplated transaction, and given that the property contains a number of very large, grand rooms, which when wholly devoid of furniture might be thought to make a striking impression on the observer, his failure to recall was perhaps surprising. Having said that, he did not contradict the proposition that the property was vacant, and in respect of one room - which he described as "*the basement*", and which the Foundation had apparently thought of using as a conference room - he confirmed that as shown in Miss Minai's photograph, it had been empty.

The Legal Principles

[A] An Individual Debtor's COMI

39. Under s.265(1)(a) of the 1986 Act, a bankruptcy petition may be presented against a debtor under s.264 if his or her COMI is in England and Wales.

40. Article 3(1) of the EU Regulation on Insolvency Proceedings (EU) 2015/848 as retained in the law of the UK ("**the Retained Insolvency Regulation**") states, in relevant part:

> "*The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.*
>
> .....
>
> *In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. ...*
>
> *In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved from the United Kingdom to a Member State or to the United Kingdom from a Member State within the 6-month period prior to the request for the opening of insolvency proceedings*."

41. The Petitioners' "*primary*" case is that as at the date of the Petition's presentation, Miss Minai was "*habitually resident*" in England, and that her COMI was, and still is, in England (both presumptively, and in fact). They did not allege that Miss Minai is or was "*an individual exercising an independent business or professional activity*" (and neither did Miss Minai herself). As to that, Ms Dixon said that not enough was known to the Petitioners about the capacity in which Miss Minai engages in her alleged business and/or professional activities, whether in Ukraine or elsewhere, to support a

positive case that she was or is such an individual. On neither side is it argued that Miss Minai's COMI moved to or from the UK, from or to a Member State, within the relevant 6-month period.

42. Further, it was ultimately common ground, and I accept, that for present purposes (and notwithstanding what was said by Chadwick LJ at [39] and [55(1)] of Shierson v Vlieland-Boddy [2005] EWCA Civ 974) Miss Minai's COMI is to be assessed as at 2 March 2022, the date of presentation of the Petition ("*the request for the opening of insolvency proceedings*") rather than the date of the Petition's final hearing.

43. In that regard, I was referred to O'Donnell v Bank of Ireland [2012] EWHC 3749 (Ch) in which Newey J. (as he then was), having considered the matter by reference to certain decisions of the ECJ since Shierson (Re Staubitz-Schreiber (Case C-1/04) and Interedil Srl v Fallimento Interedil Srl and another (Case C-369/09) concluded, at [36], "*In the light of these cases, it is now apparent, I think, that a debtor's COMI falls to be determined as at the date of presentation of a bankruptcy petition rather than the date (if different) on which the petition is heard*." More recently, in Re Melars Group Ltd [2021] EWHC 1523 (Ch), at [61], Miles J. confirmed the proposition: "*the matter has to be examined at the date of the petition. Earlier or later events may be relevant, but only in so far as they may throw helpful light on the position as at that date*." Although that decision was appealed (albeit unsuccessfully, at [2022] EWCA Civ 1419, in a decision to which I return below) that proposition was neither challenged nor contradicted. It is therefore the approach I shall adopt.

44. As to the determination of a debtor's COMI (regarding which the parties were agreed that pre-Brexit authorities remain applicable) a broad and useful summary is found at [81]-[82] of the judgment of Mr Registrar Baister (as he then was) in Re Budniok

[2017] EWHC 368, where he said in relevant part (the case raised the issue of "*forum shopping*", not material in the present case, and I have omitted certain parts directed in particular at that issue):

> "*81. I turn next to the relevant law. Although it is set out in many cases I will take a short cut by recycling a summary I made relatively recently of the relevant provisions of the EC Regulation and related material and by way of attempt to draw together the factors to be taken into account as they emerged from the case law (see Doyle v Quinn [2015] BPIR 226 ….*
>
> "…
>
> *[**38**] Recital (13)* [of the Regulation] *provides*:
>
> *'The "centre of main interests" should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.'*
>
> *[**39**] The Virgós-Schmit report comments on 'centre of main interests' (in para 75):*
>
> *'The concept of "main interests" must be interpreted as the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.*
>
> *The rationale of this rule is not difficult to explain. Insolvency is a foreseeable risk. It is therefore important that international jurisdiction (which, as we shall see, entails the application of the insolvency laws of that Contracting State) be based on a place known to the debtor's potential*

creditors. This enables the legal risks which would have to be assumed in the case of insolvency to be calculated.

By using the term "interests", the intention was to encompass not only commercial, industrial or professional activities, but also general economic activities, so as to include the activities of private individuals (e.g. consumers). The expression "main" serves as a criterion for the cases where these interests include activities of different types which are run from different centres.

In principle, the centre of main interests will in the case of professionals be the place of their professional domicile and for natural persons in general, the place of their habitual residence.'

*[**40**] It will be seen from the foregoing (a) that the 'interests' to which the Regulation refers are primarily economic: they include commercial, financial and professional activities, but also consumer activity; (b) that the word 'main' is important: a debtor may administer his interests in more than one centre; (c) that a professional person's centre of main interests is likely to be the place of his professional domicile, but that otherwise for natural persons it is likely to be that person's habitual residence.*

*[**41**] The leading English authority on the application of the EC Regulation remains Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170 . A number of important principles emerge from that case.*

[42] *The first* [this comment dealt with the issue of date of assessment, which I dealt with above at paragraphs 42 and 43]... *Secondly, the location of the centre of main interests falls to be determined in the light of the facts as they are at the relevant time, but those facts include historical facts. Thirdly, the court must have regard to the need for the centre of main interests to be ascertainable by third parties, in particular creditors and potential creditors. But, as Chadwick LJ noted (at para 55):*

'There is no principle of immutability. A debtor must be free to choose where he carries on those activities which fall within the concept of "administration of his interests". He must be free to relocate his home and his business. And, if he has altered the place at which he conducts the administration of his interests on a regular basis, by choosing to carry on the relevant activities (in a way which is ascertainable by third parties) at another place, the court must recognise and give effect to that.'

Chadwick LJ went on to note that a debtor's freedom to move could be for a self-serving purpose, even where insolvency was threatened. He also noted, however, that:

'In circumstances where there are grounds for suspicion that a debtor has sought, deliberately, to change his centre of main interests at a time when he is insolvent, or threatened with insolvency, in order to alter the insolvency rules which will apply to him in respect of existing debts, the court will need to scrutinise the facts which are said to give rise to a change in the centre of main interests with that in mind. The court will need to be satisfied that the change in the place where the activities which fall

within the concept of "administration of his interests" are carried on which is said to have occurred is a change based on substance and not an illusion; and that that change has the necessary element of permanence.'

*[**43**] There is also a significant body of first instance case-law dealing with the factors the courts will take into account when dealing with what appears to be forum shopping, but the most comprehensive list is, I think, to be found in the judgment of HHJ Purle QC, sitting as a High Court judge, in Sparkasse Hilden Ratingen Velbert v (1) Benk (2) The Official Receiver [2012] EWHC 2432 (Ch), [2012] BPIR 1258 , ChD (paras [19] and [22]), which, not for the first time, I gratefully adopt (with minor editorial changes):*

(a) An individual's COMI [centre of main interests] is where he can be contacted; this will normally be his habitual place of residence (see Geveran Trading Co Ltd v Skjevesland [2003] BPIR 73, [2003] BCC 209 , ChD, at 89; upheld on appeal Skjevesland v Geveran Trading Co Ltd [2002] EWHC 2898 (Ch), [2003] BPIR 924 , ChD);

(b) A person's COMI must have an element of permanence (see Official Receiver v Mitterfellner [2009] BPIR 1075 , ChD at paras [5] and [6]);

(c) The COMI must be ascertainable by third parties (see Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170 , at para [54]);

(d) an individual is free to re-locate his COMI, even on the eve of insolvency; what a court must determine on the facts is whether the change

in COMI is one of substance or a mere illusion (see Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170 , at para [55]);

(e) A debtor can only have one COMI;

(f) A debtor's COMI is, in the case of professionals, the place of their professional domicile and for natural persons in general, the place of their habitual residence (Virgos-Schmidt Report, at para 75 and Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170 , at para [47]);

(g) 'A man's habitual residence is his settled, permanent home, the place where he lives with his wife and family, […] the place to which he returns from business trips elsewhere or abroad ...' (Stojevic v Official Receiver [2006] EWHC 3447 (Ch), [2007] BPIR 141 , ChD at para [59] and Re Eichler (No 2) (A Bankrupt); Steinhardt v Eichler [2011] BPIR 1293 , at para [142](iv));

(h) Whilst a debtor's choice as to where he conducts the administration of his affairs may be subjective, where he actually carries on the administration of his affairs on a regular basis such that it is ascertainable by third parties and by the court is an objective question (Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170 , at para [43] and [47]; Re Eichler (No 2) (A Bankrupt); Steinhardt v Eichler [2011] BPIR 1293 , at para [141](viii));

(i) 'Regular administration' of a debtor's interests means that the court must look for the place from which the debtor exercises the management, organisation and control of his interests (Stojevic v Official Receiver [2006] EWHC 3447 (Ch), [2007] BPIR 141 , at para [28] and Re Eichler (No 2) (A Bankrupt); Steinhardt v Eichler [2011] BPIR 1293 , at para [142](i));

(j) The term 'on a regular basis' indicates 'a quality of presence', 'a degree of continuity', 'an idea of normality', 'a stable link with the forum' and 'a degree of permanence' (Stojevic v Official Receiver [2006] EWHC 3447 (Ch), [2007] BPIR 141, at para [29] and Re Eichler (No 2) (A Bankrupt); Steinhardt v Eichler [2011] BPIR 1293, at para [142](ii));

(k) Particular regard must be had for the COMI to be ascertainable by third parties, in particular creditors and potential creditors (Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170 , at para [55]);

(l) Whilst the date on which the COMI is to be established is the date of presentation of the petition, evidence as to a debtor's activities and actions at other times may be significant in that they cast light on the truth or otherwise of his claim to have had his COMI in England at the relevant time (Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170 , at paras [47] and [55]);

(m) If the debtor relocates in the face of potential insolvency, the court must scrutinise the facts and determine whether the change in the place of the administration of interests is based on substance or is an illusion

(Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170 , at para [55]);

(n) That change must also have an element of permanence (Shierson v Vlieland-Boddy [2005] EWCA Civ 974, [2005] 1 WLR 3966, [2005] BPIR 1170, at para [55] and Re Eichler (No 2) (A Bankrupt); Steinhardt v Eichler [2011] BPIR 1293, at para [141](vi)).

To those matters I would add:

'[A] debtor does not appear to be obliged to advertise his centre of main interest but nor may he hide it. It should be reasonably or sufficiently ascertainable or ascertainable by a reasonably diligent creditor' (per Deeny J in Irish Bank Resolution Corporation Ltd v Quinn [2012] NICh 1, [2012] BPIR 322 , NI ChD at para 28)".

45. More recently, the nature of an individual debtor's relevant administered "*interests*", and the rationale of the presumption based on his or her habitual residence, were considered by the ECJ in MH v OJ (Case C-253/19), a case in which the Portuguese court had refused to open bankruptcy proceedings in respect of a married couple who lived and worked (and were treated as being habitually resident) in the UK but whose sole immovable asset was located in Portugal. The question referred to the ECJ was whether the presumption is rebutted "*solely because the only immovable property of that person is located outside the member state of habitual residence*". The answer to that question, perhaps unsurprisingly, was "*no*" (see [19]-[31] at [2021] 1 WLR 2499, 2520).

46. That decision emphasised various points made previously:

i) first, that a debtor's COMI is to be established by reference to matters both "*objective and ascertainable by third parties*", to "*ensure legal certainty and predictability*" - a requirement to which I return below;

ii) second, that in assessing "*ascertainability*", special consideration should be given to creditors, and to their perception of the place of administration by the debtor of his or her interests;

iii) third, that the COMI is to be determined following an "*overall assessment"* of all the objective criteria ascertainable by third parties, and in particular, by creditors;

iv) fourth, that the interests in question are financial and economic, and entail a consideration of the debtor's economic activities, including economic decision making, earning and spending revenue, and holding assets;

v) fifth, the rationale of the presumption based on habitual residence is that there is a "*strong possibility*" that the place of habitual residence is the place where the debtor's interests are administered.

47. Whilst therefore I agree with Mr Macpherson's submission that factors relating to a debtor's social or family situation are material only insofar as they have economic implications (and may in any event not be "*ascertainable*" in the relevant sense) I do not agree (as also he submitted) that this adversely affects the reasoning of Deputy ICC Judge Agnello QC in Kooter v OR [2022] EWHC 2683 (Ch), in which (see [27]) the judge referred to various criteria stated at Article 11 of Regulation (EC) No 987/2009 (concerning the co-ordination of social security systems) including for example, "*family status and family ties*" in order to determine a debtor's habitual

residence. In my view, such matters are undoubtedly relevant to the determination of a debtor's habitual residence, albeit that the ultimate issue concerns the place of administration of economic and financial interests by reference to matters both objective and ascertainable, in particular from the perspective of creditors – habitual residence creates merely a presumption. I would make the same point in respect of Mr Macpherson's submissions concerning the judgment of Mr Registrar Jacques in Stojevic v OR [2007] BPIR 141, where amongst other things he said at [59] (as part of a longer passage often cited) that "*Essentially … a man's habitual residence is his settled, permanent home, the place where he lives with his wife and family, until, in the case of the younger members of the family, they grow up and leave home, the place to which he returns from business trips elsewhere or abroad*." Again, although I accept that the question ultimately at issue concerns matters economic and financial, rather than social and familial, the judge's description of habitual residence, or at any rate, of the sense or gist of that concept (which he himself said was "*easier to ascertain that … to explain*") continues to be useful and relevant.

48. Finally, I said above that I would return to the issue of "*ascertainability*", an important aspect of COMI, often stated, but which begs the question - ascertainable by whom, how and by reference to which facts or matters? That issue was raised in Re Melars Group Ltd, referred to above at paragraph 43.

49. In that case, Deputy ICC Judge Baister had concluded that a debtor company's COMI was in England and Wales rather than Malta, where its registered office was located, and had made a winding-up order against it. The petition had been presented on 19 July 2016, and was subject to the Insolvency Regulation (EU) 2015/845. On the company's appeal before Miles J. there were two main issues of principle: first,

whether the judge had failed properly to give effect to the presumption that a company's COMI is located in the place of its registered office, and second, whether he had gone wrong in his approach to the identification of ascertainable objective factors required to rebut the presumption.

50. The appeal was allowed, and in his judgment (at [2021] EWHC 1523 (Ch)) Miles J. held, amongst other things:

i) first, that Judge Baister had wrongly failed give effect to the important presumption in favour of the place of the company's registered office (having wrongly treated the ascertainable and undeniable fact of its situation in Malta as "*illusory*" – see [63]-[67], and also [76]); and,

ii) second, that in respect of the ascertainability of factors relevant to COMI, Judge Baister had erred (having not been referred to all relevant authority on the point) in failing to consider whether they were "*ascertainable, in the sense of being available to typical third parties of the company without further enquiry*" [68]. At [69], Miles J. added, "*To my mind, the judge's error is well illustrated by his comment … that the petitioner had ascertained the company's centre of main interests in the face of a cloud of obscurity. He said that it had been discovered by a reasonably diligent creditor (the petitioner). The judge was referring there to the petitioner reaching that conclusion in the light of all of the evidence that was before the court, including evidence, for example, about the banking contracts and the various contracts that had been disclosed in the course of the proceedings. There is no reason to suppose that those matters would have been ascertainable to typical creditors of the company, and the judge did not address that question separately*."

51. Following this decision, the petitioner appealed. Its appeal (at [2022] EWCA Civ 1419) was ultimately unsuccessful. Although the Court of Appeal differed from Miles J in respect of his approach to ascertainability, it agreed (see [46]-[49]) with his approach to the presumption based on the location of the company's office.

52. The principal judgment, agreed by Henderson and Lewison LJJ, was given by Snowden LJ. As to ascertainability (and having considered the decisions of the ECJ in Leonmobili Srl v Homag Holzbearbeitungssysteme GmbH (Case C-353/15) EU:C:2016:374 and MH v OJ (see above at paragraph 45), neither of which had been cited to Miles J.) he explained:

i) at [60]-[62], in connection with the decision of the Court of Appeal in Re Stanford International Bank [2010] EWCA Civ 137, that although "*factors relating to a fraud which was deliberately concealed from third parties and which only became apparent as a result of subsequent investigation by the relevant authorities or insolvency officeholders, cannot possibly be relevant to a determination of the company's COMI*", it was "*not authority for the proposition that matters that were known to or ascertainable at the relevant time by creditors should be excluded from consideration on the COMI question simply because they were not generally known or advertised to the public at large*"; and,

ii) that as part of its "*comprehensive assessment of all relevant factors*", the Court should not "*disregard a factor that a third party actually ascertains from the course of his dealing with the company, which indicates to him where the debtor company is administering its interests, simply because other third parties who dealt with the company in the past or who might deal with it in the*

future, may not also know of it" [70]. The issue was not one of admissibility, but of appropriate evidential weight.

53. To illustrate the Court's preferred approach, at [65]-[66], Snowden LJ provided an example:

> "*65. Suppose that in the course of its business a debtor company entered into ten separate and bespoke commercial contracts with ten separate counterparties; that each contract was negotiated and signed by the same representative of the company in the same office; and that in each contract, the company identified the same person in the same office as being responsible for dealing with the counterparty in respect of all matters arising out of the contract.*
>
> *66. From their individual viewpoints, each of the counterparties would have the same perception of where the company was administering its interests relevant to the dealing with them. Taken together, the facts in relation to the ten contracts would also indicate that the company was administering its interests in relation to the ten creditors concerned from the same place, and hence might be thought to be doing so on a regular basis. Assuming that the ten contracts represented a material proportion of the company's commercial interests, it seems to me that on a straightforward reading of Article 3(1), those facts would plainly be relevant to the determination of its COMI.*"

54. Finally, Snowden LJ acknowledged at [71] that this broader approach "*might mean that a prospective creditor could not be certain in advance what weight will be attached to his perspective by a court: but the same problem arises in a more acute form if the creditor can have no assurance that what he actually knows will be taken into account at all in the determination of COMI unless he is ultimately found to be*

"typical" of others dealing with the company". The point might to some extent be illustrated by a variation of the example stated above, in which one of the ten counterparties dealt with representatives of the company but in a different place, and without knowledge of the other nine, perhaps wrongly assuming itself to be "*typical*". But on any approach, a difficulty of sorts may arise. The present case, in which the Petitioners' evidence was that until comparatively recently, they knew nothing of Miss Minai's alleged close connections with Ukraine, also touches on this point, but I bear in mind that what is ultimately required is a "*comprehensive assessment of all relevant factors*", attaching appropriate weight to the available evidence.

[B] A Debtor's "Place of Residence" under S.265(2)(b)(i)

55. It was common ground, and I agree, that there is no single or conclusive test for what constitutes a "*place of residence*" for the purposes of s.265(2)(b)(i) of the 1986 Act. As was said by Roth J in HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud v Mobile Telecommunications Company KSCP at [37] - a case concerning service of a bankruptcy petition out of the jurisdiction - the "*expression should be given its ordinary meaning and the assessment depends on all the facts*"; a "*broad range of factual considerations ... may be relevant*".

56. As to what is or may be relevant, the authorities contain guidance. As a result, the meaning of the expression has been refined.

57. First, in Reynolds Porter Chamberlain LLP v Khan [2016] BPIR 722, Chief Registrar Baister (as he then was) considered the meaning of the words, "*ordinarily resident*" and "*place of residence*", both in the context of s.265(2)(b)(i). Although the two expressions, and the tests they embody, are distinct (it is perfectly possible to be ordinarily resident in England but without having a place of residence, and *vice versa*)

the judge noted that there was some overlap between the factors relevant to each. As to "*place of residence*", he summarised some of the principles which he derived from earlier authorities, as follows (in a passage subsequently cited with approval in numerous cases including HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud at [34]):

> "*(1) Having a place of residence is a de facto situation rather than a matter of legal right (Skjevesland para 50 and the passage from Brauch there cited). So a licensee may have a place of residence (Brauch 334).*
>
> *(2) A moral claim to premises may be sufficient (Skjevesland para 52).*
>
> *(3) The person concerned may well have to phone to make arrangements to occupy because others use the premises as well as him but this is no obstacle to a finding of having a place of residence (Skjevesland para 53).*
>
> *(4) It is possible to have a dwelling house without being in occupation in the relevant period (Brauch, 335) but the greater the occupation the more likely the finding; but not perhaps if the relevant property has been abandoned (Nordenfelt and Brauch, 335).*
>
> *(5) Living in a place with one's family as a tenant in rooms makes those rooms a dwelling house (Hecquard 74).*"

58. The proposition at (4), and the reference to "abandonment", was supported by the decision of the Court of Appeal in Re Nordenfelt [1895] 1 QB 151, which was decided under the Bankruptcy Act 1883, s.6. According to that provision, a creditor was not entitled to present a petition against a debtor unless, amongst other things, "*the debtor, within a year before the date of the presentation of the petition, has ordinarily resided or has a dwelling-house or place of business in England*". In HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud, Roth J. accepted that there is no "*substantive distinction between*" the two expressions "*dwelling-house*" and "*place of residence*", and that "*the change was probably made simply in order to use a more modern term*".

59. In Nordenfelt, the debtor had, without question, resided in a house which belonged to him, at Beckenham in Kent. However, in May 1891, he had left the house and gone with his wife and servants to live in Paris. The house and furniture were left in the charge of a caretaker, and an agent was instructed to let the house, whether furnished or unfurnished. The house having not been let, the furniture was offered for sale at auction, and a large part of it was sold and taken away. The unsold remainder was left in the house, but was packed up ready for removal. In December 1892 the lease of the house was sold. The petition was presented on 9 November 1893.

60. Although, had he chosen to do so, the debtor could have occupied the property at any time before its sale, including within the year before presentation of the petition, and notwithstanding that in the proceedings themselves, in his affidavit evidence, he had described himself as being of "*Downs House, Beckenham*", a place which had previously been his dwelling-house, the Court of Appeal refused the petitioners' appeal against the dismissal of their petition.

61. Lord Esher, MR said, at [1895] 1 QB 151, 153:

> "*I will not attempt to give an exhaustive definition, or indeed any definition, of the term "dwelling-house" as used in this section. I only intend to say what I think is not a "dwelling-house." If a man has a house belonging to him, but he has abandoned it as his dwelling-house, that house is not his "dwelling-house" within the meaning of this section.*"

Rigby LJ said, at [1895] 1 QB 151, 154:

> "*The debtor had, no doubt, had a dwelling-house at Beckenham, and he might very easily after he went away to Paris have adopted the house again as his*

dwelling-house. But when it appears, as it does, that he offered all his furniture in the house for sale, and had that which was not sold packed up in such a way that it could not, without some trouble and expenditure, be placed in a position to be used, I am satisfied that he had abandoned the house as his dwelling-house before the commencement of the critical year. I am satisfied also that he did nothing during the year to adopt it again as his dwelling-house."

62. This illustrates that in a given case, in order to determine the nature of the debtor's connection with the property said to be his or her place of residence, the court may have to consider, as a relevant factor, the debtor's state of mind, or intentions, with regard to the property's use. In Nordenfelt, an intention to "*abandon*" or relinquish the house as a dwelling (in that case at least to some extent acted upon by the debtor) was enough to change its character for these purposes, even though his intention was not irreversible.

63. In Lakatamia Shipping Company Ltd v Su [2021] EWHC 1866, Bacon J considered and allowed an appeal against a refusal to annul a bankruptcy order made by an adjudicator under s.263K of the 1986 Act. The case raised the question whether or not the debtor had had a "*place of residence*" in England under s.263I, which is the same test as under s.265(2)(b)(i). The ("*somewhat involved*") facts were summarised by Roth J in HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud, at [38]:

"*The application was made on 4 July 2020, so the three year period commenced in July 2017. Mr Su was not in the jurisdiction at all in the first 18 months of that period. The debt arose under two English court judgments of 2014- 2015, and in January 2018 the court ordered that the debtor surrender his passports and remain in the jurisdiction until he had given disclosure of his assets. The debtor*

came here only in January 2019, flying in from Taipei and intending to stay overnight in a hotel before flying on to Germany. However, he was detained pursuant to the 2018 order and his passports were confiscated. He nonetheless attempted to leave a few days later when he was arrested and served with a committal application. He spent the next month staying at various hotels and then for a month stayed in a serviced apartment that he rented until he was sentenced to prison for 21 months for contempt. He was released after serving half his sentence in April 2020 but was unable to leave the jurisdiction because a further court order had been made in January 2020 prohibiting him from leaving and continuing the surrender of his passports until he had given evidence regarding his assets. He therefore stayed, first, with a friend for a few weeks, and then from late April 2020 in a small flat in Maida Vale which had been leased by someone he met in prison. It was common ground that he had no right to remain in the UK nor to rent a property or work in the UK. He wished to leave the country and in December 2020 applied unsuccessfully to vary or discharge the January 2020 order."

64. The "*very short point*" decided by Bacon J was that an "*entitlement of some sort to occupy a place that is capable of being described as someone's place of residence*" does not satisfy the test in s.263I: [24]. Amongst other things, the judge said, at [25], that on the plain meaning of the words in the statute, "*the residence must be that of the debtor not someone else*". Having reached that conclusion, sufficient to refuse the appeal, the judge set out "*some brief comments*" on what she considered to be the correct approach to the test, "*without in any way suggesting*" that they comprised an exhaustive exposition. She made three points:

i) that the phrase should be given its natural meaning, and that it was relevant to have regard to authorities concerning the concept of residence even if arising in a different statutory context; as a result, she concluded that it is "*relevant to ask*" whether the place in question was, for the debtor, "*a settled or usual place of abode or home*" [36];

ii) that residence "*connotes some degree of permanence, some degree of continuity or some expectation of continuity*" [37]; and,

iii) that a debtor is present in England involuntarily, and is restrained from leaving - even if by court order - does not preclude that person having a place of residence under s.263I, although it is a relevant factor: the court must consider the "*nature of someone's presence in and connection to a particular place*".

65. Applying those principles to the facts, the judge held that Mr Su's presence at each of the properties occupied since his arrival in England in January 2019, "*was temporary and transient with no degree of permanence or expectation of continuity. The longest period of time appears to have been spent at the Maida Vale flat, which Mr Su's own evidence describes as a "squalid little flat" that his prison cellmate allowed him to use. Mr Su says that he has very few possessions at the flat and feels like he is still living in a prison*."

66. In HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud, Roth J, having considered these comments, agreed that the factors identified are relevant, although none are "*essential requirements*". He noted for example that it is well established that a debtor may have a "*place of residence*" in the jurisdiction, although his "*home*" is elsewhere [41]. With respect, that is the approach that I shall adopt.

The Evidence and the Issues

67. As I have already described, Miss Minai's evidence, which she maintained consistently and with some vehemence in cross-examination, was that her home is in Kyiv and has been, continuously, since long before the beginning of these proceedings.

68. More specifically, her evidence was that she has owned and lived in the Kyiv Apartment since 2004/5. She said that she settled in Ukraine in 1989 because she saw "*opportunity and decided this was the place I could build my business*", having previously lived "*around the world, including Japan, Hong Kong, Austria, East Europe*"; on her death, regardless of where she may then be, she said that she wants to be buried in Ukraine and has instructed her family to that effect; she said she is currently living in England only because of the continuing conflict in Ukraine. Although she was born in Iran and has an Iranian passport (as well as an American passport, but no others) her Iranian passport (a copy of which was in evidence) was issued in Kyiv on 7 May 2019 and is valid until 6 May 2024. It states that her "*Country of Residence*" is Ukraine. In addition, she produced a copy of a Ukrainian residency permit dated 29 April 2003 which she said was valid for life, although as Ms Dixon pointed out, there is no other evidence about its legal significance or duration, or about the requirements for obtaining it. She said that she has no right of residence in England. I have already described Miss Minai's evidence about her extensive business interests, and about her car, her driver, bodyguard and other household staff. In addition, she said that she has no bank account in England, does not use the NHS, and receives no state benefits, such as a pension.

69. As I said above, none of that evidence is inherently unbelievable; none was contradicted by the evidence of another witness telling of his or her own knowledge or belief.

70. In cross-examination, Miss Minai's description of her life, property, business and other interests in Ukraine - her connection to that country - was not directly or explicitly challenged, and was not said to be a fabrication or exaggeration, whether deliberate, innocently imagined or otherwise: as such, she was not expressly called upon either to confirm or contradict the statement that her home (her "habitual" residence) is actually in England, which is the Petitioners' case.

71. Moreover, to some extent, her connections with Ukraine were more or less acknowledged. For example, she was asked where she had been, in which country, between January 2021, at the time of the hearing before Mr Recorder Cohen QC when she was in London, and October 2021, when, on her own evidence, she came to England for medical treatment. Her response was that she had been in Ukraine for several months, and then Switzerland ("*to speak to banks*") then to Ukraine again, before coming back to England. Her evidence in that regard, her answer, was not challenged.

72. Miss Minai was however asked about the paucity of documentary evidence produced in support of her described connections with Ukraine, and also was shown and asked about various documents which might be said to contradict her case. I shall deal with each of these in context, in respect of each alleged connection with England.

12 Queen Anne's Gate

73. 12 Queen Anne's Gate has belonged to Miss Minai since 2002. It is a residential property. Undoubtedly, she could live there if she chose to do so, and would not need

any other person's permission to do so. Her evidence was that she bought the property as, and only as an "*investment*", without any thought of living in it. As to that, I am not persuaded: whilst no doubt she might have hoped for the property's value to increase over time, what she now says about her reasons for making the acquisition contradicts what she said in evidence before Field J in 2005, as explained above; accordingly, without more, I do not accept Miss Minai's word on this point, otherwise unsupported.

74. However, I do accept that Miss Minai decided to sell the property in about 2014, and since then, more or less continuously, has been intending and attempting to do so, including to the Foundation in 2017. As to that, she exhibited an article from The Daily Mail newspaper dated 5 August 2014, which referred to the property as "*one of the most expensive for sale on the open market*", with an asking price of £35.5 million. The photographs accompanying the article show the property to have been empty, as do the photographs exhibited to Miss Minai's 3rd witness statement, the evidence of which, as described above, was not contradicted by Mr Burns in his evidence. On 30 November 2005, in his judgment referred to above, Field J. said that "*Ms Minai has neither occupied the property nor rented it out. It has accordingly stood empty for four years*."

75. Accordingly, I also conclude that since at least 2014, and possibly at all times since it was bought by Miss Minai, the property is and has been almost completely unfurnished and empty, but for (as she said in cross-examination) "*a small bed ... that my niece used in 2015/16 when she was going to university*", and a library with computers; there is no evidence to contradict that conclusion. That finding tends to support Miss Minai's evidence that she does not currently live, and has never lived at

the property, for "*any period of time*", although as to that, she also accepted (indeed explicitly said in her own written evidence) that "*on occasion*", following several unlawful attempts to gain access to the property, including by people apparently intending to occupy it as squatters, "*various of my family members, including myself, have stayed overnight at the property in order to ensure it was secure*".

76. Miss Minai was asked about that evidence, and about her use of the property. As set out above, she accepted that she sometimes stays there overnight, albeit never alone, and only "*once in a blue moon*" in order to guard the property - it "*is the most uncomfortable place to be at*". She also accepted that she goes there during the day to use the library and computers "*and if somebody wants to come and see the property they can go and if the caretaker is not there, somebody is not there to open the door, I go there, but I spend my time in the library a lot*". It was not clear, and she was not asked, whether or not that evidence reflected her use of the property as at the date of the Petition's presentation, rather than subsequently and now.

77. In addition, in respect of 12 Queen Anne's Gate, Miss Minai was referred to various documents.

78. First, in her first witness statement in these proceedings (but not subsequently, since changing solicitors) and also in her witness statement in the proceedings against her that culminated in the judgment in favour of the Petitioners, Miss Minai used 12 Queen Anne's Gate as her address. PD 32 provides that a witness statement should state the witness's ("*his*") "*place of residence*" unless it is being made in his professional, business or other occupational capacity.

79. In cross-examination, Miss Minai said that she used the property's address in her first statement in the present proceedings as a "*mailing address*", that it was her address

for communication, and that her solicitors at the time knew that she did not live there, because that is what she told them. Indeed, the whole purpose of the statement was to dispute jurisdiction. Thus, amongst other things, paragraph 3 reads, in part, "*I do not currently live, and have never lived, at* [12 St Anne's Gate] *for any period of time. The Petitioners are … wrong to suggest (as they do in the petition) that I have ever resided at the Property (or in England)*"; paragraph 4 reads, in part, "*I am currently staying with friends in Islington. At the request of my previous solicitors, Stephenson Harwood, I provided the Property as an address in England that they could use to send post – as I collect my post (personally or though others) from the Property on an irregular but not infrequent basis …*"; paragraph 6 reads, in part, "*My home address is* [that of the Kyiv Apartment]"; and paragraph 12 referred to the property having been valued and marketed for sale at £35 million, and referred to the article in The Daily Mail referred to above.

80. Given the content and only purpose of the statement, served in opposition to the Petition, I accept that the use of the Property as Miss Minai's address cannot be treated as a simple statement or admission of her place of residence. Far more likely, as she said in oral evidence and in the statement itself, is that the address was used in the statement as a correspondence address. I accept her evidence on this point, that she did not knowingly state the address as that of a place of residence.

81. Moreover, given that finding, I also accept the same explanation in respect of Miss Minai's statement in the previous proceedings that culminated in the judgment debt: I do not accept that in either instance Miss Minai understood, knew or intended the implicit statement that 12 Queen Anne's Gate was her place of residence, rather than a place to which correspondence should be sent. In addition, Miss Minai said that the

address was used in the previous proceedings because it was the "*property in question*". I find that explanation less compelling – it is not otherwise supported and neither does it seem to have any obvious logical force; but it is not necessary to my conclusion on the point.

82. Second, in both the Exclusivity Agreement dated 19 December 2017, and in another earlier formal contractual document - a Deed of Variation made on 15 October 2014 between 4-12 Queen Anne's Gate Freehold Ltd and Miss Minai, supplemental to a lease of 12 St Anne's Gate dated 15 October 1999 – Miss Minai again used the address of that property as her address.

83. As to the Exclusivity Agreement, Miss Minai's explanation was that she used the address because it was the place, the property, in question, and because her solicitors inserted it in the agreement when they drafted it. I do not attach any significant weight to the use of the address in this context: it was a commercial contract, and there was no obligation to use or state a particular residential address – it was the address of a place which Miss Minai owned, the place which was to be sold, and the place at which she could, if necessary, be sent correspondence; it bears no greater significance.

84. Similarly, as to the Deed of Variation, which seems to have been produced when the freehold of the property was acquired by the tenants (and Miss Minai's evidence was that she was in Kyiv) I do not attach great weight to the use of the address – it was the address of the property in question, and its use was for that reason natural, but it was, it seems to me, otherwise insignificant.

85. Third, in closing, the Petitioners relied upon documents filed at Companies House in connection with eight English registered companies, being, in addition to Niko

Shipping, Tara Property Management and Olewatt (referred to in the Petition), five other companies:

i) Liberty Assets Ltd, registered number 04080597, in respect of which Miss Minai is listed as a person with significant control, whose country of residence is England, with a service and correspondence address at 12 Queen Anne's Gate, notified on 1 October 2016. Its first annual return was filed on 19 October 2001.

ii) Metcore Securities Ltd, registered number 04377401, in respect of which Miss Minai is listed as a person with significant control, whose country of residence is England, with a correspondence address at 12 Queen Anne's Gate, notified on 1 October 2016.

iii) Sigma Finance & Assets Ltd, registered number 04379362, in respect of which Miss Minai is listed as a person with significant control, whose country of residence is England, with a service and correspondence address at 12 Queen Anne's Gate, notified on 15 July 2016.

iv) Karon Commodities & Investments Ltd, registered number 04500033, in respect of which Miss Minai is listed as a person with significant control, whose country of residence is England, with a service and a correspondence address at 12 Queen Anne's Gate, notified on 1 March 2017.

v) Scan Euro Steel (UK) Ltd, registered number 03858038, in respect of which Miss Minai is listed as a person with significant control, whose country of residence is England, with a service and a correspondence address at 12 Queen Anne's Gate, notified on 1 August 2016.

86. As to those mentioned in the Petition:

i) Niko Shipping, registered number 04125169, in respect of which Miss Minai is listed as a person with significant control, whose country of residence is England, with a correspondence address at 12 Queen Anne's Gate, notified on 1 October 2016.

ii) Tara Property Management, registered number 04322034, in respect of which Miss Minai is listed as a director, whose country of residence is the UK, with a correspondence address at 43 Wimpole St, notified on 22 August 2014. The company's other director, a Mr Abdol Salehianpour, was appointed on 13 November 2001 (and so the company was incorporated on or before then).

iii) Olewatt, registered number 02790769, in respect of which Miss Minai is listed as a person with significant control, whose country of residence is England, with a service and a correspondence address at 12 Queen Anne's Gate, notified on 1 October 2016.

87. As to these companies and the documents filed at Companies House:

i) Miss Minai said (and in this respect was not contradicted) that Olewatt was the only one that traded, that was not dormant; it acted, so she said, as the "*agent*" in the UK of her Ukrainian companies (although its activities were no better particularised). Miss Minai accepted that she sometimes uses an Olewatt email address.

ii) otherwise, essentially, Miss Minai said that each company was established and "*taken care of*" either by a Mr Salehian, who from 2013 onwards became ill, and who died of cancer in 2018, or perhaps by another employee or assistant. I

understood Mr Salehian to have been an advisor or assistant to Miss Minai. Her evidence was that he incorporated these companies and provided her details to Companies House; that she did not know why, in respect of her stated residence in England, he had provided wrong information; but that in any event, the information was not provided by her or on her instructions, because she was resident in Ukraine. For obvious reasons, there was no evidence or other explanation from Mr Salehian of his involvement in these companies and events.

88. Ms Dixon submitted that Miss Minai's evidence about the documents filed at Companies House was not credible, having been provided on various occasions, and having not been subsequently corrected, including after service of the Petition. Mr Macpherson argued that the employment of Mr Salehian for these purposes was consistent with Miss Minai's role as the head of a large commodities business, and given that Miss Minai was not herself responsible for the (inaccurate) documents, and cannot now call Mr Salehian to provide an explanation, that I should not treat this evidence as sufficient to outweigh the totality of Miss Minai's evidence of her home and residence in Kyiv. He cited the decision of Barling J in Charlton v Funding Circle Trustee Ltd and Wright [2019] EWHC 2701 (Ch), in particular at [40], where he concluded that the Deputy DJ was entitled to find that a Companies House filing which stated the UK to be the debtor's country of residence was not enough to counteract his witness evidence that he had emigrated to Australia with his family, that he was not ordinarily resident in England and Wales, and that did he not have a place of residence in England and Wales.

89. I shall return to this point below, but:

i) I accept that Mr Salehian was a trusted advisor to Miss Minai, and is not available to give evidence for (or indeed, against) her;

ii) I accept Miss Minai's evidence that Mr Salehian was responsible for the documents lodged at Companies House (or at least, I am not willing to find that he was not); that evidence is not inherently incredible, is not contradicted by any other evidence, and is consistent with Miss Minai's position as a wealthy person with numerous property and other interests and with connections to more than one country;

iii) the documents certainly contain the words in question; the issue is what significance to attach to them; as in the Charlton decision, their significance must be assessed in the context of all the evidence.

90. Fourth, the Petitioners relied on an email sent in the course of the present proceedings by Mr John Fordham of Stephenson Harwood Solicitors, on 6 April 2022, to Mr Dhillon, exhibited to Mr Dhillon's 3rd witness statement. Stephenson Harwood were at that time Miss Minai's solicitors. Mr Fordham's email was a response to an email sent by Mr Dhillon on the previous day, the principal purpose of which was to ask for Miss Minai's agreement to an order allowing for service of the Petition by alternative means, either by sending it to Stephenson Harwood, or to Miss Minai at 12 Queen Anne's Gate, and directing the postponement of the Petition's first hearing on 13 April 2022. Mr Fordham replied that he was "*instructed to confirm the position as recorded in your ... email*", and indeed, on 12 April 2022 an order in the terms agreed was made by Deputy ICC Judge Curl QC.

91. The Petitioners refer to the opening part of Mr Dhillon's email in which he "*notes*" that following previous correspondence (none of which was exhibited) and a

telephone call (not described by Mr Dhillon in his statement): (1) Miss Minai "*resides at*" 12 Queen Anne's Gate, (2) the property is in the process of being sold, and (3) Stephenson Harwood were not acting on the sale. They rely on Mr Fordham's response as confirmation of each of those points, including therefore Miss Minai's residence at 12 Queen Anne's Gate. There was no evidence from Mr Fordham.

92. Miss Minai's written evidence was that she "*certainly*" did not instruct Mr Fordham that she "*resides*" at 12 Queen Anne's Gate, and furthermore, that Stephenson Harwood knew that she did not reside in the UK, and on that footing did not charge her VAT. In cross-examination, she said that she had complained to Mr Fordham about what he had said, that he "*didn't have an answer*", and that in any event, he had retired about a week later.

93. In the circumstances, I do not attach any significant weight to the words of Mr Fordham's email, given:

i) Miss Minai's evidence and explanation;

ii) that no detail of his conversation/s with Mr Fordham was provided by Mr Dhillon;

iii) that there was no evidence from Mr Fordham; and,

iv) that the email exchange concerned, in particular, the Petitioners' wish to serve the Petition by alternative means in one of two ways, rather than the question of the Court's jurisdiction, or of Miss Minai's residence in this country or, more specifically, at 12 Queen Anne's Gate, and that therefore, Miss Minai's instructions are more likely to have concerned that question in particular, rather than the question of residence for the purposes of jurisdiction.

94. Miss Minai's oral evidence was that neither Stephenson Harwood (as mentioned above) nor any of her other solicitors had charged VAT in respect of their services. Mr Macpherson argued that this was because none had believed that her usual place of residence was or is in the UK, and that because the relevant test in respect of VAT is "*similar to COMI and place of residence for bankruptcy*", the Court could take some comfort from the fact of their conclusions. I do not however have evidence of any of Miss Minai's solicitors' views, processes or conclusions on this matter, and contrary to Mr Macpherson's submission, I do not attach any weight to this evidence, raised by Minai in cross-examination.

12 Queen Anne's Gate as a "Place of "Residence"

95. At this point I can deal with the issue of 12 Queen Anne's Gate as a "*place of residence*" for the purposes of s.265(2)(b)(i). I deal more broadly with the property in the context of Miss Minai's COMI at paragraphs 116-120 below.

96. As a place of residence, a summary of the relevant evidence is as follows.

i) The property is a residential property, and it belongs to Miss Minai; she could live in it if she chose to do so; no other person's permission would be required; nobody else lives in it.

ii) However, since 2014, Miss Minai has been intending and actively attempting to sell the property, including to the Foundation. Since at least then, if not before, it has been almost completely unfurnished and empty.

iii) Although she uses the property for limited purposes, including as an address at which to receive correspondence, and occasionally, in recent times, has had cause to stay in it, in order to safeguard and keep it secure, Miss Minai does

not currently live in or reside at the property, and has never lived in it for any significant period of time (and certainly not in the three years before presentation). It is however possible that she bought it in 2002 intending that it would be or become a place in which to live (even if she came quickly to regret her purchase, as seems likely given the fact of the subsequent litigation against Roiter Zucker, and the findings in that case of Field J).

iv) Miss Minai stated the property's address in various witness statements, but I have found that in doing so, did not knowingly use it as that of a place of residence.

v) The use of the property's address in the Exclusivity Agreement and in the Deed of Variation is not significant.

vi) As to the Companies House documents described above at paragraphs 85 and 86, the fact that 12 Queen Anne's Gate was variously described as a service and/or a correspondence address, does not necessarily imply or entail that it was also a place of residence - it is (at least) equally consistent with the use of the property, as positively acknowledged by Miss Minai, as a place at which to accept correspondence or formal service of documents; that indeed - and in this respect, no more - is precisely what the documents state.

vii) I do not attached any significant weight to the exchange of emails between Mr Dhillon and Mr Fordham, for the reasons explained above.

97. The legal test is, as explained, multifactorial. It is for the Petitioners to prove that it is satisfied.

98. In all the circumstances, I am not satisfied that in relation to Miss Minai, the property was in the nature of a "residence": on the evidence, that was not her relationship with the property, or a proper characterisation of its use by her, as a matter of fact or ordinary language. Essentially, although she could live in the property, if she wished to, she does not, and never has done. Importantly, having decided to sell the property, and having actively embarked upon and continued in the course of selling it, then even if previously (before 2014) it might have been a place of residence, the property from that time ceased to be such; in respect of Miss Minai, it was an asset which she was and is in the course of selling. The admitted fact that she sometimes stays at the property, albeit occasionally, does not affect that conclusion. She does not stay at it other than to safeguard it; occupation in that character does not support the Petitioners' case; a nightwatchman is not a resident.

43 Wimpole Street

99. Ms Dixon submitted (and there was no real dispute) that 43 Wimpole Street was, for some time, a place of residence for Miss Minai in London. I agree. The question is whether it ceased to be such a place before 3 March 2019, three years before the presentation of the Petition.

100. Miss Minai's evidence in cross-examination was that with the assistance of Mr Salehian, arranged by him, the property had been rented and was available for her use whenever she came to London, albeit that she came, or at any rate that she used the property, only infrequently. However, she said that the lease was terminated in about 2014, because by then, the property was a "*shambles*".

101. The Petitioners' case is that Miss Minai continued to use and stay at the property, or have use of it, until about November 2019, in any event, after 3 March 2019. In that

regard, they relied on:

i) A certificate of substituted service (of the statutory demand) made by Mr Peter Brown (a process server) on 9 December 2021, in which he said that on 5 November 2021, he had been to 43 Wimpole St, and spoken to "*an adult male Concierge*", otherwise unidentified, who told him that Miss Minai had resided at the property, but had "*vacated the premises approximately two years beforehand*".

ii) Another certificate of Mr Brown, made on 5 April 2022 in respect of the attempted service of the Petition, in which he said that on 4 March 2022 he had been back to the property and been told, again by "*an adult male concierge*", again otherwise unidentified, that Miss Minai "*no longer resided at Flat 11 and had vacated the premises over two years beforehand*". Mr Brown also referred to a Land Registry search which, he said, showed the current proprietors (not Miss Minai) to have acquired the leasehold title on 19 June 2015.

102. The allegation that 43 Wimpole St was for Miss Minai a place of residence on or after 3 March 2019, was not made in the Petition, or in any of the evidence advanced in support of the Petition (although it was referred to in relation to Tara Property Management, as having been a service address, notified to Companies House in August 2014). Neither was it dealt with by Miss Minai in her own statements. Mr Brown did not produce a witness statement for the purposes of the proceedings and was not cross-examined. Nonetheless, Miss Minai was asked about his certificates, and challenged with the proposition that she had occupied or had access to the property until about two years before November 2021, being November 2019, which

she denied. She gave evidence that she had heard that the property's ownership had changed (as indeed, in 2015, seems to have been the case).

43 Wimpole St as a "Place of Residence"

103. I am not satisfied that the Petitioners have proven to the requisite standard that the property at 43 Wimpole St was occupied or rented by Miss Minai, or accessible to her as a residence, as at or after 3 March 2019:

i) the allegation was not properly raised in Petitioners' evidence or in the Petition, and predictably (although no objection was taken to the allegation being raised) the overall quality and substance of the available evidence was adversely affected; there were no relevant documents in evidence;

ii) the only evidence in support was found in Mr Brown's two certificates of service, concerning his conversations with an unidentified concierge (or possibly, two different but equally unidentified concierges); neither Mr Brown nor the concierge/s were cross-examined; no detail of Mr Brown's conversations was provided; Mr Brown's task was to effect service, not to establish whether or not the property had been a place of residence for Miss Minai after 3 March 2019; that fact presumably informed what he asked, and how he asked it, or certainly might have done, all of which may have affected the responses which he was given, and certainly affect the weight I am willing to give them;

iii) in any event, the Petitioners' case is that I should find that the words "*approximately two years beforehand*", spoken in circumstances of some

informality, must mean no more than about two years and eight months beforehand;

iv) the evidence is simply not enough to show that the property was a place of residence during the relevant period: it is inexact, untested and unsubstantiated by any document; it was contradicted by Miss Minai; the allegation was a latecomer, not explicitly raised in the Petitioners' evidence;

v) in the circumstances, I reject the submission that 43 Wimpole St was a place of residence for Miss Minai in the three year period before presentation of the Petition.

Cambridge Gate

104. Miss Minai owned the property at Cambridge Gate until a mortgagee took possession in 2020; it was sold in 2021; both events were within the period of three years before the presentation of the Petition.

105. The Petitioners advanced evidence:

i) in Ms Hunter-Barnes' witness statement, that on 26 January 2021 (after the hearing before Mr Recorder Cohen QC at which he decided to adjourn the trial of the Foundation's claim against Miss Minai) she had spoken to Miss Minai who said, amongst other things, that in relation to Cambridge Gate (as recorded in Ms Hunter-Barnes' exhibited attendance note) "*By the time she applied for a new loan, it was the pandemic and she was very sick with her heart. The lender didn't get his money and he went to the court in KM's absence and got judgment and repossessed her home.*" Miss Hunter-Barnes' written evidence (she was not cross-examined) was that at the time, she was

"*not aware of the home to which*" Miss Minai was referring, but that she had later come to think or understand that it was the property at Cambridge Gate (and on that point, her evidence was not disputed). In the same attendance note (in respect of a slightly earlier conversation) Miss Minai is recorded as having said - I infer in connection with Cambridge Gate - "*She has lost her property and she has lost her life*".

ii) an attendance note made by Mr Brad Sykes (a colleague of Ms Hunter-Barnes, and exhibited to her statement) of the hearing before Mr Recorder Cohen QC on 26 January 2021 (both before and after which Miss Hunter-Barnes had herself spoken to Miss Minai). Mr Sykes' note states, amongst other things, that Miss Minai - who was asking for an adjournment, essentially on grounds of ill health - said to the judge "*Never went to council. Wanted permission from parliament, not council. Lost chance to sell home. Lost chance to pay off loan. One of properties gone. Heart stop because they play with me. At end wanted another 6-9 month extension. Too busy not to believe. Lost my home*." Miss Hunter-Barnes did not say that she herself could recall Miss Minai's use of the word "home", or anything about how she understood it, or if she consciously attended to its use – she simply exhibited Mr Sykes' note. Mr Sykes was not a witness.

106. The Petitioners relied in particular on the use by Miss Minai, during and after the hearing, of the word "*home*" in respect of Cambridge Gate, as recorded in the two attendance notes. Ms Dixon submitted that Miss Minai understands and speaks English fluently, and that she plainly understands the difference between a property which is a "*home*" and one which is not, having herself, for example, in respect of 12

St Anne's Gate, repeatedly drawn the distinction between an investment property and a residence. She argued that the use of the word "*home*" was significant, and that Miss Minai meant exactly what she said.

107. Of the two attendance notes, Miss Minai was cross-examined only in respect of the first, that of Ms Hunter-Barnes herself. She denied having said that the property was her "*home*". Instead, she said that it was an "*investment*", like "*everything in this country*". She said (as recorded in the transcript): "*I meant that they took the home that I had, a home -- Any property that you buy if it's not-- if it is office or is home address as a home, that's what I meant, was my res-- Is a residential, it was not office that they took. They took a residential property*." Finally, in response to a question from the Bench, she said that for "*years and years*" the property was empty and that as a result of Mr Salehian having made mistakes in the proposed arrangement of refinancing, and the very high cost of a bridging loan, the property had been possessed and sold by the mortgagee.

108. In her written evidence, Miss Minai said that she sometimes says "*home*" when simply referring to a property that she owns, and said that she had "*wanted one day to give* [Cambridge Gate] *to* [her] *daughter*". There is no evidence, and Miss Minai was not asked about who (if anyone) occupied the property in 2019-2021, or indeed, whether it was ever occupied, and if so when and for how long, or how precisely she had used it since its acquisition – she was simply charged with having used the word "*home*" in respect of it on 26 January 2021, and having used that word deliberately, knowing its implications. It was not explicitly put to her that even if not her "*home*" as such, it was otherwise, in any event, a "*place of residence*" (in the sense of that expression in s.265).

109. In the circumstances, the evidence about Cambridge Gate, and Ms Minai's relationship with it, is not extensive.

Cambridge Gate as a "Place of Residence"

110. In my judgment:

i) it is more likely than not that Miss Minai used the word "*home*" on 26 January 2021 at the hearing before Mr Recorder Cohen QC and during her subsequent conversation with Ms Hunter-Barnes; that is the word used by both Ms Hunter-Barnes in her note, and by Mr Sykes, and it is unlikely that they would both have used it had it not been said (on different occasions on the same day) notwithstanding that Miss Minai has an accent and sometimes speaks quickly; both notes were essentially contemporaneous. Mr Macpherson complained that Ms Hunter-Barnes was not called to give oral evidence cross-examined, but as explained above, there was no direction to that effect, and no application. He also complained that there was no formal statement from Mr Sykes, which is true, and which I take into account, but it is not enough to persuade me that the word was not used.

ii) in principle, and as a matter of English language, Miss Minai knows the basic difference between a "*home*" and a property that is not a home – her English is at least good and fluent enough to support that conclusion, and in any event, in cross-examination, she plainly understood that distinction (as she did in respect of 12 Queen Anne's Gate) as a result of which she said it was neither the word she used nor what she meant.

111. Mr Macpherson submitted that if "*home*" was the word that Miss Minai used:

i) she nonetheless did not mean to convey that her "*home*" in the true sense was at Cambridge Gate; she meant, as she said in evidence, that the property was a residential (not a commercial or office) property that she owned, a property which she wanted to give to her daughter; on the day of the hearing before Mr Recorder Cohen QC, Miss Minai was undoubtedly very upset and emotional, and it would be wrong to treat her use of language in that context (concerning different matters) as having such significance;

ii) that its use cannot support the conclusion that Cambridge Gate was in fact her home, because her home was in Kyiv, and her evidence in that respect was not challenged in cross-examination;

iii) that the property was empty, and had been for years; plainly therefore it was not her home.

112. I agree with Mr Macpherson that the evidence is not enough to prove that Cambridge Gate was Miss Minai's principal home, her home in the sense of the place (to adopt the language of Mr Registrar Jacques in Stojevic) which is her settled, permanent home, the place to which she returns from business trips elsewhere or abroad. In particular:

i) Miss Minai's evidence, unchallenged, was that the property was empty, and had been for "*years and years*";

ii) she was not asked about whether (or how or for how long) she had ever occupied the property, and there was no evidence about her use of it or of its condition (whether, for example, it was furnished) beyond her own evidence that she had intended at some point to give it to her daughter;

iii) no documentary evidence, and no other witness evidence, suggested that Cambridge Gate was Miss Minai's "*home*";

iv) moreover, the proposition was positively contradicted by Miss Minai's own evidence regarding her life, and the location of her home in Ukraine;

v) although I have found that Miss Minai used the word "*home*" on 26 January 2021, as recorded in the two attendance notes, and in principle knows what that word means, I cannot find on that evidence alone that the property was her "*home*" in the stated sense: Ms Hunter-Barnes does not recall Miss Minai's use of the word, or recall having understood it in a particular way, or even that she noticed its use – merely that it must have been used, because she wrote it down; Mr Sykes was not called, and any notes taken by him at the time of the hearing were not exhibited (neither were any notes of Ms Hunter-Barnes); there is no dispute that during the hearing on 26 January 2021 (and immediately before and after it) Ms Minai was upset and highly emotional; possibly she was quite unwell (certainly, that is what she said at the time); she was not in the course of giving evidence about Cambridge Gate; Miss Minai's evidence to me was that she intended (or must have intended) to communicate something different - that Cambridge Gate was a residential property; although her English is proficient enough that she knows in principle the meaning of the word she used, it is nonetheless not her first language, and the possibility that on the markedly fraught occasion under consideration she used the word without precisely intending its dictionary meaning is not unlikely, either inherently, or in the circumstances;

vi) ultimately therefore, I cannot attached the required probative weight to her use of the word "*home*" on 26 January 2021, to conclude that Cambridge Gate was indeed Ms Minai's "*home*" in the stated sense; the Petitioners' only available evidence is insubstantial.

113. Mr Macpherson also submitted that the Petitioners cannot show that by "*home*" Miss Minai meant (and cannot otherwise prove) that the property was available to her as a "*place of residence*" in the sense of s.265(2)(b)(i):

i) first, because that proposition was not suggested to her in cross-examination, and is therefore not open to the Petitioners; and

ii) second, that in any event, because it makes no sense: either, when Miss Minai said "*home*", she meant "*home*" in the sense discussed (and rejected) in the preceding paragraph, or she meant it, as in effect she said in cross-examination, to mean a "*residential property but without any implication that it was, to her, a place of residence*" – those, said Mr Macpherson, are the only two alternatives.

114. As to that, in my judgment, the argument is in principle open to the Petitioners but constrained by the available evidence, and by the content of Miss Minai's examination: Miss Minai was questioned about her use of the word, and explained it, including some explanation of her relationship with the property; on that basis, the argument may be advanced.

115. The issue therefore is whether or not Cambridge Gate was a "*place of residence*" for Miss Minai at a time within three years before the presentation of the Petition. In my judgment, it was not, for the following reasons.

i) The property was owned by Miss Minai, and I accept that in principle therefore, she must or is very likely ultimately to have had the right to live in it, or use it as a residence in the relevant period, if that is what she chose (as in respect of 12 Queen Anne's Gate). This is not a case in which the nature or durability of the debtor's "right" of residence is disputed.

ii) However, I must again weigh the points made above at paragraph 122: Miss Minai's evidence that the property was empty; that there is no evidence (and Miss Minai was not asked) about its use, or of its state or condition; and that again, necessarily, the Petitioners' case ultimately turns on Miss Minai's use of the word "*home*" on 26 January 2021 (combined in this context with the additional undisputed fact of her ownership) – evidence that I have already assessed to be of limited probative value.

iii) The test is, as explained, multifactorial. It is for the Petitioners to prove that it is satisfied. On the evidence adduced, I am not satisfied that in relation to Miss Minai, the property was in the nature of a "residence": on the evidence, that was not shown to be her relationship with the property, or a proper characterisation of its use by her, as a matter of fact or ordinary language. The property was no doubt hers and was "residential" rather than not, but nonetheless stood empty and unused; she planned in due course to give it to her daughter; in the meantime it became more valuable, or so she might naturally have expected; but it was not – at any rate on the evidence in these proceedings - a place in which she had ever resided or lived, even occasionally, or treated as one such place amongst others – it was not, in respect of Miss Minai, a place of residence.

Miss Minai's COMI

116. It is for the Petitioners to prove that as at 2 March 2022, Miss Minai's COMI was in England and Wales. The principles are set out above at paragraphs 39-54.

117. The relevant evidence and matters, in summary, are as follows.

i) Miss Minai's evidence was that her home and (in effect) her habitual residence is in Kyiv, and has been for many years; that she has only been in England since about October 2021, and that but for the conflict, she would return to Ukraine immediately, and would have done so before now; that she is the owner, herself or with partners, of a large commercial organisation, damaged though it has been by the conflict in that country; and that her life in Kyiv was stable, affluent, and objectively visible – the place where she had property and employees, and from which therefore, she said, she administered her economic interests; it is the place to which she wishes to be taken after her death.

ii) Against that, there was no evidence of a life actively conducted and lived in England, and Miss Minai was not accused in cross-examination of having fabricated, exaggerated or imagined her life abroad, as she described it. Her unchallenged evidence was that she does not have a UK passport, or an English bank account; that she does not use the NHS or receive any form of support from the state. Moreover, and significantly, to some extent, in the course of her cross-examination, her connections with Ukraine were explicitly acknowledged; neither was her account inherently unbelievable or improbable; her evidence that she travelled to England from Ukraine for medical purposes in 2021 was not explicitly challenged.

iii) In support of her evidence, Miss Minai produced her Iranian passport, issued in Kyiv in 2019 (before these proceedings began) stating Ukraine to be her "*country of residence*", together with a residence card (albeit of uncertain significance, but nonetheless issued in 2004) plus a small selection of household bills, as explained above, but no other documents. The failure to produce more was certainly notable, but not wholly inexplicable in the circumstances. In any event, that which was produced speaks of a significant connection with Ukraine over a period of years.

iv) Although I have found that Miss Minai's evidence must be treated with some caution, I do not agree, contrary to Ms Dixon's submission, that it should simply be discounted unless supported by documents, or some other evidence or fact – in any event, as I have said, her case is lent support by the documents she exhibits.

v) Miss Minai has certainly been in England since October 2021, but her practical inability to return to Ukraine during that period was expressly acknowledged. In any event, it was not the Petitioners' case that Miss Minai's COMI had become England as a result of her presence here since October 2021; it was that her COMI was located in England both before and after that date. Neither side suggested that this was a case in which the Court should hold the debtor's COMI to be located in a place other than her habitual residence.

vi) Miss Minai owns 12 Queen Anne's Gate in London, and until 2021, owned Cambridge Gate – both are significant, valuable assets and both are, of course, located in England. However, I have found that neither was occupied by Miss Minai, or was even, for her, a place of residence for the purposes of s.265 of

the IA 1986 in the relevant three year period. As in the case of MH v OJ in the ECJ, the fact of immovable property situated in England is not irrelevant to the determination of a debtor's COMI, but is not (even if it is his/her principal asset) more than one factor – the real question is the location of the place where the debtor's main economic interests are administered (which is likely to be the place of that person's habitual residence in a case such as the present, where she is not exercising an independent or professional activity).

vii) 43 Wimpole Street was not a place a residence in the three year period before the presentation of the Petition. The evidence concerning this property therefore has no real bearing on Miss Minai's COMI as at 2 March 2022.

viii) There was no evidence or suggestion of where, if not at one of the three named properties, Miss Minai was "habitually" residing in England in the relevant period.

ix) As described, various Companies House documents state or stated that Miss Minai's country of residence is or was England and Wales. Miss Minai's evidence was that this was not correct. She said that Mr Salehian was responsible for making the statements (evidence that I have accepted, meaning that the statements were not those of Miss Minai herself) and that he was responsible for the (repeated) error, which contradicts her evidence summarised above. As I have said, Mr Salehian was not available to explain his understanding or intention or (if relevant) his instructions, and there was no other relevant evidence which bore upon those issues. Whilst the statements made certainly ought to have been accurate, they were short and stark

(inevitably given the context) - they contained no supporting detail, texture or particulars.

118. It is for the Petitioners to prove that Miss Minai's COMI was in England and Wales by reference to the evidence adduced. The most powerful indication of its location in England is the material filed at Companies House. However, in my judgment, on balance, and in all the circumstances summarised at paragraph 117 and above, that material and the Petitioners' other evidence is not of sufficient probative weight to support a finding that Miss Minai's habitual residence and (or in any event) her COMI was in England; weighed against Miss Minai's evidence of her sustained and settled Ukrainian existence - her idea of normality - it is not enough to substantiate the Petitioner's allegation.

119. In addition, I understood Ms Dixon to suggest that because the publicly available material before the Court supports a connection with England rather than Ukraine - in particular, the Companies House documents, but also perhaps that relating to her ownership of 12 Queen Anne's Gate and Cambridge Gate - an objective observer would conclude (as did the Petitioners, who had no knowledge, they said, of Miss Minai's Ukrainian connections) that Miss Minai's COMI was in England. In effect, she submitted that an assessment of that which is ascertainable and objective supported the Petitioners' case.

120. As to that, I disagree. As was explained in Re Melars Group Ltd in the Court of Appeal, the Court must conduct an comprehensive assessment of all evidenced factors, not simply those known to a specific creditor, and that is what I have done. The circumstances described by Miss Minai, of her life in Ukraine, were not concealed or merely subjective; they were external and would or could have been

observed by and apparent to all or many who dealt with her whilst she was in Ukraine, or dealing with her Ukrainian or other economic interests; those circumstances cannot be disregarded simply because they were unknown to the Petitioners. As in Re Melars Group Ltd, the question is, in this case, not one of admissibility, but of weight, and as to that, I have set out my conclusions.

121. In the circumstances therefore, for the reasons stated and explained above, the Petition is dismissed.

28 June 2023