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Case No:BR-2022-000329

Rolls Building
London
EC4A 1NL

Date: 11 July 2024

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES COURT (ChD)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986
RE BARBEL CHRISTA ABELA

BEFORE DEPUTY INSOLVENCY AND COMPANIES JUDGE RAQUEL AGNELLO KC

BETWEEN:

DR TANAL MOHAMED SABBAH

Petitioning Creditor

and

BARBEL CHRISTA ABELA

Respondent/Debtor

Mr Marcus Haywood (instructed by Pinsent Masons LLP) for the Petitioning Creditor
Mr Hugo Groves (instructed by Janes Solicitors) for the Defendant

Hearing dates: 23, 24 January, 8 and 12 March 2024

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JUDGMENT

Introduction

1. On 13 September 2022, a bankruptcy petition was presented against Ms Barbel Christa Abela ('the debtor' or 'Ms Abela') by Dr Tanal Mohamed Sabbah ('the creditor'). The subject matter of the petition relates to sums the creditor asserted were due under the terms of the personal guarantee dated 23 August 2019 entered into between the creditor and the debtor. The sum claimed in the petition is US$7,000,000 (£5,820,500). In summary, there are two issues raised by the debtor in opposition to the petition, being:-

   (1) jurisdiction – the debtor asserts that she did not have a place of residence pursuant to section 265(2)(b)(i) of the Insolvency Act 1986 (IA 86) in the three years prior to the issue of the petition on 13 September 2022; and

   (2) substantial dispute – the debtor disputes the debt on substantial grounds in that she asserts that the creditor had made an oral representation to her which she relied upon that he would not enforce the guarantee against her.

2. The petition was listed for hearing on 23 and 24 January 2024. By order dated 13 March 2023, the debtor was required to attend for cross examination on the residence issue (paragraph 1 above) failing which she would not be able to rely upon her written evidence without permission of the court. On 23 January 2024, the debtor made an application seeking to adjourn the hearing due to her ill health and what she asserted was her inability to deal with answering questions under the examination which had been ordered. After hearing submissions, I determined that the issue relating to the debtor's ill health would be adjourned to 24 January 2024 as the medical evidence which had been presented to the court was unsatisfactory. I heard submissions from both parties on 23 January 2024 on the disputed debt issue, reserving the judgment on that issue until after I had heard the jurisdiction issue as well. On 24 January 2024, I heard the issue relating to adjourning the rest of the hearing until the debtor was able to attend for cross-examination. There was available to me more detailed evidence relating to her illness and importantly details of when she was likely to be well enough to attend court (either remotely or in person) for the purposes of being cross examined. After hearing submissions, I adjourned the jurisdiction part of the case which was then heard before me on 8 and 12 March 2024, with the debtor attending on 8 March 2024 for the purposes of cross examination. This is the judgment relating to both the disputed debt and the jurisdiction issue. I have dealt with the two issues separately but there is of course an

amount of factual overlap in relation to the issues raised in the disputed debt and those raised by the jurisdiction issue.

Evidence and disclosure orders

3. Whilst it is not necessary to set out the procedural history of this case, it is important to deal with the disclosure orders made. The first hearing of the petition was on the 29 November 2022, when ICC Judge Barber gave directions in relation to the filing and exchange of evidence. In accordance with the order, the debtor filed evidence in opposition to the petition dated 23 January 2023 and the creditor filed evidence in reply. The debtor did not file any evidence thereto in reply. On the 13 March 2023, Deputy ICC Judge Passfield KC made an order providing for certain disclosure to be provided by the debtor in relation to the residence issue by 4:00 PM on the 24 April 2023. The disclosure which was directed to be provided comprised:-

   (1) Known adverse documents relating to the Residence Issue;

   (2) Mrs Abela's passports and/or any travel documents showing her entry into and departure from the UK in the period from 13 September 2017; and

   (3) Documents (including all correspondence) relating to the Possession Proceedings and Mrs Abela's alleged vacation of the London Properties

4. Thereafter, the parties agreed an extended deadline of 4:00 pm on 8 May 2023 for the debtor to comply with the directions order. This deadline was not met by the debtor. On 9 May 2023, the debtor's solicitors sent 4 documents to the Creditor's Solicitors in purported compliance with the directions. This included copies of three of the debtor's passports and a letter from Lightfoot solicitors who had acted for Tuscan in the possession proceedings dated the 23 March 2023, which answered certain queries which had been raised by the debtor's solicitors. Mr. Haywood submits that this was clearly not compliance with the order which had been made. I agree. Attempts were made thereafter through correspondence to allow the debtor a further period of time to rectify her deficiency with an extended second deadline of 17 May 2023. Whilst further documents were provided by the debtor's solicitors on the 16 May 2023, the disclosure remained incomplete and unsatisfactory. Finally, on 27 July 202, following the issue of an application seeking disclosure, the debtor's solicitors served an

incomplete file of papers from Chan Neill's file relating to the possession proceedings. Directions were given by a consent order of ICC Judge Burton dated 28 July 2023, that the debtor should file and serve evidence in response to the disclosure application by 18 August 2023. The debtor, again, failed to comply with this order. On 30 November 2023, ICC Judge Barber made an order requiring the debtor to:-

(1) File an additional witness statement setting out the steps she has taken to meet the disclosure requirements of the disclosure order;

(2) Exhibit to that witness statement any documents not previously disclosed;

(3) Request the complete set of the Chan Neill Papers by way of a letter in a prescribed form; and

(4) Pay the Petitioner's costs of the disclosure application in the sum of £24,000 by 4pm on 14 December 2023.

5. On 21 December 2023, the debtor served a second witness statement exhibiting certain additional papers from Chan Neill's files. However, the disclosure provided by the debtor remains, in my judgment, deficient. She has failed to provide any known adverse documents relating to the residence issue. She has failed to explain properly the searches she carried out. Mr. Haywood submits that it is simply not credible that no such documents exist. In particular, she has failed to produce any travel documentation relating to the period stipulated under the terms of the order. During her cross examination, the debtor indicated that she had a secretary who would deal with matters for her. Having seen her give evidence in the witness box, I consider that it is likely that it was her secretary who booked her trips to and from London or other places during the period from September 2017 to date. The debtor was vague in relation to booking the removal people to vacate the property in January/February 2020. She stated that her secretary dealt with these matters. The debtor has failed to produce any emails, any invoices, any receipts, or any boarding passes relating to the relevant period. Her witness statement is silent relating to the existence of her secretary and that she has asked her secretary if she has adverse documents. In my judgment, the disclosure order is clear in relation to the documentation to be produced which was in her custody or control. Documentation

held by her secretary is clearly encompassed by that and what has been produced in her second witness statement fails to deal or produce any documentation as directed and ordered.

6. In my judgment, it is simply not believable that no such documentation exists which would establish her travel between August 2019 and February 2020. I provide these dates because this is exactly the period which I am concerned with in relation to the jurisdiction issue. Mr. Groves, on behalf of the debtor, very fairly accepted these issues when I put them to him. He also appreciated that these were matters that I had to take into account in considering the evidence before me. In particular, I do not accept that the debtor is entitled to rely upon a lack of evidence relating to her travel between the period of August 2019 and February 2020 as in some way supporting her assertion that she had effectively abandoned her place of residence in England and Wales as from August 2019 and did not travel back to London during the relevant period. I will deal further with this issue in the jurisdiction issue section of this judgment.

Background – dispute issue

7. The debtor who is now aged 82, signed a guarantee dated 23 August 2019 in favour of the creditor guaranteeing and agreeing to pay on demand all monies and liabilities owed by her son Mr Marlon Abela pursuant to promissory notes which he had provided to the creditor. The total sum which the debtor could be required to pay was limited under the terms of the guarantee to US$7 million (£5,820,500). The debtor accepts she signed the personal guarantee but asserts she did so by reason of an oral representation made by the creditor to her in August 2019, that the guarantee would not be called upon. She asserts that the creditor represented that her signing it was a formality and this was required for purely regulatory purposes. The debtor asserts she relied on these representations made to her by the creditor. Accordingly, she asserts that the creditor is now estopped from relying upon the guarantee by reason of her reliance on the representations made to her by the creditor.
   Her evidence is as follows :-

'22. *A few days before the 23rd August 2019 I met with my son and Dr Sabbah at Mortons Restaurant which at the time was owned by my son. I specifically remember that Dr Tanal Sabbah explained to me that a problem had arisen in relation to the loans which he had advanced to my son`s business. He said that the Lebanese Central Bank had stipulated that to overcome this problem it would be necessary for me to enter into guarantees to secure the money loaned to my son`s business by Dr Sabbah. I confess I did not fully understand what he was telling me. However I was comforted because he told me that the signing of the guarantee was a mere formality and it was required purely for regulatory purposes, and that I would not be called upon to repay the money advanced to my son by the Bank. Dr Sabbah was very charming and reassuring over lunch and I felt quite at ease in his presence*
23. Looking back I was foolish to rely on what Dr Sabbah told me but at the time I was comfortable about giving a guarantee on the basis that he explained.
25. From memory I was asked to sign various documentation and I signed on each document as requested. I have seen the letter from Chan Neill Solicitors dated the 23rd August 2019 confirming the legal advice which had apparently been given to me by Alison Gill a solicitor from that firm. The letter also refers to the fact that Ms Gill met with me at the Flat on the 22nd August 2022. I have no recollection of a meeting at the Flat , or meeting Ms Gill on any occasion other than the one at the solicitors' office on the 23rd August 2019. I believe I signed that letter at the meeting at the solicitors' office on 23 August 2019 and it must have been prepared prior to the meeting as all the documentation was signed at the same time.
26. I realise the letter of 23 August 2019 signed by Ms Gill refers to advice having been given to me prior to the signing of the Guarantee but I do not recall her either going through the matters stated in that letter, or giving me the advice that the letter records. I also find it odd on reading the letter that it is recorded that she was giving me independent legal advice as Chan Neill were the firm of solicitors who were acting for my son at the time. Looking back I do not accept that if the advice was given as recorded that it was independent legal advice
27. *I therefore do not accept that the Guarantee is binding on me given the representations made to me by Dr Sabbah in the meeting I had in Mortons as I have referred to above and I do not believe I received independent legal advice concerning the Guarantee.'*

8. Mr Groves submits that the debt is disputed on the basis that the debtor relied upon the oral representation made by the creditor and that she relied upon it on signing the personal guarantee. Mr Groves accepts that there are no documents which support this assertion made by the debtor but he submits that it would be unusual if such documents existed. Effectively he submits that there is no reason to consider the debtor's evidence in relation to the representation and the reliance upon it as being inherently unreliable.

9. The evidence which is before me includes documentation which Mr Haywood, counsel on behalf of the creditor, submits, constitute clear evidence that the oral representation relied upon by the debtor lacks substance such that it is inherently

implausible and the debtor's evidence on this point can be rejected. The terms of the personal guarantee contain at the top of the first page of the guarantee as well as just before the signature page a warning as follows:-

'*WARNING: If you sign this Guarantee, you will be legally bound by it, and you might become liable to us instead of, or as well as, the principal debtor. You should get independent legal advice before signing this Guarantee'*

10. Mr Haywood also points to the contemporaneous documentary evidence supporting the assertion that the debtor received independent legal advice from Chan Neil Solicitors prior to entering into the guarantee. By letter dated 23 August 2019 addressed to the creditor, Alison Gill of Chan Neil confirmed that she had instructions from the debtor to act on her behalf and she confirmed that she provided legal advice to the debtor before the debtor signed the guarantee. At paragraph 5, Ms Gill states '*I explained to the Guarantor [the debtor] the reasons for the Lender requiring comfort that the Guarantor had entered into the Document freely without undue influence or as a result of misrepresentation or other legal wrong.'* Other relevant paragraphs are

'3. I met with the Guarantor at 23 Peninsula Heights London SE1 7TY on 22 August 2019 and again at 5 Fleet Place London EC4M 7RD on 23 August 2019. ...

6. I have made the Guarantor aware that the purpose of the Lender requiring this letter is that, once the transaction has been entered into, the Guarantor should not be able to dispute that they are legally bound by the Document.

7. I have provided the Guarantor with a copy of the Document. I explained to the Guarantor the nature of the Document, the seriousness of the risks involved and the practical and legal consequences to, and liabilities of the Guarantor together with the practical and legal implications these could have for her if she signed those documents ..."

11. The debtor signed the 23 August 2019 letter below a declaration which states as follows*:-'I acknowledge and confirm that all statements made in this letter are true and correct and that Alison Gill in advising me was consulted by me as my personal solicitor and in my interest only.'*

12. In my judgment, the debtor has failed to discharge the burden upon her that she has a bona fide dispute on substantial grounds in relation to the debt. In particular, both the guarantee document was signed by her as well as the 23 August 2019 letter from Alison Gill. In her evidence, the debtor asserts that she only signed in reliance upon the representation made by the creditor (which he denies) but her evidence in relation to the letter she signed is vague. She says she does not recall being given the advice or signing the letter, but as I have set out above, her witness statement provides no details. Even taking on board Mr Groves' point that one would not expect there to be documentary evidence in relation to the representation made, it is difficult to view the vagueness of her evidence set out in her witness statement alongside the contemporaneous documentation and in particular the clear letter dated 23 August 2019 signed by the debtor. In my judgment, the debtor's evidence in relation to the disputed debt is not credible when considered alongside the contemporaneous documents and in particular the letter signed by both her and Alison Gill on 23 August 2019. The debtor does not dispute she signed it. She says she cannot recall the advice being given and then comments on her observation that the advice she felt was not from an independent lawyer. Nothing turns on that last point, but her failure to recollect does not, in my judgement, mean that she has discharged the burden of establishing a debt disputed on substantial grounds. A lack of recollection by the debtor of the advice given does not defeat, in my judgment, the contemporaneous documentary evidence. Originally the debtor also raised other grounds of dispute, but these were not pursued by Mr Groves and there is therefore no need for these to be set out in my judgment.

Jurisdiction issue- place of residence (section 265(2)(b)(i) IA 86)

Legal principles

13. There was no real dispute between the parties that the determination of place of residence is fact sensitive and consists of a careful and detailed exercise in analysing the evidence and determining whether the debtor had a place of residence within the period of three years prior to the issue of the bankruptcy petition.

14. Mr Haywood produced in his skeleton a useful summary of the principles as developed in the case law which I will set out here before turning to more specific passages in certain of the cases relied upon by Mr Groves.

a. The test is "*a mixed question of fact and law, or more properly a question of fact and degree*": *Skjevesland v Geveran Trading Co Ltd (No.4): [2002] EWHC 2898 (Ch) at [13]*;

b. Any analysis will consist of a multifactorial enquiry: *Portrait v Minai [2023] EWHC 1605 (Ch) at [97*];

c. The Court should look at all the evidence, both documentary and oral, cumulatively which may result in a clearer view where there is lots of evidence which individually carries little weight: *Skjevesland* at [47]; *Reynolds Porter Chamberlain LLP v Khan [2016] BPIR 722* at [36]; and

d. The Court is entitled to and should draw adverse inferences where a debtor fails to produce documentary evidence relevant to this question that should reasonably be in its possession: *PJSC VTB Bank v Laptev [2020] EWHC 321* at [92]. What was "*not said*" was a factor of "*considerable weight*" in *Khan* at [37].

e. Having a place of residence is a de facto situation rather than a matter of legal right: *Skjevesland* at [47]. Accordingly, a mere licence to reside may be sufficient: *Re Brauch (A Debtor)* [1978] 1 Ch 316 at [p.334], as may a moral claim to the premises: *Skjevesland* at [52];

f. Absolute or exclusive use of the premises is not required: *Khan* at [40]; a place of residence includes sharing the premises with others, even if that requires making arrangements ahead to facilitate a stay: *Skjevesland* at [53]; *Al Saud* [2023] at [123];

g. Actual occupation of the place of residence within the period is not required to meet the test but the greater the occupation the more likely the finding: *Brauch* at [p.335]. The period of occupation is relevant but not solely determinative *Laptev* at [115];

h. A person may have multiple residences; ordinary residence coupled with personal and professional interests abroad does not preclude having a residence within this

jurisdiction: *Khan* at [28]. The whole purpose of the gateway is to provide an alternative where the court may "*assume jurisdiction to administer the affairs of a debtor who does not have a centre of main interests in the jurisdiction*": *Laptev* at [118].

15. Mr Haywood also relied on several factors he submitted relevant to the determination of where a debtor has a place of residence in the jurisdiction as including :-

a. Timing and purchase of the property in question: *Al Saud [2023]* at [101];

b. How long the debtor was in occupation prior to the relevant period, or the period of their connection to the property: *Al Saud [2023]* at [102];

c. Whether the property is furnished or if personal possessions are present: *Al Saud [2023]* at [103]; *Re Nordenfelt [1895]1QB 151* [p.152]; *Khan* at [19]; and

d. How often the property is available on demand to the debtor: *Al Saud* [2023] at [122]; *Skjevesland* at [53].

16. Mr Groves referred me to *Minai* (para 9) to emphasise the point that the burden is on the Petitioner and that if the test is not met, then the petition falls to be dismissed. I agree. The facts of *Minai* are of course different from those before me. In that case, the Petitioner asserted that Miss Minai's centre of main interest (COMI) was in England and Wales because during the period between 3 March 2019 and 2 March 2022, she has 'a place of residence' in England at one of two London properties. The Petitioner then sought to add a further London residence as an alternative during the same period. The evidence demonstrated that the debtor had connections with various English companies. Some of those companies' filed records show her 'correspondence address' or service address as being in England. The debtor asserted that although she is an Iranian National, as at 2 March 2022 (the date of the Petition's presentation) her COMI was in the Ukraine where she has her residency since 2003. She asserted she had acquired the properties for investment purposes. Her evidence was that she had come to England for medical treatment in October 2021 intending to return to her home in Kyiv but had been prevented from doing so because of the conflict in Ukraine.

17. She asserted her stay in England was involuntary and was forced. Mr Groves referred me to paragraph 55 of the judgment which confirmed that there is no single conclusive test for what constitutes 'a place of residence', but that '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'. There is an overlap in relation to ordinarily resident and having a place of residence and Mr Groves took me to the passage quoted therein in *HRH Prince Hussam BinSaud 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)."

18. In *Nordenfelt*, the debtor had resided in Beckenham, Kent, but in May 1891, he left the house and and went 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 had not been let, some of the furniture had been sold or taken away with what remained in the house having been packed up ready for removal. The lease of the house was sold in December 1892 with the petition having been presented on 9 November 1893.

19. The Debtor could have occupied the property at any time before the sale and he had described himself as being 'of Downs House, Beckenham'. The Court of Appeal refused the petitioner's appeal against the dismissal of the petition. Mr Groves relied on the following passage from the judgment :-

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."

20. Accordingly, in order to determine the debtor's connection with the property said to be his 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. As explained by ICC Judge Greenwood in *Minai*,

'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.'

21. Mr Groves relies upon these passages to submit that the intention of the debtor is important albeit he accepts this is not conclusive. Mr Groves relies on *Nordenfelt* and submits Ms Abela's case is one of abandonment.

22. Mr Groves also referred me to *Lakatamia Shipping Company Ltd v Su [2021] EWHC 1866*, Mrs Justice Bacon considered and allowed an appeal against a refusal to annul a bankruptcy order made by an adjudicator under s.263K of the IA 86. The short point the Judge had to determine was whether an entitlement of some sort to occupy a place that is capable of being described as someone's place of residence did not satisfy the test in section 263I. Her Ladyship then went on to set out some brief points whilst expressly stating that these were not supposed to be an exhaustive exposition, well summarised by ICC Judge Greenwood in *Minai* (paragraph 64):-

' (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".

23. Mr Justice Roth *in HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud* considered these comments and agreed with the factors expressed by Mrs Justice Bacon, but expressly stated that none of them are essential requirements and that it is well established that a debtor may have a place of residence in the jurisdiction although his home is elsewhere. Alongside ICC Judge Greenwood, I agree with that approach and I will adopt it.

Background Facts and the debtor's case on the written evidence

24. The debtor become the registered proprietor of three properties located at 23,24 and 25 Peninsula Heights, 93 Embankment, London SE1 7TY, (hereinafter referred to as the London Properties) on 6 October 2006. These properties were converted into one single dwelling house that was used as a London residence for the debtor. Her sons and grandsons lived in London and she would stay at the property when she was visiting them. This is agreed by the debtor. Her case, as is set out below is that she abandoned her place of residence in London in August 2019.

25. In July 2018, the debtor entered into a £4,203,000 three tranche borrowing facility with a six month term extended by a finance company, Tuscan Capital Limited. That loan was secured over the London Properties. By 6 November 2018, the debtor had fallen into arrears. The facility matured on 5 January 2019. The debtor appeared to have made attempts to re finance but ultimately she defaulted on the repayment term.

26. On 27 June 2019, receivers were appointed in respect of the London Properties. On 30 July 2019, possession proceedings were issued by the lender. On 13 September 2019, a suspended order for possession of the London Properties was made. Under the terms of the order, possession would not be enforced providing the debtor made certain payments between 13 September 2019 and 6 April 2020. The debtor made payments in accordance with the terms of the consent order between September and November 2019. By January 2020, she had fallen behind with the payments required

to be made. The lender therefore sought to take steps to enforce the suspended order of possession in early January 2020.

27. According to the receivers, the debtor vacated the London Properties on 29 February 2020 with the locks being changed on 6 March 2020. There is some uncertainty in the evidence as to when exactly the debtor vacated the property and arranged for the removal of her possessions. However, the precise timing is not necessarily relevant as I set out below. The debtor's case in her witness statement is that she vacated the property in August 2019 and thereafter she no longer had a place of residence in England and Wales. The creditor's case is that the debtor had a place of residence at the property at least until 13 September 2019, being three years before the issue of the petition. The burden of proof in relation to jurisdiction is on the creditor, but as I have already indicated, in this case, the failure of the debtor to comply with the disclosure order made will have a bearing on the way that the evidence is considered and weighed.

28. The guarantee dated 23 August 2019 set out the debtor's address as the London Properties. The letter dated 23 August 2019 from Alison Gill of Chan Neill, being the debtor's solicitors at that time, also used the London Properties address. The suspended possession order dated 13 September 2019 also used the London Properties as the debtor's address.

29. In her evidence, the debtor asserts that her country of domicile is Lebanon and that she has lived there permanently since December 2019. She asserts that prior to living in Lebanon, she spent most of her time in Zurich, Switzerland where she owned and lived in a flat from February 2016 until December 2019. She produces evidence of her Swiss resident permit and her Swiss driving licence. She asserts that at various times during the last 15 years, she had lived in the USA, the Turks and Caicos Islands and has travelled widely. She states that she does not consider that she is or has been resident in any other country other than Lebanon for several years.

30. At paragraphs 15, 16 and 17 of her first witness statement, she states as follows:

'15. In July 2018 , 3 charges were registered against the Flat by a finance company whom I knew as "Tuscan Finance" to secure a total borrowing facility of £4,203,000.00. I left all the arranging of the loans and their details to my son Marlon . I produce as Documents 3 , 4 and 5 the Facility Letters for the loans secured with the flat as security. It was necessary for 3 separate charges to be registered as the titles to the original 3 apartments remained separately registered under different title numbers.

16.I think repayments on those loan advances fell into arrears in or about the summer of 2018 and on the 6th November 2018 a demand was served by Tuscan Capital for repayment of the loans plus interest which had accrued. I refer to the letters addressed to me whilst I was living in Zurich as documents 6. I did not have the money to service or repay the loans and Tuscan Capital at some point in 2019 issued possession proceedings and subsequently obtained an order for possession in relation to the Flat.

17.I took little interest in the matter as my son Marlon assured me that he was making attempts to resolve the issue. However I realised that I was not in a position to defend the proceedings and I vacated the Flat in or around August 2019. I produce a Consent Order dated the 13th September 2019 as Document 7 and the actual Possession Order granted by the Clerkenwell and Shoreditch County Court dated the 20th September 2019 as Document. Although I did not have a grasp of these issues at the time I have now been informed that the funds required to suspend the possession order were not paid and therefore I lost the flat. At the time of vacating the flat I had absolutely no intention of returning to live in Peninsula Heights or in London. Aside from dealing with health and family issues I was in the throes of selling my flat in Zurich and returning to be based full time in Lebanon my homeland (rather than Zurich), and I was anxious to simplify my life and remove any stress. I could not and did not reside or visit the Flat from that time onwards.'

31. At paragraph 18 she asserts that as far as she was concerned, she was not a resident in London nor did she have a place of residence in London between 13 September 2019 until 13 September 2022 and until this day. She says she does not know why the she was still listed as the registered proprietor until very recently.

Consideration of the evidence, including the cross examination of Ms Abela

32. In cross examination, the debtor provided a somewhat different reply to the question being asked relating to her place of residence in London and did not seem to accept what is set out in her witness statement, being that she accepted she had a place of residence in England and Wales at the London Properties until she asserted she left in August 2019. In her replies during cross examination, she asserted that she did not live in England and Wales because she had a residence in Zurich. She asserted that she lived in Zurich and not in London. She stated that she only came over to London to see her family, being her sons and grandchildren. She stated that both her sons and their children live in England. From her evidence, in my judgment, it is clear that when she came to London, she stayed at the London Properties. She stated that she came over to see her sons and her grandchildren. During her cross examination, she stated that she never considered the London Properties as a home. She stated that she considered Switzerland more a home. However, in my judgment, the concept of place of residence is different to a place being a home. The use of 'place of residence' allows an individual to have more than one place of residence. This is clear from *HRH Prince Hussam Bin Saud Bin Abdulaziz Al Saud* and the judgment of Mr Justice Roth. I accept that in Ms Abela's mind, the London Properties were not a 'home', but this does not prevent it being a place of residence. As she had accepted in her witness statement, the contents of which she confirmed in court, the London Properties were a place of residence. I then need to determine whether she had abandoned that place of residence.

33. When asked, she could not remember signing the loan documentation but did recall efforts being made to seek to remortgage the London Properties with Coutts. She was taken to the guarantee document which she signed on 23 August 2019 which set out her address as the London Properties. She stated that she did not recall the document but accepted she signed it. She said that she was then going to sell it but then also stated that she was still there for correspondence. She was taken to the letter provided by Ms Alison Gill of Chan Neil reconfirming the advice Ms Gill provided on 23 August 2019. Ms Abela stated that she did not recall signing the letter. She was asked about the address for her in that letter being the London Properties and she stated that this was the address where she could be reached at the time.

34. Ms Abela was asked about the background to the consent possession order and taken to an email dated 27 June 2019 from Forsters solicitors which was sent to Ms Abela's email address. Ms Abela confirmed that she read emails on her iPad. In the email, Ms Carole Cooke from Forsters asked Ms Abela to confirm who occupies the properties and that she believed that Albertino (one of Ms Abela's sons) was currently occupying number 23. Ms Abela stated that Albetino (one of her sons) did not occupy the property and that he had no furniture there. She stated that he was staying there. She repeated that she had acquired the flats to be closer to her sons and grandchildren and that when they wanted to, they could stay there.

35. She was taken to the consent order for possession dated 20 September 2019. She stated that she recalled the time as being one when she was under a lot of stress, but when specifically asked, she stated that she did not recall the order itself. The order set out her address as the London Properties. She was asked if she wanted to retain ownership of the London Properties and she was taken to the terms of the order whereby she would retain possession providing certain payments were made to the lenders. She denied that she wanted to retain ownership of the London Properties. She stated that she wanted to pay back the loan. She stated that she couldn't remember if she wanted to retain possession of the London Properties whilst paying back the loan.

36. Ms Abela was taken to an email dated 10 January 2020 from Alan Harold addressed to Mr Colin Sanders of Tuscan Capital. As at this time, Ms Abela was in default of the payments required under the terms of the suspended possession order and from the evidence, it appears that Mr Harold was assisting in trying to reach some agreement with Tuscan Capital relating to a sale of the London Properties. In the email, Mr Harold stated that Ms Abela had arrived back in London that morning so any visits to the property would have to work round her. When asked about Mr Harold, Ms Abela stated that Mr Harold might give her some advice but that he was not a lawyer. From the cotemporaneous emails, in my judgment, during the period December 2019 and January 2020, Mr Harold was trying to arrange a sale of the London Properties on behalf of Ms Abela and trying to negotiate with Tuscan to allow this to occur without the enforcement of the suspended possession order. Upon being questioned, Ms Abela agreed that she was back in London in January 2020.

She was asked if she stayed at the London Properties and she stated that she thought at that time she was moving out. She then said when she came over for a few days she stayed there and made the comment that as she had the apartment, why would she stay at a hotel.

37. She was taken to an email dated 22 January 2020 from Mr Sanders to Mr Harold which notified him that the lender was going to make an application to court to seek enforcement of the suspended possession order bearing in mind the breach of the terms of that order. The email then asks whether, in order to save Ms Abela embarrassment and also to enable her to organise the removal of her possessions in a more discreet way, if she would be prepared to agree a date to hand the keys to the lender, Tuscan. Ms Abela was asked to confirm that her possessions were still at the London Properties at this time. She replied that she was moving her possessions out of the London Properties. She stated that she had received a letter stating that she only had one week to get out of the London Properties.

38. In the evidence, there is a letter dated 6 January 2020 addressed to Ms Abela's solicitors, Chan Neil, which states that within 7 working days, the lender would apply for a warrant of possession. There is also a letter dated 23 January 2020 written by Messrs Lighfoots on behalf of the lender addressed to the tenant and/or occupier'of the London Properties which stated that the lender had instructed them to enforce the possession order and that she would be required to vacate the property and that would include removing all the furniture, belongings and other personal effects. There are three letters dated 23 January 2020 which are in identical terms but each one relates to one of the three properties which comprise the London Properties. The 23 January 2020 letters did not refer to a 7 day period. It is not clear which of the two letters I have referred to above had given Ms Abela the impression that she had to move out in 7 days, but this is clearly what she understood. In my judgment this caused her a great deal of stress and anxiety.

39. Ms Abela was then taken to an email dated 27 January 2020 sent by Mr Clementson of Chan Neil to her which copied and pasted an email sent to Counsel, Mr Carl Fain. In this email, Mr Clementson stated that he had read out to Ms Abela the contents of

the email sent to Mr Fain. Mr Clementson was seeking advice on behalf of Ms Abela from Mr Fain relating to a possible application to the court to prevent locks being changed and Ms Abela being evicted. The email states that Ms Abela is living at the London Properties and needed until at least the end of February 2020 to vacate. She was asked if she agreed with what was set out in the email and read out to her. She stated that at that time, she was no longer living in the London Properties. She stated she had been trying to sell it. She stated that as long as she could, she stayed there. She also stated that she wanted to have control over everything which belonged to her. She was clearly concerned about the one week deadline. She stated that she had to remove everything. When asked about when she removed the possessions, she said she could not remember, but that she had to work day and night to get everything sorted.

40. Ms Abela stated that she was asking for a few more days from the lenders so that she would not have to rush. She stated again she did not live there but visited to see her sons and grandchildren. Ms Abela was asked again whether her possessions remained at the London Properties and she replied that she did not accept her possessions remained in the property at that time. She stated that when she received the letter stating that she had one week, she started organising herself. That was either the 6 January 2020 or 23 January 2020. She said she organised everything and had got removal people. She said she was there when the removal people came and took everything. She said she did not have any correspondence with removal people. She said she had some items taken to a friend's house. She said she did not keep many things. She was asked about how she arranged for the removal people and she said not by email but she thought by telephone. She was asked if the removals took place at the end of February 2020 and she replied she couldn't remember.

41. Later during her re-examination, she confirmed that it had been her secretary who had arranged for the removal people and that they had come in one go and removed everything. She was taken to her witness statement and Mr Haywood read out her statement therein that she vacated the flat in August 2019. Mr Haywood put it to her that this was not accurate bearing in mind the evidence that she was now providing to the court about removals. She replied she didn't know and that she couldn't remember precisely when she vacated the London Properties property or when she

ceased to visit. She said she had paid the service charges and that they were up to date.

42. She was asked about the order made by the court relating to document disclosure and production. She stated that she had not seen the order before. She was asked if she had searched for documents and she said she didn't know and then said she did not search for documents. She then said that at the time she had a secretary and the secretary would be responsible for searching and as I understood it, for dealing with issues. She was then asked if she had asked her secretary to search for documents and she said she didn't know. She said if there were important documents, her secretary would have them. Mr Haywood took her to her statement in her second witness statement dated 19 December 2023 where she stated that she did not have any further documents in her control.

43. As I have already stated above, Mr Groves submits that the debtor vacated the London Properties in August 2019. That is also, he submits, her intention which he submits is a factor to take into account under *Nordfelt*. He accepts that there is no documentation produced by Ms Abela in support of her having vacated the property in August 2019. He was unable to really argue that Ms Abela had properly complied with the disclosure order made against her. In my judgment, it is an important factor that the debtor accepted that she had a place of residence within the jurisdiction. The background to the acquisition of the London Proprieties is also relevant. As is set out in her evidence, she acquired the London Properties in 2005 as being a place where she would stay when she came to London to spend time with her sons and grandchildren. Her family would also stay in the property which was a large apartment converted from three smaller properties. Her evidence shows that she had her furniture and possessions at the property. So on her own admission, this was a place of residence for her until, she asserts August 2019. I have noted above that when she was questioned, Ms Abela appeared to believe that she could not 'live' in more than one place, or that she did not believe that the London Properties were a home. As the case law I have set out above make clear, (1) a person can have more than one place of residence, (2) there is no need for a place of residence to be a home. Equally the case law sets out that a person can have a place of residence without spending time in the property but that the more time which is spent in the property,

the greater the occupation, the more likely the finding. As there is an admission that the London Properties were a place of residence for the debtor prior to August 2019, I need to consider whether the evidence demonstrates that this place of residence had been abandoned by the debtor after August 2019 as she asserts in her witness statement.

44. As a witness before me in court, I have considered carefully her evidence. I have taken into account that she is a frail lady of considerable age being asked to remember matters going back to August 2019 and 2020. However, even taking all of that into account, Ms Abela was a witness who reverted to 'I don't know' and 'I cannot remember' in many instances. I cannot be certain that she actually did not recollect or didn't know every time she stated that to be the case. It may well be that she found the effort of recollecting too much. Despite this impression, I have not rejected her evidence before me and have carefully taken it into account. However her evidence must of course be considered alongside the contemporaneous documents, including the email exchanges which I were put to her during her cross examination.

45. There is no evidence to support her bare assertion that she vacated the London Properties in August 2019. Unlike in *Nordenfelt*, there is no evidence to support her furniture and possessions were being packed up, ready to be sold or moved. In *Nordenfelt* , Lord Justice Rigby stated that the debtor could not stay at the property, '*without some trouble and expenditure, to be placed in a position to be used'.* The evidence shows that Ms Abela continued to stay at the London Properties when she was in London. In my judgment, the London Properties remained available for her to stay at during the period from August 2019 to January/February 2020. It remained furnished and her possessions were still there. She used it as an address. There is a reference in the emails to her staying in the London Properties in January 2020 and another email at the same time which states she 'lives' there. Her solicitors in January/February 2020 stated that she lived there. She disagreed with these statements, but she herself said in her cross examination that she stayed at the London Properties when in London.

46. The evidence actually shows that Ms Abela was really stressed in January 2020 when she believed she had only 7 days to move out of the London Properties. The evidence also demonstrates that she sought to organise removal people and then worked 'day and night' in packing and organising her possessions in January/February 2020. I accept that I need to consider Ms Abela's intention and her statement in her witness statement that she vacated the property in August 2019, but she provides no further evidence in support of this statement. In my judgment, the evidence establishes that she only moved her furniture and possessions out of the London Properties in January/February 2020. That is supported by her evidence and also by her real panic and stress when she believed she had only 7 days to move her possessions in January 2020. The evidence also shows that she stayed there in January 2020 and she herself stated she stayed there when she was in London. Mr Groves submitted that she stayed in the London Properties in January 2020 only for the purpose of removing her possessions, but in my judgment, her evidence did not make this refinement. Her evidence was that she stayed at the London Properties when in London and would stay there when she came to London. It is also difficult to accept her written evidence that she vacated the London Properties in August 2019 and did not return with the evidence before me that she had left her possessions in the London Properties and made no effort to deal with them until she believed she only had 7 days to move. That is inconsistent with her assertion that she vacated the London Properties in August 2019.

47. I do not consider that her intention to seek to sell the London Properties supports the abandonment of the property in August 2019 as a place of residence. Had the London Properties been sold, then at that stage, she would have moved out all her possessions and furniture and of course she would have stopped using the London Properties when she came to London. That is not what happened here and was not the position in August 2019. The London Properties remained, in my judgment, available for her use during this period in the same way it was available for her use before August 2019. She also paid instalments under the suspended possession order for a few months after it was made in September 2019. She said she wanted to pay the debt, but in my judgment, paying those sums enabled her to continue to use the property as she had done beforehand.

48. I have no evidence in relation to when she stayed at the London Properties between August 2019 and January 2020. In my judgment, the failure by Ms Abela to comply with the disclosure order needs to be considered here. That order provided for her to produce documentation adverse to her case. That would have included potentially documentation relating to visits to England between those dates. Equally it would have produced evidence of the removal date. She disclosed that she had a secretary and that important documents would be in the possession of her secretary. There is no reference to this in her second witness statement. Ms Abela asserts that she did not visit the property or live there after August 2019, but she admitted before me that she stayed there in January 2020 and also that when she was in London she would stay there. The disclosure order was made because the Judge concluded that such disclosure was necessary for the just disposal of the case. The cases referred to above make it clear that I am entitled and should draw adverse inferences where a debtor fails to produce documentary evidence that should reasonably be in its possession or control.

49. In my judgment, I consider that the London Properties continued to be used by Ms Abela as she had used it prior to August 2019, being as a place where she stayed whilst in London. She produced no evidence to contradict this beyond her bare assertion that she vacated the London Properties in August 2019 and did not live there or return there to visit. In the circumstances, I accept that an inference can be drawn that the documentation which should have been provided would have demonstrated that she stayed in the London Properties during the period August 2019 and January 2020.

50. In my judgment, it does not matter in many respects whether she visited London between August 2019 and January 2020. On the evidence before me, I have held she did not abandon her place of residence in August 2019. I have also held that she stayed at the London Properties when in London, the address was used by her and her solicitors considered that she lived there, at least when she was in London. Details of stays at the London Properties between August 2019 and January 2020 would have merely confirmed the finding I have made that she did not abandon her place of residence in August 2019. It would have been an additional factor but not a determinative one.

51. In conclusion, I do not accept that the debtor abandoned her place of residence in August 2019. The debtor does not argue an alternative time as to when she asserts she abandoned her place of residence. Accordingly, I find that she retained her place of residence in England and Wales as at the date falling three years before the issue of the petition on 13 September 2019.