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Case No: 1978 of 2015 (BR-2015-001180)

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

Royal Courts of Justice
7 Rolls Building, Fetter Lane,
London EC4A 1NL
Date: 11 June 2018

Before:

MR JUSTICE SNOWDEN

- -

IN THE MATTER OF GLENN MAUD
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between:

(1) AABAR BLOCK S.A.R.L. **(2) EDGEWORTH CAPITAL (LUXEMBOURG) S.A.R.L.**	**Petitioners**
- and -	
GLENN MAUD	**Respondent**

- -

David Allison QC (instructed by **Freshfields Bruckhaus Deringer LLP**) for Aabar
Antony Zacaroli QC and **Ryan Perkins** (instructed by **Stephenson Harwood LLP**) for Edgeworth
Andrew Clutterbuck QC and **Joseph Wigley** (instructed by **Bryan Cave Leighton Paisner LLP**) for Mr. Maud
John Brisby QC and **Alastair Tomson** (instructed by **Paul Hastings (Europe) LLP**) for Global Asset Capital Europe LLC
Andrew Rose (instructed by **Paul Hastings (Europe) LLP**) for Navarro Ventures S.A.R.L.

Hearing dates: 15-18 November 2016

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Approved Judgment

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

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MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN:

Introduction

1. This is the judgment on a petition for a bankruptcy order to be made in respect of Mr. Glenn Maud ("Mr. Maud"). The background to the bankruptcy proceedings is both complicated and highly unusual. The bankruptcy petition was presented on 15 June 2015 and the hearing of the petition to which this judgment relates took place after I had allowed an appeal against a decision of Mr. Registrar Briggs making a bankruptcy order in relation to Mr. Maud in mid-2016. I allowed the appeal in essence because I took the view that the Registrar had not fully considered the class interest when deciding to make the bankruptcy order. The consequence was that I heard renewed argument over several days from a number of Mr. Maud's creditors as well as from the petitioning creditors and Mr. Maud himself.

The commercial background and the main protaganists

2. The bankruptcy petition is merely one aspect of a far wider set of proceedings in England and Spain which have at their heart the financing and a battle for the ownership of a group of Spanish and Dutch companies known as "the Marme Group" that owns a very substantial office and real estate complex in Boadilla del Monte, Madrid. That complex has been let on a long lease to a company in the Santander Banking group and houses the international headquarters of Banco de Santander. The complex is known locally as "the Financial City", and the asset that it represents has been referred to throughout the proceedings as "the Santander Asset".

3. The shareholding of the parent company of the Marme Group which owns the Santander Asset is currently registered in equal proportions in the names of Mr. Maud and a business associate of his, Mr. Derek Quinlan ("Mr. Quinlan"). The Santander Asset is worth several billion euros, but the companies in the Marme Group are heavily indebted as a result of incurring the finance to acquire the Santander Asset, and they have entered insolvency proceedings in Spain. In the course of those proceedings, the Spanish court has approved a liquidation plan under which the assets of the group - principally the Santander Asset - will be sold to the highest bidder. There have been a number of legal challenges that have delayed the implementation of that plan, and more recently a rival proposal has been made for the companies in the Marme Group to exit liquidation by paying or otherwise satisfying all of their creditors under section 176 of the Spanish Insolvency Act.

4. For present purposes, the main protaganists in the current proceedings and in relation to the Spanish insolvency are (i) Mr. Maud; (ii) a number of investment companies with which he has formed an alliance, including in particular a private equity firm based in California called Global Asset Capital Europe LLC ("GAC") which is part of a group that has been an active acquirer of office buildings in Europe leased to large corporates, and a London-based investment firm called AGC Equity Partners ("AGC"); (iii) Aabar Block S.a.r.l. ("Aabar") which is an investment company controlled by the Abu Dhabi sovereign wealth fund, and one of the joint petitioners for Mr. Maud's bankruptcy; and (iv) Edgeworth Capital (Luxembourg) S.a.r.l. ("Edgeworth") which is an investment company and the other joint petitioner. Edgeworth is associated with and advised by Mr. Robert Tchenguiz ("Mr. Tchenguiz"), who is a property entrepreneur and who introduced the opportunity to acquire the Santander Asset to Aabar.

5. Where appropriate, I shall refer to Aabar and Edgeworth collectively as "the Petitioning Creditors". As I shall explain, however, although Aabar and Edgeworth originally cooperated with a view to acquiring the Santander Asset and jointly presented the petition for Mr. Maud's bankruptcy, they have since fallen out in spectacular fashion. In particular, in June 2016 Aabar demanded repayment of monies owing by Edgeworth arising from their joint enterprise and indicated an intention to enforce its security over the rights which Edgeworth has against the companies in the Marme Group and Mr. Maud. This prompted Edgeworth to commence Commercial Court proceedings and it obtained interim injunctive relief against Aabar to prevent such enforcement. By the time of the hearing before me Edgeworth and Aabar were no longer united in their approach to the bankruptcy petition, and they have since fought a contested trial of the proceedings in the Commercial Court before Popplewell J.

The Marme Group and the acquisition of the Santander Asset

6. The Santander Asset was originally acquired in September 2008 by the Marme Group which consists of three companies. The Santander Asset was owned and operated by a Spanish company, Marme Inversiones 2007 S.L. ("Marme"). Marme was and is wholly owned by a Dutch company, Delma Projectontwikkeling BV ("Delma"), which in turn was and is wholly owned by another Dutch company known as Ramblas Investments BV ("Ramblas"). One half of the shares in Ramblas were and are registered in the names of each of Mr. Maud and Mr. Quinlan.

7. The acquisition of the Santander Asset was financed by a number of loans agreed on 12 September 2008:

    a) A "Senior Loan" of €1.575 billion to Ramblas through a syndicate of banks headed by Royal Bank of Scotland ("RBS").

    b) A "Junior Loan" of €200 million from RBS to Ramblas, which was secured, among other things, by (a) a pledge executed by Mr. Maud and Mr. Quinlan in favour of RBS over their shares in Ramblas (the "Ramblas Share Pledge"), (b) a pledge executed by Ramblas in favour of RBS over its shares in Delma (the "Delma Share Pledge"), and (c) a personal guarantee executed by Mr. Maud and Mr. Quinlan in favour of RBS limited to €40 million (the "Personal Guarantee").

    c) A "Personal Loan" of €75 million by RBS to Mr. Maud and Mr. Quinlan jointly and severally, which loan was secured over various assets of Mr. Maud and Mr. Quinlan. Pursuant to its terms, the monies advanced under the Personal Loan were on-lent to Ramblas together with other funds from Mr. Quinlan and from Mr. Maud's company, Cruz Holdings Limited (the "Shareholder Loans").

8. In September 2010 Mr. Maud and Mr. Quinlan made late payment of interest on the Personal Loan, which entitled RBS to accelerate the loan and make demand for its repayment. RBS, which had its own difficulties at the time, made such demand on 19 September 2010. This produced only a partial repayment of €25 million.

9. Aabar and Edgeworth combined to take advantage of the opportunity to acquire the Santander Asset at some point in 2010, and at the end of November 2010 they entered into an agreement to buy from RBS (a) the rights against Mr. Maud and Mr. Quinlan in respect of the balance of the Personal Loan and the accompanying securities, (b) the rights against Ramblas in respect of the Junior Loan together with the accompanying rights under the Ramblas and Delma Share Pledges and the Personal Guarantee, and (c) the rights against Ramblas under a further agreement known as the "Upside Fee Agreement" (the "UFA"). The price paid for the Junior Loan which had €200 million plus interest outstanding was €195 million: the price paid for the Personal Loan was only €5,000.

10. After completion of the purchase of the Loans from RBS, Aabar and Edgeworth accelerated the debt, and in February 2011 they brought proceedings in England against Mr. Maud and Mr. Quinlan in respect of the Personal Loan and against Ramblas in respect of the Junior Loan. On 17 June 2011, an order was made by consent by Teare J giving judgment against Mr. Maud and Mr. Quinlan on the balance of the Personal Loan and interest, and ordering them to pay Aabar and Edgeworth a sum of about €52.6 million. Subject to credit being given for the estimated value of security held (c. €10 million), it is this judgment debt that forms the basis for the bankruptcy petition against Mr. Maud. On the same day Aabar and Edgeworth also obtained judgment against Ramblas on the Junior Loan and interest in the sum of about €216.6 million.

11. Thereafter, Aabar and Edgeworth sought to negotiate with Mr. Quinlan and Mr. Maud. A settlement was reached with Mr. Quinlan in September 2011 under which Aabar and Edgeworth conditionally agreed to acquire his shares in Ramblas. The settlement was achieved via the involvement of some of the parties to a separate dispute over the ownership and control of an unrelated company known as Coroin Limited ("Coroin"), which owned a group of hotels including The Savoy. The connecting factor was that one of the assets pledged by Mr. Quinlan to RBS to secure the Personal Loan was a substantial shareholding in Coroin.

12. Under the settlement, Mr. Quinlan agreed to enter into a conditional sale of his shares in Ramblas to Aabar and Edgeworth. This was achieved by a "Deed of Sale and Adherence" under which, subject to a condition precedent, Mr. Quinlan agreed to sell his nine shares in Ramblas (defined in the Deed as "the Shares") to Aabar (which bought four shares) and to Edgeworth (which bought the remaining five), for a total consideration of €1. Clause 3 of that agreement was as follows,

> "3.1 The agreement to sell and purchase the Shares … is conditional upon the transfer of the Shares to [Aabar and Edgeworth] becoming permissible pursuant to article 11 … of the [Articles of Association of Ramblas] (the "Condition Precedent").
>
> 3.2 [Mr. Quinlan] shall use reasonable endeavours to ensure that the Condition Precedent is satisfied…
>
> 3.3 If a shareholder of [Ramblas] seeks to exercise [a pre-emption right contained in the Articles over the Shares, Mr. Quinlan] shall co-operate with [Aabar and Edgeworth] and (to the extent lawful to do so) take instructions from [Aabar and

> Edgeworth] in order to prevent such shareholder from acquiring the Shares.
>
> 3.4 … for the avoidance of doubt, irrespective of the satisfaction of the Condition Precedent, [Aabar and Edgeworth] shall at all times and, and in their sole and absolute discretion, remain at liberty to pursue the acquisition of the Shares by other means, including in connection with [the enforcement of the Ramblas Share Pledge]."

13. Of particular relevance to the current dispute involving Mr. Maud are the additional obligations undertaken by Mr. Quinlan pending completion of the transfer of his Shares. Under clause 5, Mr. Quinlan gave various undertakings as regards the exercise of his rights as a director and shareholder in Ramblas, and clause 5.1.3 was as follows,

> "5.1.3 Pending completion of the transfer of the Shares in accordance with this Deed, [Mr. Quinlan] shall:
>
> (i) only exercise the voting (and any other) rights attached to the [Shares to be acquired by Aabar] in such manner as [Aabar] shall direct; and
>
> (ii) only exercise the voting (and any other) rights attached to the [Shares to be acquired by Edgeworth] in such manner as [Edgeworth] shall direct."

Under clause 9 of the Deed of Sale and Adherence, Aabar and Edgeworth agreed that if Mr. Quinlan complied with his obligations under the agreement, they would not present a bankruptcy petition against him in connection with any of the debts owed in connection with the Marme Group.

14. The reference in the Deed of Sale and Adherence to the transfer of Mr. Quinlan's Shares to Aabar and Edgeworth becoming permissible pursuant to Article 11 was to an article that provides that except in a limited number of specified circumstances, any transfer of shares in Ramblas can only be executed after the shareholder has first offered the share or shares concerned to his co-shareholders in accordance with the mechanism set out therein. As part of that mechanism, Article 11.6 provides as follows,

> "The price of the offered shares shall – unless all parties agree otherwise in joint consultation – be determined by one or more independent experts to be appointed by the offeror and the co-shareholders in joint consultation. If the offeror and the co-shareholders are unable to agree on this within fifteen days … the willing party shall request the local sub-district court at which the company has its corporate seat to appoint three independent experts to determine the price…"

15. The other Article which is of importance in this case is Article 12.1 that provides,

> "In the event that …
>
> b. a shareholder loses the right to dispose of his property in any manner whatsoever ….
>
> the shares of the shareholder concerned must be offered to the co-shareholders …"

16. The remainder of Article 12 contains further provisions giving effect to this compulsory sale clause, including in particular Article 12.6 that provides that the provisions of Article 11 apply *mutatis mutandis*, except that the offeror may not withdraw his offer and may only retain any shares with respect to which the offer is not taken up. It is common ground between the parties that this clause would be irreversibly triggered if a bankruptcy order was made in relation to Mr. Maud and was not immediately stayed.

Mr. Maud's financial difficulties

17. Although Aabar and Edgeworth reached a settlement with Mr. Quinlan, they did not do so with Mr. Maud. Commencing in 2012, Aabar and Edgeworth therefore sought to enforce the security that existed over Mr. Maud's shares in Ramblas by means of litigation in Holland. However, those attempts were successfully resisted by Mr. Maud throughout 2012 and 2013.

18. In addition to his liabilities to Aabar and Edgeworth, Mr. Maud was also under pressure from other creditors. A bankruptcy petition was presented against him on 18 June 2013 by a company known as Incorporated Holdings Limited ("IHL"). The petition debt was for about £19.6 million and arose out of a guarantee given by Mr. Maud for sums borrowed from IHL to help finance the purchase of the Santander Asset in September 2008.

19. In addition, on 19 February 2014 the Libyan Investment Authority ("the LIA") served Mr. Maud with a statutory demand in relation to the amounts owing in respect of a personal guarantee given by him in respect of a €12.5 million loan made by the LIA to one of Mr. Maud's companies. The statutory demand was for about £17.5 million. On 5 June 2014 Aabar and Edgeworth also served a statutory demand upon Mr. Maud for the amount outstanding under Teare J's judgment of 17 June 2011 in respect of the Personal Loan. Mr. Maud applied to set aside the two statutory demands.

The Spanish insolvency proceedings

20. On 17 February 2014, each of the companies in the Marme Group (whose directors in the case of Delma and Ramblas included Mr. Maud as joint managing director) petitioned the Spanish court for the commencement of voluntary insolvency proceedings ('*concurso voluntario*'). The companies accepted that they were unable to pay their debts, including in particular the obligations under the Senior Loan and a number of interest rate swaps with a variety of financial institutions. The petitions were granted by the Spanish court on 4 March 2014 and an insolvency administrator was appointed (the "Administrator"). Under Spanish insolvency law, the Administrator occupied a supervisory role over the directors who remained in place and there was a

moratorium that prevented enforcement of security over the assets of the Marme Group, including the Ramblas and Delma Share Pledges held by Aabar and Edgeworth.

21. The Spanish insolvency proceedings did not, however, prevent the continuation of the proceedings that had already been commenced against Ramblas in England under the UFA. Those proceedings were resisted with the assistance of Mr. Maud, but on 30 January 2015 Hamblen J gave a judgment against Ramblas in favour of Aabar and Edgeworth in the sum of about €105 million: see [2015] EWHC 150 (Comm). That judgment was subsequently upheld in substantial part by the Court of Appeal: see [2016] EWCA Civ 412.

22. In late February 2015, and after unsuccessful negotiations between the Administrator and creditors, the companies in the Marme Group filed for the commencement of the liquidation stage of the Spanish insolvency proceedings. The Administrator continued in office: it is not clear whether the effect was also to remove Mr. Maud and the other directors of the companies from office.

23. Under article 148.1 of the Spanish Insolvency Law, moving to the liquidation stage triggered a requirement for the Administrator to submit a plan to the court for approval for the realisation of the assets of each of the companies. A co-ordinated plan for the three companies in the Marme Group was duly filed on 30 April 2015 ("the Plan"). The Plan recited that the Administrator had valued the Santander Asset as a financial asset rather than as real estate, and had arrived at a range of values between €2.675 billion and €3.123 billion. The Administrator also reported that he had received two offers for the assets of the Marme Group: the most favourable of these was from Aabar and Edgeworth and involved the settlement or discharge of all of the liabilities of Marme and Delma and the purchase of the assets of Ramblas for €360 million. In the Plan, the Administrator recommended a coordinated sale of the assets of all of the companies on terms that would allow for the discharge of at least all of the liabilities of Marme and Delma. He indicated that he would continue to solicit competing bids from interested parties.

The Consortium Bid and the Olivo Agreement

24. Notwithstanding the insolvency of the companies in the Marme Group, Mr. Maud retained his position as a shareholder of Ramblas, and appears also to have continued to have some influence with the Administrator after the companies moved to the liquidation phase. Mr. Maud used his position to co-operate with GAC and AGC in putting together a bid for the assets of the Marme Group to rival that of Aabar and Edgeworth. In connection with that bid, GAC bought the debt which Mr. Maud owed to IHL and agreed to the bankruptcy petition against him by IHL being dismissed.

25. As regards Mr. Quinlan, on 7 June 2015 a Dutch foundation owned by GAC called Stichting Administratiekantoor Olivo ("Stichting Olivo") entered into an agreement with Mr. Quinlan (the "Olivo Agreement"). That agreement provided for the issue of so-called "Depositary Receipts" for Mr. Quinlan's existing shares in Ramblas and for him to transfer to Stichting Olivo any other shares that he might subsequently acquire or be entitled to acquire in Ramblas. The Olivo Agreement was, however, expressly agreed to be subject to the earlier Deed of Sale and Adherence under which Mr. Quinlan had agreed to sell his shares to Aabar and Edgeworth. In particular, it was expressly provided that the Olivo Agreement should be read and interpreted so that no breach of

the Deed of Sale and Adherence might occur, and Olivo expressly acknowledged that Mr. Quinlan should only exercise the voting and other rights attached to his shares in Ramblas in such manner as Aabar and Edgeworth might direct.

26. On 6 July 2015, the consortium comprising Mr. Maud and his associated company, Cruz Holdings Limited, together with GAC acting through Stichting Olivo, submitted a written bid to the Administrator to purchase the assets and liabilities of the Marme Group ("the Consortium Bid").

27. The Consortium Bid represented that it was financed and supported by AGC and provided for the purchase of the assets of the Marme Group on terms that would enable repayment or settlement of all of the Marme Group's external liabilities. In particular, it offered a cash payment to the Administrator sufficient to enable the full repayment of the Senior Loan and the Junior Loan owed to Aabar and Edgeworth, together with the cash collateralisation of the contingent liabilities to counterparties under swap claims against the Marme Group and the liability of Ramblas to Aabar and Edgeworth under the UFA. In addition to the payments for the Santander Asset, the Consortium Bid also offered to discharge the outstanding balance of the Personal Loan owed by Mr. Maud to Aabar and Edgeworth. The Consortium Bid document thereby suggested that it would enable the shareholders of Ramblas (and thus Mr. Maud's creditors) to benefit from any monies released after settlement of the swap claims and in the event of a successful appeal of Hamblen J's judgment against Ramblas in relation to the UFA. In addition, it was said that Mr. Maud's other creditors would benefit from the discharge of his liability to the Petitioning Creditors under the Personal Loan.

The set-aside judgments

28. On 8 June 2015, Rose J gave two judgments in relation to the separate applications by Mr. Maud to set aside the two statutory demands served by the LIA and by the Petitioning Creditors.

29. Rose J set aside the LIA's statutory demand: see [2015] EWHC 1625 (Ch). The LIA then played no role in the proceedings until that decision was reversed by the Court of Appeal: see [2016] EWCA Civ 788. This led to solicitors purporting to act for the LIA filing evidence and sending a letter to me supporting the making of a bankruptcy order. This is a matter to which I shall return.

30. Rose J did not set aside Aabar's and Edgeworth's statutory demand. Mr. Maud had applied for the demand to be set aside on two grounds. The first was under Rule 6.5(4)(b) of the Insolvency Rules 1986 on the basis that the debt in relation to the Personal Loan had (or arguably had) been satisfied in full by Mr. Quinlan as a result of the agreements between Aabar and Edgeworth and Mr. Quinlan in September 2011 to which I have referred. Rose J rejected that argument, pointing out that although the parties had agreed to the security over Mr. Quinlan's shares in Coroin being released, there was no mention of Mr. Quinlan's liability to Aabar and Edgeworth having been discharged or treated as having been satisfied. She also observed that the provisions of clause 9 of the Deed of Sale and Adherence under which Aabar and Edgeworth agreed not to present a bankruptcy petition against Mr. Quinlan made no sense and would not have served its purpose of encouraging Mr. Quinlan to comply with his obligations under the agreement if his underlying liability had been discharged.

31. Mr. Maud's second ground of challenge was that the statutory demand ought to be set aside because Aabar and Edgeworth were pursuing an illegitimate collateral purpose by seeking to make him bankrupt, namely to trigger the pre-emption process set out in Article 12 of the Articles of Association of Ramblas, and thereby to gain total control of Ramblas. In considering this argument, Rose J referred to a number of authorities on abuse of process in the context of bankruptcy and winding-up, including *In Re Majory* [1955] 1 Ch 600, *Re Leigh Estates (UK) Ltd* [1994] BCC 292 and the decision of the Privy Council in *Ebbvale Ltd v Hosking* [2013] UKPC 1. She concluded,

> "29 In the light of these authorities I conclude that the pursuit of insolvency proceedings in respect of a debt which is otherwise undisputed will amount to an abuse in two situations. The first is where the petitioner does not really want to obtain the liquidation or bankruptcy of the company or individual at all, but issues or threatens to issue the proceedings to put pressure on the target to take some other action which the target is otherwise unwilling to take. The second is where the petitioner does want to achieve the relief sought but he is not acting in the interests of the class of creditors of which he is one or where the success of his petition will operate to the disadvantage of the body of creditors. It is also clear from those authorities, and as a matter of common sense, that the jurisdiction of the court to dismiss a petition based on an undisputed debt on the grounds of collateral purpose must be exercised sparingly. Bankruptcy proceedings cannot be allowed to become the forum for a detailed investigation into past and present relationships or an exploration of what the petitioner hopes to gain from the insolvency of the company or individual, in financial or personal terms and a consideration of whether those hopes are legitimate or not.
>
> 30 Applying the authorities to the present case, there is no abuse of process here. This is not a case where [Aabar and Edgeworth] do not really want to make Mr Maud bankrupt – on the contrary Mr Maud's case is that it is his bankruptcy that will trigger the pre-emption rights that will entitle either Mr Quinlan or [Aabar] (depending on whether the share transfer of Mr Quinlan's half has been completed) to get hold of his half of Ramblas' share capital. Secondly, it has not been suggested that the bankruptcy would damage the prospects of Mr Maud's other creditors. There is no reason to suppose Mr Maud's Ramblas shares will be sold under the pre-emption provisions of the Ramblas articles of association at less than their proper price. Those monies will then be available for the general body of Mr Maud's creditors.
>
> 31 Mr Maud has expressed the hope and expectation that if he is given a little more time to put his affairs in order, he will be able to realise some of his assets and generate enough money to pay off all his creditors. But this judgment debt has been

> unpaid for nearly four years now and I do not consider that the court is bound to enquire into the reasons why [Aabar and Edgeworth] have been prepared to wait that long or why they are prepared to wait no longer. That trespasses into considering [Aabar and Edgeworth]'s motive for the petition which, as the Privy Council held, is irrelevant to the court's jurisdiction.
>
> 32 I therefore hold that even if [Aabar and Edgeworth]'s motive in bringing this petition is to trigger, by Mr Maud's bankruptcy, Mr Quinlan's rights of pre-emption over Mr Maud's shares in Ramblas, that does not mean that the petition is an abuse of process or that there are other grounds within Insolvency Rules r 6.5(4)(d) why I should be satisfied that the statutory demand should be set aside."

32. Mr. Maud sought permission to appeal that decision, but his application was refused by Rose J. Permission to appeal was subsequently also refused by Gloster LJ on 1 July 2015.

The Petition

33. Aabar and Edgeworth presented their bankruptcy petition against Mr. Maud on 15 June 2015 (the "Petition"). The Petition was heard for the first time on 7 July 2015 before Mr. Registrar Briggs. Aabar and Edgeworth applied for an immediate bankruptcy order. That was resisted by Mr. Maud and a number of opposing creditors, including in particular GAC (in its capacity as holder of the debt acquired from IHL) and a Luxembourg company called Navarro Ventures S.a.r.l. ("Navarro") which is beneficially owned by Mr. Maud's estranged wife. In about 2011 Navarro had acquired debts of about £56 million which had originated from loans to Mr. Maud by Kaupthing Bank hf.

34. The Petition was adjourned a number of times during 2015. Those adjournments were explained in some detail in my earlier judgment. However, in April 2016 Mr. Registrar Briggs decided to make a bankruptcy order. In essence he did so because he was persuaded by counsel for the Petitioning Creditors that they did not have any collateral or ulterior object or purpose in petitioning. The Registrar held that in the absence of any ulterior object, the burden shifted to Mr. Maud "to provide credible evidence as to why a bankruptcy order should not be made"; and that he could not discharge that burden.

35. Before the Registrar, as had been the case before Rose J, the arguments on collateral or ulterior purpose focussed on an allegation that the Petitioning Creditors were seeking to bankrupt Mr. Maud to trigger the pre-emption provisions in the articles of association of Ramblas in order that they could acquire Mr. Maud's shares in Ramblas. The essence of the Registrar's conclusion was that the Petitioning Creditors were not seeking to acquire Mr. Maud's shares in Ramblas by that course. The Registrar reached that conclusion by accepting an argument that, on its true construction, the Deed of Sale and Adherence dealt solely with Mr. Quinlan's existing shares in Ramblas and no other shares; and that if Mr. Quinlan acquired Mr. Maud's shares as a result of the triggering of the pre-emption provisions, he would be obliged to transfer them to Stichting Olivo and not to the Petitioning Creditors. The Registrar rejected an argument made by

counsel for Mr. Maud that if Mr. Maud was made bankrupt, the Petitioning Creditors could direct Mr. Quinlan to exercise the right of pre-emption using clause 5.1.3 of the Deed of Sale and Adherence, and thereafter acquire both Mr. Maud's shares and Mr. Quinlan's shares.

36. On the question of whether Mr. Maud had discharged the burden of showing why a bankruptcy order should not be made, the Registrar concluded that,

> "88. In my judgment the ability of Mr. Maud to pay his creditors within a reasonable time is uncertain, dependent on too many events requiring a successful outcome, on circumstances that are beyond his control and reliant on a foreign process that has to date proved unpredictable in terms of timing…"

37. Shortly after Mr. Registrar Briggs handed down his judgment indicating an intention to make a bankruptcy order, on 13 May 2016 the Consortium Bid was replaced by a new bid by AGC ("the AGC Bid"). The AGC Bid did not promise the payment of sufficient monies to the Marme Group to result in a return to the shareholders of Ramblas, and there was no proposal to pay any part of the debts owed by Mr. Maud to the Petitioning Creditors, as had been the case with the Consortium Bid. The suggestion in Mr. Maud's evidence was that the Registrar's decision to make a bankruptcy order against him contributed to AGC withdrawing support for the Consortium Bid.

38. Mr. Registrar Briggs' bankruptcy order was dated 3 June 2016. On 2 June 2016 I had stayed the proceedings in the bankruptcy pending the hearing of an appeal by Mr. Maud. That appeal came on before me in mid-July 2016.

39. By the time of the appeal hearing it had become clear that there had been a falling out between Aabar and Edgeworth. The result was that Aabar and Edgeworth instructed separate solicitors and counsel for the appeal before me.

40. The reason for Edgeworth and Aabar seeking separate representation at the appeal hearing became apparent when, after the hearing, I was informed (by Mr Maud) that Edgeworth had commenced Commercial Court proceedings against Aabar. The commencement of those proceedings had followed written demand being made by Aabar against Edgeworth on 20 June 2016 seeking repayment of sums due from Edgeworth arising out of the funding arrangements for acquisition of the Loans from RBS in 2010. On 24 June 2016 Edgeworth obtained a without notice interim injunction against Aabar seeking to prevent Aabar from enforcing its security for such repayment, including its security over the rights which Edgeworth has against the companies in the Marme Group and against Mr. Maud. The substantive proceedings were issued on 28 June 2016.

41. Shortly before the appeal hearing, Edgeworth served a supplemental skeleton argument that reiterated its primary submission that the Registrar had been correct to conclude that the Petitioning Creditors did not have the ulterior object of either (a) gaining ownership of Mr. Maud's shares in Ramblas through triggering the pre-emption rights in Ramblas' articles, or (b) undermining the Consortium Bid. However, the skeleton argument went on to admit that the submission previously made and accepted by the Registrar that Edgeworth had no ulterior object in pursuing the Petition could not be sustained. The skeleton stated,

> "In light of instructions received yesterday from Edgeworth, it is however accepted that (1) Edgeworth believed that Mr. Maud was using his position as director and shareholder in the Marme Group to frustrate Edgeworth's attempts to recover full value for its investment in the Marme Group, to acquire the Santander Asset or otherwise protect its mezzanine position of €360 million, (2) it perceived that placing Mr. Maud's assets under the control of an independent trustee would be likely to remove that obstacle, and (3) this formed part of its motivation for seeking to bankrupt Mr. Maud."

That statement was subsequently verified in terms by a witness statement from Mr. Tchenguiz on behalf of Edgeworth.

42. For Aabar, a witness statement was produced from a Mr. Mohamed Al Mehairi ("Mr. Al Mehairi"), the Chief Executive Officer of Aabar's parent company, who stated his understanding (derived from unnamed sources) that Aabar had not pursued the Petition against Mr. Maud either to gain ownership of Mr. Maud's shares in Ramblas through triggering the pre-emption rights in Ramblas' Articles, or to undermine the Consortium bid. But he then continued,

> "6. At the time that the petition was presented, the senior management of Aabar believed that its ability to preserve the value of the Junior Debt and the Personal Loan, and to realise value for its investment in those assets, was being frustrated by Mr. Maud who, in his capacity as a shareholder and former director of companies in the Marme Group, was believed to be influencing the pursuit and settlement of litigation involving those companies that was commenced pre-liquidation.
>
> 7. The senior management of Aabar believed that, if an independent trustee in bankruptcy were to control Mr. Maud's assets, that officeholder would be likely to exercise the rights attaching to those assets in a commercial and rational way, for the benefit of Mr. Maud's creditors, which in turn would improve Aabar's prospects of preserving or realising the value of its investment."

43. In my reserved judgment on the appeal I first considered the authorities on the nature of a bankruptcy petition as a class remedy. I referred, in particular, to the decision of Mr. Richard Sykes QC (sitting as a Deputy High Court Judge) in *Re Leigh Estates (UK) Limited* [1994] BCC 292. At page 294, Mr. Sykes QC said,

> "Although a petitioning creditor may, as between himself and the company, be entitled to a winding-up order *ex debito justitiae*, his remedy is a 'class right', so that, where creditors oppose the making of an order, the court must come to a conclusion in its discretion after considering the arguments of the creditors in support of and opposing the petition: see *Re Crigglestone Coal Company Ltd* [1906] 2 Ch 327, in particular the statements of principle of Buckley J at first instance, and s. 195 of the Insolvency Act 1986…

> It is plain from the well-known authorities on the subject that, where there are some creditors supporting and others opposing a winding-up petition it is for the court to decide as a matter of judicial discretion, what weight to attribute to the voices on each side of the contest…"

44. Secondly, I considered the authorities on abuse of this collective process, including in particular *Re a Company (No. 001573 of 1983)* [1983] BCLC 492 (Harman J) and *Ebbvale Limited v Hosking* [2013] UKPC 1. I rejected an argument by the Petitioning Creditors that once it is determined that a bankruptcy petition is not an abuse of process, the motives or objectives of the petitioning creditor in seeking a bankruptcy order are necessarily irrelevant. I determined that such motives or objectives might be relevant if the petition is opposed by other creditors and the court is required to conduct an evaluation of the class interest.

45. Thirdly, I explained by reference to *Sekhon v Edginton* [2015] 1 WLR 4435 that the court's own discretion to adjourn a bankruptcy petition in relation to an undisputed debt where the debtor asked for time to pay would only be exercised in the debtor's favour if the debtor could produce credible evidence that there was a reasonable prospect that the petition debt would be paid in full within a reasonable time. However, I held that this type of discretionary decision for the court in the exercise of its case management powers was not a substitute for the consideration by the court of the separate question of the views of the members of the class in a case in which the petition was opposed by other creditors.

46. Finally, I referred to a number of cases which appear to indicate that the court might, in exceptional circumstances, exercise its general discretion to decline to make a bankruptcy order or a winding-up order if it is satisfied that the order would serve no useful purpose because there would be no assets available in the insolvent estate for creditors. That was the main point of decision in *Crigglestone Coal* and also appears to have been the basis for the dismissal of the bankruptcy petition in *Re Malcolm Robert Ross (a Bankrupt) (No 2)* [2000] BPIR 636. I concluded, however, that a debtor faces a heavy burden in persuading the court not to make an order on that basis: see e.g. *re Field (a debtor)* [1978] Ch 371 at 375, and *Shepherd v Legal Services Commission* [2003] BCC 728.

47. Applying these principles to the Registrar's decision, I first noted that the Registrar had reached his decision to make a bankruptcy order on what was now acknowledged to be the incorrect basis that the Petitioning Creditors had no ulterior objectives in pursuing the Petition against Mr. Maud. I then pointed out that because the Registrar had adopted the approach in a number of Irish cases (which I did not consider represented English law) he had not sought to evaluate the views of the members of the class of creditors and their reasons for seeking or opposing an order. Instead, he had proceeded simply to the case management question of whether Mr. Maud had shown that there was a reasonable prospect that his creditors would be paid within a reasonable time, and had concluded that Mr. Maud had not made out a case for a further adjournment on that basis.

48. I concluded that the class question was potentially important on the facts of this (highly unusual) case,

> "It is perfectly clear that the debts owed and assets owned by Mr. Maud are not debts of the conventional size and type usually seen in individual insolvencies for which a debtor may seek a reasonable time to pay, for example by trading profitably or liquidating other assets that he may own. Instead, … it is, I think, reasonably apparent from the submissions that were made to me, that both sides take the view that the only realistic prospect of a substantial return to Mr. Maud's creditors is if he can obtain some benefit from the Spanish bid process – either in his capacity as holder of the Shareholder Loan, or via the equity of redemption in his Ramblas shares, or via his individual participation in the acquisition vehicle of the Santander Asset.
>
> In that regard, although both sides sought to analyse the Consortium Bid with a view to showing that Mr. Maud's involvement with it carried the prospect of such a return, or did not clearly carry any such prospect, and it is true that the current ACG Bid does not appear to involve Mr. Maud, it seems to me that these submissions may well miss the point. The Spanish insolvency process leading to a sale of the Santander Asset is currently the only significant show in town, and although the timing of the process is uncertain, there is plainly the potential for increased bids to be made in that process. Mr. Maud's creditors – acting in their capacity as such – are entitled to express a view on whether Mr. Maud has any realistic prospect of obtaining a benefit from whatever those bids might be, and whether his prospects of doing so will be affected in any way if he is made bankrupt."

49. I therefore allowed the appeal and gave directions for evidence to be filed addressing the issues arising from my judgment in light of a number of other events that had taken place since the Registrar had made his order, both in England and in Spain.

The hearing of the Petition before me

50. The hearing of the Petition before me took place in November 2016. At that hearing, in addition to Mr. Maud, Aabar and Edgeworth, who were again separately represented and (as I shall explain) each took different views as to what should happen, GAC and Navarro also each appeared by counsel to oppose the making of a bankruptcy order. Solicitors purporting to act for the LIA also filed evidence and wrote to the court supporting the making of a bankruptcy order.

51. In very approximate terms, the euro equivalents of the debts claimed by those creditors to be owing to them, including interest, were as follows (the precise amounts including interest calculations were not admitted by Mr. Maud):

    i) Aabar and Edgeworth: €63 million under the judgment of Teare J, and €44 million under the Personal Guarantee

    ii) GAC: €23 million

iii) Navarro: €65 million

iv) The LIA: €26.4 million.

52. The position of Edgeworth was that an immediate bankruptcy order should be made. For Edgeworth, Mr. Zacaroli QC submitted that Edgeworth was entitled as against Mr. Maud to a bankruptcy order *ex debito justitiae* and Mr. Maud was not entitled to reopen the question of whether the Petition was an abuse of process because that had already been decided against him by Rose J (and Gloster LJ on the application for permission to appeal). In any event, Mr. Zacaroli submitted that Edgeworth's purposes in petitioning did not amount to an abuse of process because it always had the legitimate objective of seeking repayment of the Personal Loan, and its admitted collateral purpose was not one that could result in any prejudice to Mr. Maud's creditors.

53. Mr. Zacaroli also submitted that on the class question, the views of GAC and Navarro should be discounted because of their connections with Mr. Maud, and that there was no rational basis for a creditor to think that there was any greater prospect of Mr. Maud being able to repay his creditors if he was not made bankrupt than if he was made bankrupt. Hence, he submitted, the views of those creditors seeking an immediate bankruptcy order should prevail. Finally, as a matter of case management, Mr. Zacaroli submitted that it was clear that there was no prospect of Mr. Maud being able to pay all of his creditors in any reasonable period of time, and so there was no basis for any further adjournment of the petition.

54. For Mr. Maud, Mr. Clutterbuck QC resisted the making of a bankruptcy order. He contended that the evidence filed since the statutory demand was first considered by Rose J and Gloster LJ disclosed a very different picture as regards the purposes of Edgeworth and Aabar, and that it was now clear that their Petition was an abuse of the collective process and should be dismissed. The first basis for that submission was that I should find as a fact that the Petitioning Creditors had no interest in being paid the amount outstanding on the Personal Loan, but were only pursuing the Petition with a view to gaining control of the Santander Asset. In the alternative, Mr. Clutterbuck contended that if Mr. Maud were not made bankrupt he would retain his influence as a shareholder of Ramblas in the Spanish insolvency process and stood to receive a payment for assisting AGC if its bid succeeded. He contended that seeking a bankruptcy order that would deprive Mr. Maud of this opportunity to benefit from a successful AGC bid would prejudice Mr. Maud's creditors, and hence was an abuse of process.

55. Notwithstanding that Mr. Clutterbuck accepted the point made in my earlier judgment to the effect that on the class question the debtor "has no voice", Mr. Clutterbuck also sought to make submissions on behalf of Mr. Maud as to the best interests of the creditors. Consistently with his submissions on abuse of process, he said that in circumstances in which there was no prospect of any other assets being available in a bankruptcy, any rational creditor would wish to see the Spanish insolvency process run its course to see if Mr. Maud might benefit from a payment from AGC, or to see if bids would be received in excess of the current bids for the Santander Asset which might result in a return to Mr. Maud via the Shareholder Loans owed by Ramblas to him and to Cruz Holdings.

56. Aabar supported Edgeworth's arguments on the issue of abuse of process and on the connections between GAC, Navarro and Mr. Maud. However, in an oral submission that had not been foreshadowed in his skeleton argument, Mr. Allison QC stated that on the basis of the submissions made on behalf of Mr. Maud and GAC, Aabar would not oppose an adjournment of the petition for a further period to see if there might be developments in the Spanish insolvency proceedings or which could otherwise benefit Mr. Maud's creditors.

57. GAC and Navarro both indicated that they opposed the making of a bankruptcy order, essentially for the same reasons advanced by Mr. Clutterbuck in behalf of Mr. Maud. For GAC, Mr. Brisby QC also contended that the court could not or should not make an immediate bankruptcy order in circumstances where the petitioning creditors in respect of a jointly owned debt had apparently fallen out and disagreed on whether such an order should be made.

Abuse of process

58. I should first deal with the question of abuse of process and, as a preliminary question, the point raised by Edgeworth and Aabar that the judgment of Rose J meant that I could not revisit the question of whether their pursuit of the Petition is an abuse of process.

59. In *Turner v RBS plc* [2000] BPIR 683 a bankruptcy petition was presented by a bank against a debtor who had unsuccessfully attempted to set aside the statutory demand on the basis that he had a cross-claim against the bank arising out of alleged inaccuracies and breaches of confidence in references given by the bank to another financial institution. Chadwick LJ referred to the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986, together with the *Practice Note (Bankruptcy: Statutory Demand: Setting Aside (No. 1/87)* [1987] 1 WLR 119 and observed,

> "47. The scheme of those provisions, plainly, is to ensure that if the debtor wishes to dispute the debt, or wishes to raise a counterclaim or cross-demand against the creditor, he should have the opportunity to do so by an application to set aside the statutory demand; and that until that application has been heard and determined, no petition for bankruptcy can be presented. If an application to set aside a statutory demand is made, the Court is required to consider, and adjudicate upon, any contention advanced by the debtor that he has a cross-demand which extinguishes the debt. If satisfied that there is a genuine triable issue in that respect, then the Court will normally set aside the statutory demand and no bankruptcy petition can be presented.
>
> 48. Section 271(1) of the Insolvency Act prohibits the Court from making a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either (a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid, nor secured, nor compounded for; or (b) is a debt which the debtor has no reasonable prospect of being able to pay when it falls due. Section 271(3) provides that the Court may dismiss the petition if it is satisfied that the debtor

> is able to pay all his debts, or is satisfied (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is being presented; (b) that the acceptance of that offer would have required the dismissal of the petition; and (c) that the offer has been unreasonably refused. Those provisions give a flavour of the issues which the Court is to be concerned on the hearing of the petition. Questions as to the existence of the debt at the date of the presentation of the petition, and any cross-claim, are intended to be dealt with on an application to set aside the statutory demand — that is to say, before the petition is presented."

60. Against that background, Chadwick LJ then held,

> "49. Rule 6.25 of the 1986 Rules provides that on the hearing of the petition, the Court may make a bankruptcy order if satisfied that the statements in the petition are true and that the debt on which it is founded has not been paid or secured or compounded for. So the Court is not bound to make a bankruptcy order; there is some residual discretion in the Court to decide on the hearing of the petition whether or not to make the bankruptcy order. But it cannot have been intended, as it seems to me, that when exercising the discretion (which it undoubtedly has under Rule 6.25), whether or not to make a bankruptcy order at the hearing of the petition, the Court is required to revisit the arguments which have already been advanced on the hearing of the application to set aside the statutory demand; and which have already been rejected at that hearing. As Vinelott J pointed out in [*Brillouett v Hachette Magazines* [1996] BPIR 518], the debtor cannot go back and reargue the very grounds on which he unsuccessfully sought to have the statutory demand set aside. It will require some change of circumstance between the unsuccessful attempt to set aside the statutory demand and the hearing of the petition before the Court (on the hearing of the petition) can be asked to go into the question which has already been determined at the hearing of the statutory demand. To hold otherwise would be to encourage a waste of court time, and a waste of the parties' money; and would defeat the obvious purpose of the statutory scheme."

61. Mr. Zacaroli and Mr. Allison relied upon Chadwick LJ's judgment in support of a contention that Mr. Maud was prevented from raising the issue of abuse of process at the hearing of the Petition because he had attempted, but failed, to persuade Rose J to set aside Edgeworth's and Aabar's statutory demand in 2015.

62. I consider that the instant case is clearly distinguishable from *Turner v RBS* for a number of reasons. The first is that Chadwick LJ's statement of principle was made in the context of the normal case in which a debtor disputes the debt in the statutory demand or wishes to raise a cross-claim. The basis for the attack on the statutory demand in such a case is abuse of the process of the Bankruptcy Court because bankruptcy proceedings are not the proper forum in which to determine issues in

relation to disputed debts or cross-claims (see Chadwick LJ's judgment at [46]). If one judge has determined as between the debtor and the creditor that there is no relevant dispute about the debt in question, then it is clear to see why it should not generally be open to the debtor to raise the same issue for a second time when served with the petition itself. By way of illustration, in the instant case, had he sought to do so, this reasoning would have applied to prevent Mr. Maud from seeking to relitigate his arguments as to whether his debt to the Petitioning Creditors in relation to the Personal Loan had been satisfied by the settlement between the Petitioning Creditors and Mr. Quinlan.

63. However, I doubt that Chadwick LJ had in mind the much rarer situation in which it is contended that the petition is an abuse of process because the petitioner is using an undisputed debt as a means of attempting to bankrupt the debtor for illegitimate private purposes rather than for the benefit of the class of creditors as a whole. Such cases do not raise the essentially bilateral question of whether there is a genuine dispute between creditor and debtor over the debt. Instead, they engage issues of the class interest. As such, it seems to me that it might well be said that the natural time at which to resolve such issues would be at the hearing of the petition.

64. Moreover, although it is clear from *Coulter v Dorset Police* [2006] BPIR 10 at [19] – [22] that the principle to which Chadwick LJ referred in *Turner v RBS* is not founded upon estoppel or *res judicata*, his expression of the principle envisages that it is the debtor who has failed to set aside the statutory demand who will be prevented from seeking to re-run the same arguments as on his earlier application. None of the cases consider the question of whether the same principle should prevent opposing creditors, who were not involved in an earlier set-aside application by the debtor, from seeking have the petition dismissed on the basis of abuse of process at the hearing at which their separate interests fall to be considered.

65. Mr. Zacaroli readily accepted that there could be no bar on GAC and Navarro raising the same points concerning the Petitioning Creditors' purposes and motives that would be relevant on the argument on abuse of process in the course of making their submissions on the class question. However, he contended that they could not do so in support of an argument that the Petition is an abuse of process. I do not accept Mr. Zacaroli's submissions on that point. It seems to me that an abuse of process argument based upon the petitioner's alleged collateral purpose in acting to the detriment of the class is an extension of the class question, and I cannot see the logical dividing line which would prevent an opposing creditor raising either or both arguments.

66. Secondly, in *Turner v RBS* and in *Coulter*, Chadwick LJ in any event accepted that if there were a change of circumstances between the attempt to set aside the statutory demand and the hearing of the petition, the debtor would not be precluded from raising the issue again. In the case of a disputed debt it is very difficult to envisage what such a change of circumstance would be: in *Brillouett v Hachette Magazines* [1996] BPIR 518, Vinelott J gave as a possible example a change in legislation making the petition debt unenforceable. In contrast, cases in which it is contended that the petitioner is pursuing an illegitimate ulterior purpose may well require consideration of circumstances external to the bilateral relationship between debtor and creditor; and there may well be different evidence as to the purposes of the petitioner available by the time that the petition comes to be heard.

67. The instant case is just such a case: it is clear that the evidence that I have before me as to the purposes of Edgeworth and Aabar is more extensive and in some potentially significant respects different from the evidence that was before Rose J. Moreover, it includes further evidence from the Petitioning Creditors themselves rather than just further evidence from Mr. Maud.

68. Accordingly, I see no reason why I should be prevented from revisiting the question of the purpose for which this Petition is being pursued on the basis of the current evidence (including, in particular, the new evidence from Edgeworth and Aabar themselves).

The evidence as to Edgeworth's and Aabar's purposes and interests

69. Edgeworth's reasons for pursing the bankruptcy Petition against Mr. Maud were explained in two witness statements by Mr. Tchenguiz. That evidence was supported by a witness statement from Mr. Tim Smalley of R20 Advisory Limited, a company with which Mr. Tchenguiz is associated and which acts as an adviser to Edgeworth. Edgeworth also relied upon a witness statement from Mr. Blas González, a Spanish lawyer acting for it in relation to the Spanish insolvency proceedings. Although I was invited by Mr. Clutterbuck to disbelieve some parts of Mr. Tchenguiz's and Mr. Smalley's evidence, no application was made to cross-examine them.

70. Mr. Tchenguiz first asserted that Edgeworth has always been interested in obtaining repayment by Mr. Maud of the Personal Loan which it had acquired from RBS and which forms the Petition debt. He contended that this is what originally motivated Edgeworth to serve the statutory demand in June 2014 and to pursue three examinations of Mr. Maud to discover the whereabouts of his assets. Mr. Tchenguiz accepted that those investigations have thus far failed to reveal that Mr. Maud has any substantial assets apart from the Ramblas Shares and the Shareholder Loans with which to discharge his debts.

71. Secondly, Mr. Tchenguiz acknowledged that Edgeworth has at all times wished to acquire the Santander Asset, which he said that he originally believed in 2010 was possibly worth more than the existing debt of the companies in the Marme Group. He accepted that this was part of its reason for acquiring from RBS the Junior Loan and associated security rights, and the rights under the UFA as part of the package together with the Personal Loan in late 2010.

72. Mr. Tchenguiz stated that Edgeworth's original plan had been to acquire Mr. Maud's Ramblas shares through the enforcement of the Ramblas Share Pledge in Holland and then to refinance the Senior Loan so as to give Edgeworth and Aabar control over the Santander Asset. However, he stated that this plan had been frustrated, first by Mr. Maud's resistance to enforcement of the Ramblas Share Pledges in the Dutch courts, secondly when the Senior Loan went into default in September 2013 and the syndicate of banks were able to take enforcement proceedings, and thirdly when the companies in the Marme Group petitioned the Spanish courts for the commencement of voluntary insolvency proceedings (*concurso voluntario)* and the Administrators were appointed in March 2014.

73. Mr. Tchenguiz's evidence was that although acquisition of Mr. Maud's Ramblas shares had originally been a target for Edgeworth, once the Senior Loan was in default and the Marme Group had entered an insolvency process, he no longer believed that the

Ramblas shares had any value, and that any interest of Edgeworth in the Ramblas shares became peripheral. He stated that thereafter it was thought that the only realistic prospect for Edgeworth to acquire the Santander Asset was by buying it out of the insolvency process. In that respect, Mr. Tchenguiz's evidence was that because Edgeworth and Aabar owned the Junior Loan and the debt owed by Ramblas under the UFA, they considered that they had the advantage of being able to "credit bid" for the Santander Asset (i.e. to use the debt which they were owed by Ramblas itself as part of the consideration which they would offer to pay for the Santander Asset).

74. Accordingly, Mr. Tchenguiz's evidence as to Edgeworth's purpose in serving the statutory demand upon Mr. Maud and pursuing the bankruptcy Petition against him was as follows,

> "In the summer of 2014 my purpose and motivation in seeking a bankruptcy petition against Mr. Maud included my desire, through the appointment of a trustee in bankruptcy, to prevent Mr. Maud from misusing his position as both a director and shareholder of Ramblas, Delma and Marme to frustrate the progress of the insolvency process in Spain. As a director and shareholder of these companies, Mr. Maud is able to wield influence over the insolvency administrators and to dominate the process in Spain."

75. Mr. Tchenguiz also indicated that Edgeworth sought by the same means to diminish Mr. Maud's influence over Ramblas' defence of the proceedings that Edgeworth and Aabar had commenced against Ramblas in the Commercial Court under the UFA.

76. It is implicit in these statements that Mr. Tchenguiz envisaged that on bankruptcy, Mr. Maud would be forced to sell his shares in Ramblas pursuant to the pre-emption rights in the Ramblas articles, thereby losing his status as a shareholder of Ramblas. Mr. Tchenguiz denied, however that it was any part of Edgeworth's intention to *acquire* Mr. Maud's shares by this route.

77. For Aabar, in addition to Mr. Al Mehairi's earlier witness statement, I had a witness statement from Mr. Kevin Cobb ("Mr. Cobb") senior legal counsel to Aabar's parent company. Mr. Cobb confirmed Mr. Al Mehairi's evidence and stated,

> "When the Petition was presented, the senior management at Aabar believed that Aabar's ability to preserve the value of the Junior Debt and the Personal Loan, and to realise value for its investment in those assets, was being frustrated by Mr. Maud, who, in his capacity as a shareholder and former director of companies in the Marme Group, was believed to be influencing the pursuit and settlement of litigation involving those companies that was commenced pre-liquidation. Mr. Maud's bankruptcy offered an opportunity to place a neutral, professional trustee in bankruptcy in charge of Mr. Maud's assets, including those pieces of litigation to which he was a party, whose involvement Aabar considered preferable to Mr. Maud's continued involvement.

> ….Aabar …confirms that its aim in the bankruptcy proceedings, in addition to securing repayment of the debts owed to it, was and is to prevent Mr. Maud acting contrary to its interest in [the] wider Spanish Insolvency and, to that end, it aimed to prevent Mr. Maud using his position as director and shareholder in the Marme Group to frustrate its attempts to enforce its security over the holding structure of the Santander Asset … Aabar also aimed to preserve the value of the Junior Debt. Mr. Maud's bankruptcy did not guarantee that Aabar would obtain Mr. Maud's Ramblas Shares should they have been offered for sale by the trustee in bankruptcy and were Aabar minded to attempt to purchase them."

78. Against this background, Mr. Clutterbuck and those allied to him contended that I should find that Edgeworth and Aabar had not presented the Petition and were not pursuing it for the legitimate purpose of obtaining a dividend upon the Personal Loan. Instead they submitted that the Petitioning Creditors were pursuing the Petition (i) to preserve the value of the Junior Loan and the debt due from Ramblas under the UFA, (ii) to obtain Mr. Maud's shares in Ramblas, and (iii) to deprive Mr. Maud of any status in relation to the Spanish insolvency proceedings. They submitted that each of these purposes would harm the prospect of Mr. Maud's creditors receiving a dividend in his bankruptcy, and purposes (ii) and (iii) were means to an overarching end, namely for Edgeworth and Aabar to acquire ownership or control of the Santander Asset.

79. The legal background to the abuse of process argument was referred to in my earlier judgment on the appeal. The authorities such as *Re a Company (No. 001573 of 1983)* [1983] BCLC 492 and *Ebbvale Ltd v Hosking* [2013] UKPC 1 were considered by Rose J in her judgment on the application to set aside the statutory demand. As referred to above, she concluded,

> "29 In the light of these authorities I conclude that the pursuit of insolvency proceedings in respect of a debt which is otherwise undisputed will amount to an abuse in two situations. The first is where the petitioner does not really want to obtain the liquidation or bankruptcy of the company or individual at all, but issues or threatens to issue the proceedings to put pressure on the target to take some other action which the target is otherwise unwilling to take. The second is where the petitioner does want to achieve the relief sought but he is not acting in the interests of the class of creditors of which he is one or where the success of his petition will operate to the disadvantage of the body of creditors. It is also clear from those authorities, and as a matter of common sense, that the jurisdiction of the court to dismiss a petition based on an undisputed debt on the grounds of collateral purpose must be exercised sparingly. Bankruptcy proceedings cannot be allowed to become the forum for a detailed investigation into past and present relationships or an exploration of what the petitioner hopes to gain from the insolvency of the company or individual, in financial or personal

> terms and a consideration of whether those hopes are legitimate or not."

80. Subject to one point of clarification, the parties agreed that this was an accurate statement of the law derived from the earlier authorities. The important clarification relates to the second type of abuse of process to which Rose J referred, namely,

> "where the petitioner does want to achieve the relief sought but he is not acting in the interests of the class of creditors of which he is one or where the success of his petition will operate to the disadvantage of the body of creditors."
>
> (my emphasis)

81. The question is whether Rose J thereby intended to describe two separate possibilities or merely one. Mr. Zacaroli submitted that Rose J was using the word "or" in the sense of "in other words" so as to give an explanation of the meaning of the requirement that a petitioner not be acting in the interests of the class. He pointed out that Rose J was unlikely to have been intending to describe two separate situations, since that would have given rise to a total of three rather than the two to which she referred at the start of the paragraph.

82. That led Mr. Zacaroli to submit that a bankruptcy petition will not be an abuse of process if, in addition to wishing to receive a dividend on his debt in the bankruptcy together with other creditors, the petitioner has a collateral purpose which is not shared with the other creditors, but which will not cause them any detriment if achieved. I accept that submission, which seems to me to be consistent with the authorities.

83. In nearly all of the cases to which I was referred in which a petitioner has been found to be abusing the process of the bankruptcy court, he has been acting for a collateral purpose which was adverse to the interests of the class. In the most obvious case, that will be because the petitioner seeks a bankruptcy order which will result in a decrease in the value of the bankrupt estate, for example by depriving it of an asset. That was the case in *Re a Company* in which the petitioning creditor's purpose was to enable the landlord to forfeit the company's existing lease, thereby depriving the class of creditors that he purported to represent of any benefit from that lease, and enabling himself to take a new lease of the premises for himself by negotiation with the landlord: see also *Re Majory* [1955] 1 Ch 600 at 623-624. Moreover, as I indicated in my earlier judgment, if a creditor has such a collateral purpose which would operate to the detriment of the class, he cannot save his petition by protesting that he would still wish to receive a dividend upon his debt in the bankruptcy, because the effect of his achieving his collateral purpose would be to reduce that dividend for all creditors.

84. Mr. Zacaroli accepted that it might also be an abuse if the petitioner was pursuing the petition not to recover the petition debt at all, but solely for an extraneous purpose, even though that did not harm the interests of creditors.

85. One such example was the Irish case of *McGinn v Beagan* [1962] IR 364. The petitioner, McGinn, was the town clerk of the Castleblayney Urban District Council and the debtor, Beagan, was a town councillor. There was a long history of personal ill-will between the two, and various complaints had been made about McGinn's

conduct as town clerk by Beagan. When Beagan's business failed, McGinn took an assignment of a judgment debt owed by Beagan to a third party, and issued a debtor's summons (which appears to be the equivalent of a statutory demand). Beagan asserted in evidence that he had no assets, and that McGinn's sole purpose was not to recover the debt owed to him, but to bankrupt Beagan so that he would lose his seat on the town council. McGinn did not deny any of that evidence, and accordingly Budd J found as a fact that the debtor's summons was issued not for the purposes of recovering money, but for the purpose of making Beagan a bankrupt and unseating him from the town council. Budd J held that this was improper and that he should not allow the process of the court to be used for such a purpose.

86. *McGinn v Beagan* was highly unusual because there was an express finding, in the absence of evidence to the contrary, that the petitioner was not using the bankruptcy process to find assets which could be made available for creditors or to get payment. In a commercial setting, I think it is likely to be difficult to establish on the facts that a petitioner is not seeking to receive some payment on the undisputed debt which he is owed.

87. The instant case exemplifies that point. Although Mr. Zacaroli accepted that recovery of the Personal Loan was probably not Edgeworth's primary purpose in seeking to bankrupt Mr. Maud, he maintained that it was still a real purpose. With Mr. Allison's support, he pointed to the clear statements in the evidence filed on behalf of both Edgeworth and Aabar to the effect that the Petitioning Creditors wish to recover the amounts owing on the Personal Loan from Mr. Maud and that this motivated their service of the statutory demand. It was also pointed out in the evidence that the Petitioning Creditors spent considerable sums in pursuing their debt to judgment, seeking to negotiate terms with Mr. Maud, seeking to enforce the security for the debt in Holland, and examining Mr. Maud as to the whereabouts of his assets which would be available in his bankruptcy.

88. Mr. Clutterbuck's and Mr. Brisby's argument that I should reject such evidence was essentially based upon the fact that the Petitioning Creditors had bought the Personal Loan from RBS for the nominal sum of €5,000, which was said to demonstrate that they placed no value upon its recovery. That was coupled that with the submission that acquiring the Santander Asset was so obviously a more relevant and potentially lucrative opportunity, given the business interests of the Petitioning Creditors, that I could readily conclude that this was all that they were really interested in.

89. Those were powerful points which have lost none of their force in the light of the twists and turns that have occurred in relation to the Spanish insolvency proceedings since I reserved judgment. However, I do not think that the evidence on behalf of the Petitioning Creditors concerning their intentions as regards recovery of the amount outstanding under Teare J's order from Mr. Maud is inherently incredible, and in the absence of cross-examination in which Mr. Maud's contentions might have been put to Mr. Tchenguiz and Mr. Cobb, and their evidence tested, I do not consider that I can simply dismiss that evidence.

90. Moreover, whilst I might have been more inclined to believe that Mr. Tchenguiz's focus, as a property man, is exclusively on gaining control of the Santander Asset to manage as an investment property, I do not see that the same necessarily applies to Aabar, which is a sovereign wealth fund. As I will explain, I was not given any great

insight into Aabar's current strategy. However, given that it has severed its relationship with Mr. Tchenguiz, it may be that Aabar is less interested in obtaining control of the Santander Asset itself, and is rather more interested, as its evidence stated, in simply maximizing its profits from its investment, which includes the debt owed by Mr. Maud.

91. Nor do I have sufficient information about the deal done between RBS and the Petitioning Creditors to draw any reliable inferences from the nominal price paid for the Personal Loan. The loan was sold as part of a much larger package and the amount allocated to it might say as much about RBS's lack of motivation, given its own difficulties in late 2010, to spend further time and money pursuing the debt, as it does about anyone's view of Mr. Maud's available resources or the willingness of the Petitioning Creditors to seek to recover the balance of the debt.

92. Accordingly, on the state of the evidence currently before me, I cannot find that this is a case like *McGinn v Beagan* in which the purposes of the Petitioning Creditors do not include recovering money owed by Mr. Maud to them.

93. I therefore turn to consider whether any of the other collateral purposes alleged by Mr. Maud and the opposing creditors will cause detriment to the interests of Mr. Maud's creditors.

94. The first collateral purpose identified by Mr. Clutterbuck was that the Petitioning Creditors were trying to protect their investment in the amounts owing to them from Ramblas in respect of the Junior Loan and under the UFA. Both Mr. Tchenguiz and Mr. Cobb referred, for example, to Mr. Maud's apparent involvement in the defence by Ramblas of the claim made against it by the Petitioning Creditors under the UFA. Mr. Clutterbuck pointed out that any reduction in the amount found to be owing from Ramblas to the Petitioning Creditors would be a benefit to Mr. Maud's creditors because it would potentially increase the value of the shares in Ramblas. He contended that in seeking to maximise the debt which they were owed under the UFA, the Petitioning Creditors were therefore acting contrary to the interests of Mr. Maud's creditors.

95. I do not think that it can be said that seeking to reduce Mr. Maud's involvement in those proceedings on behalf of Ramblas was any more detrimental to his creditors than, for example, the replacement of the directors of Ebbvale by a liquidator in *Ebbvale Ltd v Hosking*. The evidence of both Petitioning Creditors stressed the desire for a neutral professional to have control of the companies in the Spanish insolvency proceedings, and to take a proper view of their participation in the UFA litigation. As it happened, even with Mr. Maud's involvement, the Court of Appeal upheld Hamblen J's judgment against Ramblas in the UFA litigation (save as to a minor point on interest). Accordingly, I cannot realistically see how it could be said that the intended removal of Mr. Maud's influence from the proceedings could have caused any prejudice to Ramblas.

96. The second alleged collateral purpose of the Petitioning Creditors was that they were trying to acquire Mr. Maud's shares in Ramblas. It will be recalled that it was this topic that was the focus of argument before Rose J and Mr. Registrar Briggs, and that a distinction was drawn in the evidence of the Petitioning Creditors between their wish (a) to trigger the pre-emption provisions in the Ramblas articles so as to force Mr. Maud to offer his shares for sale, thereby losing his status in the Spanish insolvency

proceedings (which was admitted and is discussed below) and (b) the intention of the Petitioning Creditors to *acquire* those shares as a consequence of the pre-emption process via the arrangements between the Petitioning Creditors and Mr. Quinlan (which was denied).

97. Mr. Clutterbuck candidly accepted that Mr. Maud was barred from seeking to re-litigate this point given the judgment of Rose J and the refusal of permission to appeal by Gloster LJ, but the opposing creditors were entitled to raise the point. However, even assuming against the Petitioning Creditors that they would be able to acquire Mr. Maud's shares either via the arrangements with Mr. Quinlan or because they would be the only realistic bidders for the shares given that any third party would have to pay off the Junior Loan so as to discharge the Ramblas Shares Pledge which is secured on them, I still do not consider that any such purpose could be said to amount to an abuse of process.

98. I reach that conclusion essentially for the reason given by Rose J in paragraph 30 of her judgment, namely

> "30 …. it has not been suggested that the bankruptcy would damage the prospects of Mr Maud's other creditors. There is no reason to suppose Mr Maud's Ramblas shares will be sold under the pre-emption provisions of the Ramblas articles of association at less than their proper price."

The pre-emption provisions in Ramblas' Articles provide for there to be a process by which the price paid would be agreed between Mr. Maud's trustee in bankruptcy and the Petitioning Creditors or in default of agreement to be fixed by independent experts appointed by the court. I cannot see how the fact that the Petitioning Creditors might acquire the Ramblas shares for their true value as determined by such a process could itself be prejudicial to Mr. Maud's creditors.

99. The majority of argument at the hearing focussed on the third alleged collateral purpose. Mr. Clutterbuck and Mr. Brisby contended that the real value of the Ramblas shares to Mr. Maud's creditors was in their continued ownership by Mr. Maud and his resultant ability to deploy his position as a shareholder in the Spanish insolvency process. They submitted that Mr. Maud had an opportunity to earn a substantial sum of money for the benefit of his creditors if he could retain his status as a shareholder of Ramblas and in that capacity could be rewarded by AGC for assisting it to make a successful bid for the Santander Asset. They submitted that the admitted purpose of the Petitioning Creditors of seeking to bankrupt Mr. Maud as a means of removing him from that position of influence would result in the loss of such opportunity, and therefore be to the detriment of creditors.

100. Mr. Maud's evidence on this issue was that he believed that the Administrator valued the involvement in the bid of the shareholders because there was still room to question whether the overall liabilities of the Marme Group exceeded its overall net asset value. His witness statement concluded,

> "In practice, if the AGC bid is successful (or any continuation or development of it) I expect, as a result of my discussions with

> AGC, to receive a payment which will enable me to make material payments to my creditors.
>
> Further it is still quite possible that the auction of the Santander Asset which will inevitably take place (subject only to what I say below) may yet result in higher bids which will result either in a payment to myself in consideration of my Shareholders Loan or by way of a dividend to me as a shareholder."

101. That evidence was criticised by Mr. Zacaroli on the basis that it amounted to no more than a vague expression of hope by Mr. Maud, and he submitted that loss of such a speculative benefit could not possibly support a finding of prejudice to creditors. He also contended that there was no basis for any suggestion that any offer would be made for the Santander Asset that could result in any value flowing to Mr. Maud via the Shareholder Loans or the Ramblas shares.

102. After exchanges on these points between myself and Mr. Clutterbuck in the course of argument on the second day of the hearing, overnight Mr. Maud asked a director of AGC, Mr. Walid Abu-Suud, to provide a letter, which he sought to introduce into evidence the next day. That letter stated as follows,

> "I am writing in response to a question that I understand has been raised during the course of your bankruptcy proceedings. Accordingly, I am writing to confirm our arrangement whereby, if AGC successfully closes its bid for the Santander asset, AGC and/or its affiliates will make a material payment to you which is dependent as to amount on the price paid by AGC following completion of the auction process and the various ongoing discussions with various stakeholders. As you know, these matters are subject to strict confidentiality and non-disclosure agreements.
>
> AGC believes that your personal involvement in actively assisting and promoting our bid is beneficial to AGC and that your bankruptcy might further delay, complicate and/or frustrate bid and the Spanish liquidation proceedings. Accordingly, this payment would be made to you for the purpose of making such arrangements with your creditors as may allow you to avoid bankruptcy, which would not otherwise be available. It is understood that you would use payment in a proper manner, which is consistent with your legal duties and for the specified purpose. For the avoidance of doubt, no payment will be made to you in the event you are made bankrupt and, in AGCs view, no longer able to adequately assist us with your knowledge and persistence in on-going negotiations with the various parties or to ensure the smooth closing of the transaction."

103. Irrespective of whether it would be right to allow the very late introduction of such evidence in circumstances in which the attitude of the Petitioning Creditors to Mr. Maud's evidence had been clear for some time, I do not think that Mr. Abu-Suud's letter enables me to conclude that Mr. Maud has an asset of value so that I could

positively find that his creditors would be prejudiced if he were to lose his status as a shareholder of Ramblas. The letter is not supported by a statement of truth from Mr. Abu-Suud and provides no specific details of the nature of the "arrangement" between AGC and Mr. Maud, or how (if at all) it might differ from what Mr. Maud was only prepared to describe in terms of what he "expected" if the AGC bid succeeded. In particular, it is wholly unclear whether or not there is any legally binding obligation upon AGC, and no details are given of the amount or even range of potential amounts of any payment to be expected.

104. As such, I am not persuaded that I have any reliable evidence upon which to find that there is any clear or valuable benefit, arising from Mr. Maud's relationship with AGC, that would be lost if Mr. Maud were to be made bankrupt. I therefore cannot find that the Petitioning Creditors' acknowledged intention to bankrupt Mr. Maud as a means of removing him as a shareholder of Ramblas would operate to diminish the value of his assets so as to prejudice his creditors. I therefore cannot conclude that the Petitioning Creditors' admitted intention in this regard amounted to an abuse of process.

105. Matters in this respect are further complicated by the fact that by the time of the hearing Aabar was not actually seeking an immediate bankruptcy order but was prepared to agree to a lengthy adjournment of the petition which would permit Mr. Maud to continue to be involved as a shareholder in the Spanish process. For GAC, Mr. Brisby accepted that Aabar were "like repentant sinners, they have seen the light" and that Aabar was no longer abusing the process of the court. It is also notable that in the correspondence concerning the Spanish insolvency proceedings that I have received since reserving my judgment, whilst the solicitors for Mr. Maud have sought to argue that Edgeworth continues to use the petition for a purpose alien to its nature as a class remedy (see e.g. a letter of 15 February 2018), no such allegation is made against Aabar.

106. As I think Mr. Brisby accepted, in these circumstances, even if I had formed the view that at an earlier point in time the Petitioning Creditors were abusing the process of the court, the fact that one of them is no longer doing so would mean that I would be unlikely to exercise my discretion to strike out the Petition.

Joint petitioners

107. The next issue with which I should deal is whether it is open to Edgeworth to push for an immediate bankruptcy order to be made in circumstances in which Aabar, its co-petitioner, is not asking for such an order.

108. Although the Petitioning Creditors' rights under the Personal Loan were stated in the documentation to be separate and independent rights, those rights merged in the judgment and order of Teare J. That order simply ordered Mr. Maud to pay to the Petitioning Creditors the sum of €52,565,110.31. I think that it is therefore clear that Edgeworth and Aabar were joint owners of the debt owed by Mr. Maud under the judgment and order, and neither was entitled to demand separate payment of any part of the debt for their own benefit.

109. Mr. Brisby submitted that as joint owners of a debt, the Petitioning Creditors were in the position of trustees for both of them. He contended that where trustees genuinely disagreed as to how a jointly held debt should be pursued, and neither was acting in breach of trust, they could only act unanimously. He sought to distinguish cases where

one trustee acted in breach of trust by refusing to join in an action to recover the trust property, where he accepted that the court would permit the other trustee to sue the debtor alone, joining the defaulting trustee as a defendant. Mr. Brisby therefore accepted that Aabar and Edgeworth technically had standing to petition as joint creditors and could both oppose the striking out of the Petition, because they each asserted that it was not an abuse of process. However, he submitted that it was not open to Edgeworth to request that a bankruptcy order be made in circumstances in which Aabar did not wish that course to be taken.

110. Mr. Zacaroli countered that the only procedural requirement was that all joint owners of a debt had to be parties to a bankruptcy petition, and he observed that if necessary the court could use its power in CPR 19.3 (as applied to insolvency proceedings by Rule 7.51A(2) of the Insolvency Rules 1986) to join a joint creditor who was unwilling to agree to be a petitioner as a respondent to the petition. He submitted that this procedural requirement had obviously been satisfied because the Petition had been presented by both Edgeworth and Aabar, and that there was then no further rule or requirement that all decisions thereafter had to be taken by them jointly.

111. Mr. Zacaroli then submitted that whether considering the position of Edgeworth and Aabar as joint owners of the Petition debt, or when considering the class interest (see below) I should disregard the position taken at the hearing by Aabar, on the grounds that it had not given any rational or objectively credible reasons why it would be in the interests of a creditor of Mr. Maud to delay the making of a bankruptcy order.

112. To the extent necessary, Mr. Zacaroli suggested that there was no conceptual difficulty in the court taking into account the different views of joint creditors in determining whether to make a bankruptcy order or adjourn. He drew an analogy with the way the court can accept a split vote from a trustee for bondholders for and against a resolution at a creditors' meeting: see *Polly Peck International plc* [1991] BCC 503. And as a final point, Mr. Zacaroli contended that if necessary the court could overcome any disagreement between Edgeworth and Aabar by using its power to make a change of carriage order under Rule 6.31 of the Insolvency Rules 1986 to enable Edgeworth to proceed with the Petition alone in place of itself and Aabar.

113. There is, so far as I am aware, no authority directly on these points in the context of a bankruptcy or winding-up petition. However, approaching matters from first principles, it does seem to me that Mr. Brisby is correct that the normal rule is that trustees are required to exercise their powers unanimously, and that unless the court can conclude that one or other joint owner of a debt is not acting genuinely in expressing its view as to the most appropriate method of pursuing recovery of their joint debt, the court cannot simply accept or act on the submissions advanced by one rather than the other.

114. Likewise, I do not consider that the court can simply accept an assertion by one joint creditor that it is entitled, as against the debtor, to a bankruptcy order *ex debito justitiae* if the other joint creditor does not make that assertion. Quite apart from the fact that, as was made clear in *Re Leigh Estates (UK) Limited*, any such remedy is a class right, such entitlement as against the debtor must be part and parcel of the rights attaching to the debt which is jointly owned. The entitlement cannot be separately asserted any more than the debt could be pursued in an action brought at the insistence of one joint creditor against the opposition of the other.

115. I consider that these conclusions are supported by the authorities to which Mr. Brisby referred me which are summarized in Lewin on Trusts, 19th ed, paras 29-068 to 29-071. The conclusion that the power of the court to entertain a claim by one of two joint owners of a debt depends upon it being shown that the other joint owner is in some way acting in breach or non-performance of trust in refusing to take action to recover the debt can also be seen from the dictum of Warrington J in *Ellis v Kerr* [1910] 1 Ch 529 at page 540,

> "It is perfectly true that authorities have been cited in support of the well-known practice and doctrine in the Court of Chancery, that if a covenant is entered into with two persons jointly by a third person, and one of those joint covenantees refuses to sue at law, the Court will allow one of them to sue the covenantor, making his co-covenantee a party to the action. But that seems to me to depend upon a perfectly well-known principle of equity, and to arise, as do so many equitable principles, out of the doctrine of trusts. I think it arises from this notion, that if a covenant to pay a sum of money is made with two jointly, each of them is trustee for the two and for the other, and if one as such trustee refuses to join in the action which in all honesty he is bound to bring for the benefit of his co-covenantee, then his co-covenantee is entitled to make him a party to the action in order that he may be bound, and to recover the moneys secured by the covenant."
>
> (my emphasis)

In my judgment, the court does not have such power to entertain a claim if there is a genuine disagreement between trustees as to whether, and if so, how, their powers to make such a claim should be exercised.

116. I also do not think that any of the other matters advanced by Mr. Zacaroli in this respect assist him. The practice of the court to allow a trustee to split its vote at a creditor's meeting so as to be able to consider the weight of the views of the ultimate beneficial owners of a debt may well be a valuable and sensible practice, but it does not help where the split would be 50:50 and the two factions take opposite views.

117. Nor do I think that the power under Rule 6.31 of the Insolvency Rules 1986 assists. On its terms, Rule 6.31 only applies to permit the court to order a supporting creditor who has given notice of intention to appear at the hearing of the petition the right to have carriage of the petition in place of the petitioning creditor. It does not apply to permit one of two joint petitioning creditors to take over carriage of the petition to the exclusion of the other. Even if it were applicable, to suggest that it should be used begs the very question of whether the court should override a genuine disagreement between joint owners of a debt as to what should best be done to recover that debt.

118. Accordingly, I do not think that Mr. Zacaroli was correct to suggest that I should simply proceed on the basis that Edgeworth had a right to a bankruptcy order which should prevail unless Aabar could give objectively credible reasons why the interests of Mr. Maud's creditors would be served by an adjournment of the petition. In my judgment there is a prior question, which is whether Edgeworth alone is entitled to ask the court

to make a bankruptcy order. That issue turns upon whether Edgeworth can demonstrate that Aabar is acting in breach of its duty as trustee of the jointly owned debt: and the onus in that respect is on Edgeworth, not upon Aabar.

119. Aabar's explanation for preferring an adjournment of the petition rather than the making of an immediate bankruptcy order was given by Mr. Allison in submissions as follows,

> "…. [Aabar is], as my Lord knows, [a] sovereign wealth fund. What is our interest? Our commercial interest is in recovering payment in respect of the petition debt and other sums owed by Mr Maud. In that context we are conducting an ongoing assessment of the course of action which is most likely to achieve that commercial interest of recovering payment, and as noted in our supplemental skeleton argument, we will consider and respond orally to any submissions that are developed by Mr Maud or others, in particular GAC on why a further adjournment of the petition could be said to give rise to a better realisation to creditors …
>
> If it helps my Lord, the present position of Aabar is that it would not oppose a further adjournment of the petition if that application is made and fleshed out and it would not oppose a further adjournment of the petition for a further period of six months.
>
> The change in Aabar's view, to the extent it is relevant to my Lord, is due to its current assessment of the landscape in the Spanish insolvency proceedings and the course of action which is most likely to achieve its commercial interest of recovering payment. It is against that backdrop that Aabar would be prepared not to oppose a further adjournment of the petition."

At the conclusion of the hearing, and when questioned again by me, Mr. Allison reiterated that Aabar was prepared to give more time to see if anything would come of the discussions between Mr. Maud and AGC in relation to the liquidation process in Spain.

120. This was manifestly not a complete explanation of Aabar's assessment of the position. However, I do not consider that I can find that Aabar's stance is irrational or a breach of its duty to Edgeworth as the joint holder of the debt.

121. For the reasons that I have explained, I have been unable to accept the proposition that the Petitioning Creditors are abusing the process of the court in seeking to remove Mr. Maud from a position of influence, because I have no reliable evidence upon which to conclude that Mr. Maud has any clear entitlement to payment from AGC for co-operating in its bid for the Santander Asset which will be lost if he is made bankrupt. However, just because I cannot reach a positive conclusion on the evidence that a bankruptcy order would deprive Mr. Maud's creditors of a benefit, it does not follow that Aabar is acting irrationally by accepting the arguments advanced by Mr. Maud and GAC and choosing, for the time being, to wait and see whether, notwithstanding the

apparent lack of any binding commitment from AGC, some material benefit might nonetheless be obtained by Mr. Maud if he were to retain his status as shareholder in Ramblas and the events in Spain were to run their course. That is especially so given that there is no obvious prospect of any immediate recovery of any significant assets for Mr. Maud's estate from any other source if he were to be made bankrupt.

122. That conclusion is reinforced in the highly unusual circumstances of this case in which it is clear to me that the commercial dynamics and alliances have been changing, that all of the parties have been playing their cards close to their chest, and that the position in the Spanish insolvency process has been developing.

123. In very brief outline, the up-to-date position in Spain appears to be as follows. A substantial number of writs and clarification requests were filed in relation to the Administrator's liquidation Plan. These were considered by the Spanish court during 2015 and 2016 leading to orders being made on 15 September 2016 clarifying the procedure to be followed for bids for the Santander Asset to be submitted to and considered by the Administrator under the Plan.

124. However, on 4 October 2016 a number of companies in the Santander group filed an appeal against the orders of 26 October 2015 and 15 September 2016 asserting that Santander has a right of pre-emption on any sale of the Santander Asset and that the liquidation should be suspended once the Administrator has received the best offer for the assets. That was followed on 14 November 2016 by Edgeworth filing a writ in opposition to the Santander appeal and raising a further appeal of its own making an application for the liquidation bidding process to be stayed until after both appeals were resolved. A large number of other interested parties including Mr. Maud, AGC and Aabar also filed their own writs opposing recognition of any right of pre-emption of Santander in the liquidation. Some of them also sought an immediate stay of the bid process, contending that the unresolved question of whether Santander had a right of pre-emption would have a chilling effect on the process. On 21 November 2016, the Spanish court suspended the liquidation phase in light of the Santander appeal.

125. The Administrator challenged Santander on the question of its willingness to exercise any alleged right of pre-emption, and on 24 April 2017 Santander waived its appeal against the liquidation Plan. A number of further applications were then filed. For present purposes the relevant applications included applications by the Administrator, AGC and Aabar asking that the suspension of the liquidation Plan be lifted, and by Edgeworth seeking a suspension of the Plan until its own appeal had been resolved.

126. By decisions given on 26 January 2018 (in relation to Marme) and 13 April 2018 (in relation to Delma) the Madrid Court of Appeal dismissed challenges brought to the liquidation Plan by various parties including Edgeworth. The consequence is that the auction bid process for the Santander Asset was cleared to commence.

127. Between the two rulings, however, on 8 February 2018 the Administrator applied to the Spanish court seeking the approval of the court to initiate an alternative process promoted by Edgeworth. This sought to utilize section 176 of the Spanish Insolvency Act which provides that a company can exit the liquidation process with the approval of the court where it has been verified that all claims against the company have been paid or secured or satisfied in some other way, such that the company's insolvency has been resolved. The proposal was described in the subsequent court order as a complex

financing system which would have included payments to certain creditors, the novation of other claims and the introduction of external financing. From the correspondence with which I have been provided, it seems that this would have included repayment of the Shareholder Loans owed to Mr. Maud and to his company, Cruz Holdings, in the sums of about €36.75 million and €37 million respectively. As it is, however, on 8 May 2018 the Spanish court refused the Administrator's application, holding that it was not for the court to authorize such financing transactions in advance under section 176.

128. Whatever else can be said about the position that has now been reached in Spain - and I am conscious that I have not had detailed expert evidence or argument on the current position - it is, I think, fair to say that there is real competitive tension in Spain as regards the battle for ownership or control of the Santander Asset between Edgeworth on the one hand, and AGC, GAC, Mr. Maud and their allies on the other. This competitive tension also seems to have given rise to at least some prospect that either through the bid process under the Plan, or pursuant to an alternative process under section 176, a proposal might be made that could provide some benefit to Mr. Maud via his Shareholder Loans (or possibly even his Ramblas shares).

129. In these circumstances, I do not think that I can say that Aabar's stance in being prepared to listen to Mr. Maud and GAC, as outlined above, is irrational or obviously a breach of its duty as joint creditor with Edgeworth. Siding with Mr. Maud and GAC is plainly not a view that finds favour with Edgeworth, or assists it in its endeavour to acquire the Santander Asset, but that is not the interest that is jointly held in this case.

The Class Question

130. The conclusion that I have reached as regards the inability of Edgeworth to ask the court to make an immediate bankruptcy order against the wishes of its joint petitioner, Aabar, means that I did not actually have a creditor appearing before me which was entitled to ask for an immediate bankruptcy order to be made.

131. Although the LIA appears to be an entirely independent creditor which did at one stage wish to have Mr. Maud made bankrupt, it did not appear at the hearing. I was given complex evidence about the status of the LIA from a solicitor at Hogan Lovells International LLP who claimed to be authorised by the LIA act for it in relation to the Petition, and who stated that the LIA wished to have Mr. Maud declared bankrupt essentially because the LIA had run out of patience with waiting for payment, it saw no prospect of getting paid, and it wished to have a trustee investigate Mr. Maud's affairs.

132. I was not taken to that evidence in any detail by any of the parties, and as is well-known, the issue of who is entitled to act for the LIA in proceedings in this country has been and remains a matter of some controversy: see e.g. *LIA v Societe General SA* [2015] EWHC 1925 (Comm) and [2017] EWHC 2631 (Comm). In the absence of a clearer picture, I do not think that I am in a position simply to accept that Hogan Lovells are entitled to act for the LIA, or that the views which the LIA once held are the views which those who are entitled to act on behalf of it still hold in light of the up-to-date position.

133. Although I had no creditor before me that was entitled to ask me to make an immediate order (and excluding Aabar for the same reasons as Edgeworth), I had two creditors for a total amount greater than the debt owed to LIA (namely GAC and Navarro) who appeared at the hearing to oppose the making of a bankruptcy order. That is undoubtedly a factor to be taken into account as to why I should not make an immediate order. However, since the making of a bankruptcy order is a class remedy and is not simply a matter of counting heads or debts, I think that I should in any event consider the class interest in so far as I am able to do so.

134. I have, in effect, already considered the rival arguments for and against making an immediate bankruptcy order in the class interest. In favour of making an immediate bankruptcy order Edgeworth contended that the presumption should be that a debtor who cannot pay his debts should be made bankrupt. It suggested that the fact that no-one has yet been able to point to any specific assets of value that would be available in Mr. Maud's bankruptcy (apart from his Ramblas shares which would have to be sold and the Shareholder Loans) does not mean that there are no other assets which might be found. It also said that the prospect of any money being obtained from the Ramblas shares and the Shareholder Loans is uncertain and remote and there is no real basis for concluding that any value would be lost if those assets were put into the hands of an independent trustee.

135. Against that, the creditors opposing the making of an immediate order say that there is no basis for a belief that other assets would be readily available given that Mr. Maud has already been examined extensively by the Petitioning Creditors. For the reasons that I have given, if all other things were equal, that might not ultimately be a good ground for opposing a bankruptcy order. However, the opposing creditors do not seek the dismissal of the Petition on that basis, but only an adjournment. They accept Mr. Maud's view that no clear positive benefit will be obtained in the short term if Mr. Maud is made bankrupt, and contend that it therefore makes better commercial sense to preserve the status quo for the time being and to wait and see whether the Spanish process produces an offer which would result in value flowing to the Shareholder Loans or the Ramblas Shares or a payment to Mr. Maud from AGC. They say that it is clear, not least from Edgeworth's determined attempts to remove Mr. Maud as a shareholder, that Mr. Maud's continued involvement in the process and in support of the AGC bid serves to maintain the competitive tension in the Spanish process and may bring some ultimate benefit to Mr. Maud's creditors.

136. It is extremely difficult for me to weigh the strength of these arguments because these are essentially matters of commercial judgment, in relation to a complex situation in Spain, and (as might be expected) because I have not been given a full picture by those involved in the Spanish proceedings of their real game-plans.

137. In addition, when assessing the views advanced by the various parties it is necessary to have regard to the fact that none of them are what might be described as "ordinary" commercial creditors of Mr. Maud. I have already described the manner in which Edgeworth and Aabar acquired their claims against Mr. Maud and embarked together upon a project to acquire the Santander Asset or control of it. Edgeworth is still determined to pursue that course. Aabar is no longer aligned in that pursuit with Edgeworth, but I have no information as to its current relationship (if any) with AGC in that regard.

138. GAC is involved in the property business and acquired its debt from IHL as a precursor to making the Consortium Bid together with AGC and Mr. Maud. I have little or no information about GAC's current relationship with AGC. Whilst GAC contends that it believes that its interests as a creditor of Mr. Maud are best served by a successful AGC bid for the Santander Asset, for the reasons that I have outlined, I also surmise from its business activities that GAC is likely to have a commercial interest in the success of a bid by AGC that goes beyond simply recovering its debt from Mr. Maud.

139. So far as Navarro is concerned, it accepts that it has an association with Mr. Maud by reason of the fact that its ultimate beneficial owner is Mr. Maud's estranged wife and its sole director (an accountant in Luxembourg, a Mr. Heinz) is also a trustee of a family trust settled by Mr. Maud. The evidence also strongly suggests that Navarro only acquired its debt at Mr. Maud's instigation when Mr. Maud recommended the transaction under which Navarro acquired the debt not long after he and his wife became estranged. Navarro has also instructed the same solicitors as GAC. Those facts inevitably give rise to a suspicion that Mr. Maud continues to exert influence over Navarro. However, that is denied by Mr. Heinz who has given evidence, upon which he has not been cross-examined, that he acts independently and without influence from Mr. Maud. Mr. Heinz has stated that he takes the view that bankrupting Mr. Maud would be unlikely to result in any material benefit to creditors, and that he would prefer the "uncertain but realistic prospect" of payments being made to Mr. Maud if the AGC bid succeeds.

140. Taking all these factors into account, I am not currently satisfied that the interests of Mr. Maud's creditors would be served by making him bankrupt immediately. Whilst there is no certainty, there does now seem to be some prospect of an imminent end-game to the Spanish insolvency which might bring a benefit to Mr. Maud and his creditors if he continues to be able to play a role in Spain. In contrast, there seems to be no real likelihood of any obvious, still less immediate, benefit to his creditors if a bankruptcy order is made now, and I have not been given any specific reason why a formal investigation of Mr. Maud's past dealings needs to be undertaken immediately.

141. The majority in number and value of Mr. Maud's creditors are also in favour of a further adjournment, and whilst I recognise that the creditors who have advocated or supported an adjournment may have other interests to serve, I cannot say that I find their approach unreasonable or irrational. I also have in mind that the only voice that I actually heard in favour of the making of such an order, that of Edgeworth, also comes from a party that is vigorously pursuing its own commercial agenda outside the bankruptcy proceedings.

The adjourned hearing

142. Accordingly, for the reasons that I have given, I do not propose, at this stage, either to dismiss the Petition or make an immediate bankruptcy order.

143. Since, regrettably, the time that has elapsed before delivery of this judgment is more than the period of the adjournment which was sought by the opposing creditors and supported by Aabar, I will not simply order a further adjournment. Instead, I consider that it would be appropriate for me to invite the parties to address me on the hand down of this judgment (or on a convenient date thereafter) as to the appropriate directions that I should give for the future conduct of the Petition. I envisage that those directions may

include a provision for further evidence to be filed to bring matters up-to-date, in particular in relation to possible future developments in the Spanish insolvency proceedings and, if relevant, in relation to the relationship between Edgeworth and Aabar in light of the outcome of the Commercial Court proceedings.

144. It is, I recognize, exceptional for a bankruptcy petition to have been pending for as long as this one has been pending. But this is a wholly exceptional case.