

Bankruptcy order refused where creditors issued petition for ulterior purpose (Re Maud, Maud v Aabar Block Sarl)

27/09/2016

Restructuring & Insolvency analysis: In *Re Maud* the High Court considered how it should approach a bankruptcy petition alleged to have been presented for an ulterior purpose. Tina Kyriakides, barrister specialising in insolvency law at Radcliffe Chambers, sets out what lessons can be learned from this case.

Original news

Re Maud, Maud v Aabar Block Sarl and another [2016] EWHC 2175 (Ch), [2016] All ER (D) 51 (Sep)

The Chancery Division allowed a debtor's appeal against a bankruptcy order. The court concluded that the registrar had not taken the correct approach to the petition as a matter of law. He had focused on whether the court could be satisfied that the petitioner had an ulterior objective in presenting the petition and had omitted a critical stage in the exercise of his discretion of addressing the interests of the class and weighing the views of the creditors who supported and opposed the making of the bankruptcy order.

What practical lessons can those advising take away from this case?

It is likely to be a rare case when a debtor will be able to show that the sole purpose of a petitioner presenting a petition was for his own benefit to the detriment of other creditors in his class. However, advisors should bear in mind that if there is evidence that one of the purposes was a collateral purpose, this might be deployed in the event that other creditors oppose the petition.

What was the background to the appeal?

Aabar Block Sarl and Edgeworth Capital (Luxembourg) Sarl (the creditors) presented a bankruptcy petition against Glen Maud (the petition). The petition was opposed by Mr Maud and also by a number of other creditors. Mr Maud was a director and 50% shareholder of a Dutch company, Ramblas Investments BV (Ramblas), which through a Spanish subsidiary, Marme Inversiones 2007 SL (Marme), owned a very substantial office and real estate complex in Madrid which was leased to the Santander Banking group (the Santander Asset). Ramblas and its subsidiaries entered into Spanish insolvency proceedings. Bids were submitted to the administrators for the Santander Asset by Mr Maud and a number of investment companies (the consortium bid) and also by the creditors.

The Santander asset was bought with funds provided by the Royal Bank of Scotland (RBS) to Mr Maud and his co-shareholder, Mr Quinlan (the personal loan). RBS assigned its rights to the personal loan to the creditors. The creditors then obtained judgment against Mr Maud and Mr Quinlan, which formed the basis of the petition. If Mr Maud was made bankrupt, he would have been obliged under Ramblas' articles of association to have offered his shares to the other shareholders. The creditors entered into a sale agreement with Mr Quinlan for the purchase of his shares. Mr Maud argued that the petition should be dismissed, because it had been issued for the collateral purpose of:

- making him bankrupt in order to trigger the pre-emption rights under the articles, thereby giving the creditors control of Ramblas, and
- undermining the consortium bid

This argument failed before Mr Registrar Briggs on 3 June 2016 (see *Edgeworth Capital Luxembourg sarl, Aabar Blocks sarl v Glenn Maud* [2016] EWHC 1016 (Ch)).

What were the issues on the appeal?

The three issues before Mr Justice Snowden were:

- the extent to which the ulterior purpose or the motive of a petitioner in presenting a petition was relevant
- the exercise of the court's discretion to adjourn a petition, and
- where the burden of proof lay in petition cases

How did Snowden J decide these issues as a matter of law?

Ulterior purpose

The court stated that petitions were to be viewed having regard to the nature of bankruptcy proceedings—these were a process for the collective enforcement of debts. When a creditor presents a petition, he seeks an order not for his own benefit, but for the benefit of a class of creditors of which he is a member.

The court then considered how the collective nature of the remedy can have a bearing on whether a bankruptcy order should be made where the petitioner's debt is not disputed. It held that if the petitioner's sole purpose in presenting the petition was to benefit himself at the expense of the class interest, the petition was an abuse of court. It cited as an example the case of *Re a Company (No 001573 of 1983)* [1987] BCLC 492. There a deal had been made between a landlord and the petitioner that if the petitioner presented a petition against the debtor company, the landlord would forfeit the debtor's lease and grant a new lease to the petitioner, thereby depriving the debtor of its only asset. Harman J held that the petition had been presented solely for the petitioner's benefit and was an abuse of process. Snowden J emphasised that this principle would apply if the illegitimate purpose of obtaining a private benefit had the effect of reducing the dividend payable to unsecured creditors, as well as eliminating it altogether.

The question also arose as to whether the above principle applied where the petitioner had a dual purpose in presenting the petition, one of which was to seek to obtain a dividend in the bankruptcy and the other was his own private purpose. The court held that this would not amount to an abuse of process, even if the latter purpose was the petitioner's principal purpose. However, Snowden J went on to say that even if a petition is not an abuse of process, motives or objectives may still be relevant if the petition is opposed by other creditors and the court is required to conduct an evaluation of the class interest.

Adjournment of the petition

The court reiterated its existing practice, namely, that it has a discretion to adjourn a petition if it is shown that there are reasonable prospects of payment of the petition debt within a reasonable time. However, it emphasised that this discretion is not a substitute for the consideration by the court of the separate question of the views of members of the class in a case in which the petition is opposed by other creditors. In such a situation, the majority of creditors may consider that their prospects of getting paid are better if no bankruptcy order is made at all.

Burden of proof

Relying on a number of Irish cases the registrar had held that where the court was satisfied that the petitioner had an ulterior object, the burden of proof would shift to the petitioner to demonstrate that an immediate order was required in the interests of the class or was otherwise necessary. He also held that where the court was not satisfied that he did not have an ulterior object, then the burden would move to the debtor to show why an immediate bankruptcy order should not be made. Snowden J rejected the registrar's analysis and held that the Irish cases did not provide any support for 'shifting the burden' as held by the registrar.

What decision did Snowden J reach on the facts and why?

Snowden J held that, contrary to the finding of the registrar, the creditors did have some other ulterior purpose in presenting the petition. He also held that the registrar had been wrong to deal with the issue of an adjournment of the petition prior to his having first evaluated the views of the creditors and their reasons for seeking or opposing an order. This exercise might involve a consideration of the various objectives of the creditors and the nature and interests of the opposing creditors. Only if after having carried out this exercise, he was not minded to have dismissed the petition, should the registrar then have considered whether to exercise his case management powers to adjourn the petition. Accordingly, the bankruptcy order was set aside with a view to there being a further hearing on the petition.

To what extent is the judgment helpful in clarifying the law in this area?

The judgment has helped to clarify the law in the following respects:

- when a petition might be struck out as an abuse of process where there is an ulterior purpose in presenting it
- when objects and motives may be relevant even if a petition is not an abuse of process, and
- how a court should proceed, when it is presented with issues of ulterior purpose, opposing creditors and arguments by a debtor for an adjournment of the petition

Interviewed by David Bowden.

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