



Neutral Citation Number: [2021] EWHC 3709 (Ch)

Case No: BR-2021-000107

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

**IN THE MATTER OF MARLON RALPH PIETRO ABELA  
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

Royal Courts of Justice  
Rolls Building  
London EC4A 1NL

**Before :**

**INSOLVENCY AND COMPANIES COURT JUDGE BURTON**

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**Between :**

**LEBANESE SWISS BANK S.A.L.**

**Petitioner**

**and**

**MARLON RALPH PIETRO ABELA**

**Debtor**

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**Marcus Haywood** (instructed by **Pinsent Masons LLP**) for the Petitioner  
**Jamie Holmes** (instructed by **HCR Sprecher Grier**) for the **Debtor**

Hearing date: 8 December 2021  
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**APPROVED NOTE  
OF EX TEMPORE 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.

**INSOLVENCY AND COMPANIES COURT JUDGE BURTON**  
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**Insolvency and Companies Court Judge Burton:**

1. This is the fourth hearing of a petition presented by Lebanese Swiss Bank S.A.L. against Mr Abela (the “Petition”).
2. At the last hearing of the Petition on 24 November 2021, the Court dismissed Mr Abela’s grounds of opposition to the making of a bankruptcy order. The Court ordered that Mr Abela should, by 12pm on 3 December 2021, file and serve evidence as to how and when the debt claimed in the Petition would be paid. The Petition was adjourned for further hearing and consideration of that evidence today.
3. Mr Abela failed to file evidence in accordance with the Court’s order.
4. The original debt claimed by the Petitioner was approximately £19.5 million. It has since been reduced to £15,691.311 (the “Petition Debt”) to reflect sums received by the Petitioner by way of distribution from the administration estate of Mortons Club Limited which I understand stood as a guarantor or co-guarantor of the amount claimed by the Petitioner.
5. Following his failure to file additional evidence before the deadline set by the Court, the Court has now been provided with Mr Abela’s fourth witness statement dated yesterday, 7 December 2021 together with an application notice (which does not appear yet to have been issued) supported by Mr Abela’s fifth witness statement, both also dated 7 December 2021.
6. By the application notice, Mr Abela seeks relief from sanctions under CPR Rule 3.9 for his failure to comply with the deadline for evidence. He also seeks an order adjourning the Petition until the end of January 2022 to give him sufficient time to update the Court regarding (i) a proposed sale of assets and (ii) further funding to enable him to discharge the Petition Debt.
7. In earlier witness statements, Mr Abela referred to land in St Tropez which he intends to sell. In his fourth witness statement, he states that he has been in negotiations with at least four “very serious” potential purchasers of the land. One such prospective purchaser is a company called Astor George V. Mr Abela exhibits a draft *Promesse de Vente*, for which, he told the Court, he could provide a translation “if required” and according to which the proposed price for the land appears to be €6.4 million. He states that another prospective purchaser, a well-known family office that is “heavily invested” in St Tropez, is willing to proceed “immediately to an unconditional sale” for €6.8 million. Mr Abela says that he is optimistic that at least one of the interested parties will be prepared immediately to enter into a contract for sale, without first going through the *promesse* stage of the process.
8. Mr Abela’s witness statement explains that Société Générale de Banque au Liban SAL (“SGBL”) is prepared to lend him US\$31.5 million (significantly more than the Petition Debt). However the loan is conditional on him first paying SGBL US\$6,250,000 using “fresh money”. He states that it is his intention to pay the proceeds of sale from the land in St Tropez to SGBL in order to obtain the loan which would then enable him to pay the Petition Debt in full as well as another debt due to a Mr Sabah which is apparently secured on the St Tropez land. His witness statement recognises that he would require a validation order to complete the proposed sale. He concludes saying

that there is a realistic prospect that he can raise sufficient funds to pay the Petition Debt in full no later than 31 January 2022, but seeks for the Petition to be adjourned for a few weeks beyond that date, in case, due to the imminent Christmas holiday, the transactions take longer than expected.

9. The Petitioner opposes the Court granting relief from sanctions and opposes any further adjournment of the Petition. On its behalf, Mr Haywood informed the Court that at the hearing on 24 November 2021, the Court made it clear that if there were to be any further adjournment of the Petition, it should only be on the basis of Mr Abela filing evidence to show that the Petition Debt would be paid before the end of the Christmas period.
10. During his submissions, and despite opposing the court granting relief from sanctions, Mr Haywood referred to Mr Abela's fourth witness statement. He highlighted to the Court that Mr Abela is still only in negotiations with prospective purchasers of the St Tropez land and that there is very little explanation why such a large amount of money needs to be paid to SGBL in order to obtain the proposed advance. No documentation has been provided evidencing the proposed lending arrangement.

### **Decision**

11. Mr Abela's fourth witness statement extended to just a few pages. It is clear that despite it having only very recently been provided to the Petitioner, and despite the Petitioner's objection to the Court granting relief from sanction, Mr Haywood felt able to address the Court in relation to its contents. This hearing has been listed for 5 minutes. In light of Mr Haywood's ability to deal with the evidence, in my judgment it is in accordance with the overriding objective for the Court to grant relief from sanctions and to move directly to considering the Petition.
12. Where a petitioning creditor has complied with the relevant statutory conditions and requirements, he is usually entitled to a bankruptcy order. The Court will only adjourn a petition if there is credible evidence of a reasonable prospect that the petition debt will be paid within a reasonable time (see Lewison LJ at paragraphs 18-19 of *Edginton v Sekhon* [2015] 1 W.L.R. 4435). In *Anderson v Kas Bank NV* [2004] B.P.I.R. 685, David Richards J noted at paragraph 23 of his judgment, that a reasonable time is a "very short period". Depending on the circumstances of the case, the Court usually considers an adjournment of a few weeks sufficient time for a debtor to be able to raise funds to discharge an uncontested debt that is immediately due and payable.
13. In this case, the Petitioner served a statutory demand on Mr Abela on 1 March 2021. No application was made to set aside the statutory demand.
14. The Debtor opposed the making of a bankruptcy order on the basis that the Petitioner was not entitled to seek such an order as a consequence of Lebanese Suspension laws. His opposition was considered by the Court to be misconceived and the notice of opposition was dismissed.
15. No certified translation of the *Promesse de Vente* exhibited to Mr Abela's witness statement has been put in evidence. Even Mr Abela does not resile from the fact that the *promesse* remains in draft and is subject to contract. This is reflected by those parts of his evidence that refer to his continued negotiations with other prospective

purchasers. Whilst one such purchaser is said to be willing immediately to enter into an unconditional sale, Mr Abela has provided no evidence to show that that is the case. He has similarly failed to provide any evidence of SGBL's the proposed loan to be provided by SGBL. In short, Mr Abela's evidence of an ability to discharge the Petition Debt by selling the land and raising sufficient funds pursuant to the somewhat opaque lending proposal, amounts to no more than mere assertion.

16. The Petition has been outstanding since April 2021. There is no credible evidence before the Court of Mr Abela being able to discharge the Petition Debt within a reasonable period. The Petition Debt remains due and owing and has not been paid, secured or compounded for. Mr Abela resides in England where, I understand, he carries on business as a company director. His centre of main interests is within the jurisdiction of this Court.
17. The papers are in order.
18. I make a bankruptcy order against Marlon Ralph Pietro Abela this 8th day of December 2021 at 10.52 am. The EU Regulation as retained in English law shall apply such that the bankruptcy proceedings will be COMI proceedings.
19. Whilst the court would usually draw up a bankruptcy order, as today's hearing also concerned Mr Abela's application for relief from sanctions, Mr Haywood should please file a draft minute of order for my approval.