Neutral citation number: [2022] EWHC 2683 (Ch)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY LIST (Ch D)
IN THE MATTER OF MANUELA RAYKOVA RADEVA (IN BANKRUPTCY)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Case Number BR-2019-000895

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

Date: 24 October 2022

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE AGNELLO QC

- -

Between :

MARCELLUS ADRIANUS ANTONIUS KOOTER
Applicant

- and –

(1) THE OFFICIAL RECEIVER
(2) MANUELA RAYKOVA RADEVA (A BANKRUPT)
(3) SIMON JAMES UNDERWOOD AND LAURENCE PAGDEN (as trustees in bankruptcy)
Respondents

- -

Mr Kamen Shoylev (Direct Access) for the Applicant
No attendance by the Respondents

Hearing date: 21 and 22 June 2022

- -

APPROVED JUDGMENT
DEPUTY ICC JUDGE AGNELLO KC

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.

Introduction

1. This is the hearing of the application issued by the Applicant (Mr Kooter) on 23 July 2019 seeking the annulment of the bankruptcy of the Second Respondent, Ms Manuela Rykova Radeva. Mr Kooter is a substantial judgment creditor of Ms Radeva and makes his application essentially as the only known substantial creditor with a debt in the value of £206,000. This is around 99.5% of the overall total of creditors. The bankruptcy order was made on 27 March 2019 by the Adjudicator, on the application of Ms Radeva, the debtor, dated 4 March 2019. The application to annul pursuant to section 282(1)(a) of the Insolvency Act 1986 was made promptly by Mr Kooter, on 23 July 2019. Trustees in Bankruptcy were appointed on 2 July 2019, shortly before the application to annul was made. Both the Trustees and the Official Receiver have played no part in the hearing of the adjournment application but notice is to be given to them as there will be submissions relating to costs at the hand down of this judgment.

2. The grounds of the section 282(1)(a) are twofold:
   (i) the COMI (centre of main interest) of Ms Radeva was not in England and Wales at the time that the bankruptcy order was made – lack of jurisdiction; and
   (ii) there was incomplete/incorrect disclosure by Ms Radeva in concealing or mispresenting material information relating to her COMI, her assets and the appropriateness of bankruptcy and its consequences.

3. The jurisdictional issue (2(i) above) occupied most of the time before me at the hearing. In so far as Ms Radeva's COMI was not in England and Wales as at the time of the bankruptcy order, then the order made stands to be annulled. A challenge relating to a lack of jurisdiction falls to be determined under section 282(1)(a) of the Insolvency Act 1986 on the grounds that the order ought not to have been made. In so far as I determine that, at the time, Ms Radeva's COMI was not in England and Wales, then the cases of *Raiffeisenlandesbank Oberosterrich AG v Mayden [2016] EWHC 414 (Ch), Munks v Munks [1985] FLR 576,*

Sparkasse Hilden Ratingen Velbert v Horst Konrad Benk [2012] EWHC 2432(Ch) and *Deutsche Apotheker-Und Arzebank EG v Leitzbach [2018] EWHC 1544 (Ch)* establish that the order ought to be set aside or annulled as of right. As I set out in the section below relating to legal principles, I proceed on this basis.

The position of Ms Radeva – non attendance

4. This application which was issued as long ago as July 2019 has a somewhat lengthy history. Shortly before Ms Radeva presented her application for a bankruptcy order, judgment was entered against her for the sum of £206,145.70 (on 7 February 2019). This was a judgment in favour of Mr Kooter. In July 2019, Mr Kooter made his application to annul. On 7 October 2019, Deputy ICC Judge Barnett gave directions on the application and listed it for a non attendance pre trial review on 2 January 2020. At the pre trial review, the application was listed for hearing on 16 and 17 November 2020, with a time estimate of one and half days. Directions for the hearing were given including lodging of the bundle and skeleton arguments as well as attendance of both Mr Kooter (the Applicant) and Ms Radeva for cross examination, '…in default of which their statements will not be read without permission of the Judge.'

5. On 15 November 2020, being the day before the hearing on 16 November 2020, Ms Radeva applied for an adjournment of the hearing on the grounds that she was suffering from Covid 19 and was hospitalised in Bulgaria. The application was granted and the hearing of the annulment application adjourned. Before me, the Applicant relies upon evidence to demonstrate that Ms Radeva was not hospitalised in Bulgaria at that time. Whilst I did not have to determine that particular issue, it is clear that the grounds provided by Ms Radeva in support of the earlier adjournment are hotly contested before me and the evidence produced by the Applicant is compelling and cannot be ignored or dismissed. By way of example, it provides evidence that Ms Radeva was not in a hospital at the time and the doctor who asserted he was treating her was not her doctor.

6. A directions hearing was listed for 21 June 2021 and thereafter the hearing was listed for final hearing on 30 and 31 March 2022. On 30 March 2022, before me, Ms Radeva, acting then through Counsel, sought a further adjournment as well as

seeking permission to rely on further evidence. After hearing submissions, I granted the adjournment and allowed in the additional evidence. I expressed some real concern about granting Ms Radeva a further adjournment and both her and her Counsel were made well aware that I adjourned with some real reservations. The matter was then listed initial for a hearing on 3 and 4 May 2022, but these dates were then altered by my order and with the agreement of both parties, to 21 and 22 June 2022. That date alteration was at the request of Mr Kooter.

7. Despite the numerous adjournments granted in particular to Ms Radeva as set out above, shortly before the hearing on 21 June 2022, Ms Radeva sent an email to the court seeking an adjournment of the hearing listed for 2 pm that day. That email is dated 21 June 2022 and timed at 13.53. The hearing was listed as a remote hearing. Her counsel, Mr Julian Gunn Cunninghame, whom she had instructed on a direct access basis, had informed the Court on Monday 20 June 2022 that he would not be attending the hearing for professional reasons and no longer represented Ms Radeva. In her email timed at 13.53, Ms Radeva stated that she had been admitted to hospital with pneumonia and could not dial in as the Wifi held only for 15 minutes than it cut off. However, she did state in that email that if the matter was adjourned to Wednesday, she would attend the teams hearing. The document which she attached to the email was, it appears, an ECG result. There was no medical report and certainly a lack of compliance with the type of evidence and detail required by the Court in relation to applications seeking to adjourn on medical grounds. This was the second time that Ms Radeva sought an adjournment on medical grounds, albeit different grounds.

8. On Tuesday 21 June 2022 shortly after the start of the hearing at 14 00, after submissions from Mr Shoylev, Counsel for the Applicant, and having considered the documents and email sent by Ms Radeva, I determined to adjourn the case to Wednesday 22 June 2022 at 10.30 am in order for Ms Radeva to attend via the teams. In the email which was sent by the court clerk on the Tuesday 21 June 2022, to both her and to Mr Kooter's legal representatives, I referred her to CPR rule 3.1(2)(b) and to the guidelines set out in *Decker v Hopcraft [2015] EWHC 1170(QB)* relating to the principles of seeking adjournment based on medical

grounds. I made the point that the document produced by Ms Radeva did not provide the detail and evidence required by the Court to consider adjourning a hearing on medical grounds. Ms Redeva sent a reply to my court clerk at 16.54 where she stated that she would connect to the teams hearing the next day and make her application for an adjournment. She also sent a further exhibit of documents, but not documents relating to her medical grounds. On Wednesday 10.30, after waiting for above five minutes for Ms Radeva to dial into the teams hearing, I commenced the hearing. At 10.51, my court clerk emailed me a further communication from Ms Radeva.

9. That 10.51 email set out that Ms Radeva was not feeling well and that her temperature was spiking and that she did not feel she would be able to attend a full day's hearing. She attached this time a document which appeared to be a document stating that she had been admitted to Frimley Health Hospital (NHS Foundation Trust). There was no medical report relating to her condition beyond a note that she had pneumonia. The document failed to provide any of the details required for me to be able to ascertain what were her medical grounds, how long they would last and whether she could participate remotely in any event. The document was not signed and it is clearly not a medical report. It continued no information about when she had been discharged after her admission on 20 June 2022. The documented states, 'admission' but provides no further details. It contained no details as to when she would be able to attend a remote hearing. It did not provide me with details as to why after the email sent to my court clerk the day before, she was unable to dial in in the morning at 10.30 on 22 June. I had to consider her application for an adjournment based on an extremely unsatisfactory and vague explanation provided with a real lack of medical evidence of the type which is set out in the useful guidelines provided in *Decker v Hopcraft*, reference to which I had provided via the court clerk the day before. The email also sought an adjournment to enable her to obtain representation as she alleged that her Counsel, Mr Gunn Cunninghame, was in some way conspiring with the Applicant. I should add that such unspecified allegations as against her Counsel were not something I took into account in considering her application to adjourn. I did take into account the fact that her Counsel had stepped down a few days before the hearing.

10. The Applicant opposed the adjournment. I handed down a short judgment refusing the adjournment. However, as Ms Radeva was acting in person, I have set out in this judgment some of the background. In particular, it is clear that this is far from the first application to adjourn the hearing of the annulment application. As I made clear at the hearing in March 2022, it was only with great hesitation that I acceded to Ms Radeva's application at that time for an adjournment. She was, in my judgment, fully aware of the position. Her earlier adjournment application on medical grounds was the subject of extensive evidence before me relating to its genuineness. That was something upon which the Applicant's Counsel would have cross examined her about had she attended the hearing before me. In refusing her adjournment, I took into account the number of adjournments in this case and in particular the late adjournment made in March 2022 as well as before me in June 2022. I also took into account that the evidence relied upon by Ms Radeva raises more questions as to what she asserts it shows. It is, in any event not signed by a doctor and does not provide the information so as to enable me to consider it properly. Moreover, Ms Radeva indicated on the first day of the hearing, being the 20 June, that she would be able to attend and the court waited before commencing the hearing. In my judgment, it was not in the interests of justice that a further adjournment be granted. Ms Radeva was provided with details of the type of medical evidence required. She has failed to produce such evidence. She failed to dial in despite saying in her evidence she would do so. She has repeated numerous allegations relation to the Counsel who was acting for her which are serious yet completely vague and unparticularised. She is well aware of the history of this matter and was certainly well aware that her previous adjournment was granted with great hesitation on my part. Mr Shoylev submitted that Ms Radeva was seeking to delay the hearing and that the application was not genuine.

11. As is set out in the judgment I gave on 21 June 2022, I rejected the application to adjourn and proceeded to hear the application in the absence of Ms Radeva. The order dated 2 January 2020 provided for the usual direction that in the event that a deponent did not attend for the purposes of being cross examined, then the evidence shall not be read without permission of the court. In this case where Ms Radeva relies upon her assertion that her COMI was in England and Wales and

this is heavily disputed by the Applicant, cross examination of Ms Redeva was an important part of the fact finding exercise which I need to carry out. Mr Shoylev did not ask me to ignore the evidence which had been filed on behalf of Mr Radeva and made reference to it in his submissions. Despite the direction relating to the evidence not being admissible without my permission, I have taken the approach that I will consider the evidence relied upon by Mr Radeva, but importantly, I bear in mind that such evidence as she presents was incapable of being tested in cross examination. Its probative worth is therefore limited.

Legal principles

12. Section 282(1)(a) of the Insolvency Act 1986 states that an annulment may be granted by the Court if, 'on any grounds existing at the time the bankruptcy order was made, it ought not to have been made'. *JSC Bank of Moscow v Kekhman [2015] EWHC 396 (Ch)* sets out the 3 step exercise being as follows:
    (1) What grounds existed for making the order when it was made;
    (2) Whether on those grounds the order ought not to have been made, and
    (3) If it determines that the order ought not to have been made, whether to exercise its discretion to annul.

13. As set out by Mr Shoylev, the position in cases which raise a jurisdiction objection, such as the one before me, the discretion element of the above test is somewhat modified. Mr Shoylev relies upon the case of *Meyden [2016] EWHC 414 (Ch)* where Mr Justice Nugee stated (paragraph 17)
    'I proceed on the basis that the authorities before me do establish that the general position is that, once it becomes apparent to the Court that an order has been made without jurisdiction, a party or any person who might be affected by such an order is entitled as of right to have it set aside'

14. These principles are well established in the case law which Mr Shoylev relied upon and *Meyden* is merely one of the more recent cases which sets out effectively the entitlement of a party affected in a lack of jurisdiction case to have the order set aside as of right. As I stated in the introduction of this judgment, I approach the current case under these principles and will turn to the issue of COMI shortly.

15. Mr Shoylev also made submissions relating to the burden of proof. He submitted, relying on *Paulin v Paulin [2009] EWCA Civ 221 (Civ)* that in annulment cases, the standard burden of proof reverses and the respondent/debtor needs to discharge the burden of proof where two conditions are met, being (1) the debtor had not been insolvent on the balance sheet test at the material time and (2) the debtor had been dishonest in obtaining the bankruptcy order. Having considered the case relied upon, I am not convinced that this is an accurate summary of the case itself. However, even if Mr Shoylev is correct, it is still for his client to establish that Ms Radeva was not balance sheet insolvent at the time that the bankruptcy order was made and also that she had been dishonest in obtaining the bankruptcy order. There is before me little evidence which would enable me to determine that the Respondent was not balance sheet insolvent at the time that the bankruptcy order was made. Mr Shoylev did not push this point based on the evidence. He submitted that the true state of Ms Radeva's financial position remains obscure. Based on the lack of evidence relating to the balance sheet insolvency issue, it does not seem, in my judgment, necessary for me to determine the second limb relied upon by Mr Shoylev. The grounds relied upon by Mr Shoylev have not been established for this reversal of the burden of proof. I will approach this case on the basis that the usual rules as to the burden of proof applies and that it is for the Applicant to establish that the order ought not to have been made and this includes establishing that the Respondent's COMI was not in England and Wales at the time that the bankruptcy order was made.

COMI

16. Mr Shoylev referred me to the recast EU Insolvency Regulation 2015/848 and in particular article 3(1) :-

"1. The courts of the Member State within the territory of which the [COMI] is situated shall have jurisdiction to open insolvency proceedings ('main insolvency proceedings'). The [COMI] shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

...

In the case of an individual exercising an independent business or professional activity, the [COMI] shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only

apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the [COMI] shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings."

17. The COMI attributes derived from regulation 3(1) are, in summary, as follows;_
    (a) The place where the debtor conducts the administration of its interests on a regular basis
    (b) A place ascertainable by third parties, and in particular creditors and prospective creditors
    (c) For an individual engaged in a business or professional activity, rebuttably presumed to be that individual's principal place of business
    (d) For any other individual, rebuttably presumed to be the place of the individual's habitual residence.

18. Mr Shoylev took me through the cases which demonstrate that courts are alive to abuse and in particular cases where a debtor seeks to change his COMI for forum shopping or for other reasons. The well-known case of *Shierson v Vlieland Boddy [2005] EWCA Civ 974*, sets out the need for someone's COMI to have an element of permanence. A change of COMI needs to be real and not one where there are indications of opportunism or abuse. COMI is very much a factual investigation. In order to ascertain which of the rebuttable presumptions applies, the starting point is to consider what is set out in Ms Radeva's application for bankruptcy.

Employment and further education

19. In her application for bankruptcy, Ms Radeva describes herself as unemployed. She attributed her bankruptcy to a relationship breakdown rather than, for example some business failure. Ms Radeva has filed three witness statements. Her first witness statement dated 4 November 2019 states that she is, at that date, resident in the UK and studying in Oxford Said Business School. It states that she has numerous marketing management qualifications achieved in the UK. The

witness statement as states, ‘I am a graduate from Birkbeck College, UCL with an MBA’. She relies on the fact that she has instructed UK lawyers since the service upon her of the freezing injunction related to the proceedings brought against them by the Applicant, Mr Kooter. At paragraph 7, she states, ‘My habitual residence is in the UK because I have obtained my university education here and have formed a professional and social circle of connections which enable me too[sic] state the UK is my home. ‘She asserts that her permanent address is 21 The Driftbridge, Epsom. She asserts at paragraph 16, ‘My COMI is undoubtedly in the UK and has been for several years both as a student and pursuing a marketing career after.’ She sets out details of courses which she asserts she had attended. That list does not include details of the period in which she attended ‘Birkbeck. UCL’ and obtained an MBA, but in her statement, she asserts she did the MBA at Birkbeck college in 2015-2016. The other courses she listed appear by their dates to be very short courses:-

September 2018 – University of the Arts- Digital Marketing Strategy Programme (part time)

October 2018 – Digital Online Content Strategy

November 2018 [left blank]

December 2018 – Data Visualisation for Marketeers

December 2018 – Management Programme – Graduation (part time)

January 2019 University of the Arts – Digital Marketing Strategy Programme Gradation

20. It is noticeable that no further details have been given in later witness statements to explain the length of the courses and whether these course were online or required actual physical attendance. She provides details of graduation but this, in my judgment, does not provide evidence of attendance, not even of attendance at any graduation ceremony. Significantly, she provides no details as to the funding of the numerous courses she asserts she attended.

21. She states at paragraph 18 that she has in fact worked in number of marketing jobs with Nepresso Club UK and Picturehouse Cinemas, Marketing Department. No details of dates or the type of jobs are provided. No details as to the duration

of such different employments are provided. Equally, there is no evidence of salary being paid into the bank accounts for which Ms Radeva provided copies. No pay slips and no P60s or P45s have been provided. She asserts that since January 2018, she has been unable to work in the UK due to the freezing order. I pause to note that the freezing order does not prevent Ms Radeva from working. It provides restrictions, subject to her providing disclosure, on her ability to deal with her assets which would include earnings from any job. In my judgment, there were no restrictions on Ms Radeva working or seeking employment after the freezing order was made. Evidence of previous jobs in the UK are merely bare assertions by Ms Radeva. Although Ms Radeva asserts in many places in her statements that her COMI is in England, her statements are bare assertions, subject only to certain modest utility bills, dental and doctors' appointments and voter registration, which I will deal with further below. Her statements lack any detail relating to how she funds her life in England, details of her earnings and any evidence of paying tax. As Mr Shoylev pointed out, the bank statements she has produced provide little evidence of earnings coming into the accounts. They show, as Mr Shoylov submits, modest sums and spending. By way of example, they show no evidence of rental payments being made.

22. In her written statements, Ms Radeva also asserted that she was unable to work due to Mr Kooter retaining her mobile phone and her diplomas. In my judgment, these explanations by Ms Radeva lack a sense of reality. There is no evidence of any jobs applied for where proof of diplomas relating to very short courses was necessary. Equally, duplicate of diplomas relating at least for longer courses such as a Masters or an undergraduate degree can be obtained. The loss, or, as alleged, retention by a third party of a mobile phone does not prevent someone seeking employment. There is a real lack of detail to support this bald assertion. There is also the point made by Mr Shoylov, namely that there is no such place as Birkbeck UCL. It is difficult to imagine that a person who attended either of these well-known higher education institutions and obtained an MBA there, would make such an error. It is also significant that no genuine diploma from either of those institutions certifying that Ms Radeva did obtain an MBA has been exhibited to her various witness statements. I will deal with the certificate

produced by her. This certificate which has been produced by Ms Radeva raises significant issues as to its authenticity.

23. She exhibits a ‘Certificate of Attendance’ which has the Birkbeck, University of London, logo on it at the right-hand side. This document is undated, which is unusual for what is presented as being evidence of her certificate of her MBA. The document says she attended and successfully completed, ’The MBA Programme’. That is itself unusual working for an MBA certificate. There are two typographical errors on this certificate. One of them is the repeat of the word ‘the’ and the other is a misspelling of BirkBeck in the details of the Programme Director. ‘Birkbeck’ is spelt as ‘Birbeck’. Mr Shoylev has directed my attention to a certificate of attendance of a ‘Mini MBA’ which he says is a genuine certificate for the course consisting of the same four courses set out in Ms Radeva’s certificate. Significantly, this certificate states that the holder attended a four day course leading to a Mini MBA and it provides the relevant dates. In my judgment, based on the comparison of the two certificates and the anomalies contained in Ms Radeva’s certificate, I reject that this certificate is genuine. Accordingly, there is no evidence which supports Ms Radeva having completed an MBA in England and Wales. This means that for current purposes, the evidence shows at best, either in presence or online attendance at a number of very short courses.

24. Ms Radeva’s second witness statement is dated 30 March 2022 (which was filed with my permission and with granting relief from sanctions). She referred therein to the court proceedings costing her time off work, but she did not provide any further details relating to her work position at that stage. She did exhibit what she called was a confirmation that she attended a ‘Content Marketing Strategy’ course at the London College of Communications between 25 February 2019 and 28 June 2019. Again, the same points I have set out above relate to this latest course. There is no evidence relating to whether it was online or in person and importantly where the funding for this course was obtained.

25. In my judgment, Ms Radeva's evidence filed in opposition to the annulment application does not establish that during the period before her bankruptcy and/or at the date of her bankruptcy, she was involved in any business or profession. Mr Shoylev did take me to the evidence whereby Ms Radeva introduced herself to Mr Kooter as being an investment manager and in this way Mr Kooter was persuaded to invest. However, the judgment dated 7 February 2019 by which Ms Radeva was ordered to pay the sum of £206,145.70 to Mr Kooter demonstrates that these representations to Mr Kooter were part of a sham. So no reliance upon them is made by me in assessing whether Ms Radeva had a business or professions at the relevant time.

26. Ms Radeva is keen in her evidence and in the exhibits to rely upon utility bills to establish that she resided in England and Wales. She also produces details of being registered with a GP, being registered with a dentist and having attended a hospital here In my judgment, evidence of utility bills in this case does not relate to her exercising any business or profession. Having considered the evidence before me, I agree with Mr Shoylev that the evidence points to her not exercising any business or profession in England and Wales. Put simply, her evidence fails to demonstrate the exercise by her of a business or profession. Accordingly, the relevant test is one of habitual residence as a rebuttable presumption. The emphasis on the creditors is therefore somewhat different. For the purposes of habitual residence, the types of creditors would be those relating to her residency rather than creditors arising from any trade or profession. I should add for the avoidance of doubt that the existence of the utility and other bills relied upon by Ms Radeva in relation to her assertion that her COMI was at the time in England and Wales is a factor and therefore relevant to determining her habitual residence. This is clear from the discussion below.

Habitual residence

27. Habitual residence in the applicable EU context is a factual exercise having regard to all the circumstances as to a person's real choice of country as a state of residence. The principles are well known and I only provide a short summary in this judgment. A distinction is drawn between a short term stay or presence and

habitual residence. Non exhaustive criteria include the following (article 11 of Regulation No 987/2009) :-

"*the duration and continuity of presence on the territory of the Member*

17 the person's situation, including:

(i) the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract;

(ii) his family status and family ties;

(iii) the exercise of any non-remunerated activity;

(iv) in the case of students, the source of their income;

(v) his housing situation, in particular how permanent it is;

(vi) the Member State in which the person is deemed to reside for taxation purposes."

28. Using the above as a useful guide, there appears be no dispute (certainly none appears from the evidence filed by Ms Radeva) that her original habitual residence is Bulgaria. She was born there, domiciled there and it appears, educated there. I have noted above that Ms Radeva asserts she obtained her university education here in the UK, but, in my judgment, there is a lack of evidence to support such an assertion. I have dealt above with the various diplomas and courses which Ms Radeva asserted she had acquired or attended. I have rejected her evidence that she had an MBA from Birkbeck or indeed UCL. The evidence relating to other courses fails to provide any details relating to duration, whether the course was online or in person. Again, as I have already set out above, there is a lack of evidence in relation to the funding for any of these courses. Funding in relation to study is an important factor to be considered. This is clear from article 11 (b)(iv) of the above named Regulation. There is no evidence before me relating to funding of any of the courses taken by Ms Radeva. There is also no evidence relating to how she funds her lifestyle when she is in the UK. I will deal further with this point below. It is the Applicant's case that essentially, Ms Radeva is seeking to create an illusion of permanent presence in the UK. Mr Shoylev relies on the strong ties to Bulgaria of Ms Radeva. I deal with these below.

29. Evidence of Ms Radeva relating to a period in 2022 and her being an employee of a 'top 100' university is in my judgment not relevant to the COMI exercise in 2019. In any event, these statements by Ms Radeva are challenged as being false.

It is correct that much of Ms Radeva's statement consists of bare assertion with no contemporaneous documentation to support the same. For example, despite her assertions of being employed at various times, she produces no evidence relating to the sums paid to her by way of salary, or tax deductions made. Equally her evidence is devoid any explanation relating to her earnings and/or income and the source of sums she uses in order to live. She provides no details or explanation as to her source of funds and/or income in the period leading up to the bankruptcy and as at the time that the judgment was handed down against her. This is, in my judgment, significant, because consideration of what a person does, that person's economic activity, as well as income source, are important factors for consideration of whereabouts of habitual residence. Evidence from Ms Radeva that she has, an English bank account, that she pays certain modest bills, that she is on certain utility bills, are not conclusive and are to be weighed against the lack of any evidence relating to source of income as well as what exactly she did workwise. She asserts she is registered with a doctor and a dentist. However, these factors need to be considered alongside the lack of evidence relating to how exactly she funded her life when in the UK. Her evidence is silent. There is no real evidence of economic activity in England and Wales. IN relation to any non economic activity, such as studying, there is no evidence as to the funding of the studies and importantly whether the course themselves were online or required physical presence.

30. In *Die Spakrasse Bremen AG v Mehmet Armutcu [2021] EWHC 4026 (Ch)* , Mrs Justice Proudman considered an appeal from a Registrar who held that a debtor's COMI had remained in Germany. In considering whether the alleged residence in the UK had the requisite degree of permanence, the Judge agreed with the Registrar that existence of an economically unviable job in the UK was not sufficient when there was evidence of significant emotional and economic ties with Germany. The evidence demonstrated that the debtor travelled to Germany often to collect cash from his wife to fund his lifestyle in the UK. In the case before me, the Applicant asserts that the evidence does not demonstrate the relevant degree of permanence. The Applicant also asserts that essentially the alleged change of habitual residence is not genuine. Such a submission is similar to the one made in *Mehmet Armutcu*.

31. There is no evidence of any security of tenure in relation to where Ms Radeva asserts she lives, being 21 The Driftbridge, Epsom, Surrey. The evidence from Ms Radeva is silent as to the arrangement between herself and the owner of 21 The Driftbridge Epsom, Surrey where she asserts she lives. There is no evidence of tenancy agreement, licence or in fact of any sums being paid by Ms Radeva. In my judgment, this is an important factor in assessing whether she has her habitual residence in England and Wales. Mr Shoylev went painstakingly through the various addresses used by Ms Radeva as well as inconsistencies which arose from the evidence. I do not propose to set this out in this judgment. Having determined that Ms Radeva's evidence fails to satisfy me that she carried out either a business or profession in the UK, or exercised any economic activity in the UK, there is no need to consider the various addresses she has used.

Evidence of habitual residence remaining in Bulgaria

32. There is clear evidence, which does not appear to be disputed by Ms Radeva in her evidence that she maintains strong family ties with her family in Bulgaria and in particular, her parents. I agree with the submission of Mr Shoylev, that her family ties and interests in Bulgaria are important in this case where I have no evidence of any economic activity in England and Wales. Mr Shoylev also relied upon various transfers of cars acquired by her in the UK and then exported to Bulgaria and transferred to her father. There is evidence of real estate holdings of Ms Radeva in Bulgaria. A property which was in the name of Ms Radeva was transferred in 2018 to her mother. The Applicant asserts that this transfer was carried out in breach of the terms of the freezing order. For current purposes, the transfers and dealings between Ms Radeva and her parents are, in my judgment, evidence of strong ties to Bulgaria, in dealing with assets and property, which go beyond simply visiting close family.

33. Mr Shoylev relies on evidence, which he submits, are indications that Ms Radeva engaged in business in Bulgaria. There is evidence that Ms Radeva researched real estate investments in 2017 in Bulgaria. Mr Kooter states in his first witness statement Ms Radeva had informed him in 2017 that she wished to establish a bitcoin 'mining' business in Bulgaria where she stated that she had both the

contact and the cost effective access to electricity and equipment storage space. She imported cryptocurrency mining equipment into Bulgaria and significantly immediately after the bankruptcy order on 27 March 2019, she headed a private foundation dedicated to promoting private enterprise. Her application for the bankruptcy order was made on 4 March 2019. On 28 March 2019, Ms Radeva's father incorporated a private foundation in Bulgaria (Enterprise in Action). Ms Radeva was appointed as sole manager. She opened bank accounts in the name of the foundation and is given exclusive power to dispose of funds in the accounts. Although her position as head of the private foundation in Bulgaria is dated the day after the bankruptcy order is made, I agree with Mr Shoylev that steps were clearly taken before the bankruptcy order was made in order to set up the private foundation. For current purposes, I accept that the evidence demonstrates connections with Bulgaria and that those connections may well be related to employment or a profession.

34. Mr Shoylev also relied upon evidence relating to Ms Radeva's declared permanent residence in Bulgaria. Although there is no direction relating to expert evidence of Bulgarian law, Mr Kooter sets out that a Bulgarian permanent resident who is a citizen of Bulgaria must be identifiable in Bulgarian government records on the formal application of creditors as resident in Bulgaria. Mr Kooter states that in both 2018 and also in 2019, when he had to obtain Ms Radeva's address, he was provided, from these records, with an address in Bulgaria, initially in Troyan and thereafter an address in Sofia. Mr Shoylev explained that Ms Radeva would have been able to apply in an administrative procedure to amend her permanent and/or current addresses which he asserted was a requirement of Bulgarian law to keep them up to date. Whilst no direction has been given relating to an expert in Bulgarian law, I accept the evidence, which as it stands, is unopposed. Moreover, Mr Kooter states that he searched to locate Ms Radeva's address in Bulgaria. In my judgment, it is also significant, that in the register of permanent residence in Bulgaria, Ms Radeva changed her address from one in Troyan to an address in Sofia. A change of her Bulgarian address from Troyan to Sofia is, in my judgment, a conscious move by Ms Radeva. This information was and is available for creditors, like Mr Kooter. It is a matter of public record.

35. Accordingly, creditors of Ms Radeva were able to ascertain her address in Bulgaria. I accept that Ms Radvea presented evidence of bills, such as a credit card, bank statements and utility bills, which it can be said would lead those creditors to consider her address in Epsom to be where they could locate her. However, this needs to be weighed up against the evidence of her activity and ties with Bulgaria and the real lack of any economic activity in England and Wales. The cases make it clear that, as Mr Shoylev addressed me on, evidence of permanent residence needs to be genuine, not be an illusion and have a quality of presence. Ms Radeva seeks to rely on her bare assertion backed up by her modest utility bills and unreliable evidence relating to her studies.

36. In 2018 – 2019, in court proceedings issued and continuing in Bulgaria, Ms Radeva stated that her permanent address was in Bulgaria. In an application made by her to the Bailiff in the District Court of Lovech, Bulgaria, Ms Radeva stated that her address was 93 Tsar Samuil Street, entrance B, 3rd floor, apartment 46, Sofia. This was an application dated 3 October 2018, which she sought to make in relation to what she averred was an unlawful enforcement measure in relation to the court proceedings brought against her by Mr Kooter. There is also in the evidence a sworn statement from Ms Radeva in the court proceedings in Bulgaria, which is dated 17 January 2018. She sets out details of certain bank accounts she has, which includes two in Bulgaria. Significantly for current purposes, she declares in that statement, that her permanent address is 207, Vasil Levski Str, 2, floor 4, town of Troyan. The later application made to the Bailiff provides the address in Sofia. This accords with the change of address registered in Bulgaria. Ms Radeva's evidence is silent on all these issues relating to the nature of her residence in Bulgaria and her real estate interests there.

37. Having considered the evidence before me, in my judgment, Ms Radeva's habitual residence remained in Bulgaria. The evidence does not support a genuine change of habitual residence. The evidence demonstrates an attempt by her to create an illusion of habitual residence in England and Wales. Her evidence fails

to deal with the close and strong ties she has in Bulgaria. She has presented to this court a certificate which I have held is not genuine. She places reliance upon her various marketing and other courses, but fails to provide any evidence as to how she funds her studies or her lifestyle in England and Wales. There is no evidence relating to her arrangement relating to 21 The Driftbridge. Certainly she has provided no evidence relating to security of tenure, or any licence agreement, or even that she pays any rent. As I have held on the evidence, she did not exercise any economic activity in England and Wales at the relevant time. Her activities in Bulgaria have meant that she has provided sworn statements and also expressly declared what is her permanent residence in Bulgaria. A change of habitual residence needs to be, in my judgment, genuine. I reject the evidence presented by Ms Radeva that her change of habitual residence is genuine. Accordingly, I am satisfied that at the time that Ms Radeva sought to apply for a bankruptcy order, the Court had no jurisdiction to make such an order by reason of her COMI being in Bulgaria.

38. Mr Shoylev also sought to rely on ground 2, namely that there was incomplete/incorrect disclosure by Ms Radeva in concealing or mispresenting material information relating to her COMI, her assets and the appropriateness of bankruptcy and its consequences. I do not propose to make any determination as to whether that ground has been made out. I have held that her COMI was in Bulgaria and not in England and Wales at the relevant time and therefore the bankruptcy order is set aside as of right. In those circumstances, there is no need to consider the secondary ground.

39. I will hear from the parties, including the Trustees in Bankruptcy and Official Receiver in relation to costs and any other orders and directions being sought by any of the parties.

Dated 24 October 2022