Neutral Citation Number [2023] EWHC 1887 (Ch)

CR 2023 002738

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

IN THE MATTER OF TIME GB GROUP LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 28/07/2023

Before :

ICC JUDGE BARBER

- -

Between :

TIME GB GROUP LIMITED

Applicant

- and –

YARWELL MILL COUNTRY PARK LIMITED

Respondent

- -

Tom Poole KC (instructed by **Pinder Reaux and Associates Limited)** for the Applicant
Christopher Boardman KC (instructed by **Harold Benjamin Solicitors**) for the Respondent

Hearing date: 22 June 2023

- -

Approved Judgment

This judgment was handed down remotely by email and MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.00 a.m. on 28 July 2023

ICC Judge Barber

1. This is an application to strike out, or alternatively restrain the Respondent from advertising, a winding up petition presented on 25 May 2023. On 22 June 2023, I dismissed the application, with written reasons to follow. This judgment sets out my reasons for that decision.

Background

2. The Applicant was incorporated on 14 August 2017 and carries on the business of identification, intermediary management and introduction of land to other businesses for development purposes. Mr Robert Bull is sole shareholder and sole director of the Applicant. The Applicant previously had another director, Mr Jason Williams, who resigned on 22 November 2022.

3. The Respondent was incorporated on 9 August 2019. It offers support activities to other businesses. The present director of the Respondent is Ms Kellymarie Moore. The Respondent previously had another director, Mr James Crickmore, who was appointed on 9 August 2019 and resigned on 18 November 2021.

4. On 4 April 2023, the Applicant entered into a promissory note ('the Promissory Note') with the Respondent, by which the Applicant promised to pay the Respondent the sum of £2.37m ('the Debt') by 27 April 2023. On the same day, Mr Bull entered into a guarantee with the Respondent ('the Guarantee') by which he guaranteed the Applicant's obligations under the Promissory Note.

5. The Applicant did not pay the Debt by 27 April 2023. On 28 April 2023, the Respondent served a statutory demand in the sum of £2.37m on the Applicant's corporate solicitors, Gunnercooke LLP. On the same day, the Respondent made formal demand under the Guarantee.

6. On 28 April 2023, the Respondent's solicitors, Harold Benjamin, received an email from a Mr Spyrou of Pinder Reaux, seeking a copy of the Guarantee. By email dated 2 May 2023, Mr Ross of Harold Benjamin sent Mr Spyrou (cc-ing Ms Olivia Taylor-James) copies of (1) the Promissory Note (2) the Guarantee and (3) a certificate of independent legal advice dated 4 April 2023.

7. By letter dated 3 May 2023 from Mr Spyrou/Ms Taylor-James to Harold Benjamin, the Applicant's solicitors confirmed receipt of the Promissory Note and the Guarantee and then set out the Applicant's position on the same. As the letter is central to this application, most of it is set out below. The letter provided as follows:

> 'Having now had the opportunity to obtain our client's expeditious instructions, we respond to your purported Demand Letter hereunder.
>
> Promissory Note
>
> Having revisited this document, our clients dispute the amount of the Promissory Note.

The Promissory Note states that the Principal amount is £2,370,000 (two million three hundred and seventy thousand pounds).

Our clients instruct us that the above amount is incorrect and, in fact, the Principal Amount ought to have been recorded as £2,120,000 (two million one hundred and twenty thousand pounds).

We are instructed that our clients assigned four properties to your client's former Director, James Crickmore's business partner, Fred Sines/Doe, the value of which was £1,620,000 (one million six hundred and twenty thousand pounds).

As consideration for assigning these properties to Mr Sines/Doe, our clients agreed to pay Mr Crickmore the amount of £500,000… For the avoidance of doubt, the lawfulness of, inter alia, such arrangements is in dispute by means of High Court proceedings – claim number BL-2023-000631 (the 'Proceedings') issued on 2 May 2023 as against Mr Sines and Others. This point is therefore made without prejudice to the matters in the Proceedings.

The above amounts calculate to the aforementioned £2,120,000.

Our client does not understand, and did not realise at the time of the Promissory Note, why there is an additional £250,000 .. as per the figures stated in the Promissory Note. Please explain the difference.

Purported 'Demand on Guarantor'

In addition to and notwithstanding the preceding paragraphs, we understand that our clients paid Mr Crickmore the amount of £500,000 on or around 28 February 2023.

Paragraph 2 of your Demand Letter does not appear to have taken the above payment into account. If there was any amount due from our clients to your client, which, for the reasons set out in the remainder of this letter, our clients entirely deny in any event, that amount ought to be £1,620,000 not £2,370,000.

The remainder of this letter is written without prejudice to and notwithstanding the above.

Your Client's Conduct

1. We are instructed that Mr Crickmore, on behalf of your client, has been directly contacting our client, Mr Bull's finance brokers. You will appreciate that Mr Bull and Time GB

(including the wider Royale and Time companies of which Mr Bull controls) are involved in significant and large-scale financing, which is commercially sensitive. Such financing is arranged, monitored and supported by brokers. By way of examples, we understand that Mr Crickmore has contacted Riaz on many occasions, most recently on Friday, 28 April 2023 by continuously calling asking for details of our clients' commercial financing transactions.

By contacting the above-named, your client (in so far as Mr Crickmore is authorised by your client to make such conduct [sic] - we will expand on that point further in this letter) is seeking to interfere with our client's business transactions. The above-named is our client's broker and is working on raising some £1.5 billion for our clients through a global finance raise. Given the sums involved, the gravitas of your client's interference could obviously be immense should any prejudice or harm come from it. Our clients' rights in this regard are expressly and fully reserved.

The type of conduct engaged by Mr Crickmore, assumingly on behalf of and as authorised by your client, in attempting to interfere with our client's financial brokers by contacting them as regards alleged unpaid monies, is unwanted and unreasonable interference with our clients' commercial operations. As you will be aware, large-scale financing is sensitive and so such conduct by your client is tantamount to tortious interference with our client's business relationships. Your client is aware of this relationship and has no justification to interfere in that relationship. In fact, your client, through Mr Crickmore has no lawful reason that our clients can see, for contacting Riaz or any of its brokers at all - this is exactly the type of conduct which is considered unlawful interference with business relationship see Mogul Steamship Co. Ltd v McGregor, Gow & Co. and Others (1889) 23 Q.B.D. 508 CA at p.609.

Our client is astonished that your client has undertaken such conduct quite overtly and without any apparent concern for the effects and consequences on our clients.

2. We are instructed that Mr Crickmore has also been discussing confidential matters as between our respective clients directly with Mr Sines/Doe, and that Mr Sines/Doe has discussed matters with Mr Crickmore concerning our clients and Mr Sines/Doe. Mr Sines/Doe has stated this expressly in legal correspondence sent by his solicitors, Farhi LLP.

Clearly Mr Crickmore has the benefit in knowing what our clients are doing with other persons/entities, nor is it of any

purpose or benefit for Mr Crickmore to discuss matters between our respective clients with other parties.

However, this is exactly what Mr Crickmore has done. To put it simply, Mr Crickmore has been interfering in matters which are not of his direct concern for no good or warranted reason, asking for sensitive information such as financial and confidential details, and has also divulges information to 3rd parties that he ought not to have done. His conduct is hugely prejudicial and has caused our clients detriment. We understand that your client's Mr Crickmore has some business dealings and is even, to an extent, in partnership with Mr Sines/Doe, but that does not mean that he, on behalf of your client, can share confidential sensitive information as to the arrangements between our client and your client.

The Legal Position

It was an implied term of the Loan Documents, that your client would act in good faith at all times.

Given your client's conduct as set out above, it has quite patently not acted in good faith and has caused our clients prejudice, harm and has simply tried to exert illegitimate commercial pressure upon our clients. Your client has engaged in conduct intending to, or reasonably foreseeably having the effect of harming not only the value of any of our clients' assets, but also our client's reputation. Your client's conduct can only be regarded as commercially unacceptable by reasonable and honest people, and thereby deemed as having acted in bad faith….'

Having raised a list of questions as to the extent and basis of Mr Crickmore's involvement in the matter, the letter continues:

'Consequences

The conduct of your client raises as [sic] serious issue and our clients are entitled to know just how far the extent of your client unlawful tortious conduct reaches, as such, we require details of who else, connected to our client, your client, through Mr Crickmore or others, has contacted as regards alleged monies your client is owed.

On the current premise our clients would be entitled to terminate and/or rescind the Loan Documents and bring proceedings against your client and Mr Crickmore in his personal capacity … Our clients' rights as regards such matters are fully reserved pending your response to this letter.

> Conclusion
>
> Your client's conduct has pushed our clients' boundaries too far now and our client will simply not tolerate it any longer.
>
> We require your response to this letter within the next 7 days, namely by Wednesday, 10 May 2023.
>
> All of our client's rights as set out throughout this letter and generally, remedies defences, and causes of action are fully reserved. In so far, as our clients will issue proceedings against your clients please confirm for whom you are instructed to accept service of proceedings.'

8. Pinder Reaux wrote again by letter of 9 May 2023, this time complaining that the previous evening Mr Crickmore had attended at the family home of a former director of the Applicant, Mr Williams, saying (via the intercom at the vehicular gates to the property) that he had 'business' with Mr Williams. He had been denied entry and Mr Williams had been out, but Mr Williams' wife had found the experience unsettling and the matter had been reported to the police (who subsequently confirmed that no further steps would be taken).

9. By letter dated 11 May 2023, Harold Benjamin responded to Pinder Reaux, confirming that they acted for the Respondent rather than for Mr Crickmore but had spoken to him prior to responding to the Applicant's correspondence. The letter continued:

> 'We do not intend to respond to each and every allegation in your letter given the embarrassing lack of particularity in respect of the allegations made, the self-evident lack of legal basis for the contentions advanced and the fact that it would appear that you are ill informed as to the factual background. We are simply not prepared to waste our client's money responding to uninformed and bald allegations.
>
> However and without prejudice to our client's right to respond to any proper letter of claim that may in the future be issued, we do respond to your letter dated 3 May 2023 as follows:
>
> 1. At all material times when negotiating and entering into the Promissory Note and Guarantee, your clients were represented and advised by Janis Wilderspin of Gunnercooke solicitors. They know full well how the amount in the Promissory Note was arrived at, and if you are unclear and cannot obtain instructions from your clients then we suggest that you speak to Ms Wilderspin. We cannot see how your clients could be under any genuine misapprehension as to the make-up of the sum under Promissory Note and Guarantee, and this point seems to

> be nothing more than a crude attempt by your clients to muddy the waters.
>
> 2. The allegations that have been advanced as to our client's conduct are nothing more than a series of un-particularised and uncorroborated statements, which, even if they were factually correct, go nowhere at all. It would appear that your client is simply on a fishing expedition to find some basis to contest our client's previously acknowledged debt. it. If you wish to issue a properly particularised and corroborated CPR compliant letter of claim, then we will respond at that time. As matters stand, nothing of any substance has been advanced for our client respond to and there is no obligation on it to do so.
>
> 3. Your assertion that the Loan Documents contain an implied obligation of good faith is self-evidently misconceived in law and of no merit. The Promissory Note is simply a contractual promise by Time GB Limited to pay our client the sum stated therein. Our client has no obligations to fulfil (either express or implied). The same can be said of the Guarantee, which imposes personal payment obligations which support those of Time. Our client has done nothing that could be said to be a breach of any express or implied term of the Loan Documents as you claim. It has simply called upon your clients to fulfil their contractual obligations by paying the sums due, which cannot conceivably be a repudiation entitling your clients to avoid their obligations altogether.
>
> In the circumstances, our client looks forward to receiving your clients' realistic proposals for settlement of the sums outstanding under the Loan Documents. In the meantime, our client reserves its right to take steps to enforce the Loan Documents without further notice… '

10. By a second letter dated 11 May 2023, Harold Benjamin wrote to Pinder Reaux addressing Mr Crickmore's visit to the home of Mr Williams on 8 May 2023 and denying any wrongdoing on Mr Crickmore's part.

11. The Applicant did not respond with a CPR compliant fully particularised letter of claim, as suggested by Harold Benjamin's first letter of 11 May 2023. Instead, without any prior notice to the Respondent, on 23 May 2023, the Applicant filed an application to restrain presentation, supported by the witness statement of Mr Robert Bull, its sole director, dated 23 May 2023.

12. The application to restrain presentation and supporting witness statement were never formally served on the Respondent. On 25 May 2023, prior to disposal (or service or notice) of the application to restrain presentation, the Respondent presented the petition.

13. The petition was served on the Applicant's registered office and on Gunnercooke LLP on 26 May 2023.

14. On 5 June 2023, the Applicant filed the present application to strike out/restrain from advertisement, supported by the witness statement of Ms Taylor-James of Pinder Reaux dated 5 June 2023.

Legal Principles

15. The legal principles applicable to the application were largely uncontroversial.

16. Mr Boardman KC referred me to the useful summary of the circumstances in which the Companies Court will restrain the presentation of a winding up petition, as set out at [31-35] of Coilcolour v Camtrex [2015] EWHC 3202, in which Hildyard J confirmed:

(1) The court will prevent presentation of a winding up petition where it considers that the petition would be an abuse of process and/or that the petition is bound to fail (to the extent that they are different).

(2) The Court will restrain a company from presenting a winding up petition where the company disputes, on substantial grounds, the existence of the debt on which the petition is based.

(3) The Court will restrain a company from presenting a winding up petition where there is a genuine and substantial cross-claim which equals or exceeds the petition debt.

(4) It is an abuse of process to present a winding up petition against a company as a means of putting pressure on it to pay a debt where there is a bona fide dispute on substantial grounds as to whether that money is owed.

(5) The practice that the Companies Court will not usually permit a petition to proceed if it relates to a disputed debt does not mean that the mere assertion in good faith of a dispute or cross-claim in excess of any undisputed amounts will suffice. As put by Hildyard J at [35]:

> 'The court must be persuaded that there is substance in the dispute and in the Company's refusal to pay: a "cloud of objections" contrived to justify factual enquiry and suggest that in all fairness cross examination is necessary will not do'.

17. Mr Poole KC referred me to Tallington Lakes v South Kesteven District Council [2012] EWCA Civ 443, in which Etherton LJ (albeit on an obiter basis) considered the threshold that an applicant must cross in an application to restrain presentation. At paragraph 22 of his judgment, he observed as follows:

> 'it is well established that the threshold for establishing that a debt is disputed on substantial grounds in the context of a winding up petition is not a high one for restraining the presentation of the winding up petition, and may be reached even if, on an application for summary judgment, the defence could be regarded as "shadowy"'.

18. Mr Boardman referred me to Tallington Lakes Ltd v Ancasta International Boat Sales Ltd [2014] BCC 327, in which David Richards LJ approved the well-known passage in the judgment of Chadwick J in re a Company (No 00685 of 1996) [1997] BCC 830 at [835]:

> 'the general rule under which this court refuses to entertain a petition founded on a disputed debt applies only where the dispute is a genuine dispute founded on substantial grounds; and does not preclude this court from determining - or entitle this court to decline to determine - the question of whether or not there are substantial grounds for dispute. Indeed, in the passage from the judgment of Oliver LJ to which I have just referred, he pointed out that the court necessarily has to take a view whether on the evidence there really is substance in the dispute which is raised by the alleged debtor'.

19. Mr Boardman also took me to James Dolman & Co v Pedley [2004] BCC 504, in which Arden LJ at [10] confirmed that the jurisdiction to restrain advertisement is to be exercised to prevent a threatened abuse of process of the court and that, in the absence of evidence of a threatened abuse of process, it was 'erroneous in principle' to restrain advertisement. This dovetailed neatly with a further authority relied upon by Mr Boardman, that of In Re a Company (No 007923 of 1994), in which Nourse LJ (at 958D-H) stressed the dual purposes of advertisement, these being (1) to give notice of the petition to those who are entitled to be heard on it and (2) to give notice to those who might trade with the company during the period between the presentation of petition and its final determination and who might thus be adversely affected by the provisions of section 127 IA 1986.

Evidence

20. I have read the following witness statements and their respective exhibits:

(1) witness statement of Mr Robert Bull, sole director of the Applicant, dated 23 May 2023, filed in support of the application to restrain presentation;

(2) witness statement of Ms Olivia Taylor-James, solicitor for the Applicant, dated 5 June 2023, in support of the current application to strike out/restrain advertisement;

(3) witness statement of Mr Steven Ross, solicitor for the Respondent, dated 19 June 2023;

(4) witness statement of Mr Jason Williams, former director of the Applicant, dated 21 June 2023.

I have also considered other documents in a bundle prepared for use at the hearing, to which reference will be made where appropriate.

21. Mr Boardman submitted that the statements of Mr Bull and Mr Williams should not be admitted in evidence as (i) Mr Bull's witness statement (and the application which it supported) had never been served on the Respondent; the witness statement was simply included in the hearing bundle prepared by the Applicant without the consent

of the Respondent; and (ii) Mr Williams' witness statement was filed and served without permission or consent at the eleventh hour. These are both valid objections. Having considered both witness statements however, I have reached the firm conclusion that even if they are both admitted in evidence, the application still fails. Against that backdrop, little purpose would be served by an arid debate on whether they should be admitted in evidence. I shall admit them in evidence.

Mr Bull's evidence

22. Mr Bull accepted that the Applicant had signed a Promissory Note on 4 April 2023 promising to pay the Respondent £2.37m by 27 April 2023.

23. By paragraph 10 of his witness statement, however, he claimed that, by Pinder Reaux's letter dated 3 May 2023, the Applicant had written to Harold Benjamin 'inter alia rescinding/terminating the [Promissory] Note'. This was demonstrably untrue.

24. Mr Bull's statement did not articulate any substantial grounds for disputing the entirety of the Debt. There was a bald assertion at paragraph 15 of his statement that the Applicant disputed owing the Respondent the sum claimed under the Promissory Note and a quibble on quantum at paragraphs 20 to 23 (not going to the whole debt), but other than that, Mr Bull's statement rested largely on the unparticularised uncorroborated allegations regarding Mr Crickmore's conduct set out in Pinder Reaux's letter dated 3 May 2023.

25. Mr Bull also complained of the visit which Mr Crickmore is said to have made to Mr Williams' family home, as addressed in Pinder Reaux's letter of 9 May 2023.

26. Mr Bull made no meaningful attempt to quantify the loss said to have been suffered by Mr Crickmore's alleged conduct. Interestingly, when addressing the balance of convenience test (at that stage for restraining presentation), Mr Bull stated (at 34) that the presentation of a petition 'could result in pressure being put on the Applicant by other creditors' and 'the loss of customers'; adding (at 35): 'The Applicant would likely have to respond to queries from its financiers as to the WuP and this may also involve their withdrawing finance, which might well, in turn, create a catastrophic effect for the Applicant …'; suggesting, in context, that at the time Mr Bull made his witness statement, finance had not been withdrawn.

27. Mr Bull also maintained that the Applicant was 'not insolvent' (para 37) and in this regard referred to the last filed accounts of the Applicant, for the period ending 30 December 2020.

Ms Taylor-James' evidence

28. Ms Taylor-James' primary contention, as set out in her witness statement, was that the petition was presented 'erroneously' because by the time of presentation, an application to restrain presentation had been filed (but not served or given a hearing date).

29. Her fall-back position (at paragraph 35) was that the court should make an order restraining advertisement as the Debt was 'the subject of a genuine, bona fide dispute'. The grounds of the dispute relied upon were not really spelt out in her

statement, however; reference was made to Pinder Reaux's letters of 3 May and 9 May 2023 at paragraph 14 of her statement, but these were simply letters, not evidence; and their contents speak for themselves. Save for a reference to those letters, a suggestion that the Promissory Note was somehow rescinded or terminated by the letter of 3 May, and an assertion that the Applicant was not insolvent, there was little else to speak of in the witness statement.

Mr Ross's evidence

30. Save for addressing procedural history, Mr Ross's evidence largely commented on the Applicant's evidence. Mr Ross confirmed that the restraint of presentation application and supporting evidence had not been served on the Respondent. He also noted that the accounts relied upon by the Applicant in support of its claim to be solvent were historic and that the Applicant's evidence on solvency had failed to address steps recently taken by other creditors seeking to enforce their debts against the Applicant, including Sines Park Holdings Limited and Hampshire Trust Bank.

Mr Williams' evidence

31. Mr Williams' statement focussed largely on Mr Crickmore's visit to his family home on 8 May 2023. It was clear from his statement that Mr Williams felt strongly about Mr Crickmore visiting his family home uninvited, even if Mr Crickmore did not get past the intercom at the gates; Mr Williams is challenging the decision of the police to take no further action about it. The mere fact that Mr Crickmore visited Mr Williams' family home uninvited, however, is plainly not of itself substantial grounds for disputing the Debt. Nor does the evidence of Mr Crickmore's visit on 8 May 2023 establish, or support any suggestion of, any arguable cross-claim of substance equalling or exceeding the amount of the Debt. For present purposes, therefore, the visit is largely irrelevant.

32. Mr Williams' statement does also address what he describes as Mr Crickmore's 'interference' with financiers, but from the wording of his witness statement, it appears that he does not give evidence based on his own knowledge. At paragraphs 15 and 16 of his statement he states as follows:

> '15. In addition, the site which forms the basis of the Promissory Note had intended to form part of a wider and significant, refinancing which the Time Group and Royale Group of Companies is involved in - this financing is in excess of £1.5 billion. The actions of JC in interfering with the financiers of the [Applicant] and the wider group, as explained in Ms Taylor-James' witness statement, has created significant turbulence and concern. It should [be] appreciated that at the high levels of refinancing, turbulence is not accepted and there is very little scope for such issues. I estimate that the damage caused to the [Applicant] by JC's unlawful actions will at least equal the alleged debt, as it was intended that the four assigned properties that make up £1.62m of the alleged debt would form part of the refinancing transaction referred to above. However, as a result of JC's actions, in particular his communications with Time's financier brokers, it is now likely that the

> properties will fall outside the value of the refinancing, causing Time an equivalent loss, as these properties are essentially worthless if they cannot be refinanced against. Time intends to issue proceedings against [the Respondent], and JC in his personal capacity, for such actions.
>
> 16. In addition, the current extant Petition, which I understand was issued erroneously and or irregularly and the determination of [the Respondent] to hang onto the same has caused significant concern amount [sic] the market and I, as Group COO, have had to field numerous questions about it and explain what is happening about it. In short, lenders are extremely concerned about it. This will worsen if [the Respondent] are allowed to advertise the Petition through the formal channels of the London Gazette as that will make this disputed issue more public and more widespread. Right now it is difficult to put a number on the damage caused by the Petition being extant but I can say that damage has been caused and Time reserves the right to take action against [the Respondent] in this regard, for what I understand is known as malicious prosecution of a Petition, i.e. because [the Respondent] did not take steps to withdraw the Petition when [Pinder Reaux] told them it had been issued erroneously by the Court, despite there being no apparent prejudice to them in taking such a step. It is also not clear what [the Respondent] hope to achieve by seeking that [the Applicant] be wound up, and therefore I say again that this seems a clear attempt to place undue pressure on Time to pay a disputed debt'.

33. Mr Williams concludes his statement by asserting that the Applicant is not insolvent and 'instead has a healthy net asset position of over £60 million', referring to draft accounts up to 31 December 2021, which were said to be awaiting auditor sign off. The assertion that the Applicant had a net asset position of over £60 million was untrue. That was a reference to the group net asset position. According to the same draft accounts, the Applicant was balance sheet insolvent to the tune of over £17m. It also had creditors falling due within one year of £207m.

Submissions and conclusions

(1) Timing of Presentation

34. The first ground relied upon by the Applicant in support of the strike-out limb of its application was the extraordinary proposition that the petition should not have been treated as having been presented in circumstances where the Company filed its application to restrain presentation before the date of presentation. On that basis, Mr Poole contended that the court should simply dismiss the petition: skeleton argument, paragraph 3. This was an utterly hopeless argument which I have no hesitation in rejecting. The mere filing of an application to restrain presentation of a petition does not of itself preclude presentation.

(2) Genuine Dispute on Substantial Grounds

35. The next argument put forward by the Applicant was that the debt was disputed on substantial grounds.

36. In this regard Mr Poole contended that the promissory note was subject to an implied term that the parties would act in good faith towards each other, and that the Respondent had acted in breach of the implied duty of good faith, with the result that the Applicant was 'not liable for the alleged debt under the promissory note': skeleton argument, para 27 and 28.1.

37. This too was a hopeless argument.

38. As rightly observed by Mr Boardman, a promissory note is defined in s.83 of the Bills of Exchange Act 1882 as 'an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future date, a sum of money, to, or to the order of, a specified person or to bearer.'

39. Section 88 of the 1882 Act goes on to provide that: 'The maker of a promissory note by making it … (1) engages that he will pay it according to its tenor'. By s.89, it is further provided that: 'the provisions of this Act relating to bills of exchange apply, with necessary modifications, to promissory notes'.

40. It follows that a promissory note is a negotiable instrument of payment, akin to cash. As explained at [36-004] of Chitty on Contracts, 34th edition:

> 'The popularity of promissory notes is greater in domestic trade, where, basically, they serve two functions. In the first place, promissory notes made by the debtor … constitute a useful security …. If the debtor … falls into arrears, the creditor is able to enforce the corresponding promissory note or notes. The advantage of such an action over an action based on the main contract is that, even if an action on a note is maintained by the original creditor or less or the debtor cannot plead certain defences concerned with the main contract … In the second place, promissory notes executed by the debtor facilitate the refinancing of the transaction: the creditor can discount the promissory notes with a financial institution and, in this way, obtain credit against them well before the date of maturity. From the discounter's point of view, the transfer to him of promissory notes is more attractive than the mere assignment of the main contract. While a simple contract is signed subject to equities available to the debtor against the assignor, a transferee of a negotiable instrument, who attains the status of a holder in due course, is entitled to enforce the instrument despite defects in the title of previous parties.'

41. Mr Boardman also reminded me of the limited circumstances in which a term of good faith will be implied into a contract, as addressed in the recent case of Candey Ltd v Bosheh [2022] 4 WLR 84, at [29-32], noting in particular the following:

(1) The test for any implied term can be formulated in this way: (a) the term must be reasonable and equitable, (b) it must be necessary to give business efficacy, (c) it must be so obvious that it "went without saying", (d) it must be capable of clear expression, and (e) it must not be inconsistent with an express term.

(2) An implied duty of good faith will only arise in a category of "relational" contracts like joint ventures, in which the parties are committed to collaborating with each other, typically on a long-term basis, in ways which respect the spirit and objectives of their venture which they have not tried to specify in a written contract.

(3) A useful checklist of the characteristics expected to be present in a "relational" contract are: (a) there must be no specific express term that prevents the duty of good faith being implied, (b) the contract will be a long-term one, with the mutual intention of the parties being that there will be a long-term relationship, (c) the parties must intend that their respective roles be performed with integrity and with fidelity to their bargain, (d) the parties will be committed to collaborating with one another in the performance of the contract, (e) the spirits and objectives of their venture may not be capable of being expressed exhaustively in a written contract, (f) they will each repose trust and confidence in one another, but of a different kind to that involved in a fiduciary relationship, (g) the contract will involve a high degree of communication, cooperation and predictable performance based on mutual trust and confidence, and expectations of loyalty, (h) there may be a degree of significant investment by one party (or both) in the venture, (i) exclusivity of the relationship may also be present.

(4) The mere fact that some relationships are long-term does not make the underlying contract a "relational" contract. It is also important not to veer from the test for implied terms. An implication of a duty of good faith will only be possible where the language of the contract viewed against its context permits it: putting that another way, the elusive concept of good faith should not be used to avoid orthodox and clear principles of English contract law.

42. On behalf of the Applicant, Mr Poole referred me to paragraph 28 of his skeleton argument, which in summary provided as follows:

(1) The promissory note was subject to an implied term that the parties would act in good faith towards each other.

(2) The need for such a term was obvious having regard to (a) the subject matter and purpose of the promissory note; (b) the small size of the commercial sector in which the parties operate; and (c) the extensive commercial dealings between the parties.

In the premises, he contended, a duty to act in good faith was implied in law, as the promissory note should be viewed as a relational contract; alternatively such a term was implied in fact arising from the relationship and dealings between the parties.

(3) The implied duty to act in good faith required the parties to avoid conduct that reasonable and honest people regard as 'commercially unacceptable' and not to act to undermine the bargain entered or the substance of the contractual benefit bargained for: Mid Essex Hospital Services NHS Trust v Compass Group UK and Ireland Ltd [2013] EWCA Civ 200 per Beatson LJ at [150].

(4) As more fully set out in RB1 and JW1, R, through its servants and/or agents, Mr James Crickmore (who is the husband of Mrs Moore and a former director of R) acted in a way that reasonable and honest people would regard as commercially unacceptable by:

(i) contacting finance brokers engaged by TGB/Mr Bull to assist with a commercially sensitive refinancing transaction to raise some £1.5 billion regarding alleged unpaid debts of TGB;

(ii) discussing commercially sensitive matters that are confidential as between TGB and R with third parties; and

(iii) attending the home of TGB's former director and COO, Mr Jason Williams, on 8 May 2023 and causing distress to Mr Williams' wife.

43. In my judgment the argument that the Promissory Note was subject to an implied term that the parties would act in good faith towards each other flies in the face of the unilateral obligations imposed on the Applicant by the Promissory Note.

44. Moreover even if one were to put to one side the steep legal hurdles faced by Mr Poole summarised at paragraphs 38 to 40 above, and to assume that theoretically, a term of good faith could conceivably be implied in the context of a promissory note, the Applicant has failed to show, whether by evidence or submission, how any of the 5 tests for the implication of a term are (even arguably) met. The Applicant has also failed by its evidence to demonstrate an arguable case that any of the 9 criteria for the establishment of a relational contract are met in this case.

45. Mr Poole had little if any evidence with which to back up a number of the building blocks relied upon in constructing his argument in favour of the implication of a term of good faith.

46. When asked by the court what the evidence was of the 'subject matter and purpose' of the promissory note, for example, (see paragraph 42(2)(a) above), Mr Poole referred to paragraph 12 of Ms Taylor-James' witness statement, which simply referred to Pinder Reaux's letter dated 3 May 2023. He also referred to Mr Bull's witness statement, which again largely rested on the letter of 3 May 2023.

47. Mr Poole was in similar difficulty in relation to the propositions set out at paragraphs 42(2)(b) and (c) above; I was taken to no evidence addressing the size of the commercial sector in which the parties operated, the nature of the parties' relationship or the extent of their dealings.

48. Mr Poole argued that the promissory note should be treated as part of a wider suite of transactions. Again, however, I was taken to no meaningful evidence of what the wider suite of transactions relied upon was said to be. All roads appeared to lead back to the letter of 3 May 2023, which was extremely light on detail. Ms Taylor-James' witness statement and that of Mr Bull simply cross referred to that letter.

49. In short, notwithstanding Mr Poole's valiant attempts to make bricks without straw, the Applicant has failed to make out on the law and the evidence any properly arguable grounds supporting the implication of a term of good faith in this case.

50. That of itself would suffice to dispose of this application. I do not rest my ultimate decision on this conclusion alone, however. As I have heard submissions on other aspects, I shall address these in turn below. My ultimate decision is based on all conclusions set out in this judgment.

51. On the issue of breach, Mr Poole again relied on the letter of 3 May. (I should say that his skeleton argument suggested that there might be more relevant documents on this issue in the exhibits to the statements relied upon by the Applicant in support of this application, but I was taken to no further documents said to be of relevance on this issue, save for the letter of 9 May, which for reasons already expressed at paragraph 31 above, takes matters nowhere).

52. The letter of 3 May simply sets out a series of unparticularised and unsubstantiated allegations regarding an individual who is not even an officer or employee of the Respondent. As rightly observed by Mr Boardman, the letter itself is not evidence of what actually occurred.

53. Moreover, even if one were to take at face value the unsubstantiated allegations regarding Mr Crickmore's conduct set out in the letter of 3 May, they amount to little more than an allegation that he contacted *the Applicant's brokers* (not funders) and asked questions. As rightly submitted by Mr Boardman, that falls far short of establishing a properly arguable breach of an implied term of good faith with any real prospects of success, even if such a term could be implied. As Mr Boardman put it, 'what creditor is not going to try and find out if the refinances are going ahead?' The only other allegation put forward, that Mr Crickmore, who is not an officer or an employee of the Respondent, shared information with Mr Sines/Doe and other unnamed third parties, is woefully underparticularised and does not come close to providing substantial grounds for disputing the Debt. I have already dealt with the visit of 8 May, addressed in Pinder Reaux's later letter of 9 May, at paragraph 31 above.

54. For the sake of completeness, I would add that the suggestion that Pinder Reaux's letter of 3 May 2023 somehow rescinded the Promissory Note or accepted a repudiatory breach was untenable. Even leaving aside the fact that no properly arguable repudiatory breach or basis for rescission was supported by the evidence, the letter itself does not purport to rescind or to accept a repudiatory breach. Mr Poole's attempts to argue that Mr Bull's later witness statement of itself amounted to an acceptance of a repudiatory breach were also entirely unpersuasive. Mr Bull's statement, which was not even served on the Respondent, simply set out what he claimed the impact of the letter of 3 May to have been.

55. For all these reasons, in my judgment the Applicant has failed to establish any bona fide substantial grounds for disputing the Debt.

(3) Cross claim equalling or exceeding the Debt

56. Mr Poole was in similar (and additional) difficulties in relation to the cross-claim.

57. For reasons previously explored, the Applicant has failed to make out on the authorities cited and evidence adduced any properly arguable grounds supporting the implication of a term of good faith. Even if such a term could be implied, the

Applicant has also failed to demonstrate on the evidence any properly arguable breach of such a term.

58. Moreover, even if one were to put to one side all other difficulties with the proposed cross-claim, the Applicant's case on quantum was based on little more than a self-serving 'guestimate' by Mr Williams, which made no sense at all in context, and was entirely unsupported by documentary evidence.

59. In this regard I remind myself of the guidance given in Ashworth v Newnote [2007] EWCA Civ 793 at [29-34] in which Lawrence Collins LJ (among other things) confirmed that it is open to the court to reject evidence because of its inherent implausibility or because it is contradicted by *or not supported by* the documents.

60. The Applicant's case on quantum, as set out in Mr Williams' statement, was based on little more than bare self-serving assertion. It is inherently implausible and is not supported by any underlying documentation. I have no hesitation in rejecting it. Had I not rejected it, I would in any event have concluded that it did not come anywhere near clearing the minimum evidential threshold.

Summary of conclusions

61. For all these reasons, I conclude that:

(1) the Applicant has failed to demonstrate genuine substantial grounds for disputing the petition debt; and

(2) the Applicant has failed to demonstrate a genuine arguable cross-claim of substance in a sum equalling or exceeding the petition debt.

62. I shall therefore dismiss this application.

63. Whilst strictly unnecessary for the purpose of this application, I would add that on the evidence before me, the Applicant appears to be hopelessly insolvent. The assertions as to solvency made in the witness statements of each of Mr Bull, Ms Taylor-James and Mr Williams are regrettable.

64. I shall hear submissions on costs on the handing down of this judgment.

ICC Judge Barber