Neutral Citation Number: [2023] EWHC 410 (Ch)

Case No: CR-2022-002269

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF K WEARABLES LIMITED
AND IN THE MATER OF THE INSOLVENCY ACT 1986

Date: 27 February 2023

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE RAQUEL AGNELLO KC

Between :

MOORWAND LTD

Petitioner

— and —

K WEARABLES LTD

Respondent

Ms Ella Vacani (instructed by Keystone Law) for the **Applicant**
Mr Philip Campbell, a director, representing the **Respondent**

Hearing date: 8 February 2023

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JUDGMENT

Introduction

1. This is the hearing of the winding up petition presented on the 22nd July 2022 by Moorwand Limited ('Moorwand') against K Wearables Limited ('the company'). The petition claims a debt of £56,462.23 based upon unpaid invoices in respect of fees and charges invoiced under a card association issuing agreement dated 23rd April 2020 ('the Agreement') entered into between Moorwand and the company. The

invoices cover the period from 31st December 2020 to 18th July 2022. The company disputes the debt on the basis that (1) the agreement entered into should be rescinded on the basis of a fraudulent misrepresentation relied upon by the company when entering into the agreement; and/or (2) Moorwand provided a poor and substandard service in breach of the terms of the agreement causing loss to the company.

Legal principles

2. The test which needs to be applied is well known and set out in many cases. Ms Vacani on behalf of Moorwand, the petitioning creditor referred to some of these cases in her skeleton, including *Re Bayoil SA [1999] 1 WLR 147*. In order to succeed in having the petition dismissed, the company needs to satisfy the court, in summary, that the debt is disputed on substantial grounds. In this case, the company accepts the invoices are effectively due under the terms of the agreement, but asserts the existence of cross claims and/or counterclaims which exceed the sums alleged to be outstanding under the agreement. In *Wilson and Sharp Investments Ltd v Harbour View Developments Limited [2014] EWCA Civ 1030*, the Court of Appeal considered an appeal where part of the appeal related to whether the first instance judge was correct in having determined that on the evidence the company had failed to demonstrate a serious and genuine cross-claim in an amount which exceeded the debt claimed in the petition. The Court of Appeal disagreed with the Judge and held that the evidence clearly contained features which suggested that the appellant's cross claims were reasonably arguable and were sufficiently strong to be tested in court proceedings. The Court of Appeal concluded that there was a substantial dispute between the parties which could not be appropriately determined in winding up proceedings.

3. As part of determining whether a serious and genuine cross claim has been raised, it is important to consider whether the company did genuinely consider that it had a cross claim, when it was first raised and in particular whether it was first raised after the service of the winding up petition or the service of a statutory or other type of

demand prior to the issue of the petition. This includes consideration of why the company says it has been unable to litigate its claim to date. I should add that despite the language used in *Bayoil* which was set out by Ms Vacani in her skeleton, it is accepted that there is no requirement for a company to establish why it has been unable to litigate before its genuine and serious counterclaim or cross claim can lead to the dismissal of a winding up petition. The current approach, as accepted by Ms Vacani with reference to later cases, is that the court can take into account whether the company did genuinely consider it had a claim and reasons provided as to why it has not litigated that claim.

The background

4. The company was represented before me by Mr Philip Campbell, a director. He relied upon his own affidavit dated 19 November 2022 plus exhibits. He explained the business of the company at the time and how he, acting on behalf of the company, approached Moorwand. None of this was disputed or indeed commented upon in the evidence filed on behalf of Moorwand which consisted of two witness statements, one of Mr Robert Harvey dated 22 July 2022, being the solicitor acting on behalf of Moorwand and that of Mr Luc Gueriane dated 23 November 2022, a director of Moorwand.

5. The company operates in the area which Mr Campbell calls a direct to consumer payments business. The company sells rings to consumers which enable consumers to make payments using the ring. In order to facilitate a payment, the ring has to be linked to a payment network. Mr Campbell explained that a consumer would make a purchase using the ring which opens a prepaid MasterCard which links the ring to it. A customer would need to load up funds onto the prepaid Mastercard to then be able to spend those funds using the ring to pay.

6. The company operates in a heavily regulated financial field and this necessitates the company obtaining the services of companies which have the requisite licences in order to operate in this financial services environment. The company needed to enter into agreements with companies which possessed either a full banking licence

or an e-money license. The ring, which had been developed by the company, required an 'issuer' to facilitate the payment transaction. Prior to the migration to Moorwand, the company had an issuing agreement with PSI-Pay which had been entered into in 2016. It also had agreements for the provision of card acquiring services. It had plans to launch the product in European countries. It had, as described by Mr Campbell, a working product even though it had a monthly burn in 2019 of approximately £35,000 per month. It had a combination of funds from directors and investors during this period.

7. As explained by Mr Campbell, the issuer effectively controls to a large extent the operation of the company. It dictates when the programme (ie the selling of the products) can go live, the core features of the programme such as rates and limits, the processes used in the operation of the programme and importantly for current purposes, the ability of the company to be able to change issuer. The company required the approval of its issuer in the event that it seeks to change to a different issuer. Moreover, as Mr Campbell set out in his evidence, migrating to a new issuer is an expensive and long drawn out process. According to Mr Campbell the business of the company was growing well, but as it grew, it faced a 'cash netfunding' issue. The issuer, PSI, expected the client funds to be settled the following day, but the funds which were transferred from the company's card acquirer are not sent for some days. The meant that the company had to fund the period between settling with PSI and receiving the funds from the card acquirer. This could be a period between 3-4 days to 7 days. The company also had to provide cash guarantees. As the business grew, the cash requirement would increase. This is the 'cash netfunding' described by Mr Campbell.

8. By late 2018, the company was considering a possible solution. It considered that a change to the netfunding/client settlement model was needed. The current issuer, PSI was approached, but PSI were not prepared to offer any flexibility in their approach. The solution for the company was to move to an e-money issuer that also provided in house acquiring. This would allow a level of visibility of what is transferred from a customer to a pre-paid account and what is being spent. This

would reduce the cash burden in terms of funding the gap between the issuer and acquirer as well as the provision of cash guarantees from the company. Mr Campbell was also seeking an issuer/acquirer to be able to facilitate and work on the planned expansion into Europe. The latter issue does not arise in relation to the fraudulent misrepresentation relied on for current purposes and I will not deal with it in any further detail in this judgment.

9. The company prepared a four page issuer review document. The documents exhibited to Mr Campbell's witness statement contains excerpts from this document. That document made clear that the company was seeking to migrate from its current issuer with the aim of obtaining an agreement with an issuer with in house acquiring. The company also wanted to launch a European programme. Moorwand was one of those companies shortlisted by the company who was capable of providing issuing and acquiring.

10. The evidence shows that this document was sent to Moorwand alongside others which had issuer and acquirer services to offer. Moorwand does not dispute that it received the document. The evidence of Mr Campbell states that the company only pursued discussions with issuers which offered in-house acquiring. On the evidence, in my judgment, this was clearly the aim for moving from its current issuer. As Mr Campbell explained, a move to a new issuer was an expensive operation.

11. Mr Campbell states in his evidence that Moorwand stated that it had in house acquiring. He relied upon statements made to him in meetings, in phone calls, in email correspondence and on their own channels. As to the latter, he referred me to Moorwand's website, its LinkedIN profile and its publicly issued press release. In particular, Moorwand's website specifically represented that its merchant acquiring offering, *'can provide you with a single payment gateway to a variety of payment schemes, including Mastercard, Visa, JCB and Union Pay, to allow for the acquiring of payment transactions.'* Additionally, Moorwand had published its acquisition rates in

its publicly issued press releases at 1.1% which Mr Campbell stated was competitive. The company was paying 1.2% to its then provider for acquisition services.

12. The emails which have been exhibited to his statement also provide support for Mr Campbell's statement that the company was seeking a new issuer who could also provide acquiring services. Moorwand had received the document which stated the issuing and acquiring to be effectively a key aim and in many respects the reason for the proposed change of issuer. There are also several emails from Mr Campbell addressed to Moorwand which make this point to Moorwand. The email dated 15 May 2019 from Mr Campbell to Mr Robert Courtleidge (the CEO and Director) of Moorwand attached the document which set out the reason as to why the company was seeking a new issuer and acquirer but additionally, the body of the email itself made the same point. Mr Campbell stated, *'I feel that our priority needs to be on the issuing/acquiring side rather than processing as it is that situation that creates the most difficulties for me. I have had discussion with PSI to see if they would review their netfunding process and it is now clear that isn't going to meet our requirements and hence I'd like to move on.'* An email sent by Mr Neil DaCosta (Head of Sales) of Moorwand to Mr Campbell on 28 May 2019 refers to a meeting which took place between Mr Campbell and Mr Da Costa, Mr Courtleidge and Ms Gladstone, all from Moorwand. Mr Campbell asserts that at that meeting the requirement of the company for issuing and acquiring was clearly explained. An email dated 21 June 2019 from Mr Campbell to Mr Courtleidge again sets out the company's requirement relating to acquisition. It states, *'..a key aspect for this to work is moving the acquiring piece also'*. Mr Campbell then asks about which one of Mr Courtleidge's colleagues is dealing with acquiring. That request is also set out in a later email dated 19 November 2019 addressed to both Mr DaCosta, Mr Luc Gueriane and copied to a Mr Clive Williams. It states, *'Not sure who may be dealing with your acquiring side at Moorwand but I wanted to follow up on this about how we go about setting ourselves up with yourselves. Obviously a key motivation is to have issuing and acquiring under one roof to help with our netfunding'*.

13. On the same day, Mr DaCosta replies and states, 'The email states, *'Additionally, it was useful to understand your rationale for potentially migrating your existing programme to Moorwand'*. The email states, *'Additionally, I've cc'd in Helena Louka – who is the Commercial Manager on the acquiring team based with us in the London office, who can also join the meeting.'* A further email dated 12 February 2020 from Mr Campbell to Mr Courtleidge, Ms Gladstone, Mr Gueriane and Ms Louka again refers to issuing and acquiring. The email dated 12 February 2020 from Mr Gueriane to Mr Campbell (copied in to Mr Courtleidge, Mr DaCosta, Ms Gladstone and Ms Louka) refers to a further meeting which appears to be necessary with Ms Louka as she will deal with acquiring. Mr Campbell states that at this time, being February 2020, no issues had been raised by Moorwand regarding the ability of Moorwand to deal with the acquiring services as well as the issuing services. The evidence of Mr Campbell is supported by the emails which I have set out above and this provides support to the company's claim that the position of Moorwand, as represented to Mr Campbell, was not just that Moorwand could supply the necessary acquiring services to the Company, but that it was willing to do so to the company.

14. Moreover, the emails also demonstrate that Moorwand was well aware that (1) the reason that the company approached it was because it could meet the stated aim of being provided with issuing and acquiring services from one provider, and (2) that without the provision of both services, the company had no identifiable reason to move from its current issuer. As to the latter point, it is clear from the evidence that moving issuers is an expensive process. As someone who provided issuing services, in my judgment, Moorwand was well aware of this. In her submissions, Ms Vacani submitted that the company could have decided to move issuers for many reasons. I accept that is hypothetically correct, but the evidence demonstrates something quite different. In my judgment, the evidence demonstrates that Moorwand knew that the company wanted to move to an entity which could provide both issuing and acquiring and that there was no other reason for the proposed move.

15. In his evidence, Mr Campbell states (paragraph 13) that Moorwand confirmed that it understood the company's reasons for wishing to migrate and that it could support in house acquiring. Mr Campbell states (paragraph 14) that a migration is not a simple task and requires many months of work (besides needing the approval of the current issuer). Mr Campbell states that at this point (December 2019) Moorwand *'was promoting its acquiring service to KW [the Company] (via email, meetings etc) via its website and publicity.'* At paragraph 15, Mr Campbell states, *'In April 2020, KW signed the issuing agreement with Moorwand and the migration completed on 29 April 2020. At this point, Moorwand was still advocating its acquiring capability. Their senior team was actively proposing that we get the issuing deal done and then sort out acquiring. Given that a programme can only have 1x issuer but support multiple acquirers, this was not a red flag-simply a case of prioritising resource to the issuer migration.'*

The alleged cross claim relating to fraudulent misrepresentation

16. Ms Vacani submits that there is no evidence that Moorwand made any representation that it would provide acquiring to the company. Her submission on this point was that Moorwand had stated to Mr Campbell that it could provide acquiring services but not that it would provide acquiring services. This is what is set out in the witness statement of Mr Gueriane. I will deal later with other matters raised in his evidence. Ms Vacani accepted that Moorwand had received the communications from Mr Campbell. These communications clearly set out the reasons for the proposed change of issuer. As I have stated above, the evidence demonstrates that there was effectively no point in a change of issuer for the company unless the new issuer could also provide acquiring services. As I have already set out above, the evidence established that Moorwand was aware of this point. There are no further emails exhibited between February 2020 and November 2020 although Mr Campbell deals in his evidence as to why he signed the agreement without the acquisition having been sorted out. I have set out his evidence in this regard above.

17. The email dated 3 November 2020 sent by Mr Campbell to Moorwand and addressed to both Mr Gueriane and Kevin Friedrich, repeats that a key issue for the company in the arrangements was to find a partner who provided both issuing and acquiring so that the funding issue would no longer be a problem. This email again supports, alongside the earlier emails and the witness statement of Mr Campbell, the knowledge of Moorwand and that any agreement with the company needed to deal with both issues. The email continues, '*I was told on a call last Wednesday with Helena [Louka] that the VISA acquiring is unlikely to be ready before May 2021- not least due to the development cost and it doesn't appear to be a high priority. While I understand every business has to make decisions, the concern is that it's not what we were lead to believe back in June 2019 when we signed with Moorwand and I've always been led to believe it's in advanced stage of development and just required certification. That now appears not to have been the case.'* Mr Campbell also stated, *'I know we could move to Mastercard acquiring, but I've also been clear that the Mastercard volume is pretty low so the benefit is minimal. Plus it would arguably make it problematical for us if we're splitting MC and VISA acquiring'*

18. Moorwand's evidence is to deny that any statement was made to the company relating to Moorwand providing acquiring services. Its case is that it could provide acquiring services but did not agree to provide those services to the company. It relies heavily on the terms of the Agreement entered into between the parties and the fact that the Agreement does not provide for acquiring services, only for issuing services. It asserts that after the Agreement was entered into, Moorwand did consider whether to provide acquiring services, but decided against doing so. Mr Gueriane also set out that Moorwand did propose several solutions to the cash net funding issue to the company which, according to Mr Gueraine, would enable the company to deal with the issue. Mr Gueraine called this an alternative acquiring solution for the company. Mr Campbell denies what is set out by Mr Gueraine are solutions. These solutions do not appear to have been proposed by Moorwand at the time that the agreement was entered into. There is clearly a conflict in the evidence between the evidence of Mr Gueraine and Mr Campbell which cannot be determined in the winding up proceedings.

19. Additionally, in my judgment, the fact that Moorwand was proposing solutions does not in some way nullify the company's evidence that it entered into the Agreement based on the representation that Moorwand would provide acquiring services. Solutions to an inability to provide those acquiring services is in many respects somewhat supportive of the company's claim that a statement was made by Moorwand that it would provide acquiring services. There was no reason for the company to change its issuer unless acquiring services were also offered. The issue of alternative solutions only really arose later when the company raised the failure of Moorwand to provide the acquiring services and being unable to provide VISA services until July 2021. Moorwand also makes the point that there is no evidence of any of the terms agreed in relation to the acquisition services which the company asserted Moorwand represented it would provide to the company. Mr Campbell points out in his evidence that the rate charged by Moorwand for its acquiring services was set out in the publicly available documents.

20. Furthermore, in my judgment, the contents of the 3 November 2020 email is important. It forms part of the documentation which supports, in my judgment, what Mr Campbell asserts to be the company's position, namely that Moorwand represented that it could and would and provide acquiring services to the company. There is also the evidence I have set out above which explains why Mr Campbell on behalf of the company signed the Agreement which contained no reference to the acquiring services. Moreover, the emails also provide evidence confirming Mr Campbell's evidence that Moorwand engaged its staff working on acquiring services for the company. This, in my judgment, is more than merely a representation that Moorwand could provide the acquiring services rather than it would provide them. It also supports the Company's assertion that the representation made earlier by Moorwand was fraudulent.

21. The company's evidence demonstrates that a representation was made to the Company that Moorwand had the capability of providing acquiring services to the company. This statement was also supported by the company's own website which

stated in particular that its acquiring services included VISA. Mr Campbell's evidence asserts that the relevant acquiring services needed to contain VISA because this is effectively the largest operator. Again, Mr Campbell states that Moorwand were informed by him that the company sought both issuing and acquiring services from one provider and that this would include VISA. This is supported by the email in November 2020. Moreover, the email supports the company's case that Moorwand's statement earlier was untrue because Moorwand was actually unable to provide the VISA acquiring service until May 2021 at the earliest. This contradicts what Mr Campbell had been told, namely that the acquiring services including VISA was in an advanced stage of development and only required certification. Moorwand's website also referred to be able to provide Visa acquiring services. Accordingly, this evidence supports the company's case that the statements made to the company at the earlier time were untrue. Moorwand must have known that the statement made to the company during the negotiations (as well as clearly stated in its website at the time) were not true. It is clear that there is a fundamental difference between acquiring services which are 'good to go' and those which end up merely being at a certain stage of development, which is what Ms Louka informed Mr Campbell was the position in November 2020. This was seven months after the agreement had been signed, which supports the company's case that at the time the agreement was entered into, Moorwand was unable to provide the acquiring services to the company. The evidence also supports the company's claim that it relied upon the statement made by Moorwand in entering into the Agreement. That is clear from the documentation I have referred to above as well as Mr Campbell's witness statement which I have also referred to above.

22. Although Ms Vacani made a submission that there needed to be strong evidence to establish fraud, in my judgment, her submission somewhat took the word 'fraud' out of its context. In order to establish a fraudulent mispresentation, the maker must have made the statement knowing it to be untrue/false or is reckless as to whether it is true or false. In my judgment, the evidence is sufficient to establish a serious and genuine cross claim based on the cross claim of fraudulent misrepresentation. The company's evidence taken in its entirety supports its claim that a representation was

made to it that Moorwand could and would provide acquiring services. The company relied upon this and Moorwand knew this because the only reason for the company to change issuers was to be able to have one entity providing issuing and acquisition services. The company's evidence explains why it signed the issuing Agreement including based on the representation that the acquiring services would then be sorted out. As I have set out above, the evidence demonstrates that Moorwand was unable to provide the acquiring services and in particular was unable to provide VISA acquiring services. As these services were not ready before May 2021, this supports the company's case that Moorwand knew the statement it made about being able to provide the relevant acquiring services to the company was untrue. That is a serious and genuine cross claim. The evidence relied upon by Moorwand does not establish any reason as to why the evidence of the company which sets out the above should be rejected. That evidence raises issues where, as I have already stated, would require a trial to be determined.

23. Ms Vacani relied on the terms of the Agreement and in particular relied upon certain of the clauses of the agreement. Clause 9.3 prevents deductions and set offs which Ms Vacani submitted would prevent a cross claim by the company for pre contractual misrepresentation as it would not constitute a defence to the debt. This is misconceived in so far as Ms Vacani relies upon this submission in winding up proceedings. As is clear from the cases relied upon by Ms Vacani, a debtor company facing a winding up petition can raise a set off, counter claim or cross claim. The words 'cross claim' are wide enough to cover effectively any claim raised by the debtor company against the creditor even one which would not create a defence to the debt under the terms of a contract between the creditor and debtor. In winding up proceedings, the Court has a discretion not to wind up a debtor company in circumstances where it is satisfied that there is a serious and genuine cross claim which appears to equal or exceed the debt being claimed. The debtor company is not prevented from raising such a cross claim in winding up proceedings on the grounds that there exists a contract which would prevent the claim being raised as a defence to the debt in other court proceedings.

24. Ms Vacani also relied upon clause 20 of the agreement which provides that Moorwand,'…*gives no other representations, terms, conditions or warranties of any kind, express or implied, statutory or otherwise'*. Therefore, Ms Vacani submits that the company is estopped from asserting that Moorwand made representations as to its capability to provide additional services not included in the agreement. The company is asserting a claim based upon fraudulent misrepresentation and claims rescission of the agreement. In my judgment, in so far as the claim is one of rescission, it would be somewhat surprising if such a claim could be defeated by the perpetrator of the fraudulent misrepresentation relying upon the terms of the agreement for which rescission is claimed. It may well be that such an argument finds favour with a trial judge, but in many respects, this type of argument raised by Ms Vacani merely goes further in supporting my determination that there is a serious and genuine cross claim which should be tried. That would allow these types of arguments to be dealt with as well. Equally, Ms Vacani's reliance upon the entire agreements clause contained in the agreement does not defeat the claim being asserted by the company. The entire agreement clause expressly states that it only applies to *'non fraudulent representation, warranty, arrangement or agreement which is not expressly contained in the agreement'*. In my judgment, the company's case falls outside of these terms, being formulated as a fraudulent misrepresentation.

25. The company is seeking rescission of the agreement between the parties on the grounds of the fraudulent misrepresentation. In my judgment, the value of its damages claim is not necessarily relevant when the remedy being sought is one of rescission. Generally, a claim for fraudulent misrepresentation and rescission as a remedy would prevent there being obligations owing under the terms of the agreement. It would be surprising in a successful action for rescission for fraudulent misrepresentation that the defendant could assert a claim for any sum due under the agreement entered into under those circumstances. I did raise this issue with Ms Vacani during the hearing, but Ms Vacani did not really argue against that analysis. She did submit that there was a lack of evidence relating to the value of the claim against Moorwand. There are sums set out in an email dated 1 October 2021

addressed to Mr Gueriane from Mr Campbell which set out the sums incurred by the company in relation to the migration costs. This is set out as being a total of £65,500. These are said to be the direct costs of migration. So what has been set out are the costs actually incurred by the company. The email then very frankly states that other losses are more difficult to quantify. The company then quantifies those other losses in the sum of £270,000. I entirely accept that the losses of £270,000 are on the company's own case harder to quantify. However it seems to me that the rather modest migration costs which were incurred are something that can be taken into account in so far as necessary. They exceed the petition debt on their own.

26. Ms Vacani did submit that there were certain small sums on all the outstanding invoices which related to charges made to Moorwand in relation to the company for which she submitted there could be no dispute. She did not provide an analysis of these small modest sums, nor did she seek to argue that those sums entitled the petition to proceed based just on those small sums. I was not presented with a calculation of those small sums and I did not carry out the calculation, but it did not seem that those sums exceeded £750. However, in circumstances where I am satisfied that there is a bond fide dispute which includes a claim for recission, I would not be minded to allow the petition to proceed based on such small sums. It seems to me that in so far as the Agreement would be rescinded if the company succeeds, then it is certainly well arguable that even the relatively modest charges would also not be due and owing in any event.

27. Ms Vacani also relied upon the failure of the company to bring any claim prior to the issue of the winding up petition. I have set out above the details in the email sent in November 2020 and well as the email sent in October 2021. The November 2020 is evidence of the claim, at least in summary form being raised with Moorwand. The email in October 2021 set out in summary the losses claimed by the company. This is not a case where, prior to the issue of the informal demand or the petition, there was no indication from the company of its claim against the creditor. Additionally, in his witness statement, Mr Campbell sets out the details he relies upon to assert that

Moorwand exercised ‘undue control’ over the company’s pre paid programme primarily through its threats of termination. This was to keep the company compliant and continue with the service despite the company’s view that it was not the service originally offered and it was far below the professional standards that would be expected of a competent issuer. At paragraph 31, he sates. ‘KW has been unable to move to an alternate provider, nor to use legal measures without in effect agreeing to terminate its own programme and business.’ The evidence asserts that the cost of migration is high and this can also be seen from the direct migration costs which are claimed by the company against Moorwand. Change of issuer also required the approval of the current issuer. Based on the evidence before me, I do not consider that a failure to litigate the claim for a period of two years requires me to reject the serious and genuine cross claim which I have determined has been established.

The claim relating to poor and sub standard services provided by Moorwand to the company in breach of the agreement

28. I will briefly mention the second claim relied upon by the company. As the company has succeeded in establishing a genuine and serious claim based upon its claim of fraudulent misrepresentation, I do not propose to consider in any great detail the second alternative claim raised relating to poor and sub standard services. I accept that the evidence relied upon by the company does demonstrate considerable issues relating to Moorwand’s performance of its obligations under the terms of the agreement. These appear to be denied by Moorwand. However, there is no evidence of the value of the claim made by the company. Some of those losses may well be part of the claim made in the October 2021 email but this is not entirely clear. In the circumstances, there is a lack of evidence for me to be able to determine the value of this claim. Accordingly, this part of the company’s case has not been made out based on quantum.

29. In conclusion, I am satisfied that a genuine and serious cross claim has been established by the company. I am also satisfied that this is not a case appropriate for winding up proceedings. In reaching this decision, I have taken into account the failure to litigate the claim previously. I note that there is one supporting creditor

listed but there was no attendance or representation before me at the hearing from that creditor. Accordingly, the petition will be dismissed. I will hear the parties in relation to costs at the hand down hearing.

DATED 27 February 2023