

Neutral Citation No: [2022] NICH 5

Ref: McB11795

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

ICOS No: 20/006737/01

Delivered: 07/04/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**CHANCERY DIVISION
(BANKRUPTCY)**

Between:

**ALAN McFARLAND
(A BANKRUPT)**

Debtor/Appellant

and

**ALISON BURNSIDE
(AS TRUSTEE IN BANKRUPTCY OF RODNEY ELLIOTT)**

Petitioning Creditor/ Respondent

**Mr Michael Sheil BL (P Haughey & Co, Solicitors) for the Debtor/Appellant
Ms King BL (Mills Selig, Solicitors) for the Petitioning Creditor/Respondent**

McBRIDE J

Introduction

[1] The debtor/appellant, Alan McFarland (“the debtor”) appeals against the decision of Master Kelly dated 19 November 2021 adjudicating him bankrupt.

[2] In addition the debtor seeks an extension of time to set aside the statutory demand upon which the bankruptcy order was based.

[3] The debtor was represented by Mr Michael Sheil of counsel and the Petitioning Creditor/Respondent, Alison Burnside (as Trustee in bankruptcy of Rodney Elliott) (“the Trustee”) was represented by Ms King of counsel.

[4] I am grateful to both counsel for their joint position paper setting out the relevant legal principles together with their individual oral submissions which were clear, precise and proved to be of much assistance to the court.

Evidence

[5] The application was supported by the grounding affidavit of the debtor sworn on 6 December 2021. In addition, the Trustee filed a replying affidavit sworn on 17 December 2021.

Chronology

[6] The chronology is as follows:

- 19.9.2018 Rodney Elliott was adjudicated bankrupt.
- 20.9.2018 The trustee was appointed Trustee in Bankruptcy of Mr Elliott.
- 22.10.2018 The debtor claimed ownership of a herd of cattle which the trustee believed formed part of the estate of Mr Elliott.
- 14.11.2018 The trustee issued proceedings seeking a declaration that title to the cattle vested in her.
- 12.03.2019 The court ordered the debtor to deliver up the cattle to the trustee.
- 19.03.2019 Debtor's solicitors sent correspondence to the trustee's solicitors indicating intended date of sale after 2 May 2019 and asserting a lien on the cattle for the costs of feeding and caring for them.
- 02.04.2019 The trustee issued committal proceedings against the debtor for breach of court order dated 12 March 2019.
- 05.04.2019 Return date for contempt summons. Terms of Settlement were entered into between the trustee and the debtor.
- 08.04.2019-08.05.2019 In compliance with the terms of settlement cheques totalling £35,000 paid by the debtor to the Trustee.
- 08.05.2019 The debtor's solicitors notify trustee's solicitors that third party KMC Livestock Ltd ("KMCC") were claiming ownership of some of the cattle. In light of threatened injunction proceedings debtor not going to sell cattle until third party claim resolved.
- 12.06.2019 The Trustee issued proceedings against KMCC and the debtor seeking *inter alia* a sale of the cattle.
- 19.06.2019 The court ordered the sale of the cattle and further ordered that £30,615 be held in "escrow" pending determination of KMCC's claim.

19.08.2019 Statutory Demand was served personally on the debtor.

28.08.2019 Land and Property Services (LPS) presented a bankruptcy petition against the debtor.

11.09.2019 The debtor's solicitors write to the trustee's solicitors alleging a defence to the statutory demand by way of a counterclaim.

19.09.2019 The trustee's solicitors responded by refuting the counterclaim and confirmed that £35,000 remained due and owing.

28.10.2019 Trustee files Notice of Intention to appear on LPS Bankruptcy Petition.

18.12.2019 LPS's petition listed before the Master. As the debtor who was represented indicated an intention to pay LPS debt, the trustee indicated an intention to apply to be substituted as the petitioning creditor.

08.01.2020 Hearing before the Master at which debtor was represented. The Master ordered the trustee be substituted as the petitioning creditor.

08.01.2020 A further review hearing of PLS petition before the Master. The debtor was represented.

14.01.2020 The court ordered that KMCC had no interest in the cattle and the herd vested in the trustee.

19.02.2020 The Master rescinded the order substituting the trustee as the petitioning creditor and dismissed LPS's petition. Fresh petition issued by trustee.

28.02.2020 Return date for fresh petition. Petition not served.

23.03.2020 Suspension of all court business due to Covid.

03.04.2020 Petition adjourned generally.

19.10.2021 Notification to debtor of return date of 19.11.21 for petition.

19.11.2021 Petition relisted for hearing. Debtor adjudicated bankrupt by order of Master Kelly.

Relevant legal principles- Extension of time to set aside Statutory Demand

[7] Under Order 3 rule 5 of the Rules of the Court of Judicature (NI) 1980 (the 1980 Rules) the court has a power to extend time. The criteria for the exercise of this discretion were set out in the dicta of Lord Lowry LCJ in *Davis v Northern Ireland Carriers* [1979] NI 19. In summary they are:

- “(a) Whether the time is already spent: a court will look more favourably on an application made before the time is up;
- (b) When the time limit has expired, the extent to which the party applying is in default;
- (c) The effect on the opposite party of granting the application and in particular whether he can be compensated by costs;
- (d) Whether a hearing on the merits has taken place, or would be denied by refusing an extension;
- (e) Whether there is a point of substance to be made which could not otherwise be put forward;
- (f) Whether the point is of general and not merely particular significance; and
- (g) That the rules of the court are there to be observed.”

[8] In *Benson v Morrow Retail Ltd* [2010] NIQB 140 Gillen J, when considering the *Davis* criteria held at paragraph 19:

“[19] I respectfully add one footnote to the principles set out in *Davis*. I do not consider that they should be approached artificially as a series of hurdles to be negotiated in succession by an appellant with loss of the right to obtain an extension if he cannot pass any one or more of them. To do so would be to focus too closely on appearance rather than substance. Courts must not fall into the trap of missing the wood for the trees. The central underlying question is always whether in the particular circumstances and in accordance with an overall desire to achieve justice, the discretion ought to be exercised in favour of the appellant.”

[9] Essentially the criteria in *Davis* comprise two main elements relating to (a) the duration and reasons for the delay and (b) the merits of the application specifically and more generally.

[10] In respect of the merits of the application, rule 6.005(4) of the Insolvency Rules (NI) 1991 provides that the court may set aside a statutory demand if:

- “(a) The debt is disputed on grounds which appear to the court to be substantial; or
- ...
- (d) the court is satisfied, on other grounds, that the demand ought to be set aside.”

[11] In *Allen v Burke Construction* [2010] NI Ch 9 Deeny J held that the court’s power under rule 6.005(4)(b) was analogous to the jurisdiction to set aside a judgment or grant leave to defend in a summary judgment application. He stated at paragraphs [5] and [7] as follows:

“[5] These provisions were considered by Girvan J in *James Moore Earthmoving v Commissioners of Inland Revenue* [2001] NI Ch 15. He points out that the prevailing, although not undisputed, view is that if a debtor fails at this stage he may not raise the same arguments again in regard to the debt at the hearing of a petition. He concluded therefore that a debtor should not be in a worse position than a party seeking to set aside a judgment or a party seeking leave to defend a case and avoid summary judgment. I agree with that view. The language in the former situation is of a defendant showing that he has an arguable case. In the latter the court considers whether it is in the interests of justice for the defendant to be allowed to defend. Order 14 rule 4(1) provides that a ‘defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the court.’ Rule 1 allows an application for summary judgment to be brought – “On the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed . . .

[7] It may be thought that the words of the relevant rule are clear *i.e.* in this case, is the debt ‘disputed on grounds which appear to the court to be substantial?’ The court is not holding a full trial of the matter; it must only decide if the grounds appear to be substantial. They must

be genuine. The grounds of dispute must not consist of some ingenious pretext invented to deprive a creditor of his just entitlement. It must not be a mere quibble.”

[12] *Allen* alluded to the “prevailing, although not undisputed, view” that a debtor may not be able to dispute the validity of a statutory demand at the petition stage. This court considered the issue of a debtor’s ability to challenge the veracity of the debt at the petition stage, in circumstances where the debtor had failed to previously challenge the debt by way of application to set aside the statutory demand in *Department of Finance, Land and Property Services v Foster* [2021] NI Ch 4. In *Foster* the court held at para [14] that a court could and should at the petition stage consider any dispute raised as to the debt in circumstances where there was no previous application to set aside the statutory demand. In this case no application was brought to set aside the statutory demand and in accordance with *Foster* I consider this court can therefore still entertain a challenge to the debt in the statutory demand even at the petition stage.

Consideration – Extension of Time

[13] In determining whether time should be extended I intend to consider the *Davis* criteria under the broad headings of (a) duration and reasons for delay and (b) merits of the application. I then intend to consider all the criteria and other circumstances globally to determine whether it is just and convenient to exercise my discretion to extend time.

(a) The duration and explanation for delay

[14] The statutory demand was served personally on the debtor on 19 August 2019. Thereafter, he had 18 days to apply to have the statutory demand set aside. Such an application ought therefore to have been made on or before 5 September 2019. Accordingly, time has expired by a very significant extent.

[15] There are two relevant periods of delay, namely the period commencing with personal service of the statutory demand in August 2019 until the date of the issue of the bankruptcy petition in February 2020. The second period of delay relates to the period between the issue of the bankruptcy petition and the date on which the debtor was adjudicated bankrupt by Master Kelly namely the 19 November 2021.

[16] In his affidavit the debtor seeks to explain the first period of delay by averring that he sent a copy of the statutory demand to his former solicitors on 4 September 2019. He then followed this up by an email on 5 September 2019 in which he stated:

“Can you please attend to the statutory demand and send the vouching details to whoever they need to go to as this statutory demand is nonsense in the circumstances. ... I

do not accept her entitlement to 35p let alone £35,000 given my costs are in excess of £43,000."

[17] Thereafter on 9 September 2019 following a court hearing on 6 September 2019 the debtor emailed his former solicitors in the following terms:

"Richard,

Having met and spoke with yourself on Friday after court you advised me the result/arrangement was as follows:

Committal hearing - 6.9.2019 - dismissed
Statutory demand application - withdrawn.

Could you kindly confirm this to be the case?

Regards

Alan."

His former solicitors replied as follows:

"The statutory demand is not withdrawn as yet."

On the same day his former solicitors then wrote to the trustee's solicitors as follows:

"I require an undertaking from you that you will not be proceeding on foot of the statutory demand previously served by you. Unless I receive such an undertaking forthwith I am instructed to make an application to set aside the demand. Subject to counsel's advices, my client's claim can either be incorporated into the present proceedings against the third party by way of a counterclaim against your client."

[18] The debtor submits that the email trail and correspondence indicates that he always refuted the debt claimed in the statutory demand on the grounds that he had a counterclaim based on the costs of housing and feeding the cattle. He instructed his former solicitor to have the statutory demand set aside and to issue a counterclaim and avers at para 21 of his affidavit that he believed the dispute over the statutory demand "had been resolved". In such circumstances he submits that he should not be held responsible for the default of his former solicitors in failing to apply to set aside the statutory demand within the time limit.

[19] Thereafter the debtor submits that he had no reason to be concerned about the statutory demand until he received a petition in February 2020. In respect of the

delay after the issue of the petition the debtor explains this delay arose as a result of the pandemic. He avers that before he could address the petition he was notified by the court office by letter dated 10 April 2020 that the petition had been adjourned and “at this time no new court date has been allocated. However, once the public health situation has resolved please contact the court office and cases will be provided with new court dates.” He heard nothing further until 19 October 2021 when he received correspondence from the trustee’s solicitors advising him that the petition was listed for hearing on 19 November 2021. His new solicitors only received papers from his former solicitors on 6 October 2021 and therefore had limited time to prepare for the hearing. Notwithstanding this they nonetheless made an oral application at the hearing of the petition for an extension of time to apply to set aside the statutory demand. The Master refused this application.

[20] The debtor therefore submits that he has provided an explanation for the two periods of delay and, in particular submits that the delay does not arise as a result of any default on his part.

[21] In contrast, Ms King, on behalf of the trustee, submits that the debtor has had multiple opportunities to bring the application to set aside the statutory demand but has simply failed to do so. In particular, she submits that he was aware as a result of correspondence dated 19 September 2019 sent by the trustee’s solicitors to his former solicitors that the trustee disputed any counterclaim and had confirmed that the debt remained due and owing. Despite this the debtor failed to make any application to set aside the statutory demand. Further, she submits that in August 2019 when LPS presented a bankruptcy petition against the debtor, he was legally represented at hearings on 18 September 2019, 8 January 2020 and 19 February 2020 and was therefore aware the statutory demand had not been set aside as the trustee was applying to be substituted as the petitioning creditor. Notwithstanding this knowledge he failed at that time to take any steps to have the statutory demand set aside.

[22] I am satisfied that there has been substantial delay in this case. I am further satisfied that the debtor is responsible for part of the delay for the reasons set out below.

[23] Firstly, I do not accept as he asserts in his affidavit, that the dispute over the statutory demand “had been resolved.” The debtor’s former solicitors advised him by email on 9 September 2019 that the statutory demand had not been set aside. This was in response to his query about the status of the statutory demand and therefore I find he was fully aware that the statutory demand had not been set aside at that stage. Secondly, even if he had thereafter instructed his solicitors to have the statutory demand set aside and had left the matter in their hands he must have been aware by at least the 28 October 2019 that the statutory demand had not been set aside because at that stage the trustee had served notice of intention to appear at the LPS bankruptcy petition hearing. Further, he was represented at hearings in December 2019 and January and February 2020 when it was made clear by the

trustee that she wished to be substituted as the petitioning creditor in the LPS bankruptcy petition and therefore he must have been fully aware that the statutory demand had not been set aside. Notwithstanding this knowledge, the debtor again took no steps to have the statutory demand set aside. I note that the debtor is completely silent in his affidavit about the LPS petition and the associated court hearings and his involvement in them. I draw an adverse inference from his silence about these hearings and conclude that his failure to refer to them in his affidavit is evidence that he knew the statutory demand was still extant. He has therefore been less than frank and honest with the court in respect of this period of delay and has given no explanation for his failure to have the statutory demand set aside from, at the latest, October 2019.

[24] I therefore find that the debtor was responsible for the delay in failing to have the statutory demand set aside between October 2019 and the date the petition was presented.

[25] In respect of the second period of delay namely the period after the petition was presented I accept that the delay arose as a result of the pandemic and accordingly I attach no fault to the debtor in respect of this period.

(b) Merits of the Application

[26] Mr Shiel submitted that no hearing on the merits had taken place. The debtor had a point of substance which could not otherwise be put forward if time was not extended. In such circumstances he submitted that the debtor would be prejudiced in a way that could not be compensated whilst any prejudice to the trustee could be compensated in costs.

[27] As already noted under rule 6.005(4) of the Insolvency Rules a statutory demand can only be set aside if the debt is disputed on grounds which appear to the court to be substantial. In order to determine whether the defence raised by the debtor has substance it is necessary to set out the basis for the debt claimed in the statutory demand.

[28] The debt set out in the statutory demand relates to the settlement of a dispute by the trustee in respect of the estate of Rodney Elliott. Mr Elliott was a farmer who was adjudicated bankrupt on 19 September 2018. In the course of administering his affairs the trustee sought to take possession of his herd of beef cattle but could not do so as the debtor claimed ownership of the herd. As a result of this dispute the trustee had to apply to the court to determine title to the cattle. On 12 March 2019 the court ordered the debtor to forthwith deliver up the cattle to the trustee. The debtor failed to comply with this court order. His former solicitors wrote to the trustee's solicitors asserting a lien on the cattle for the cost of feeding and caring for the cattle. The trustee issued contempt proceedings against the debtor. When these were listed for hearing on 5 April 2019 the parties entered into Terms of Settlement ("terms"). The terms, inter alia, provided as follows:

"1. The respondent (debtor) hereby acknowledges and accepts that the herd is owned by the applicant (trustee).

2. The respondent (debtor) shall pay to the applicant's (trustee's) solicitors the sum of £70,000 by cheque in the following amounts on the following days:

- (a) £10,000 on or before 12 April 2019;
- (b) £10,000 on or before 19 April 2019;
- (c) £10,000 on or before 26 April 2019;
- (d) £40,000 on or before 3 May 2019.

...

5. On payment of the said sum of £70,000 in cleared funds in accordance with these terms, the property and the herd shall pass to the respondent (debtor).

6. These terms are in full and final settlement of:

- (a) The claims of the applicant (trustee) and the respondent (debtor) to the herd;
- (b) The respondent's (debtor's) claim for compensation for the costs of feeding, housing and keeping the herd; and
- (c) The applicant's (trustee's) entitlement to costs under the order of Master Kelly dated 12 March 2019

...

9. Should the respondent (debtor) default in payments under Clause 2 of these terms, the applicant (trustee) shall at her election be entitled to:

- (a) Enforce payment of the balance of the £70,000 outstanding as a liquidated sum immediately due to the applicant, given credit for any sums paid by the respondent (debtor)..."

[29] The debtor paid three £10,000 instalments as per the terms. He failed to pay the final instalment of £40,000 on or before 3 May 2019. By letter dated 8 May 2019 his former solicitors advised the trustee's solicitors in correspondence that the debtor was unable sell the cattle as a third party, namely KMCC Livestock Ltd (KMCC),

were asserting title to some of the cattle. Subsequently the debtor paid £5,000 to the trustee making a total payment of £35,000.

[30] On 19 August 2019 the trustee served a statutory demand personally on the debtor. The particulars of debt in the statutory demand were specified as follows:

“Following agreed Terms of Settlement between the creditor and debtor dated 5 April 2019 (copy attached) the debtor was due to make a number of payments totalling £70,000. To date only £35,000 has been received and the creditor has now elected to recover the balance of £35,000 as a liquidated sum pursuant to Clause 9 of the Terms of the Settlement.”

[31] The debtor submits that he has a substantial defence to the statutory demand on the basis that he has a counterclaim which is at least equal to or exceeds the claim in the statutory demand.

[32] He submits that payment of the last instalment was conditional upon the sale of the cattle. He was unable to sell the cattle by that date because KMCC made a claim to some of the cattle. Pending resolution of the dispute about title to the cattle the debtor had to feed and house the cattle. He submits that the trustee as owner of the cattle is liable for his costs of feeding and housing the animals until he was able to sell them. As these costs are equal to or exceed the debt of £35,000 he has a counterclaim which amounts to a complete defence to the claim in the statutory demand.

[33] Under the terms the last instalment was to be paid on or before 3 May 2019 and the debtor submitted that this date was inserted in the terms as it reflected the target date for the sale of the cattle. He refers to correspondence from his solicitor dated 19 March 2019 sent to the trustee’s solicitors as support for this contention as it stated the cattle would be made available for slaughter “after 2 May 2019.” Therefore, he submits everyone understood that the sale of the cattle was required to raise the necessary funds to make the final payment of £40,000 and for this reason the date of the last instalment was to be by 3 May 2019. As a result of the third party claim the debtor submits that he could not sell the cattle and therefore was not in a position to pay the final instalment. Approval from the court to sell the cattle was not given until 19 June 2019 and it was therefore not until July and August 2019 that he was able to sell the cattle. In the intervening period he had to pay for the feed and upkeep of the cattle and he seeks to counterclaim for these costs because the cattle belonged to the trustee. He further asserts that the trustee was aware she would be liable for the costs of feeding the animals. This is because, before the terms were entered into, the debtor had claimed for the costs of housing and feeding the cattle up to that date and the terms took this claim into account as appears from clause 6(b) of the terms.

[34] The debtor submits in his affidavit at paragraph 8 that the counterclaim was in excess of £35,000 and, indeed, in correspondence with this former solicitor he states that it was in excess of £43,000. In either case the counterclaim is equal to or exceeds the claim in statutory demand and therefore he submits he has a substantial defence to the statutory demand.

[35] I am satisfied that the debtor's counterclaim has no real prospect of success and in reality is a hopeless case.

[36] First, his counterclaim arises because he could not sell the cattle due to a third party claim to the cattle and he is now seeking to recover the costs of keeping the cattle until the date of sale by way of a counterclaim. Correspondence dated 8 May 2019 from the debtor's solicitors to the trustee's solicitors states that the third party claim was initiated on 8 May 2019. Under the terms the final instalment was due on or before 3 May 2019. Consequently, the third party claim occurred 5 days after the date when the final instalment was due. I am satisfied there is no evidence of any impediment to the debtor selling the cattle on or before 3 May 2019 and I agree with Ms King's submission that there is factually no support for the counterclaim the debtor is seeking to make.

[37] Second, the debtor has not presented any evidence in support of his counterclaim. The affidavit baldly asserts that "additional funds in excessive of £35,000 were spent." No vouching documentation in support of the claim has been made. No counterclaim has been issued and therefore there are no pleadings which would otherwise set out the basis of the claim. Further as submitted by Ms King his affidavit at paragraph 8 does not suggest he sustained any loss when the cattle were sold. Consequently, given there is no evidence supporting his counterclaim and given the lack of particularity of the counterclaim and the fact no counterclaim has yet issued the court is not in a position to conclude that there is any potentially viable defence to the statutory demand by way of a valid counterclaim.

[38] Third, the terms record that they are in "full and final settlement of the debtor's claim for compensation for the cost of feeding housing and keeping the herd" - see Clause 6 (b). Accordingly, I am satisfied that he has already entered into a full and final settlement for these costs and cannot make a further claim for these costs, notwithstanding the fact title to the herd remained with the trustee.

[39] Fourth, under the terms the debtor was obliged to pay £70,000 by way of instalments on or before certain specified dates. There is no express or implied term in the terms that payment of the instalments was conditional upon the debtor selling cattle to enable him to raise the necessary finance to make the payments. The last payment was due on or before 3 May 2019. The debtor failed to pay the last instalment when due and accordingly is in breach of the terms. In these circumstances the trustee was entitled under clause 9 of the terms to enforce the balance due and owing as a liquidated sum and, accordingly, I am satisfied the debt

claimed in the statutory demand is due and owing and the debtor has no defence to it.

[40] Accordingly, I consider that the debtor has no defence to the statutory demand unless he can establish that the terms were subsequently varied to make payment conditional upon sale of the cattle. Having regard to all of the proceedings and correspondence between the parties I am satisfied that there was no variation of the terms. The proceedings brought by the trustee against the third party do not represent a variation of the terms but rather an implementation of them. As appears from the court order dated 19 June 2019 the cattle were sold pursuant to the terms of settlement. It records as follows:

“The cattle set out in the schedule to this Order be sold
...to the (debtor) pursuant to the terms of settlement
dated 5 April 2019.”

Clause 5 of the terms provided that title passed to the debtor upon payment of £70,000 and therefore the court order represented implementation of the terms of settlement and not a variation of those terms. Further, the purpose of the trustee’s application was to assist the debtor in raising finance to pay the monies due to the trustee.

[41] For all these reasons I am satisfied that the debtor has failed to demonstrate that his counterclaim has any real prospect of success.

Other *Davis* Criteria

[42] Turning to the other criteria set out in *Davis v Northern Ireland Carriers* I am satisfied that there no point of general importance arises in this case. In addition, I note that the Rules of Court are there to be observed and the purpose of the Rules is to provide a timetable for the conduct of litigation in light of the overriding objective to deal with cases justly and expeditiously in accordance with Order 1 rule 1A of the 1980 Rules.

Conclusion

[43] Having regard to the criteria set out in *Davis v Northern Ireland Carriers* I have found that the time is already spent; that there has been significant delay in bringing the application; that a hearing on the merits has not taken place but there is no point of substance to be made; that there is no point of general importance and that the Rules of Court are there to be observed.

[44] In answering the central question whether justice requires an extension of time, having regard to my findings in respect of the *Davis* criteria and having regard to all the particular circumstances of this case I consider that justice does not require

me to exercise my discretion to extend time and accordingly I refuse to exercise my discretion to extend time to set aside the statutory demand.

The substantive appeal against bankruptcy

[45] The Master adjudicated the debtor bankrupt on the basis of a bankruptcy petition grounded on the statutory demand. The statutory demand has not been set aside and for the reasons already set out the debtor has no grounds to set aside the statutory demand under rule 6.0005(4).

[46] Under Article 245(1) of the Insolvency (Northern Ireland) Order 1989:

“The High Court shall not make a bankruptcy order on a creditor’s petition unless it is satisfied that the debt or one of the debts, in respect of which the petition was presented is either:

“(a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for; or

...

(c) a debt which the debtor has no reasonable prospect of being able to pay when it falls due ...”

[47] I am satisfied the requirements of Article 245 (1) are met and accordingly the Master did not err in making a bankruptcy order.

[48] Under Article 245(3) the court can dismiss the petition if satisfied the debtor has offered to pay the debt. No such offer has been made by the debtor.

[49] Accordingly, I find there is no basis upon which this court can or should dismiss the bankruptcy petition and, accordingly, I affirm the order of the Master when she adjudicated the debtor bankrupt and I dismiss the appeal.

[50] I will hear the parties in respect of costs.