Neutral Citation Number: [2021] EWHC 3393 (Ch)

Case No: BR-2019-001140

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

Date: 17 December 2021

Before :

Deputy Insolvency and Companies Court Judge Kyriakides

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Between :

Lord George Morgan Magan	**Applicant**
- and -	
(1) Wilton Management Limited	**Respondents**
(2) Nicholas Barnett and Adrian Hyde (as trustees in bankruptcy of Lord George Morgan Magan)	

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The Applicant in person and **Edward Magan**, on behalf of the Applicant with the permission of the court
Diane Doliveux (instructed by **Jaswal Johnston LLP**) for the **First Respondent**
Thomas Cockburn (instructed by **Lord Locke (UK) LLP**) for the **Second and Third Respondents**

Hearing date: 19 November 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Deputy ICC Judge Kyriakides

Introduction

1. This is an application by Lord George Morgan Magan ("**the Bankrupt**") for an order pursuant to section 282(1)(a) of the Insolvency Act 1986 ("**the 1986 Act**") that the bankruptcy order made against him on 8 September 2020 ("**the Bankruptcy Order**") be annulled. The respondents to the application are Wilton Management Limited (a company incorporated in Dubai) ("**the Petitioning Creditor**") and the trustees in bankruptcy of the Bankrupt's estate, Nicholas Barnett and Adrian Hyde ("**the Trustees**").

2. The application was issued by way of an application notice on 21 October 2020 ("**the Annulment Application**"). The grounds relied upon in support of the Application were that the "*bankruptcy order should not have been made as the Respondent did commit a fraudulent act in seizing monies under false pretences, that would otherwise have enable the respondent's loan to be serviced.*"

3. On 7 April 2021 the Bankrupt issued a further application seeking the permission of the court to annul the Bankruptcy Order on the basis that there were grounds existing at the time the order was made, which showed that it should not have been made. The application was supported by the second witness statement of the Bankrupt dated 6 April 2021. In that witness statement, the Bankrupt introduces a second ground in support of the Annulment Application, namely, that at the time of the Bankruptcy Order he had no assets, that the Petitioning Creditor knew that he had no assets and that any bankruptcy order made against him would be "*pointless and futile*".

4. As both grounds were fully argued before me at the hearing on 19 November 2021, permission is granted to the Bankrupt to amend the Annulment Application to include the additional ground referred to in paragraph 3 above.

Background

5. The Bankrupt was once a very successful businessman. His evidence states that he earned large sums of money and acquired significant assets, almost all of which he

settled into three main family trusts, namely, the Eaglehill Trust (set up on 1 April 1999), the Clonearl Trust (set up on 18 February 1988) and the 1984 Settlement Trust, of which he is a beneficiary (set up on 21 May 1984). There is also an fourth trust, which is a purpose trust called the Irish Heritage Preservation Trust ("**IHPT")**. From 5 April 2013 the family trusts have been managed by Dixon Wilson Trustees Limited ("**Dixon Wilson Trustees**"). From 7 November 2018, Wilton IOM Trustees Limited ("**Wilton IOM Trustees**") have also been trustees of the 1984 Settlement Trust. The IHPT was managed by different trustees.

6. It is the Bankrupt's case that the trusts were mismanaged by Dixon Wilson Trustees and that as a result of their mismanagement, their value was reduced from over £100 million to about £26 million. Proceedings were issued against the Dixon Wilson Trustees in three jurisdictions, including Ireland and, according to the Bankrupt, have been ongoing for a number of years.

7. In October 2018 the Bankrupt required funds in order to pay arrears of rent which he owed to Dixon Wilson Trustees in respect of his family home at Castletown Cox House in Ireland ("**Castletown House**"). Castletown House is part of the Castletown Cox Estate ("**Castletown Estate**"), which was an asset of the Eaglehill Trust. The Irish court made an order against the Bankrupt requiring him to pay the arrears of rent as a pre-condition of his being permitted to maintain his proceedings in Ireland against Dixon Wilson Trustees.

8. A loan of £600,000 ("**the Loan**") (£576,793.80 net after the deduction of various fees) was arranged for the Bankrupt with the Petitioning Creditor by one Tony Flanagan ("**Mr Flanagan**"), the CEO of Wilton (UK) Group Limited ("**Wilton Group**"). It is the Bankrupt's case that Mr Flanagan is, in fact, the de facto controller of all of the companies in the Wilton group, including the Petitioning Creditor.

9. The loan was provided pursuant to a loan agreement dated 26 October 2018 ("**the Loan Agreement**"). It was to be repaid within six months from the date of the first drawdown with an option to extend the period by a further three months. The Bankrupt's liabilities under the Loan Agreement were guaranteed by the Bankrupt's

son, Edward Magan, and were secured by negative pledges over: (i) the Bankrupt's and his wife's then home at 9 Cambridge Place; (ii) an investment property owned by the Bankrupt at 10 Cambridge Place (the title deeds to which, together with a blank transfer, were be to be transferred to the Petitioning Creditor); and (iii) any rights that the Bankrupt might have as a beneficiary of any of the family trusts.

10. Pursuant to the Loan Agreement, on 31 October 2018 the sum of £104,254 was transferred to the client account of GJ Maloney, the Irish solicitors acting on behalf of the Bankrupt and his son, in order to pay legal costs incurred by them in relation to the Irish proceedings, and on 15 November 2018 the sum of £406,475 was transferred to the client account of GJ Maloney for the purpose of paying the arrears of rent that the Irish court had ordered the Bankrupt to pay. On 20 May 2019 GJ Moloney confirmed that the above payments had been made in accordance with the instructions from the Bankrupt. It would appear that the balance of the loan in the sum of £66,064.80 was retained by the Petitioning Creditor and was never paid over to the Bankrupt.

11. On 13 November 2018 Edward Magan instructed his solicitors, Farrer & Co., to transfer further funds of €363,000 to the client account of GJ Mahony. In May 2019 GJ Mahoney came off the record for the Bankrupt and his son in the Irish proceedings. By this stage, the funds held by them, and which had been transferred to them by Edward Magan, had reduced to the sum of €201,253.27, of which, the Bankrupt states in his evidence, the sum of €114,378.60 had been earmarked for the Irish Revenue. These funds were subsequently transferred to the Bankrupt's client account, which appears to have been held by Wilton IOM Trustees.

12. On 21 June 2019 the Petitioning Creditor made demand for repayment of the Loan and interest in the sum total of £690,950.68. On 27 June 2019 Mr Flanagan sent to the Bankrupt a letter addressed to him at Wilton Group from the Petitioning Creditor dated 25 June 2019, which claimed that the sum of €202,001.39 ("**the Funds**") received from GJ Maloney represented the refund of a payment made by the Petitioning Creditor pursuant to the Loan Agreement on 15 November 2018 and instructed Wilton Group to retain the funds on account and not to make any distribution of them pending enforcement of the Petitioning Creditor's security as

the Loan was in default. When on 1 and 2 July 2019 the Bankrupt asked Mr Flanagan to use the funds to discharge his liabilities to the Irish Revenue, Mr Flanagan referred back to Wilton Group's letter and suggested that he contact James Robson of Wilton Group. The Bankrupt followed this advice, but to no avail. It is the Bankrupt's case that although Mr Flanagan knows that the Funds do not belong to him, but to his son Edward, the Funds remain with Wilton IOM Trustees in an account with Barclays Bank plc.

13. On 17 August 2019 the Petitioning Creditor served a statutory demand on the Bankrupt ("**Statutory Demand**") claiming that the sum of £805,361.64 was owed under the Loan Agreement. No application was made by the Bankrupt to set aside the Statutory Demand and on 26 September 2019 the Petitioning Creditor presented a bankrupt petition against the Bankrupt ("**the Petition**").

14. The Petition was adjourned on a number of occasions on the basis that Edward Magan agreed to release the Funds held in the IOM account in part payment of the Bankrupt's liabilities to the Petitioning Creditor and expected to receive further funds from which he could discharge the balance. Unfortunately, such funds were never realised.

15. The Petition was also initially opposed on the grounds that the Bankrupt had a "counterclaim" against the Petitioning Creditor based on the allegation that the Petitioning Creditor and Mr Flanagan had defrauded Edward Magan by "seising" the Funds, which they knew belonged to him, under false pretences. It was said that by this fraud, the Bankrupt was prevented from receiving the benefit of these Funds, which would have reduced the amount owed to the Petitioning Creditor.

16. The Bankrupt was throughout the bankruptcy proceedings represented by solicitors and counsel. At the final hearing of the Petition on 8 September 2020, the Bankrupt's counsel's abandoned the "fraud" and "counterclaim" points and the Bankruptcy Order was made.

The Law relating to section 282(1)(a) of the 1986 Act

17. Section 282(1)(a) provides that the court "*may annul a bankruptcy order if it at any time appears to the court… that, on any ground existing at the time that the order was made, the order ought not to have been made*".

18. The approach of the courts in considering whether a bankruptcy order should be annulled under section 282(1)(a) is explained in *JSC Bank of Moscow v Kekhman* [2015] 1 W.L.R 3737. From this case, the following principles may be derived (see, in particular: [67], [68], [74], [88]-[90]):

    18.1. the court normally needs to decide the following three questions: first, what were the grounds existing at the time that the order was made (**Question 1**); (2) secondly, whether on those grounds, the order ought not to have been made (**Question 2**); and (3) thirdly, if the answer to Question 2 is: "the order ought not to have been made", whether it should annul the order (Q**uestion 3**);

    18.2. in relation Questions 1 and 2, the court is not confined to the facts and matters that were drawn to the court's attention at the time that the bankruptcy order was made and may take into account any further evidence adduced and further submissions made regarding grounds that existed at the time of the order. It may also take into account events subsequent to the making of the bankruptcy order, if they cast "reliable light" on the grounds existing at the time the bankruptcy order was made;

    18.3. in relation to Question 2, the court may have to consider whether the court had jurisdiction to make the bankruptcy order or it may have to consider whether in its view, the bankruptcy "ought not to have been made" as a matter of discretion;

    18.4. when considering whether the order ought not have been made as a matter of the court's discretion, the court hearing the annulment application is not conducting an appeal against the exercise of a discretion, but must exercise an original jurisdiction and, taking into account all of the relevant material and submissions before it, decide whether or not a bankruptcy order ought to have been made;

18.5. in a case where the material before the court hearing the annulment application is the same as the material considered when the bankruptcy order was made, the court will normally not address Question 2 in any detail, but will proceed directly to Question 3 in order to hold that even if the bankruptcy order ought not to have been made, in the absence of an appeal against the order, the court should exercise its discretion against annulling that order.

19. Even if the court is satisfied that the bankruptcy order ought not to have been made, as Question 3 shows, the court still has a discretion as to whether or not to annul the bankruptcy order. However, in exercising this discretion, the cases show that:

19.1. the court is not bound, as a matter of its discretion, to annul the bankruptcy order. It must be satisfied that it is doing the right thing by the creditors for whose benefit the bankruptcy order has been made and, in particular, that they will not be prejudiced by the exercise of the discretion (*Re Owo-Sampson v Barclays Bank plc (No. 2)* [2003] EWHC 2900 (Ch) at [30]);

19.2. the court will take into account whether the petitioning creditor has acted reasonably and the debtor has failed to raise defences which were open to him at an earlier stage. In such a case, a critical factor will be whether, if the bankruptcy is annulled, the debtor will be able to satisfy the petitioning creditor's debt and meet his other liabilities (*Re Owo-Sampson v Barclays Bank plc (No. 1* [2003] EWCA Civ 714 at [35]). So, for example, the court may exercise its discretion against annulling a bankruptcy order if to do so would be pointless, because the circumstances are such that it is obvious that a new bankruptcy order will certainly be made or where circumstances have changed following the making of the bankruptcy order, which would make it inappropriate to make an annulment order (*JSC Bank of Moscow v Kekhman* at [67], [68], [74]).

The grounds of the Annulment Application

20. In this case, there are two grounds on which the Bankrupt seeks the annulment of his bankruptcy:

    20.1. the first ground is that the Petitioning Creditor fraudulently prevented the Funds from being released in order to reduce the Petition debt ("**the First Ground**");

    20.2. the second ground is that at the time of the bankruptcy order, to the knowledge of the Petitioning Creditor, he had no assets and, therefore, that the Petitioning Creditor knew that his bankruptcy would be pointless and futile ("**the Second Ground**").

21. I shall consider each ground in turn.

The First Ground

22. The first ground relied upon is that the Petitioning Creditor, under the direction of Mr Flanagan, fraudulently "seised" the Funds, which, to the Petitioner Creditor's knowledge, belonged to Edward Magan, and thereby prevented them from being released to Mr Magan and used for the purpose of reducing the Bankrupt's liability to the Petitioning Creditor. It is contended that if these Funds had been released, the Bankrupt could then have sought finance to repay the balance, although this is not something that had occurred to the Bankrupt at the time of the bankruptcy hearings.

23. The Bankrupt also raised a subsidiary point by arguing that, in any event, his liability to the Petitioning Creditor as at the date of the Statutory Demand was not £805,361.64 as claimed.

Question 1

24. In my judgment, there are grounds, which support the Bankrupt's claim that the sum of £805,361.64 was not the correct figure for the amount outstanding under the Loan Agreement as at the date of the Statutory Demand. The Petitioning Creditor has not provided a breakdown of this sum, in either the Statutory Demand, the Petition or its evidence, and, even taking into account that interest was chargeable

under the Loan Agreement at the rate of 4% per month, it is difficult to see how the Bankrupt's liability to the Petitioning Creditor could have increased from £690,950.68 as at 21 June 2019 to £805,361.64 by 17 August 2019.

25. Further, there were grounds existing at the time, which showed that Edward Magan had a real prospect of establishing that:

25.1. the Funds retained by the Petitioning Creditor belonged to him and, no demand having been made under his Guarantee, it had no right to retain them; and

25.2. if the Funds had been released to him, he would have used them to reduce his father's debt to the Petitioning Creditor.

Question 2

26. Although as a result of the matters referred to in paragraphs 15, 16 and 28.1, I do not need to spend much time on Question 2, as it has been argued before me, I will nevertheless consider it.

27. .A court may dismiss a bankruptcy petition either on jurisdictional grounds or on discretionary grounds. In relation to the latter, section 266(3) of the 1986 Act provides:

"The court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a bankruptcy petition".

28. In my judgment, the First Ground is not sufficient for the court to reach the conclusion that a bankruptcy order ought not to have been made either on jurisdictional grounds or as a matter of its discretion, for the following reasons:

28.1. the First Ground was raised in the course of the Petition proceedings and was abandoned; in my judgment, rightly so;

28.2. the Bankrupt and his counsel admitted that a debt was owed. Even if the figure owed as at 17 August 2019, the date of the Statutory Demand, was not as high as £805,361.64, it was at least equal to the sum of £690,950.68 plus additional accrued interest from 22 June 2019, a sum which the Bankrupt does not dispute in this application;

28.3. the claim upon which the First Ground is based is a claim vested in Edward Magan, not the Bankrupt;

28.4. even if the Funds had been released and used to reduce the debt owed to the Petitioning Creditor, there would still have been a sum in excess of £500,000 owed by the Bankrupt to the Petitioning Creditor, which could not be paid;

28.5. whilst it is asserted in the evidence filed on behalf of the Bankrupt that, if the Funds had not been "seised", he could have sought finance to repay the amount owed (the implication being that the court, in such circumstances, would have adjourned the Petition), no evidence has been produced to show that there was a real prospect of his obtaining such finance and, indeed, in view of the Bankrupt's Second Ground, it is difficult to see how this assertion can seriously be maintained by him.

29. In light of the above, the First Ground is not a sufficient ground for the court to conclude that a bankruptcy order ought not to be made. Question 3, therefore, does not arise for consideration.

The Second Ground

Questions 1 and 2

30. The Bankrupt argued that at the time he was made bankrupt he had no assets and, that, as subsequent investigations by the Trustees have revealed, no assets would be forthcoming. He, therefore, submitted that a bankruptcy order against him would serve no useful purpose and bring no benefit to his creditors. Further, he argued that the Petitioning Creditor, through Mr Flanagan and a Mr Robson, knew that he had no assets and, accordingly, that the Petition was presented for an improper purpose.

Following an email dated 9 October 2020 from Strand Associates Limited (an acknowledged creditor of the Bankrupt in the sum of £4,475,724.18) to Edward Magan, the Bankrupt alleges that the improper purpose was to "break open" the 1984 Settlement Trust so as to make the assets in that trust, or at least 25% of them, available to his creditors.

31. The argument, if accepted, does not provide, as a matter of the court's jurisdiction, a defence to the Petition, since, as set out above, there is a clear undisputed debt, which the Bankrupt cannot pay. However, it is relevant to whether the court, as a matter of its discretion under section 266(3) of the 1986 Act, should make a bankruptcy order.

32. The principles to be derived from the cases, which are relevant to how the court should exercise its discretion under section 266(3) where an assertion is made by a debtor that he has no assets may be summarised as follows:

    32.1. bankruptcy provides a system of collective execution against a debtor's property and ensures a fair distribution of assets amongst creditors. It also allows investigations into the bankrupt's assets and affairs;

    32.2. to engage the court's discretion a debtor must establish to the court's satisfaction both that there are no assets and that there is no prospect of such assets;

    32.3. the burden on the debtor to satisfy the court that there are, and will be, no assets available for distribution, and in demonstrating that no useful investigation of his assets and affairs can be undertaken in bankruptcy, is a heavy one.

    (See: *Harriet Lock v Aylesbury Vale District Council* [2018] EWHC 2015 (Ch) at [21], [34] and [35]).

33. The question, therefore, in this case is whether the Bankrupt has satisfied the heavy burden he has that at the time he was made bankrupt, he had, and would have, no

assets and any investigations into his assets and affairs would serve no useful purpose. In my judgment, for the reasons set out below, the Bankrupt has not satisfied this heavy burden.

34. The Petitioning Creditor submitted that the Bankrupt had assets at the time of his bankruptcy and also that the Trustees' investigations into the affairs of the Bankrupt to date showed that there was a prospect that further assets may still be established. The Trustees, who I accept were neutral, also produced evidence, which their counsel submitted, showed, at least, on its face that the Bankrupt had assets at the time of his bankruptcy and that investigations were ongoing, which might result in further assets being claimed for the estate of the Bankrupt. The assets alleged and the possible further assets, together with the parties' arguments in relation to the same, are set out below.

The arguments of the parties

*The property known as Whitechurch Church, Whitechurch, Carrick-on-Suir, Co. Kilkenny ("**Whitechurch**")*

35. The Trustees' evidence is that in 2002 Whitechurch was purchased for the sum of €15,000 by the Bankrupt in his own name. The Trustees sold Whitechurch for the sum of €40,000. The net proceeds of sale in the sum of €30,214.25 were transferred to the Trustees on completion on 26 October 2021.To date no claim has been made by any other party to the proceeds of sale. By way of documentation, the Trustees have adduced a certified conveyance of Whitechurch from The Representative Body of the Church of Ireland to the Bankrupt on 28 March 2002, which was registered at the Registry of Deeds. Further, the search carried out at the Registry of Deeds, which has been produced, shows that the Bankrupt did not convey this property to any other party after his purchase of it in March 2002.

36. The Bankrupt argued that Whitechurch was not, in fact, owned by him, but that he held it as nominee for Castletown Foundation (BVI) Limited ("**Castletown Foundation**"), which is part of the Eaglehill Trust. It was said that Whitechurch formed part of the Castletown Estate, which was also in the name of Castletown Foundation. In support of his submissions, the Bankrupt relied on:

36.1. his claim that at least two thirds of the costs of repairs to Whitechurch, which were in the sum of €150,000, were paid for by Castletown Foundation. He argued that these payments gave Castletown Foundation "*de facto controlling ownership*". However, he conceded that there would need to be a forensic accounting exercise of all trust accounts for the above figures to be confirmed;

36.2. a confirmation of instruction given by Jonathan Benford of Dixon Wilson Trustees on 25 October 2016 for the purpose of enabling Colliers to value Castletown Estate, which refers to Whitechurch as forming part of the Castletown Estate;

36.3. the valuation report by Colliers, which refers to Whitechurch as being part of the Castletown Estate;

36.4. a valuation report produced by Michael H Daniels & Co. on 9 December 2014, which refers to the Castletown Estate including Whitechurch;

36.5. the year-end financial statements for Castletown Foundation to 5 April 2012 and for subsequent years, which refer to the freehold owned by the Foundation as being "*456 acres of land (including Whitechurch and Castlane House) at Castletown* Estate".

37. The Bankrupt also made the point that the Trustees had not disclosed the name of the purchaser of Whitechurch and voiced a suspicion that the buyer was not an arm's length buyer, but someone associated with his bankruptcy, and that Dixon Wilson Trustees may have colluded with buyer and/or the Trustees to make it appear that Whitechurch belonged to the Bankrupt, because it was in Dixon Wilson Trustees' interests and those of their solicitors, A&L Goodbody (who had formerly acted as solicitors to the Bankrupt), for the Bankrupt to be destroyed (presumably by stopping him from pursuing his litigation against them).

The 150 boxes of personal papers relating to the Bankrupt's affairs, together with artworks, books and other (potentially valuable) personal effects

38. In his first witness statement, Mr Barnett, one of the Trustees, states that when Whitechurch was inspected he discovered 150 boxes of personal papers relating to the Bankrupt's affairs, together with artworks, books and other (potentially valuable) personal effects, which he has now removed and placed into storage.

39. In reply, Edward Magan in his second witness statement dated 12 November 2021 asserts that the majority of the effects found in Whitechurch are his own personal property. He says that he was an officer in the Irish Guards and because he was living outside of Europe, most of his personal property was stored at Castletown House. When that property was sold, his personal effects were removed from Castletown House and stored in Whitechurch. He, therefore, claims that the artworks, books, electronic equipment, clothing, including military uniforms and equipment, as well as papers, belong to him. The artworks he states, include portraits and pictures gifted to him on his christening by his grandparents and other fine artworks, including an original portrait of the author of the "Pugwash" cartoons who was a friend of his grandfather's working in MI5.

Shotguns

40. The Trustees in their evidence state that they were made aware of the fact that the Bankrupt owned a number of potentially valuable shotguns that were handed in to Thomas Town Garda Station on 23 September 2019 by the Estate Manager of Castletown Estate, which they are currently taking steps to recover.

41. The Bankrupt accepts that two of the shotguns belong to him and contends that the other one belongs to Edward Magan, having been gifted to him on his sixteenth birthday, although licences for all three guns are held in the name of the Bankrupt. Edward Magan in his evidence states that he believes that the shotguns, which are owned by his father and currently held by Thomas Town Garda Station as part of a criminal investigation, may have a value of between €1,000 and €1,500.

The Castletown Wine Collection

42. The Trustees in their evidence state that they are making enquiries relating to a valuable interest in what is known as the Castletown Wine Collection ("**the Wine Collection**"), which they say is worth at least €200,000. They state that they are currently in dispute with a creditor over this asset, but believe that there should be a material benefit to the bankruptcy estate from it.

43. The Bankrupt accepts that the Wine Collection was his and that it was not transferred by him to the trusts. However, he claims that the Wine Collection no longer belonged to him by the date of his bankruptcy, but to a one John Donnelly, or more accurately, to his company, Eastleigh Limited ("**Eastleigh**"). Although not in his evidence, the Bankrupt included in his bundle a sale agreement dated 21 November 2019 between Eastleigh and the Bankrupt, whereby the Bankrupt sold the Wine Collection to Eastleigh (on the basis that it had a value of £120,000) for the sum of £80,000 (being a 40% discount) ("**the Eastleigh Sale Agreement**").

The art collection stored with Gurr Johns Limited

44. The Trustees in their evidence state that they are still investigating the Bankrupt's interest in an art collection ("**the Art Collection**") that was stored with Gurr Johns Limited ("**Gurr Johns**"). It would appear from those investigations that the Bankrupt borrowed the sum of £600,000 from Gurr Johns in 2015 and allegedly provided security over 18 artworks (which the Trustees state were conservatively valued at about £1.4 million). The Trustees have produced what appears to be a schedule to a loan and security agreement dated 21 April 2015, which values paintings on the following bases: a pre-sale low estimate; an insurance value high estimate; and a reserve value. The total of the pre-sale low estimate was £1,335,000 and the total of the reserve valuation was £1,195,950.

45. The Trustees' understanding is that Gurr Johns sought to enforce its security and sold the majority of the Art Collection. In their evidence, they state that they are now pursuing Gurr Johns for a recovery for the benefit of the Bankrupt's estate. I was told at the hearing by counsel for the Trustees that the basis of their claim was that the Art Collection had been sold at an undervalue.

46. The Bankrupt does not deny that the Art Collection belonged personally to him, but provides little by way of evidence relating to the Art Collection, save that it was seised and sold by Gurr Johns many years ago. However, in his skeleton argument, the Bankrupt refers to the amount that was owed him to Gurr Johns as being in the sum of about £800,000 plus the costs of restoring some of the paintings and states that some of the paintings were sold privately and some at auction and of the ones sold at auction, at least two paintings did not achieve their reserve with the result that Gurr Johns was entitled to sell these paintings up to 40% less than their reserve price under its agreement with the Bankrupt. The Bankrupt, however, has not been provided with any reconciliation statement by Gurr Johns.

*The shares in St James's Company Limited ("**St James's**") and other assets*

47. Finally, the Trustees state that the Bankrupt was the sole shareholder and director of St James's, which receives funds from the Bankrupt's pension and that at present, the Trustees consider the shareholding to form part of the Bankrupt's estate. They also say that they have investigations into other potential assets of the Bankrupt's.

48. The Bankrupt does not comment on his shareholding in St James's, although he admits that he has a pension, which he says the Trustees have prevented him from drawing down on. The Bankrupt has provided information to the Trustees relating to his pension fund.

Discussion

49. In my judgment, the Bankrupt has not discharged the heavy burden on him by showing that at the time that the Bankruptcy Order was made he had no assets, would have no assets and that there was nothing to investigate. I have reached this conclusion for the reasons set out below.

50. First, on the evidence before me there is currently, at the very least, a strong prima facie case that Whitechurch belonged to the Bankrupt at the date of his bankruptcy. The documents show that Whitechurch was purchased by the Bankrupt in 2002 and that it remained in his name until it was sold by his Trustees. Whilst the Bankrupt claims that it belonged to the Eaglehill Trust and formed part of Castletown Estate

(in respect of which some evidence has been adduced by him), to date no claim to this effect has been made by Dixon Wilson Trustees. Further, although in about October/November 2019 Castletown Estate was sold by Dixon Wilson Trustees to one Kelcy Warren, there is no evidence that the buyer has claimed that Whitechurch was included in the sale and was owned by him, a matter which is supported by a letter dated 16 November 2020 from A&L Goodbody, who acted for Dixon Wilson Trustees in the sale of the Castletown Estate, in which they informed the Bankrupt that prior to the completion of the sale, Dixon Wilson Trustees had arranged for personal items at Castletown House to be stored in Whitechurch on the basis that this property remained in the Bankrupt's possession. I appreciate that the Bankrupt claims that there might have been some kind of conspiracy between Dixon Wilson Trustees and the buyer not to make a claim, but at the moment there is no evidence before me to support such a claim. Finally, I note that in his skeleton argument, the Bankrupt concedes that Whitechurch is a "*tentative exception*" to his claim that he had no assets at the date of his bankruptcy.

51. Secondly, it would appear that some of the items stored initially in Whitechurch and since stored elsewhere by the Trustees may well belong to the Bankrupt. In the second witness statement of Edward Magan dated 12 November 2021, Mr Magan claims that the majority of the effects at Whitechurch belong to him, although no determination to this effect has yet been made, although the burden will be on Mr Magan to prove the same. By claiming that the majority of items belong to him, Mr Magan implicitly concedes that some of the items do not belong to him. No details are, however, provided by the Bankrupt or by Mr Magan as to which items may, therefore, belong to the Bankrupt, but the inference appears to be that some may well belong to him, even on the Bankrupt's case.

52. Thirdly, it is admitted by the Bankrupt that at least two of the shotguns belonged to him at the date of his bankruptcy. Whilst the Trustees assert that the guns are potentially valuable and the Bankrupt claims to the contrary, there was no valuation evidence before me. However, these assets clearly formed part of the Bankrupt's estate at the date of his bankruptcy.

53. Fourthly, it is admitted that the Wine Collection, which it is agreed is valuable, did belong to the Bankrupt. Whilst the Bankrupt states that it was sold prior to his bankruptcy, there is currently a dispute between Eastleigh and the Trustees regarding its ownership. I have not been told the exact nature of the dispute and I am not asked to determine it, but I note that the Eastleigh Sale Agreement was made after the date of the Petition. This may mean that the sale to Eastleigh was void under section 284 of the 1986 Act (although this is not necessarily the case), in which case ownership of the Wine Collection may not have passed to Eastleigh. At the very least, it would appear that the Trustees are claiming ownership to the Wine Collection and that there is a dispute which has yet to be determined.

54. Fifthly, although it would appear that the Art Collection deposited with Gurr Johns by way of security was sold by Gurr Johns and, therefore, no longer belonged to the Bankrupt at the date of his bankruptcy, the prices which these paintings achieved in light of the valuations attached to the loan agreement (which, on any of the stated bases showed that, if achieved, there should have been a surplus) clearly called for an investigation by the Trustees. The Bankrupt did not receive any funds from these sales and was not provided with any reconciliation or details of the sales (save for the failure of two paintings to achieve their auction reserve). The Trustees, however, consider that they have a claim against Gurr Johns, presumably based on the duty a chargee owes to a chargor in realising secured property. Such a claim would have been property that belonged to the Bankrupt at the date of his bankruptcy.

55. Sixthly, it is clear that the shares in St James's belong to the Bankrupt, although there is no evidence regarding whether they can be sold and, if so, whether they, in fact, have any realisable value.

56. Finally, there are ongoing investigations regarding other assets that may be recovered or which may exist. Whilst the Bankrupt takes exception concerning comments about "piercing" the Eaglehill Trust, the Trustees are under a duty to investigate not only this trust, but also the other trusts, in order to ascertain whether or not there are any grounds on which they could be set aside. I further note from the documents produced by the Bankrupt that the Bankrupt may have other chattels,

although their value is not clear. For example, the Bankrupt has disclosed an agreement dated 31 October 2019 between himself and John Donnelly for a loan by John Donnelly to him of £5,000. The loan was secured by a grand piano and three 18th century pictures (which were assets at the Bankrupt's home at 9 Cambridge Place). The security was, however, created after the date of presentation of the Petition and may, therefore, be a void disposition under section 284 of the 1986 Act. If those assets were, therefore, not sold prior to the Bankruptcy Order being made, they may have formed part of the Bankrupt's estate as at that date. It is further not clear whether the Bankrupt owned as at the date of his bankruptcy any other potentially valuable chattels, which were at 9 and 10 Cambridge Place prior to their sale in 2019.

57. Accordingly, the Bankrupt has not satisfied me that the Bankruptcy Order against him was futile and pointless. Not only does the Bankrupt appear to have had assets and the prospect of further assets at the date of his bankruptcy, but there were, and are, matters which require investigation. Balanced against this, the evidence shows that the value of creditors' claims in the bankruptcy are in excess of £12.6 million, including wholly independent creditors with debts totalling about £6 million.

58. In light of my conclusion in paragraph 57, the Bankrupt's argument that the Petitioning Creditor knew that the Bankrupt had no assets must also fail.

59. Accordingly, the Second Ground is not a sufficient ground for the court to conclude that a bankruptcy order ought not to have been made against the Bankrupt. Question 3, therefore, does not arise for consideration.

Conclusion

60. Whilst I sympathise with the Bankrupt's position, in my judgment, he has failed to show that there were grounds existing at the time of his bankruptcy from which the court can conclude that no bankruptcy order ought to have been made. I will, therefore, dismiss the Annulment Application.

61. I would like to thank all the parties for their helpful submissions. In particular, I would like to thank both the Bankrupt and his son for their clear, concise and well-argued submissions.