Neutral Citation Number: [2024] EWHC 2553 (Ch)

Case No: BR-2024-MAN-000002

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

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 10 October 2024

Before :

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

LEE JONES	**Applicant**
- and –	
ASTON RISK MANAGEMENT LTD	**Respondent**

- -
- -

The Applicant appeared in person
Louis Doyle KC (instructed by **Fieldfisher LLP**) for the **Respondent**

Hearing date: 30 September 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 10 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

HHJ CAWSON KC:

Contents

Introduction

1. The present applications follow on from proceedings brought by the Respondent, Aston Risk Management Ltd ("**Aston**"), against the Applicant, Lee Jones ("**Mr Jones**") and others (BL-2020-MAN-000067) ("**the Main Proceedings**") in which I gave judgment on liability on 20 March 2023 ([2023] EWHC 603 (Ch)), and judgment on quantum on 9 February 2024 ([2024] EWHC 252 (Ch)). By my Order dated 23 February 2024, made at a hearing to deal with consequential matters following the hand down of my judgment on quantum, I awarded judgment in favour of Aston against Mr Jones in the sum of £1,661,483.27 inclusive of interest to date, but subject to further continuing interest until payment, plus costs in the sum of £365,820.

2. I am presently concerned with four applications ("**the Applications**"):

   i) An application dated 15 December 2023 ("**the First Jones Application**") whereby Mr Jones applies to set aside a statutory demand dated 15 December 2023 ("**the First Statutory Demand**") served upon him by Aston in respect of the sum of £10,000 ordered to be paid by Mr Jones by an interim order for the payment of costs that I made in the Main Proceedings on 23 November 2023;

   ii) An application dated 29 April 2024 ("**the Second Jones Application**") whereby Mr Jones applies for *"an anti-suit injunction"* against Aston restraining the latter from presenting a bankruptcy petition against him;

   iii) An application dated 20 May 2024 ("**the Third Jones Application**") whereby Mr Jones applies to set aside a statutory demand dated 13 May 2024 ("**the Second Statutory Demand**") served upon him by Aston in respect of the sum of £2,047,491.23, being the total of the sums awarded against Mr Jones in the Main Proceedings as referred to in paragraph 1 above, plus additional interest of £20,187.96;

   iv) An application dated 18 July 2024 brought by Aston ("**the Service Out Application**") whereby Aston seeks permission to serve bankruptcy proceedings

on Mr Jones out of the jurisdiction pursuant to paragraph 1(8) of Schedule 4 to the Insolvency (England and Wales) Rules 2016 ("**IR 2016**") and CPR PD 6B paragraph 3.1(1), and an order pursuant to paragraphs 1(2) and (4) of Schedule 4 to IR 2016 for substituted service of such bankruptcy proceedings by way of process server delivery to an address of Mr Jones in Guernsey, and by email.

3. The principal question raised by the Applications is as to whether, in respect of any bankruptcy proceedings that might be brought by Aston against Mr Jones, any of the jurisdictional conditions set out in s. 265(1) and (2) of the Insolvency Act 1986 ("**IA 1986**") are satisfied, or at least as to whether there is a good arguable case that one such condition is satisfied.

4. For the purposes thereof, Aston does not seek to contend that Mr Jones's centre of main interests ("**COMI**") is in England and Wales, or that he is domiciled or ordinarily resident, or has a place of residence in England and Wales. The sole basis for seeking to found jurisdiction is that Mr Jones, for the purposes of s 265(1)(b)(ii), has at sometime within the period of 3 years ending with the date on which a bankruptcy petition would be presented, *"carried on business in England and Wales"*.

5. Mr Jones, as in the Main Proceedings, continues to appear in person. Aston continues to be represented by Louis Doyle KC, instructed by Fieldfisher LLP.

Background and procedural history

6. It is necessary to set out the background and procedural history in some detail in order to identify the questions that require to be decided.

7. The First Jones Application was issued on 15 December 2023 in the Business and Property Courts of England and Wales, i.e. in the Insolvency and Companies Court in London. The basis for the First Jones Application was that the First Statutory Demand should be set aside because the Courts of England and Wales did not have jurisdiction to entertain a bankruptcy petition based upon it. By the order of ICC Judge Prentis dated 12 January 2023, the First Jones Application was transferred to the Business and Property Courts in Manchester given the connection between the issues raised by the First Jones Application and the Main Proceedings.

8. Contemporaneously with the quantum trial in January 2024, my judgment on quantum handed down on 9 February 2024 and the hearing in respect of consequential matters following on from the latter, Mr Jones had, within the Main Proceedings, issued an application dated 4 January 2024 that, amongst other things, sought injunctive relief, restraining Aston from commencing bankruptcy proceedings. I dismissed this application on the basis that I considered that the appropriate court to deal with any jurisdiction or forum issues was the court dealing with the First Jones Application, and I believe that I was then unaware that an order had already been made transferring the latter to Manchester. However, when the issue of jurisdiction or forum for bankruptcy proceedings was raised in the Main Proceedings, it was identified that, in *Lyons v Bridging Finance* [2023] EWHC 1235 (Ch), Chief ICC Judge Briggs had decided that there was no jurisdiction to deal with the issue of forum on an application to set aside a statutory demand, albeit recognising that it may be possible to apply for an anti-suit injunction to restrain the presentation of a bankruptcy petition.

9. On transfer of the First Jones Application to Manchester, it was referred to me in order to triage it and give any required directions. I noted that Section 10 of the First Jones

Application did, on one reading at least, appear to be seeking injunctive relief to restrain the presentation of a bankruptcy petition as well as seeking to set aside the First Statutory Demand, although such relief was not specifically sought at Section 3 of the application. By my order dated 2 April 2024, made without a hearing, I therefore directed that if Mr Jones wished to seek an order restraining the presentation of a bankruptcy petition, then he should file and serve, within 21 days of the service on him of the order, an amended application specifically seeking such relief, supported by any evidence relied upon in support thereof. Mindful of the decision of the Chief ICC Judge in *Lyons v Bridging Finance* (supra), I ordered that in the event that Mr Jones did not file and serve an amended application supported by evidence, then the First Jones Application should be dismissed. In the event of compliance, I gave directions in relation to the service of further evidence by the parties, and provided for the First Jones Application to be listed to be heard on the first available date after 3 June 2024.

10. In the event, within the 21 days provided for by the order dated 2 April 2024, Mr Jones, rather than filing an serving an amended application, CE filed the Second Jones Application, supported by his witness statement dated 29 April 2024 ("**Jones 1**"), and a witness statement dated 26 April 2024 made by Roger Platt ("**Mr Platt**"), the accountant to Mr Jones, his wife Susan Elizabeth Jones ("**Mrs Jones**"), and a number of companies with which Mr Jones and/or Mrs Jones have historically been connected, namely Eightfooted Ltd ("**Eightfooted**"), Neutrino Networks Ltd ("**Neutrino**"), RFD Networks Ltd ("**RFD**"), Zaro Equestrian Ltd ("**Zaro**"), and Creditas Capital Ltd ("**Creditas**") (together "**the Companies**"). The general purpose of the evidence relied upon by Mr Jones is to seek to demonstrate that he and Mrs Jones permanently left England and Wales on 9 December 2020 to reside in Guernsey, and that by that date the Companies had ceased to carry on business, albeit that their filed accounts have continued to show monies as being owed by the Companies to Mr Jones, and, in one case, a small amount as owed by Mr Jones to the company in question (Creditas), as further referred to below. This evidence is relied upon by Mr Jones as demonstrating that none of the conditions in s. 265(1) and (2) IA 1986 Act is satisfied so as to found jurisdiction for Aston to commence bankruptcy proceedings against him. As I have said, Aston does not seek to challenge Mr Jones's position so far as COMI, domicile and residence are concerned. Aston limits itself to the *"carried on business in England and Wales"* gateway under s. 265(2)(b)(ii).

11. For reasons that remain obscure, the Second Jones Application, Jones 1 and Mr Platt's witness statement were not served on Aston prior to the hearing that took place on 5 August 2024 that I refer to below.

12. On 20 May 2024, Mr Jones issued the Third Jones Application seeking to set aside the Second Statutory Demand. This application was referred to me to triage and give directions. I did this on the papers by my Order dated 31 May 2024. In short, by this order, and with a view to case managing together the applications brought by Mr Jones, I directed that Mr Jones should, within 14 days of the service of the order upon him, file any further evidence intended to be relied upon in support of each of the First, Second and Third Jones Applications ("**the Jones' Applications**"), and serve on Aston the Jones' Applications, Jones 1, Mr Platt's witness statement, and any further evidence intended to be relied upon by him in relation to the three applications. I then directed that the Jones Applications should be listed for a directions hearing on 5 August 2024. I considered that any case management directions going beyond those that I had already given could only sensibly be given with Aston's input. The directions that I gave by my order dated 31 May 2024 superseded those given on 2 April 2024. As the order dated 31 May 2024 was

made without a hearing, it provided for any party affected by it to be able to apply for it to be varied or set aside.

13. By application dated 3 June 2024, Mr Jones applied to set aside my Order dated 31 May 2024. I understand that Mr Jones' objection was that he regarded it as unfair that I had required him to file his evidence and provide it to Aston, but that I had imposed no such obligation on Aston. I have explained above my reasons for this. In the event, I directed that this application should be heard at the directions hearing in respect of the other applications listed on 5 August 2024. Having issued his application dated 3 June 2024, Mr Jones did not comply with my order of 31 May 2024 with regard to the filing of any further evidence, or with regard to the service on Aston of the documents that I had ordered should be served.

14. On 18 July 2024, Aston issued the Service Out Application supported by the witness statement dated 18 July 2024 of Mark Fairclough ("**Mr Fairclough**") of Aston's Solicitors, Fieldfisher LLP. Mr Fairclough's witness statement referred to Mr Jones living in Guernsey, but made no reference to how it might be suggested that the jurisdictional conditions of s. 265 IA were satisfied.

15. It was at the hearing on 5 August 2024 itself that it emerged that Aston had not been served with the evidence relied upon in support of the Second Jones Application, and therefore that Aston was unaware of the evidential basis for Mr Jones' contention that the jurisdictional requirements of s. 265 IA 1986 were not satisfied. The relevant evidence was provided to Aston during the course of the hearing in order that Aston could consider its position in relation thereto. The hearing on 5 August 2024 was an unsatisfactory one in other ways, not least in that no bundle had been prepared for it, and it was necessary to take some time to take stock as to the outstanding position in respect of the, by then, five outstanding applications.

16. In the event, I dismissed Mr Jones' application dated 3 June 2024, and in respect of the Jones' Applications and the Service Out Application, I directed that they should be heard together at a one day hearing on 30 September 2024. To this end, and with a view to ensuring that the parties' respective positions could be identified and that there could be an effective hearing on 30 September 2024, and I gave directions providing for:

    i) Aston to file and serve its evidence in response to the Jones Applications by 26 August 2024;

    ii) Mr Jones to file and serve his evidence in response to the evidence filed and served by Aston in support of the Service Out Application by 26 August 2024;

    iii) Aston to file and serve evidence in response to Mr Jones's evidence referred to in sub-paragraph (ii) above by Monday, 16 September 2024;

    iv) Aston's Solicitors, Fieldfisher LLP, to file a hearing bundle by 24 September 2024;

    v) Skeleton Argument to be filed and exchanged by 4 PM on Thursday, 25 September 2024. In fact, 25 September 2024 was a Wednesday, and the parties proceeded on the basis that the order had intended to provide for filing and exchange of skeleton arguments by 4 PM on Thursday, 26 September 2024.

17. Pursuant to the order dated 5 August 2024:

i) Mr Jones filed and served a witness statement dated 26 August 2024, essentially relying upon the evidence that he had filed in support of the Second Jones Application ("**Jones 2**");

ii) Aston filed and served a witness statement dated 22 August 2024 made by a director thereof, Richard James Moose ("**Mr Moose**"). Mr Moose stated that he was not seeking to make submissions, but clarified that Aston relied upon s. 265(2)(b)(ii), and a case that Mr Jones had carried on business in England and Wales within the last 3 years. As to this, Mr Moose sought to address Mr Jones' contention in paragraph 15 of Jones 1 that, leading up to 9 December 2020, when he left for Guernsey, … *"all companies and related business in the UK was terminated permanently, and all companies in which myself and my spouse were involved, ceased."* He exhibited copies of the financial statements relating to the Companies over the last few years, with a view to demonstrating that this statement was not accurate. Further, particular reliance was placed by Mr Moose on the fact that Mr Platt had said in paragraph 18 of his statement that: *"PWH* [his firm] *has conducted book-keeping, prepared the accounts, VAT returns (as appropriate) and the necessary tax and other like returns"* from 6 December 2020 to date. Mr Moose suggested that the relevant companies remaining active in this sense would become apparent in the course of submissions. In addition to referring to Mr Jones' relationship/involvement with the Companies, under the heading *"Other matters relevant to the carrying on the business by Mr Jones in England and Wales"*, Mr Moose made reference to Mr Jones' involvement with *"Caresso Law"*, an entity based in the Channel Islands of which Mr Jones was CEO, and in respect of which, so it was suggested, he may be conducting business in England and Wales.

iii) Mr Jones filed and served a witness statement dated 16 September 2024 ("**Jones 3**"), responding to Mr Moose's witness statement. In Jones 3, Mr Jones specifically challenged the suggestion that he has had any continuing involvement/relationship with the Companies that demonstrates that he has been carrying on business on his own account in England and Wales since the Companies ceased to trade, and challenging that that any involvement with Caresso Law demonstrates anything relevant so far as jurisdiction is concerned. In addition, Mr Jones filed and served a witness statement dated 16 September 2024 made by Mrs Jones, and a witness statement dated 16 September 2024 made by his daughter, Aimee Jones, dealing principally with the settled intention of the family to leave, and to sever their ties with the UK, in favour of Guernsey.

iv) Skeleton Arguments were exchanged on 26 September 2024. So far as Mr Doyle KC's Skeleton Argument on behalf of Aston is concerned, it is to be noted that it made no reference to Mr Jones's involvement in Caresso Law, and based Aston's case as to Mr Jones having carried on business in England and Wales on his own account solely upon his continued involvement/relationship with the Companies over the last 3 years.

18. In response to Mr Doyle KC's Skeleton Argument on behalf of Aston, at 10.47 PM on 26 September 2024, Mr Jones CE filed a further witness statement dated 26 September 2024. The primary contention in this witness statement is that the various sums shown in the Companies' filed accounts as owing to Mr Jones by four of the Companies, and as owed by Mr Jones in the case of Creditas, had all been written off prior to Mr Jones leaving the UK on 9 December 2020, despite the position as reflected in the accounts. Although this

witness statement was not served pursuant to the directions that I gave on 5 August 2024, no objection to Mr Jones relying upon it was taken by on behalf of Aston at the hearing on 30 September 2024.

19. At 8.46 PM on Sunday, 29 September 2024, i.e. on the eve of the hearing, Mr Doyle KC emailed to me directly a *"Supplemental Note for Set Aside Hearing"*. I understand that this Supplemental Note was provided to Mr Jones at about the same time. The Note sought to advance a completely new line of argument with regard to Mr Jones carrying on business in England and Wales during the last 3 years that had not been raised, or even hinted at, either in Mr Moose's witness statement or in Mr Doyle KC's Skeleton Argument filed and served the previous Thursday. The line of argument sought to be advanced relied upon certain findings at paragraphs [266]-[280] of my liability judgment in the Main Proceedings to the effect that Mr Jones had, in late 2014, used his new phoenix company, Audiological Measurement and Reporting plc ("**AMR**"), as the vehicle to which the business and assets of Audiological Support Services Ltd ("**ASS**"), of which he was a de facto director, were transferred in breach of his fiduciary duties owed to ASS. The argument advanced, relying upon authorities to which I will return, was that this involved him carry on a business on his own account separate and distinct from his involvement in ASS and AMR, and that given that the Main Proceedings concerned liabilities of Mr Jones stemming from such separate business activity, Mr Jones was, on the basis of the authorities to the effect that a business continues until its liabilities have all been discharged, to be regarded as having continued this business up to and throughout the course of the Main Proceedings, i.e. within the last 3 years.

20. Paragraph 10, the Supplemental Note recognised that Aston: *"cannot argue against an adjournment"*. It suggested that Aston would: *"seek a further opportunity to file and serve evidence substantiating its case, limited to the above, and following which Mr Jones ought be permitted to serve evidence in response."*

21. Mr Jones, for his part, CE filed a further witness statement dated 29 September 2024 at 10.10 PM on 29 September 2024 ("**Jones 4**") responding to the Supplemental Note, in which he maintained that his actions in 2014 were carried out on behalf of AMR, rather than as part of some separate and distinct business carried out on his own account, but that in any event, so far as his involvement in the Main Proceedings was concerned, this simply involved him defending claims that were brought against him rather than carrying on any business. Mr Jones submitted that I should disregard the Supplemental Note and what he submitted were the misconceived arguments put forward in it.

22. At the commencement of the hearing on 30 September 2024, it was necessary for me to consider whether Aston should be permitted to run the argument sought to be advanced by the Supplemental Note. I decided that it should not be entitled to do so given how late in the day the argument had been raised, and that Aston should be confined to the case as advanced in Mr Doyle KC's Skeleton Argument. My reasons were set out in an extempore judgment, but in essence they were as follows:

    i) The new argument raised by the Supplemental Note could not fairly or satisfactorily be dealt with at the hearing on 30 September 2024, and any proper consideration of it would, as anticipated by paragraph 10 of the Supplementary Note, have required an adjournment in order that the evidence relevant to the argument could be properly considered. Further, it was plain to me that that whilst Mr Jones had sought to address the new argument in Jones 4, it had been sprung upon him at the eleventh hour, and he had not had a fair or proper opportunity to

consider the same, let alone to properly consider the evidence that might be relevant to it. In this respect, I was mindful, amongst other things, of CPR 3.1A(2).

ii) Aston had had every opportunity to advance this particular line of argument well prior to the hearing, and the directions that I gave on 5 August 2024 were designed to ensure that the relevant issues were identified well prior to the hearing, so that the four outstanding applications could be comprehensively dealt with at the full one day hearing listed on 30 September 2024.

iii) No reasons were advanced for the new argument being raised so late in the day, and nor was any attempt made to justify it being raised so late in the day. One must assume that it was a late afterthought given that it had not been addressed in Mr Doyle KC's Skeleton Argument, in which Aston had set out its case for the hearing on 30 September 2024.

iv) I considered that the position was akin to an attempt to rely upon a very late amendment, where an important consideration is the effect that allowing the same might have on court resources and other court users – see e.g. *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm) at [38]. To have properly addressed, and dealt with the new argument would have required an adjournment and with it the resulting waste of court time on 30 September 2024, and the need to commit further court resources to accommodating the adjourned hearing.

v) I did not regard the new argument as straightforward, or as being an obviously good one. I have added a postscript after further reflection in paragraphs 64 and 65 below.

vi) Notwithstanding the size of the judgment debt in respect of which Aston wishes to pursue bankruptcy proceedings against Mr Jones, in the exercise of my discretion in respect of this issue of case management, I did not consider that fairness or the application of the overriding objective would have been properly served by permitting Aston to run the new argument raised so late in the day.

Interrelationship between the Applications

23. Whilst the Applications each raise the same fundamental question as to jurisdiction to entertain bankruptcy proceedings against Mr Jones, they do so in the different contexts of applications to set aside statutory demands, an application for an anti-suit injunction, and an application for permission to serve out of the jurisdiction and for substituted service. Mr Doyle KC accepted that one only gets to the Service Out Application if the First and Second Statutory Demands are not struck out. This is because it is only by being able to rely upon an effective statutory demand that has not been struck out that Aston would have the basis for petitioning to bankruptcy.

24. Further, it must be open to question as to whether Mr Jones in fact requires any form of anti-suit injunction if Aston is not, on the determination of the Set Aside Application, permitted to serve out of the jurisdiction in that, realistically, there is no prospect of Aston being able to serve Mr Jones within the jurisdiction. On the other hand, if Aston is permitted to serve out of jurisdiction, then it is difficult to see that there could be any proper basis for an anti-suit injunction.

25. In these circumstances, I consider that the appropriate course is to first consider whether either or both of the Statutory Demands ought to be struck out. If they are not struck out,

then I consider the appropriate course would be to consider the Service Out Application, before turning to the Second Jones Application (seeking the anti-suit injunction) if necessary and appropriate to do so.

First and Second Jones Applications

26. Aston takes the point, touched upon in paragraph 9 above, that in *Lyons v Bridging Finance* [2023] EWHC 1235 (Ch), Chief ICC Judge Briggs decided that there was no jurisdiction to deal with the issue of forum on an application to set aside a statutory demand. Aston relies upon this decision as being correct. Mr Jones did not deal with this point as such in that his contention is that if there is no jurisdiction to deal with the issue of jurisdiction/forum on an application to set aside a statutory demand, then if the debtor's position is that none of the conditions in s. 265 IA 1986 is made out by the putative petitioner, the appropriate course is to grant an anti-suit injunction as suggested by the Chief ICC Judge. Nevertheless, I consider it necessary to determine the point given that it is only if the Statutory Demands are not set aside, that it could be appropriate for Aston to seek permission to serve out of the jurisdiction as otherwise it does not have a basis for presenting a bankruptcy petition against Mr Jones.

27. R. 10.5(5) IR 2016 provides that the court may grant an application to set aside a statutory demand if:

> "(a) the debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt specified in the statutory demand;
>
> (b) the debt is disputed on grounds which appear to the court to be substantial;
>
> (c) it appears that the creditor holds some security in relation to the debt claimed by the demand, and either rule 10.1(9) is not complied with in relation to it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
>
> (d) the court is satisfied, on other grounds, that the demand ought to be set aside."

28. In *Lyons v Bridging Finance* (supra), Chief ICC Judge Briggs declined to follow the earlier case of *Harfield v GML International* [2021] EWHC 713(Ch) (ICC Judge Prentis), and [2021] EWHC 3299 (Ch) (ICC Judge Burton), where it had been held that it was appropriate to consider the question of forum on the hearing of an application to set aside a statutory demand. In the latter judgment, ICC Judge Burton specifically held that although paragraphs (a) to (c) of r. 5.10(5) dealt the subject of debt, cross claims and counter claims, this did not mean that sub-rule (d) was confined to such considerations. She reasoned that r. 5.10 acted as a control on the presumption arising under s. 268 IA 1986 to prevent the engagement of the mandatory r. 10.5(8) (requiring the court, where it dismisses an application, to make an order authorising the creditor to present a petition) in circumstances where it would be unjust. She did not regard anything said by Nicholls LJ in *Re a Debtor (No1 of 1987)* [1989] 1 WLR 271 as leading to a different conclusion. On this basis, she held that there was no need to apply for an injunction to restrain presentation of a petition on jurisdictional grounds, the procedure to raise such concerns being already built into r. 10.5(5)(d).

29. In *Lyons v Bridging Finance Inc* (supra), Chief ICC Judge Briggs, at [10]-[11], concluded that rather more required to be read into what had been said by Nicholls LJ in *Re a Debtor (No1 of 1987)* than suggested by ICC Judge Burton in the earlier case. Whilst Nicolls LJ had spoken in terms of the forerunner to r. 10.5(5)(d) providing for a residual discretion to set aside where there were circumstances which would make it unjust for the statutory demand to give rise to the relevant consequences, he went on to speak in terms of sub-rule (d) being *"in-line"* with sub-rules (a) to (c), in a context of some injustice arising from the statutory demand itself, and its use as the mechanism to establish the basis for the petition to be presented founded upon an indisputable and unsecured debt the subject matter of the statutory demand, rather than to determine some extraneous consideration such as the jurisdiction of the court to entertain a bankruptcy petition against the relevant debtor – see per Nicholls LJ at 276E-F, and 278A.

30. I agree with the approach taken by Chief ICCJ Briggs in holding that sub-rule (d) of r. 10.5(5) is to be read in the context of the preceding grounds, and that the better view is that it does not include a ground unrelated to the debt or unrelated to the form statutory demand as prescribed. I further agree that this approach is fortified by the fact that whilst r. 10.7 of the 2016 Rules requires a bankruptcy petition to contain a statement that England and Wales is the correct forum to make a bankruptcy order, there is no similar requirement in r. 10.1 so far as the contents of a statutory demand is concerned. There is force in ICC Judge Burton's point that by dismissing an application to set-aside a statutory demand, one engages with r. 10(8) IR 2016 and the mandatory requirement to authorise the issue of a bankruptcy petition, which would conflict with the grant of an anti-suit injunction. This is an issue that I address in paragraph 68 below, where I conclude that, in circumstances such as the present at least, the solution is to stay the application to set-aside the statutory demand rather than dismiss it. In these circumstances, the force of ICC Judge Burton's point does not lead me to a different conclusion as to the scope of r. 10(5)(d) IR 2016.

31. Chief ICCJ Briggs went on, at [16], to say that he considered that the fact that there is no jurisdiction to deal with the issue of forum under the grounds in r. 10.(5)(a) to (d) IR 2016 does not mean that a debtor is without remedy. He expressed the view that whilst an anti-suit injunction is not commonly made in a bankruptcy context, without deciding point, he consider that it may be possible to apply for such an injunction. Further, at [13], he said that he tended to agree that if there were a challenge as to forum, it may be better to deal with it before a petition was presented.

32. Consequently, having concluded, in agreement with Chief ICCJ Briggs in *Lyons v Bridging Finance Inc*, that the court has no jurisdiction under r. 10.5(5) of the 2016 Rules to set aside the First Statutory Demand and the Second Statutory Demand on the basis of an objection as to jurisdiction or forum, I consider that the appropriate course, subject to the issue identified in paragraph 68 below, would have been to dismiss the First Jones Application and the Third Jones Application. However, for the reasons set out in paragraph 68 below, I consider that, in the circumstances of the present case, the appropriate course is simply to stay the First Jones Application and the Second Jones Application on the terms that I refer to therein.

33. I would add that, in his evidence, Mr Jones has made reference to an intention to commence proceedings alleging fraud as against the individuals behind Aston, if not also to challenge my judgments in the Main Proceedings on the ground that they were obtained by fraud. However, these are bare assertions, and in any event, in hearing an application to set aside a statutory demand based on a judgment, the court is not entitled to go behind

the judgment – see paragraph 11.4.4 of the Insolvency Practice Direction, reflecting earlier well established case law. Mr Jones did not press this point at the hearing, but I it is plain that there would be no basis for setting aside either the First Statutory Demand or the Second Statutory Demand on this basis.

Service Out Application

Principles to be applied

34. I have already identified that Aston brings this application pursuant to sub-paragraphs 1(2), (5) and (8) of Schedule 4 to the IR 2016 and CPR PD 6B, sub-paragraph 3.1(10).

35. The most significant provision of Schedule 4 to the IR 2016 for present purposes is paragraph 1(8) which provides that Part 6 of the CPR applies to the service of documents outside the jurisdiction with such modifications as the court may approve or direct. Sub-paragraphs 1(2) and (5) deal more generally with substituted service.

36. CPR PD 6B, sub-paragraph 3.1(10) provides that a claimant may serve a claim form out of the jurisdiction with the permission of the court under CPR 6.36 where: *"A claim is made to enforce any judgment or arbitral award."* However, in view of the mandatory terms of s. 265 IA 1986 providing that a bankruptcy petition may be presented *"only if"* one or more of the gateway conditions provided for thereby is satisfied, I do not consider that CPR PD 6B, sub-paragraph 3.1(10) can assist Aston if unable to show a good arguable case that one or more of the s. 265 IA 1986 conditions is satisfied.

37. It is trite that, generally speaking, where the court is concerned with an application for permission to serve out of the jurisdiction, it is incumbent on the claimant to show that:

    i) There is a good arguable case that the claim against the foreign defendant falls within one or more of the heads of jurisdiction for which leave to serve out of the jurisdiction may be given as set out in paragraph 3.1 of PD 6B;

    ii) In relation to the foreign defendant to be served with the proceedings, there is a serious issue to be tried on the merits of the claim; and

    iii) In all the circumstances: (a) England is clearly more distinctly the appropriate forum for the trial of the dispute (forum conveniens), and (b) the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction.

    See the White Book, 2024 at 6HJ.1 (page 346).

38. The authorities are to the effect that:

    i) In the case of a bankruptcy petition, the correct approach for court to adopt in determining whether grounds for jurisdiction for service out are satisfied is that which applies under CPR Part 6, albeit on the modified basis that the grounds for jurisdiction for a bankruptcy petition are those set out in s. 265 IA 1986 rather than paragraph 3.1 of CPR PD 6B;

    ii) At the stage of an application for service out, the standard of proof which requires to be satisfied in showing that the petition falls within one the jurisdictional conditions in s. 265 IA 1986 is not the balance of probabilities, but the lower standard of *"a good arguable case"*.

See *Mobile Telecommunications Co KSCP v HRH Hussam Bin Saud Bin Abdulaziz Al Saud* [2023] EWHC 312 (Ch), 2023 BPIR 1179. See also *Anglo Irish Bank Corp Ltd v Flannery* [2013] BPIR 1, a service out case in concerning a bankruptcy petition, where the court was concerned with whether the putative petitioner had a good arguable case that it could satisfy the jurisdictional requirements of s. 265 IA 1986.

39. So far as *"good arguable case"* is concerned, this means, in essence, that:

    i) The claimant had to supply a plausible evidential basis for the application of a relevant jurisdictional gateway;

    ii) If there was an issue of fact about it, or some other reason for doubting whether it applied the court had to take a view on the material available if it could reliably do so; but

    iii) The nature of the issue and the limitations of the material available at the interlocutory stage might be such that no reliable assessment could be made, in which case there was a good arguable case for the application of the gateway if there was a plausible (albeit contested) evidential basis for it.

    See the helpful analysis of the relevant authorities in *Mobile Telecommunications Co KSCP v HRH Hussam Bin Saud Bin Abdulaziz Al Saud* (supra) at [26] to [34], per Deputy ICC Judge Curl KC.

40. It was Mr Doyle KC's submission, on behalf of Aston, that there is a good arguable case that the jurisdictional gateway under s 265 IA 1986 is satisfied in the circumstances of the present case because there is a good arguable case that Mr Jones has carried on business in England and Wales within the three years ending with the date on which a bankruptcy petition is likely to be presented if permission to serve out is granted, so as to satisfy the requirements of the s. 265(2)(b)(ii) IA 1986 condition. This is disputed by Mr Jones, and it is, as I have identified, the principal issue that I have to determine in considering whether I ought to grant Aston permission to serve a bankruptcy petition on Mr Jones out of the jurisdiction in Guernsey.

41. Mr Doyle KC's Skeleton Argument did not cover, and he did not address me as to issues of forum conveniens or discretion if I were to conclude that there was a good arguable case in relation to the application of s. 265(2)(b)(ii). I will only return thereto, in so far as it might be necessary for me to do so.

42. I will turn therefore to consider whether Aston has demonstrated, and the onus is clearly upon Aston to do so, that there is a good arguable case that the gateway under s. 265(2)(b)(ii) IA 1986 (carrying on business in England and Wales) can be established.

Meaning of *"carried on business"* - s. 265(2)(b)(ii) IA 1986

43. I was referred by Mr Doyle KC to a number of authorities concerned the meaning of *"carried on business in England and Wales"* for the purposes of s. 265(2)(b)(ii) IA 1986, and the circumstances in which a debtor might be considered to have so carried on business, including *In re Brauch (A Debtor), ex parte Britannic Securities & Investments Ltd* [1978] Ch 316 (CA), *re A Debtor (No.784 of 1991)* [1992] Ch 554 (Hoffmann J), *Anglo Irish Bank Corporation Ltd v. Flannery* (supra) (Chief Registrar Baister), *Masters v. Barclays Bank plc* [2013] BPIR 1058 (Norris J), *Gate Gourmet Luxembourg IV Sarl v. Morby* [2015] BPIR 787 (Mr Registrar Briggs), *Charlton v. Funding Circle Trustee Ltd*

[2020] BPIR 125 (Barling J), and *Durkan v. Jones* [2023] BPIR 1074 (Deputy ICC Judge Baister)**.**

44. I gather from these cases the following propositions:

i) The question is one of mixed fact and law, and the court must consider: (a) what the debtor did; (b) when he did it; and (c) whether what he did amounted to carrying on business – see *Masters v. Barclays Bank plc* (supra) at [16(a)], and *Durkan v Jones* at [24]. This may invite the question as to what the debtor is or was doing if not carrying on business – see *Durkan v Jones* at [36]: *"There is another way of looking at the matter, which is to ask what the debtor was doing if he was not carrying on business. He was not engaged in charitable work, nor was he engaged in a pastime or hobby."*

ii) Carrying on business through a company or being a director or shareholder (even sole director or shareholder) of a company does not, in itself, amount to the carrying on of business as an individual and on one's own account – see *In re Brauch (A Debtor)* (supra) at 328F-G, per Goff LJ. Likewise, simply providing a guarantee for the indebtedness of a company – see *Masters v Barclays Bank plc* (supra).

iii) However, it is open to the court to find that a director or shareholder, in addition to his involvement in the company, is also conducting a separate business of his own – see *In re Brauch (A Debtor)* (supra) at 328G-329F, per Goff LJ. In the latter case, the debtor was held to have conducted a separate business of his own involving the incorporation and use of some ninety companies to acquire land. The companies were held to form part of the machinery by which the debtor implemented his own business project. It was held that it was necessary to look at the totality of the evidence and see whether or not the right conclusion was that there was a business being carried on by the debtor independently of the business of the companies – see 330F, per Goff LJ.

iv) The number of occasions upon which a person has been involved in the promotion or establishment of businesses assists towards the conclusion that the person has an independent business of promoting companies – see *Masters v Barclays Bank plc* (supra) at [20].

v) A one-off transaction might be sufficient to show that the debtor was carrying on a business. An example is provided by *Gate Gourmet Luxembourg IV Sarl v. Morby* (supra), where the entry by the debtor into a share purchase agreement concerning the sale of his shareholding in a significant number of companies was held to be sufficient to amount to the carrying on of a business distinct from that of the companies themselves – see at [26], per Mr Registrar Briggs. Cf. *Charlton v. Funding Circle Trustee Ltd* (supra) where a discussion between the debtor and potential investors with regard to the sale of his shares in a company did not amount the carrying on of a separate business. The director in that case was held to have simply been exploring options for the rescue of the company.

vi) There is authority for the proposition that where a debtor has been shown to be carrying on business, then the relevant business will be considered to have continued until such time as all debts of the business had been discharged albeit that the actual conduct of the business itself might have ceased – see *re A Debtor (No.784 of 1991)*. In this case, the debtor had sold a nursing home business carried

on in her own name, and had moved to Tenerife, but leaving an unpaid tax debt. The existence of the latter debt meant that the debtor was to be regarded as continuing to carry on business and, for the purposes of s. 265(2)(b)(ii), until such time as the debt was discharged. This principle was applied in *Gate Gourmet Luxembourg IV Sarl v. Morby* (supra) with the result that the business (i.e. the sale of shares by the debtor in a number of companies pursuant to the share purchase agreement) was held to have continued throughout subsequent litigation involving a claim of breach of warranty, and given the existence of an outstanding tax debt – see at [27], per Mr Registrar Briggs.

vii) It does not matter that the business is only carried out on small scale. What matters is the nature and quality of what is being done, rather than its extent – see *Durkan v Jones* (supa) at [39], per Deputy ICC Judge Baister.

Aston's case as to carrying on business

45. Aston's case is based upon Mr Jones' continuing relationship with, and involvement in the Companies. The features relied upon in respect of the respective Companies, as identified in Mr Moose's witness statement and as ascertained largely from the Companies' filed financial statements, are the following:

i) Eightfooted - The filed accounts for the year ended 31 December 2022, consistent with earlier filed accounts, show Mr Jones still being owed £67,507. Mr Jones remains as sole director, and is identified as ultimate controlling party.

ii) Neutrino - The filed accounts for the year ended 29 December 2022 show net a deficiency of £90,287, as against a deficiency of £72,480 as at 29 December 2021. Mr Jones' director's current account shows him to be owed £81,138 as against £70,803 as at the previous year end. The filed accounts make reference to liabilities for social security and tax, and although Mr Jones is referred to as sole director, Mrs Jones is identified as ultimate controlling party in these and earlier filed accounts.

iii) RFD - Again, Mr Jones is shown in the filed accounts as sole director, with Mrs Jones as ultimate controlling party. The filed accounts for the year ended 30 December 2022 referred to a VAT liability of £46,690. Mr Jones' director's current account shows him as owed £21,242, with no change on the previous year end. However, I note that the records at Companies House show RFD to have been struck off the register on 20 May 2024, and dissolved on 4 June 2024.

iv) Zaro - Again, Mr Jones is shown in the filed accounts as sole director, and in this case, he is shown as ultimate controlling party. Note 10 to the filed accounts for the year ended 31 December 2022 shows £200,247 to be owing to Mr Jones on his director's current account.

v) Creditas - Mr Jones is shown in the filed accounts for the year ended 30 December 2022, and in earlier filed accounts, as director together with his son, and as being ultimate controlling party. In this case, he is shown as owing £6,166 to Creditas on a director's loan account.

46. As to continuing activity, Aston refers to paragraphs 15-18 of Mr Platt's witness statement where, although he says that the Companies have not traded, in the sense of carrying on business, since Mr Jones left the UK on 9 December 2020, he refers to his

firm as continuing to act for the Companies, albeit *"on a run-off basis, where a number of the Companies have, or are in the process of being run-off, some having already been removed from the Companies House register, and some, as I understand it, in that process."* He refers to those of the Companies that remain on the register as *"artefact companies"* that cannot be removed therefrom due to having judgments against them, or where negotiations with creditors are ongoing to close them down. He goes on to say that his firm has: *"conducted book-keeping, prepared the accounts, VAT returns (as appropriate) and the necessary tax and other light returns from the Commencement Date* [i.e. 9 December 2020] *to date."*

47. In response to Mr Jones's suggestion in Jones 4 that the liabilities as between himself and the Companies were written off prior to him leaving the UK on 9 December 2020, Aston points to the fact that the relevant liabilities continued to be shown in the filed accounts which, on the face thereof, purport to have been approved by Mr Jones as director of the respective Companies. Further reference is made to the fact that, at paragraphs 18.2 and 18.3 of Jones 3, Mr Jones, when commenting upon the matters identified by Mr Moose in respect of Neutrino, and the differences between the 2021 and 2022 accounts referred to above, explained that liabilities had increased *"due to interest, costs and fees"*, and he specifically stated that *"Mr Jones (I) has continued to provide an ongoing loan to this company, at least on the balance sheet, but not in cash terms."*

48. In addition, it was pointed out that whilst a resolution dated 24 April 2023, purporting to be of all the Companies, has been produced referring to the liabilities as between the respective companies as having been waived, this makes no mention of the liabilities as between the Companies and Mr Jones, or of their waiver, and no similar document has been produced in relation to the latter. Mr Doyle KC, on behalf of Aston, further drew my attention to an email from Mr Platt's firm to Mr Jones dated 29 September 2023 relating to Neutrino's accounts where reference is made to being asked to send over the accounts, as they were, with the intercompany loans still on the balance sheet, and to intercompany loans at least being written off as the companies are struck off. I further note that Note 10 of the filed accounts of Zaro for the year ended 31 December 2022 could be read as showing that the balance of £220,247 due to Mr Jones had been written off during the course of the year. However, inconsistent therewith, Note 7 still shows £220,247 as being due to Mr Jones in respect of his director's current account as at 30 December 2022, suggesting some error somewhere.

49. Against this factual background, Aston's submissions as to Mr Jones having carried on business in England and Wales within the last three years are, in essence, as follows:

    i) Mr Jones cannot say that his continuing involvement with the Companies was concerned with the Companies' trading, and was not his own commercial activity or his own carrying on of business, because the Companies were no longer trading, and there was nothing for any director thereof to do in respect of the carrying on of business by the Companies.

    ii) The relevant commercial activity or business on the part of Mr Jones was the continued funding provided by him to four of the Companies, and the outstanding director's loan account with the other, Creditas, in circumstances in which the Companies were not trading and their affairs were being run down for removal from the register and dissolution. Thus, Mr Jones' involvement was not as director and/or shareholder of an active trading company, which would not in itself be consistent with him carrying on his own separate business, but as a creditor/debtor

of non trading companies to which different considerations apply. Consistent with the approach in *Re a Debtor (No.784 of 1991)* (supra), it is submitted that the activities of Mr Jones as funder or debtor of the various Companies will not cease until all of those debts have been paid or otherwise resolved.

iii) It said that it does not matter that Mr Jones' own business activity was not profitable, because that is not the test. The issue is as to what he was doing, and it is submitted that he was clearly not engaged in charitable work, a pastime or a hobby, but in carrying on his own business.

iv) Consequently, looking at the totality of the evidence with a view to seeing whether or not the right conclusion is that there was a business being carried out by Mr Jones independently of the business of the Companies, it is submitted that the objective observer would certainly conclude that there was a such a business being carried out during the course of the last few years, and within the period of 3 years relevant to s. 265(2)(b)(ii) IA 1986 for present purposes.

50. On the basis of the above, it is submitted on behalf of Aston that jurisdiction is established for the purposes of s. 265 IA 1986, and for the presentation of a bankruptcy petition against Mr Jones.

Good arguable case as to jurisdiction under s. 265 IA 1986?

51. Applying the test as to good arguable case referred to in paragraph 39 above, I am not persuaded that Aston has demonstrated that it has a good arguable case as to jurisdiction under s. 265 IA 1986, and specifically under s. 265(2)(b)(ii), in that I am not persuaded that Aston has a good arguable case that Mr Jones has, within the meaning of s. 265(2)(b)(ii) carried on business in England and Wales at any point in the 3 years leading up to when a bankruptcy petition might be presented.

52. I do not accept that the various amounts outstanding as between Mr Jones and the Companies were written off prior to Mr Jones departing for Guernsey in December 2020 as Mr Jones seeks to suggest in Jones 3. I accept Mr Doyle KC's contention that the evidence that I have summarised in paragraphs 47 and 48 above is entirely inconsistent with the relevant sums having been written off. I note that there is no evidence from Mr Platt supporting the write-off suggested despite the fact that Mr Moose's evidence had highlighted these outstanding amounts. In the light of all this, I consider that Mr Jones' evidence to the contrary lacks credibility and reality.

53. However, even on the basis that Mr Jones remained a creditor and debtor vis-à-vis the Companies, objectively considered, I do not consider that the totality of the evidence points to a separate business being carried on by Mr Jones as contended for by Aston, either before or after the Companies ceased to trade.

54. Prior to the Companies ceasing to trade, I do not consider that it could realistically be argued that Mr Jones carried on a separate business on his own account in respect of his relationship with the Companies. On the authority of *In re Brauch (A Debtor)* (supra) at 328F-G, the starting point is that a debtor merely having acted as a director or shareholder of a company (even as sole director and/or shareholder) is insufficient, in itself, to lead to the conclusion that they were carrying on business on their own account in some way. If that is the principle that applies in the case of a director/shareholder of one company, then I can see no reason why the same principle should not apply to a director/shareholder involved in a number of companies carrying out different activities absent evidence of

some commercial aim or objective going beyond that of the individual companies - albeit that it might be easier to find such evidence the more companies the director/shareholder is involved in as to which see paragraph 44(iv) above. This explains the decision in *In re Brauch (A Debtor)* (supra) at 328F-G, where the nineteen companies in question were held to have formed part of the machinery by which the debtor implemented his own business project. Further, *Gate Gourmet Luxembourg IV Sarl v. Morby* (supra) is explicable on the basis that the director was carrying out some commercial activity distinct from the business of the companies in question in dealing with his own shares in the relevant companies.

55. Consequently, I do not consider that the fact that Mr Jones may have been a director of all of the Companies, and a shareholder in some of them, can be taken, in itself, to point to him carrying on some separate business on his own account.

56. Further, I am not persuaded that the carrying on of a separate business distinct from that of a company or companies is demonstrated by a director and/or shareholder lending money to their company, or borrowing from it, at least unless there is some evidence that the director and/or shareholder in question is doing something more than simply funding the company's trading activities incidental to his ownership or directorship of the company in question. I consider that one could almost as easily say that the holding of share capital in a company represented a distinct or separate business carried on by the shareholder, which would lead to a result entirely inconsistent with *In re Brauch (A Debtor)* (supra) at 328F-G. It cannot, as I see it, make a difference that the company has capitalised itself through borrowing rather than share capital.

57. I note that in *Charlton v. Funding Circle Trustee Ltd* (supra) at first instance, the Deputy District Judge had held that the debtor merely guaranteeing the debts of the company was not sufficient, in itself, to lead to the conclusion that the debtor was carrying on business distinct from the company. On appeal before Barling J, this finding was not challenged, and at [10], Barling J described this finding as not being contentious. The point was similarly addressed in *Masters v Barclays Bank plc* (supra) by Norris J at [15] and [16(g)]. I consider the guaranteeing the liabilities of a company to be an analogous to lending to, or borrowing from, a company for the purpose of a consideration as to whether it amounts to the carrying on of some separate business on the debtor's own account.

58. If, as I consider to be the case, Mr Jones is not properly to be regarded as having carried on a separate business on his own account prior to the Companies ceasing to trade prior to him departing for Guernsey in December 2020, then I do not consider that the position is properly to be considered to have changed upon the Companies ceasing to carry on business.

59. The essence of the argument advanced by Mr Doyle KC is that upon the Companies ceasing to carry on business, there was nothing for Mr Jones to do as a director as such, and so his position in relation to the Companies is properly to be regarded as that of a lender and borrower carrying on business separate to that of the Companies. However, Mr Jones has not ceased to be a director of any of the Companies, and he has remained as the ultimate beneficial owner of those of the Companies of which he was, upon the relevant Companies ceasing to carry on business, the ultimate beneficial owner. Mr Jones' duties as a director, including to ensure that the Companies complied with their statutory obligation to file accounts etc., will not have ceased upon the Companies ceasing to carry on business in the sense of them ceasing to trade, and will have continued pending the dissolution of the Companies as planned, when achievable.

60. Further, there is no suggestion that any further monies have been lent by Mr Jones to any of the Companies, or that he has borrowed any further monies from them. The only change is in relation to Neutrino, where it has been explained that interest and costs have been added to liabilities.

61. In the circumstances, I consider that Mr Jones' relationship with the Companies has remained properly attributable to his continuing position as a director and/or shareholder in the Companies pending dissolution, and that there is no good arguable case that, because Mr Jones has remained as a debtor and creditor of the Companies despite them ceasing to carry on business, he is properly to be regarded as having carried on some separate business distinct from the Companies, having regard to the totality of the evidence, viewed objectively. If a debtor is to be regarded for the purposes of s. 265(2)(b)(ii) IA 1986 to be carrying on business until all their debts are discharged, then the same logic ought, as I see it, to extend to the debts of the Companies in the present circumstances with regard to any consideration as to whether they were still carrying on business. To this extent, the relevant business activity ought, as I see it, to be regarded as having remained that of the Companies rather than being regarded as some new separate business of Mr Jones simply because of the relationship of debtor and creditor as between the Companies and himself.

62. I have a great deal of sympathy for the position of Aston in circumstances where, as it is put on their behalf, Mr Jones has fled the jurisdiction only some months after the Main Proceedings were commenced against him, and where it might be said that he did so with the aim of making himself judgment proof in respect of a judgment of in excess of £2 million by doing so. However, this cannot, in itself, affect the proper analysis as to whether Mr Jones has, indeed, carried on business in England and Wales during the course of the last three years. A similar point might be made so far as any arguments as to COMI, domicile and residence are concerned, but Aston does not seek to challenge Mr Jones's assertion that his COMI is now Guernsey, and nor does it seek to argue that Mr Jones' domicile or residence remains England and Wales.

Conclusion regarding Service Out Application

63. In the circumstances, having concluded that Aston does not have a good arguable case that the condition in s. 265(2)(b)(ii) IA1986 has been satisfied, I consider that I must dismiss the Service Out application.

Further observations

64. Before dealing with the final application, the Second Jones Application, I just add a short observation with regard to the new late case that Aston sought to introduce on the evening before the hearing on 30 September 2024 that I did not permit to be advanced.

65. In the circumstances, I did not hear argument as to the merits of this new case going significantly beyond the points made in the Supplemental Note produced by Mr Doyle KC. I am therefore reluctant to say a great deal about this new case. However, even if it could be said that, in setting up AMR, Mr Jones is properly to be regarded for the purposes of s. 265(2)(b)(ii) as carrying on business on his own account, which I regard as in itself problematic, I find it very difficult to see that such business could properly be said to have continued beyond the actual setting up of AMR. Mr Doyle KC prayed in aid the authorities such as *Re a Debtor (No. 784 of 19991)* (supra) and *Gate Gourmet Luxembourg IV Sarl v. Morby* (supra) in support of an argument that the liability established in the Main Proceedings was properly to be regarded as a liability of this

separate business of Mr Jones' that has continued to within the last 3 years and throughout the Main Proceedings. However, I find it very difficult to see that Mr Jones' liabilities to ASS for breach of fiduciary duty etc. that formed the basis of the claim in the Main Proceedings could properly be regarded as the liabilities of any such business as opposed to liabilities arising from Mr Jones' actions as a de facto director of ASS, and acting in breach of his duties as a de facto director of ASS.

The Second Jones Application

66. This leaves the Second Jones Application, by which Mr Jones seeks an anti-suit injunction, perhaps more appropriately, perhaps, described in the present context as an injunction to restrain Aston from presenting a bankruptcy petition against him.

67. The position is that Aston has served perfectly proper statutory demands in respect of the relevant order for costs, and in respect of the subsequent judgment debt for in excess of £2 million inclusive of interest and costs, but I have declined to give permission to Aston to serve a bankruptcy petition on Mr Jones out of the jurisdiction by reason of Aston's inability to demonstrate a good arguable case that any of the gateways provided for by s. 265 IA 1986 is available to Aston.

68. For the reasons that I have set out above, I consider that the appropriate course would, ordinarily, to have been to dismiss the First Jones Application and the Second Jones Application seeking to set aside the First Statutory Demand and the Second Statutory Demand. However, this course of action would, potentially at least, present something of a difficulty so far as r. 10.5(8) IR 2016 is concerned given that the latter provides that if the court dismisses an application to set aside a statutory demand, then it *"must"* make an order authorising the creditor to present a bankruptcy petition either as soon as reasonably practicable, or on or after a date specified in the order. However, this would be a somewhat odd order to make if the court has, as it has done in the present case, declined to give permission to serve out of the jurisdiction because the court has been unable to satisfy itself that there is a good arguable case that any of the gateway conditions under s. 265 IA 1986 can be satisfied.

69. In the circumstances such as the present at least, I consider that the appropriate course is simply to stay the First Jones Application and the Second Jones Application pursuant to CPR 3.2(1)(f) as applied by r. 12.1(1) IR 2016, giving permission to Aston to apply to have stay lifted if circumstances should change so far as jurisdiction is concerned. The court could, at that stage, lift the stay, dismiss the applications, and make an appropriate order under r. 10.5(8) thereby enabling Aston to present a petition.

70. If this course is adopted, and given that Aston, in practice given Mr Jones's absence from the jurisdiction, needs to obtain permission to serve out of the jurisdiction in order to pursue bankruptcy proceedings against him, I do not consider that it can properly be considered to be necessary or appropriate to make an order restricting Aston from commencing bankruptcy proceedings against Jones.

71. In the circumstances, I will dismiss the Second Jones Application.

Overall Conclusion

72. For the reasons set out above, I consider it appropriate to make the following orders so far as the Applications are concerned:

i) The First Jones Application and the Third Jones Application (seeking to set aside the First Statutory Demand and the Second Statutory Demand respectively) should be stayed, with Aston having permission to apply to have the stay lifted, and for an order that these applications be dismissed on showing cause in the event of a change in circumstances;

ii) The Second Jones Application (seeking an anti-suit injunction) should be dismissed;

iii) The Service Out Application should be dismissed.

73. I will make an order in these terms upon the hand down of this judgment. I would hope that outstanding issues between the parties in respect of costs and otherwise can be dealt with by way of agreement. However, if this is not the case, or if a party should wish to seek permission to appeal, then a short (one hour) hearing should be listed as soon as possible in order to deal therewith. I will adjourn consideration of such consequential matters to such a hearing, and extend the time for lodging an appellant's notice with the Court of Appeal until 21 days after this further hearing.