Neutral Citation Number: [2020] EWHC 2075 (Ch)

Case No: CR-2019-007180

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

IN THE MATTER OF TELNIC LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 29/07/2020

Before:

SIR GEOFFREY VOS, CHANCELLOR OF THE HIGH COURT

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B E T W E E N:

TELNIC LIMITED

Applicant/Appellant

and

KNIPP MEDIEN UND KOMMUNIKATION GmbH

Respondent

- -

Mr Robert Amey (instructed by **Downs Solicitors**) for the **Appellant**

Ms Anna Scharnetzky (instructed by **Ellisons Solicitors**) for the **Respondent**

Hearing date: 22nd July 2020

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JUDGMENT

Covid-19 Protocol: This judgment was handed down by the judge at a remote hearing and by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 15:00pm on 29 July 2020.

Sir Geoffrey Vos, Chancellor of the High Court:

Introduction

1. This is an appeal from an order made by Deputy ICC Judge Schaffer (the "judge") on 19 December 2019 (the "Order"), whereby he restrained the Petitioner, Knipp Medien und Kommunikation GmbH ("Knipp"), from proceeding with its winding-up petition against Telnic Limited ("Telnic" or the "Company"), stayed the petition on the basis that the debt was not admitted and subject to an arbitration clause, and ordered Knipp to pay Telnic's costs assessed at £25,000 into an escrow account held by the solicitors.

2. I dealt with a number of preliminary matters concerning the appeal and Knipp's respondent's notice in a judgment delivered on 10 June 2020 ([2020] EWHC 1615 (Ch)) (the "first judgment"). I shall not repeat what I said there.

3. The parties have attempted to turn what is, in reality, a quite straightforward and commonplace set of circumstances into something complex. I am not intending to allow myself to be any more diverted into those complexities on the substantive hearing of the appeal and cross-appeal, than I was in my first judgment.

4. In essence, the appeal and cross-appeal raise just 5 issues:-

   i) Was the judge right to decide that he was bound by *Salford Estates (No. 2) Limited v. Altomart Limited (No. 2)* [2015] Ch 589 ("*Salford Estates*") to consider whether there were wholly exceptional circumstances before moving to ask whether the debt was disputed in good faith on substantial grounds?

   ii) Was the judge right, in effect, to decide that there were, in this case, no such wholly exceptional circumstances?

   iii) Should the judge have dismissed the petition, stayed the petition, or allowed the petition to proceed?

   iv) Was the judge wrong to have ordered Knipp to pay Telnic's costs on the standard basis?

   v) Was the judge wrong to order Knipp to pay the costs into an escrow account, rather than directly to Telnic?

The basic facts

5. Since 2007, Knipp has provided data hosting and software development services to Telnic for the purposes of its operation of the ".tel" domain.

6. On 1 December 2009, Knipp and Telnic entered into a Services Agreement (the "Agreement") for the provision of those services. Clauses 12.1 and 12.2 provided for a service fee to be paid by Telnic to Knipp within 30 days of receiving monthly invoices from Knipp. Clause 23.1 provided that "any dispute, controversy or claim arising out of or relating to this agreement … or the breach, termination or validity thereof" shall be referred to arbitration upon the written request of either party.

7. Knipp claims that Telnic has not paid invoices totalling £263,777.28 in respect of hosting services provided after October 2015 and earlier software development work, and that Telnic is balance sheet insolvent.

8. In November 2014, Knipp and Telnic allegedly entered into a further agreement (the "Term Sheet"), which provided for the creation of a new German company, "NEWCO", to be 51% owned by Knipp and 49% owned by Telnic. The joint venture envisaged by the Term Sheet never took place. According to Telnic, Knipp agreed to waive the service fees (payable under the Agreement) in accordance with clause XI of the Term Sheet. According to Knipp, certain conditions precedent set out in clause XIV of the Term Sheet were never met so that the Term Sheet never came into force. Telnic claims to have a cross-claim against Knipp for its failure to adhere to the agreement in the Term Sheet.

9. On 23 November 2015, Mr Khashayar Mahdavi, a director of Telnic, allegedly wrote to Knipp agreeing that Telnic would pay the service fees due under the Agreement to Knipp from October 2015. There is a dispute as to whether this letter is covered by without prejudice privilege.

10. On 21 April 2017, Telnic sold its business to Telnames Ltd ("Telnames"), then its wholly owned subsidiary, since which time Telnic has not been actively trading. At the same time (after a Telnic board meeting on 24 March 2017) Telnic distributed all Telnames shares owned by Telnic in kind to Telnic's shareholders *pro rata* to their holding in Telnic.

11. On 19 March 2019, Knipp demanded £263,777.28 from Telnic in respect of the charges I have mentioned (the "petition debt"). The charges remain unpaid.

12. On 25 October 2019, Knipp presented a petition to wind up Telnic based on the petition debt on the grounds that Telnic was unable to pay its debts. The judge made his Order on 19 December 2019. Telnic was granted permission to appeal by Fancourt J on 29 April 2020, and I granted Knipp permission to cross appeal the Order and to amend its respondent's notice on 10 June 2020.

13. Since the Order was made, an arbitration between Telnic and Knipp has been initiated, and directions have been given by the arbitrators for its determination in the ensuing months.

The judge's judgment

14. Having set out the facts and the relevant parts of sections 122 and 123 of the Insolvency Act 1986 (the "1986 Act"), the judge cited the headnote and [39]-[41] of Sir Terence Etherton C's judgment in *Salford Estates* (see below). The judge concluded that the winding-up petition should not proceed for 5 reasons: (i) the Agreement on Knipp's own case remained extant, (ii) the petition debt was based on the Agreement, (iii) the petition debt was disputed and any such dispute should be referred to arbitration. That was consistent with the view taken by Knipp when it was proposing to trigger the arbitration provisions in July 2018, (iv) the Term Sheet was not material to the question of whether there should be an arbitration, because clause 24.3 of the Agreement made clear that the Term Sheet did not vitiate the terms of the Agreement, and (v) there were no special or exceptional circumstances "which would require this court to undertake

the very exercise which in *Salford [Estates]* we were cautioned not to undertake". He said that, stripping out the disputed debt, on Mr Mahdavi's evidence the company was not balance sheet insolvent.

15. The judge decided at [19] to limit the relief he granted, as a matter of discretion, to a stay of the petition because it was appropriate to protect Knipp for 4 reasons: (i) Knipp could apply to lift the stay if an arbitration award were made in its favour, (ii) any steps taken by Telnic to dispose of assets after the petition was presented would be *prima facie* void under section 127 of the 1986 Act, (iii) the petition date critically preserved any appropriate attack on antecedent transactions before October 2019, and (iv) "on balance and importantly" there was no real prejudice to Telnic as it was not actively trading and had not been for some time.

16. At [20] the judge stated that he would give liberty to apply "making it clear that if the arbitration does not proceed with the assiduous cooperation of the Company, and by that I mean within the next month to six weeks, the court may well be minded to consider lifting the stay and allowing the petition to proceed on the basis that the Company is deliberately not engaging in the arbitration process. That would be, in my judgment, an appropriate exercise of the court's discretion in allowing the petition, in those circumstances, to proceed and to exercise its own jurisdiction on the sustainability of the petition debt and any defences which are advanced against it".

17. When declining permission to appeal, the judge said that it was "important, in the overall context of this litigation, that [Knipp's position] is preserved". He refused permission to appeal "because it is right to hold the ring pending arbitration. Although I do not find special circumstances, I do find the facts of this case, particularly given the unusual concession which was made by Mr Mahdavi … as to the claim and how it is perceived by him, is something which would have told against him in terms of an overall assessment of the case". I suggested in argument that the "unusual concession" might have been a reference to paragraph 8b of Mr Mahdavi's 2nd witness statement, where he said that it was his view that "Knipp was cynically using the threat of legal action, and a refusal to comply with its obligations under the Term Sheet, as a strategy to take over the Company's business", and that it was in that context that Telnic had told Knipp that "commencing a misconceived arbitration against [Telnic] would not have the result that Knipp hoped. Instead of gaining the [Telnic's] business for itself, [Telnic] would enter liquidation, destroying value for all stakeholders". Ms Anna Scharnetzky, counsel for Knipp, thought that it was, instead, a reference to Mr Mahdavi's admission of a debt of over £300,000 as recorded in Telnic's accounts. I think the former more likely. Although it may not matter greatly, this aspect of the judge's comments throws some further light on his reason for ordering a stay rather than a dismissal of the petition.

18. The transcript of the hearing before judge also records that, in submissions on costs, the judge said that he wanted "to put [Telnic] under pressure to make sure it engages in the arbitration. I do not want anyone to dilly-dally on this".

Authorities

19. The leading relevant authority is *Salford Estates*, upon which the judge relied. Sir Terence Etherton C said this at [39]-[41]:

> "39. My conclusion that the mandatory stay provisions in section 9 of the [Arbitration Act 1996] do not apply in the present case is not, however, the end of the matter. Section 122(1) of the 1986 Act confers on the court a discretionary power to wind up a company. It is entirely appropriate that the court should, save in wholly exceptional circumstances which I presently find difficult to envisage, exercise its discretion consistently with the legislative policy embodied in the 1996 Act. This was the alternative analysis of Warren J in the Rusant case, at para 19.
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> 40. Henry and Swinton Thomas LJJ considered in *Halki Shipping Corpn v Sopex Oils Ltd* [1998] 1 WLR 726 that the intention of the legislature in enacting the 1996 Act was to exclude the court's jurisdiction to give summary judgment, which had not previously been excluded under the Arbitration Act 1975. It would be anomalous, in the circumstances, for the Companies' Court to conduct a summary judgment type analysis of liability for an unadmitted debt, on which a winding up petition is grounded, when the creditor has agreed to refer any dispute relating to the debt to arbitration. Exercise of the discretion otherwise than consistently with the policy underlying the 1996 Act would inevitably encourage parties to an arbitration agreement—as a standard tactic—to bypass the arbitration agreement and the 1996 Act by presenting a winding up petition. The way would be left open to one party, through the draconian threat of liquidation, to apply pressure on the alleged debtor to pay up immediately or face the burden, often at short notice on an application to restrain presentation or advertisement of a winding up petition, of satisfying the Companies Court that the debt is bona fide disputed on substantial grounds. That would be entirely contrary to the parties' agreement as to the proper forum for the resolution of such an issue and to the legislative policy of the 1996 Act.
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> 41. There is no doubt that the debt mentioned in the Petition falls within the very wide terms of the arbitration clause in the Lease. The debt is not admitted. In accordance with the decision in the *Halki Shipping* case [*HalkiShipping Corporation v. Sopex Oils Limited* [1998] 1 WLR 726], that is sufficient to constitute a dispute within the 1996 Act, irrespective of the substantive merits of any defence, and, were there proceedings on foot to recover the debt, to trigger the automatic stay provision in section 9(1) of the 1996 Act. For the reasons I have given, I consider that, as a matter of the exercise of the court's discretion under section 122(1)(f) of the 1986 Act, it was right for the court either to dismiss or to stay the Petition so as to compel the parties to resolve their dispute over the debt by their chosen method of dispute resolution rather than require the court to investigate whether or not the debt is bona fide disputed on substantial grounds".

20. In *AnAn Group (Singapore) Ptw Ltd v. VTB Bank* [2020] SGCA 33 ("*AnAn*"), the Court of Appeal of Singapore ("CAS") considered the standard of review in respect of a winding up petition based on a debt, which was the subject of an arbitration agreement. It largely followed *Salford Estates* concluding at [56] that winding up proceedings would be stayed or dismissed "as long as (a) there is a valid arbitration agreement between the parties; and (b) the dispute falls within the scope of the arbitration agreement, provided that the dispute is not being raised by the debtor in abuse of the court's process". The CAS thought that the "wholly exceptional circumstances" exclusion was too exacting a standard, imposing the "abuse of the court's process" exclusion instead (see [94]-[99] in the CAS's judgment). The CAS referred to the fact that Nugee J in *Fieldfisher LLP v. Pennyfeathers Ltd* [2016] EWHC 566 (Ch) at [28]-[29] had said that "the fact that the alleged debtor has made admissions in the past that money is due cannot fall within the description of wholly exceptional circumstances that the Chancellor seems to have had in mind".

The arguments of the parties

21. On its cross appeal (issues 1 and 2 above) Knipp argued that *Salford Estates* preserved the court's power to enquire whether a petition debt is disputed in good faith and on substantial grounds. The court should look closely at the particular facts of the case and balance the conflicting interests of the arbitration and insolvency regimes. There are, Knipp submitted, exceptional circumstances in this case because (a) the debt was admitted in correspondence said by Telnic to have been without prejudice, (b) Telnic is anyway balance sheet insolvent and the judge was wrong to have held otherwise, (c) Telnic has made an unlawful distribution to its shareholders, and (d) Telnic has tried to slow down the arbitration, or failed to participate in it in good faith. The court should therefore look at the substance of Telnic's non-admission of the petition debt and conclude that it is not in good faith and/or on substantial grounds.

22. On Telnic's appeal, Knipp argued that the judge had a discretion whether to dismiss or stay the petition. The judge was correct to stay the petition pending arbitration, both for the reasons he gave and because Telnic is balance sheet insolvent and has sought to delay the arbitration proceedings. Knipp argues that the costs order was a discretionary decision which the judge was entitled to reach and it should not be interfered with on appeal.

23. Telnic argued on issues 1 and 2 that none of the exceptional circumstances relied upon by Knipp can justify displacing the well-established rule that the court will not examine whether a debt governed by an arbitration agreement is disputed in good faith on substantial grounds.

24. On issue 3, Telnic argued that the judge should have dismissed the petition. It argues that a petitioner does not have standing unless it first establishes that it is a creditor. The court will only allow a petition based on a debt disputed in good faith and on substantial grounds to proceed in "very exceptional circumstances". An unadmitted debt which is subject to an arbitration agreement is treated as disputed for all practical purposes. A petition based on a disputed debt is bound to fail, is an abuse of the court's process and entitles the company to an unconditional injunction restraining it on the basis that the petitioner cannot establish standing. The court has a duty to strike out abusive proceedings. Telnic relied on numerous cases where the court has struck out a winding up petition based on a disputed debt. It submitted that Knipp knew that the debt was

disputed and decided to proceed anyway with its petition. The winding up petition is therefore a clear and deliberate abuse of process.

25. On issue 4, Telnic relied on the decision of Evans-Lombe J in *Sat-Elite Limited v. Strong* [2003] EWHC 2990 (Ch) ("*Sat-Elite*") at [24] to argue that it is wrong in principle to award costs on anything other than the indemnity basis without good reason when there is a disputed debt petition. On issue 5, Telnic argued that the judge appeared to have been motivated by an inappropriate desire to prevent the Company from using the costs awarded in its favour to fund its defence to the arbitration proceedings. The order in effect gave Knipp an enhanced freezing order.

Issue 1: Was the judge right to decide that he was bound by *Salford Estates* to consider whether there were wholly exceptional circumstances before moving to ask whether the debt was disputed in good faith on substantial grounds?

26. Once it is accepted, as it must be in this case, that (i) the petition debt is alleged to arise under the Agreement, (ii) the Agreement includes a binding arbitration clause, and (iii) the debt is disputed or not admitted, the judge was plainly bound by the decision in *Salford Estates*.

27. As Sir Terence Etherton C made clear in *Salford Estates*, in a case where the debt is covered by an arbitration agreement, the judge sitting (now) in the Insolvency and Companies List of the Business and Property Courts should not "conduct a summary judgment type analysis of liability". It is not, therefore, appropriate, save in wholly exceptional circumstances, for that judge to inquire whether the debt is disputed in good faith on substantial grounds. *Salford Estates* decided that such an investigation should not be made unless wholly exceptional circumstances were established. Nugee J said in *Fieldfisher*, and I agree, that even past admissions of the debt (at least ones that are seemingly retracted by the time of the application) would not constitute such circumstances. That is because the court reasoned in *Salford Estates* that the discretion of the judge of the Insolvency and Companies List must be exercised so as to (a) uphold the policy of the Arbitration Act 1986, (b) discourage parties to an arbitration agreement from bypassing it as a tactic by presenting a winding up petition, (c) prevent one party applying pressure on an alleged debtor to pay up immediately or face the burden of satisfying the court that the debt was *bona fide* disputed on substantial grounds, and (d) require the parties to adhere to their agreement as to the proper forum for the resolution of such an issue.

28. In these circumstances, the only real question is whether such wholly exceptional circumstances existed in this case.

Issue 2: Was the judge right, in effect, to decide that there were, in this case, no such wholly exceptional circumstances?

29. It is said that there were wholly exceptional circumstances in this case because (a) the debt was admitted in correspondence said by Telnic to have been without prejudice, (b) Telnic is anyway balance sheet insolvent and the judge was wrong to have held otherwise, (c) Telnic has made an unlawful distribution to its shareholders, and (d) Telnic has tried to slow down the arbitration, or failed to participate in it in good faith.

30. As the CAS in *AnAn* and Nugee J in *Fieldfisher* implied, the "wholly exceptional circumstances" test is an exacting one. Knipp invites the court in this case to circumvent the test laid down in *Salford Estates*, because, in effect, it is said that the dispute raised by Telnic and its non-admission of the petition debt is unmeritorious. But the merits are being determined in the arbitration as the parties agreed they should be. There is, in my judgment, nothing in the circumstances relied upon by Knipp that takes this case out of the ordinary and into the realm of wholly exceptional circumstances. The alleged admissions are hedged around with caveats that make them inconclusive, and, as I have said, I agree with Nugee J's views about the value of this kind of alleged admission. The alleged balance sheet insolvency is unclear as is so commonly the case. Even if it were the case, it would not give Knipp *locus standi* to pursue a petition unless it could show that it was a creditor. The alleged unlawful distribution is also disputed and itself raises complex issues of law and fact that cannot be resolved in proceedings of this kind. Telnic's conduct in seeking to stay the arbitration may have been unfortunate, but can hardly be described as a wholly exceptional circumstance.

31. As I said in my first judgment in this case at [12], *Salford Estates* does not establish that the court cannot under any circumstances enquire into whether or not the debt is disputed in good faith or on substantial grounds. It is a matter of discretion, as I made clear in *The Commissioners for Her Majesty's Revenue and Customs v Changtel Solutions UK Limited* [2015] EWCA Civ 29 ("*Changtel*") at [48]. But as I also said in my first judgment the circumstances will be very rare for the reasons given in *Salford Estates.* Having now examined the circumstances raised by Knipp in this case in detail, I have reached the clear conclusion that no very rare and wholly exceptional circumstances exist here that would justify the court in departing from its usual practice which is to dismiss or stay the petition.

32. There is, therefore, no need for me to go on to consider whether the petition debt is, on the facts, disputed in good faith on substantial grounds. Knipp accepted that, if there were no wholly exceptional circumstances justifying the consideration of that issue, it did not require determination on their cross-appeal.

Issue 3: Should the judge have dismissed the petition, stayed the petition, or allowed the petition to proceed?

33. On the basis of the decisions that I have made thus far, the judge was right not to allow the petition to proceed.

34. The first question under this head, therefore, is whether there is a discretion in the court to decide not to dismiss a petition, having concluded that the dispute is covered by an arbitration agreement, and that there are no "wholly exceptional circumstances" justifying the court proceeding to consider whether the petition debt is disputed in good faith and on substantial grounds.

35. The starting point once again is *Salford Estates*. Sir Terence Etherton C said at [40] that "it would have been better to have dismissed the Petition rather than to stay it in the absence of any evidence that there was another creditor of Altomart who was willing to be substituted as the petitioner". Although he seems not to have thought that a stay was not open to the court.

36. There is, in fact, not much authority on the situation that arises here and arose in *Salford Estates*; that is where a petition is stayed or dismissed to allow an arbitration to proceed. The bulk of the authority concerns the more usual situation where the question is what should happen to a petition founded on a debt that is determined to be genuinely disputed on substantial grounds.[1]

37. In *Tallington Lakes v. Ancasta International Boat Sales* [2014] BCC 327 at [4]-[5], David Richards J described the principle that a petition founded on a debt that was genuinely disputed on substantial grounds would be struck out as "a statement of general practice". He said also that "the earlier practice of staying a winding-up petition while the issue of liability was determined in separate proceedings was abandoned in favour of striking it out". Moreover, in *In Re a Company (No 006685 of 1996)* [1997] BCC 830 at page 832, Chadwick J described the striking out of a disputed debt as a "rule of practice". Finally, in *Jubilee Internationale v. Farlin Timbers TBE* [2005] EWHC 3331 (Ch), Mr John Jarvis QC, sitting as a deputy judge of the High Court, adjourned a petition to allow an arbitration to proceed in Singapore, but for reasons that are far removed from the present case. Telnic argued that the decision was wrong because it did not consider whether the presentation of the petition had been an abuse of process and because very few cases were cited. I would regard it as an example of the flexibility that is available to the winding up court.

38. As it seems to me, the cases relied upon by Telnic such as *Mann v. Goldstein* [1968] 1 WLR 1091, *Re Claybridge Shipping* [1997] 1 BCLC 572 (CA) and *Re GFN Corporation* [2009] CILR 650 are not concerned with the question of whether there is jurisdiction to stay or adjourn, rather than strike out, a petition (save, perhaps, where the company is obviously solvent). There plainly is such jurisdiction; the question is simply whether it was correctly exercised.

39. As Sir Terence Etherton C held in *Salford Estates*, the court's discretion in circumstances of this kind should be exercised consistently with the policy behind the Arbitration Act 1996.

40. The judge's reasons for staying, rather than dismissing, the petition were diverse. He wanted to make it clear that Telnic should cooperate in the arbitration process, and to protect Knipp by allowing it to lift the stay if it succeeded in the arbitration. He wanted to protect creditors by preventing Telnic disposing of assets and preserving a liquidator's rights of action in respect of the period up to presentation. He considered prejudice to Telnic, but thought a stay was appropriate because Telnic was not an active trading company.

41. Mr Robert Amey, counsel for Telnic, criticised these reasons because he said the stay gave Knipp better protection than it would have had if it had applied for a freezing injunction, without it having to provide an undertaking in damages or an exclusion for Telnic's reasonable legal fees. He submitted that Telnic needed to raise money to contest the arbitration and it could not do so whilst Knipp's petition was extant. Knipp

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1 *French* on *Applications to Wind Up Companies*, 3rd edition, 2015, gives three reasons why a disputed debt petition might be adjourned rather than dismissed: fraud, a likely inability to pay if the debt is established, and "required by the particular circumstances of the case".

submitted in response that Telnic has in practice raised funds to contest the arbitration, so this objection was illusory.

42. As it seems to me, the judge exercised his discretion as between stay and dismissal of the petition in an appropriate manner. I see no indication in his judgment that he had failed to realise that he needed to consider the question carefully. It seems a fair inference from what he did say, and despite the fact that he did not mention the point expressly, that he understood that the normal course would have been to dismiss the petition. That was why he explained carefully, in a short judgment, the precise reasons for limiting the relief he was granting to a stay of the petition. Moreover, his judgment expressly cited the passage from Sir Terence Etherton C's judgment in which he spoke repeatedly of the need, in exercising the winding up court's discretion, to uphold the policy of the Arbitration Act 1996.

43. Moreover, the matters the judge took into account were all relevant, in greater or lesser measure, to the discretion he was exercising. Prejudice to Telnic was considered and apparently rejected. The judge did not have to mention every aspect of every ramification of the Order he was making. The comparison with the freezing order jurisdiction is not a relevant factor; as I pointed out in *Changtel* at [36]-[41], the winding up court exercises its own discretion.

44. In these circumstances, I can see no basis for the submission that the judge exercised his discretion on the wrong legal basis, and therefore no foundation for an appeal court to interfere with his conclusion.

45. I raised the possibility in the course of argument, that circumstances had changed since the judge made his order, in that an active arbitration was now underway, when that had not been the situation before the judge. Telnic suggested I could take that into account in deciding this aspect of the appeal. I disagree, on the basis that I have decided that I cannot interfere with the judge's discretion. It would have been different if I had reached another conclusion. But, in this situation, if Telnic wishes to ask for the judge's stay to be varied, or for a new order to be made, in the light of new circumstances, it must apply at first instance under the liberty the judge granted.

46. I would, therefore, dismiss Telnic's appeal on this point, and uphold the judge's decision to stay Knipp's petition.

Issue 4: Was the judge wrong to have ordered Knipp to pay Telnic's costs on the standard basis?

47. This issue only arises if Telnic is right on issue 3. Once it is clear that the judge was entitled to stay the petition, the award of standard costs was entirely appropriate.

Issue 5: Was the judge wrong to order Knipp to pay the costs into an escrow account, rather than directly to Telnic?

48. Again, I see this as entirely a matter of the court's wide discretion as to costs. The judge was justified in his scepticism at the time about Telnic's willingness to engage in the arbitration. He required the costs to be deposited in escrow in case all that Knipp had been alleging came true, and it was later shown that Telnic had indeed been contesting

the petition debt in bad faith or on insubstantial grounds. I do not see any reason to suppose that the judge exercised his discretion as to the costs on an improper basis.

49. In the result, I ordered on 10 June 2020 that the monies in the escrow account should stand as security for Knipp's costs of this appeal, and that appeal has been unsuccessful. What will happen to that escrow account will nonetheless depend on what overall costs order I decide to make as a result of this judgment as a whole.

50. I will dismiss this part of Telnic's appeal.

Conclusion

51. For the reasons I have given, I will dismiss both the appeal and the cross-appeal and uphold the judge's order.