Neutral Citation Number: [2020] EWHC 974 (Ch)

Case Nos. BR-2014-002375 and BR-2015-001180

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
IN BANKRUPTCY

Royal Courts of Justice
Rolls Building, Fetter Lane,
London EC4A 1NL
Date: Friday 24 April 2020

Before :

MR JUSTICE SNOWDEN

- -

IN THE MATTER OF GLENN MAUD

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between :

(1) EDGEWORTH CAPITAL (LUXEMBOURG) S.A.R.L. **(2) THE LIBYAN INVESTMENT AUTHORITY**	**Petitioners**
- and –	
GLENN MAUD	**Respondent**

- -

Jonathan Nash QC and Cleon Catsambis (instructed by **Farrer & Co LLP**) for Edgeworth Capital (Luxembourg) S.A.R.L.
Stephen Robins (instructed by **Hogan Lovells International LLP**) for The Libyan Investment Authority
Joseph Wigley and Edward Crossley (instructed by **Bryan Cave Leighton Paisner LLP**) for Mr. Maud
Andrew Rose (instructed by **Joseph Hage Aaronson LLP**) for Navarro Ventures S.A.R.L.

Hearing dates: 20-22, 25, 27 February 2019

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Approved Judgment

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 11 a.m. on Friday 24 April 2020.

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MR JUSTICE SNOWDEN

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1. This judgment follows a hearing in February 2019 (the "2019 Hearing") of two petitions for a bankruptcy order to be made in respect of Mr. Glenn Maud ("Mr. Maud"). One petition (BR-2014-002375) was by The Libyan Investment Authority (the "LIA" and the "LIA Petition") and the second (BR-2015-001180) was by Edgeworth Capital (Luxembourg) S.à.r.l. ("Edgeworth" and the "Edgeworth Petition").

2. I set out the background to these complex and highly unusual bankruptcy proceedings in two earlier judgments on the Edgeworth Petition. These were the judgment on appeal from a bankruptcy order made by Mr. Registrar Briggs: [2016] EWHC 2175 (Ch) (the "Appeal Judgment"); and my judgment following the first hearing of the Edgeworth Petition before me: [2018] EWHC 247 (Ch) [2019] Ch 15 (the "First Judgment").

BACKGROUND

3. The labyrinthine details of the earlier stages of the two Petitions are set out in those two judgments, but for the purposes of this judgment I can sketch the outline more broadly.

4. The Edgeworth Petition is one aspect of a long-running set of proceedings in England and Spain which relate to a group of three Spanish and Dutch companies known as the "Marme Group". Until recently, the Marme Group owned the "Santander Asset" which is a substantial office and real estate complex in Boadilla del Monte, Madrid. That complex, which is known locally as "Financial City", houses the international headquarters of Banco Santander and is let on a long lease to a company in the Santander Banking group.

5. The Santander Asset was owned and operated by a Spanish company, Marme Inversiones 2007 S.L. ("Marme"). Marme was and is wholly owned by a Dutch company, Delma Projectontwikkeling BV ("Delma"), which in turn was and is wholly owned by another Dutch company known as Ramblas Investments BV ("Ramblas"). One half of the shares in Ramblas were and are registered in the names of each of Mr. Maud and a business associate of his, Mr. Derek Quinlan ("Mr. Quinlan").

6. As a result of its rental income from Banco Santander, the Santander Asset is a very valuable property investment. However, the companies in the Marme Group were heavily indebted as a result of the financing incurred to acquire the Santander Asset. These financial obligations led to the companies in the Marme group entering insolvency proceedings in Spain in February 2014. At a relatively early stage of those proceedings the insolvency administrator appointed in Spain (the "Administrator") proposed that there should be an open auction and sale of the Santander Asset to the highest bidder.

7. The Administrator's attempt to implement that plan led to intense litigation in Spain throughout the insolvency proceedings between a number of parties who were interested in acquiring control of the Santander Asset. These parties included Mr. Maud and his associates on the one hand, and Edgeworth (which is a property investment company associated with Mr. Robert Tchenguiz ("Mr. Tchenguiz")), and its associates on the other. In very broad terms, the battle for control of the Santander Asset has been between Mr. Maud and Mr. Quinlan as incumbent shareholders of the Marme Group, and Edgeworth and its associates as the holders of a large proportion of the Marme Group's debt.

8. The acquisition of the Santander Asset by the Marme Group in September 2008 was financed by a number of loans:

i) A "Senior Loan" of €1.575 billion to Marme through a syndicate of banks headed by RBS.

ii) A "Junior Loan" of €200 million from RBS to Ramblas, which was secured, among other things, by (i) a pledge executed by Mr. Maud and Mr. Quinlan in favour of RBS over their shares in Ramblas (the "Ramblas Share Pledge"), (ii) a pledge executed by Ramblas in favour of RBS over its shares in Delma (the "Delma Share Pledge"), and (iii) a personal guarantee executed by Mr. Maud and Mr. Quinlan in favour of RBS, limited to €40 million (the "Personal Guarantee").

iii) A "Personal Loan" of €75 million by RBS to Mr. Maud and Mr. Quinlan jointly and severally, which loan was secured over various assets of Mr. Maud and Mr. Quinlan.

iv) Pursuant to its terms, the monies advanced under the Personal Loan were on-lent to Ramblas together with other funds from Mr. Quinlan and from a company owned by Mr. Maud called Cruz Holdings Limited ("Cruz") in the total amount of €148.5 million (the "Shareholder Loans").

9. In addition, Mr. Maud, Cruz and Mr. Quinlan entered into a subordination agreement which subordinated repayment of the Shareholder Loans to repayment of the Junior Loan by Ramblas; and Mr. Maud, Cruz and Mr. Quinlan granted third party security to RBS over their rights in respect of the Shareholder Loans to secure repayment of the Junior Loan by Ramblas.

10. In September 2010 Mr. Maud and Mr. Quinlan defaulted on an interest payment on the Personal Loan, and RBS took the opportunity to accelerate the loan and demand repayment. Only a partial repayment was forthcoming.

11. Thereafter, in late 2010, RBS sold the Junior Loan and the Personal Loan and their related security rights to Edgeworth and its then funder, Aabar Block S.a.r.l. ("Aabar") which is an investment company controlled by the Abu Dhabi sovereign wealth fund. Edgeworth and Aabar jointly acquired the Junior Loan and its related security (the Ramblas Share Pledge, the Delmas Share Pledge and the Personal Guarantee) for about €195 million. They also paid a mere €5,000 to acquire the Personal Loan and its related security.

12. In June 2011, Edgeworth and Aabar obtained judgment from Teare J in the Commercial Court against Ramblas on the Junior Loan and interest in the sum of about €216.6 million, and judgment against Mr. Maud and Mr. Quinlan in the sum of about €52.6 million in respect of the Personal Loan and interest. Receivers were also appointed over Mr. Maud's, Cruz's and Mr. Quinlan's rights in respect of the Shareholder Loans (the "Receivers").

13. After judgment against him, and following his involvement in an unrelated dispute in relation to the Coroin group of companies which owned hotels including the Savoy, Mr. Quinlan conditionally agreed to sell his shares in Ramblas to Edgeworth and Aabar; the condition being that the transfer became permissible pursuant to the Articles of Association of Ramblas.

14. Having reached an agreement with Mr. Quinlan, Edgeworth and Aabar then sought to pursue Mr. Maud and to enforce their security rights in respect of his shares in Ramblas. After failing to enforce their security directly through litigation in Holland, they turned their attention to attempting to bankrupt Mr. Maud in England, serving him with a statutory

demand in June 2014, based upon his liability of about €52.6 million in respect of the judgment on the Personal Loan, less the estimated amount of security which they held for that debt.

15. In addition, in October 2014 Edgeworth and Aabar demanded payment of €40 million from Mr. Maud under his Personal Guarantee, and when payment was not forthcoming commenced proceedings in the Commercial Court against him. The trial of that claim took place in November 2015, when Edgeworth and Aabar obtained judgment against Mr. Maud for €40 million. Having heard expert evidence on Spanish law, Knowles J rejected an argument by Mr. Maud that the Personal Guarantee had been discharged by Article 97.2 of the Spanish Act on insolvency 22/2003 ("Article 97.2"). Knowles J held that, even if it were applicable to the Personal Guarantee (which was governed by English law), as a matter of Spanish law, Article 97.2 only applied to guarantees *in rem* given by the debtor company which was subject to the insolvency proceedings, and did not apply to guarantees given by a third party such as Mr. Maud.

The Edgeworth Petition

16. After being served with the statutory demand by Edgeworth and Aabar, Mr. Maud applied to set it aside. One of the grounds advanced by Mr. Maud was that Edgeworth and Aabar were pursuing an illegitimate collateral purpose which made their petition an abuse of process. The basis for this argument was that the Articles of Association of Ramblas contain a provision that if a shareholder loses the right to dispose of his property (e.g. is declared bankrupt) his shares must be offered to the other shareholders at a price that, if not agreed, is to be determined by three independent experts.

17. Mr. Maud alleged that Edgeworth and Aabar were motivated to trigger the provision in the articles of Ramblas and to obtain control of Mr. Maud's shares in Ramblas by that route. It was said that, together with their agreement to acquire Mr. Quinlan's shares, this would enable them to obtain control of the Santander Asset via ownership of the Marme Group. Mr. Maud contended that this would be contrary to the interests of the general body of his creditors who would be better off maximising the returns through sale of the Santander Asset in the Spanish insolvency and the distribution of the resultant funds up the corporate structure, including repayment of the Shareholder Loans.

18. In a judgment given on 8 June 2015, [2015] EWHC 1626 (Ch), Rose J refused to set aside Edgeworth and Aabar's statutory demand. She held on the evidence then before her that there was no abuse of process. In particular, she held that Edgeworth and Aabar truly wanted to make Mr. Maud bankrupt, and that there was no reason to think that a sale of Mr. Maud's Ramblas shares under the pre-emption process would be at any less than a proper price: hence triggering that process would not damage the prospects of Mr. Maud's other creditors.

19. The Edgeworth Petition was then presented on 15 June 2015. After presentation, the Edgeworth Petition was heard and adjourned a number of times on the grounds that there was a reasonable prospect of payment. However, on 21 April 2016 Mr. Registrar Briggs decided that the time had come to make a bankruptcy order: see [2016] EWHC 1016 (Ch).

20. Although Mr. Maud had continued to argue that the petition was an abuse of process by Edgeworth and Aabar, the Registrar rejected that argument. Part of his reason for doing so was the acceptance of a submission made to him by counsel then instructed jointly by

Edgeworth and Aabar, based upon an interpretation of the Articles of Association of Ramblas and the agreement between them and Mr. Quinlan, that Aabar and Edgeworth did not have any ulterior object in pursuing the Edgeworth Petition.

21. That order was stayed pending appeal to avoid triggering the pre-emption provisions, and the appeal came before me in mid-July 2016. By the time of the appeal hearing, Edgeworth and Aabar had fallen out and were separately represented. Shortly before the appeal hearing, Edgeworth served a supplemental skeleton argument in which it accepted that the submission previously made, and accepted by the Registrar, that Edgeworth had no ulterior object in pursuing the petition could not be sustained. The skeleton stated:

> "In light of instructions received yesterday from Edgeworth, it is however accepted that (1) Edgeworth believed that Mr. Maud was using his position as director and shareholder in the Marme Group to frustrate Edgeworth's attempt to recover full value for its investment in the Marme Group, to acquire the Santander Asset or otherwise protect its mezzanine position of €360 million, (2) it perceived that placing Mr. Maud's assets under the control of an independent trustee would be likely to remove that obstacle, and (3) this formed part of its motivation for seeking to bankrupt Mr. Maud."

This was subsequently verified by a short witness statement from Mr. Tchenguiz.

22. For its part, a witness statement served on behalf of Aabar gave its reasons for pursuing the petition as the belief of its senior management that an independent trustee in bankruptcy with control of Mr. Maud's assets would be likely to exercise the rights in a commercial and rational way, for the benefit of Mr. Maud's creditors.

23. In my Appeal Judgment, I first considered the nature of a bankruptcy petition as a class remedy, referring in particular to the decision of Mr. Richard Sykes QC (sitting as a Deputy High Court Judge) in Re Leigh Estates (UK) Limited [1994] BCC 292, which summarized the applicable principles. Secondly, I considered the authorities on abuse of this collective process, concluding that the motives or objectives of a petitioning creditor that do not amount to abuse might still be relevant if the court is required, as a result of opposition from other creditors, to evaluate the class interest.

24. Thirdly, I explained, referring to Sekhon v Edgington [2015] 1 WLR 4435, that the court's consideration of the views of creditors opposing the petition was separate from the exercise of the court's discretion, as a case management question, to adjourn a bankruptcy petition in relation to an undisputed debt where the debtor asks for time to pay. I held that the court would only exercise this discretion if the debtor could produce credible evidence that there was a reasonable prospect that the petition debt would be paid in full within a reasonable time. Finally, I considered the court's discretion in exceptional cases to decline to make a bankruptcy order that would serve no useful purpose.

25. Applying these principles, I concluded that the Registrar had not addressed the class question correctly, and that with the auction of the Santander Asset about to take place in the Spanish insolvency, Mr. Maud's creditors as a class were entitled to express a view on whether Mr. Maud had a realistic prospect of obtaining a benefit from being involved in some way in that process and whether that prospect would be affected by making the

bankruptcy order. I therefore allowed the appeal and the Edgeworth Petition was relisted for a hearing which took place before me in November 2016.

26. At this time, the main protagonists in the Edgeworth Petition were Edgeworth and Aabar as joint petitioners on the one hand, and Mr. Maud, Navarro Ventures SARL ("Navarro") and GAC Global Asset Capital Europe LLC ("GAC") on the other. I also received written submissions from solicitors claiming to represent the LIA.

27. Navarro is owned by an entity which is beneficially owned by Mr. Maud's estranged wife. The sole director of Navarro is one of the trustees of the Maud family trust. Navarro is not an involuntary creditor of Mr. Maud: on the contrary, it voluntarily acquired the claims of Kaupthing Bank hf against Mr. Maud in October 2008 at the suggestion of Mr. Maud himself. The director of Navarro has given evidence that he exercises an independent judgment from Mr. or Mrs. Maud, but Navarro has supported every request by Mr. Maud for an adjournment.

28. GAC is also a company which chose to acquire a debt owed by Mr. Maud to a company called IHL which arose out of a guarantee for sums borrowed to finance the purchase of the Santander Asset by the Marme Group in 2008. GAC is an investor in office properties and formed a business association with Mr. Maud, doubtless with a view to making a bid for the Santander Asset.

29. At the hearing in November 2016, Mr. Maud sought again to raise the issue of abuse of process, referring to the skeleton argument and witness statements to which I have referred above. However, Mr. Maud declined an invitation to make an application to cross-examine Mr. Tchenguiz or the representative of Aabar on those witness statements. He nonetheless suggested I should disbelieve them.

30. Edgeworth and Aabar were united in refuting the allegations of abuse of process and resisting any suggestion that the Edgeworth Petition should be struck out, but were at odds as to what should happen to the petition. Although Edgeworth sought an immediate bankruptcy order, Aabar was content for the petition to be adjourned to see if benefit came from Mr. Maud's continued involvement in the Spanish insolvency proceedings.

31. For the reasons that I subsequently set out in the First Judgment, I declined either to dismiss the petition or make an immediate bankruptcy order. My reasoning can be summarised as follows:

    i) On the evidence before me and in the absence of cross-examination, I could not disregard the evidence as to Edgeworth and Aabar's purpose in pursuing the Edgeworth Petition, and I could not find that their purposes did not include recovering the money owed to them by Mr. Maud through a bankruptcy process.

    ii) I was in any event not satisfied that the collateral purposes of Edgeworth and Aabar alleged by Mr. Maud would operate to the detriment of his creditors as a whole. In particular, I was not satisfied that Mr. Maud had any clear arrangement with a company called AGC Equity Partners ("AGC") to benefit from a successful bid for the Santander Asset that would be harmed if Edgeworth and Aabar were to make him bankrupt and trigger his removal as a shareholder of Ramblas.

    iii) As joint creditors, Edgeworth and Aabar were required to exercise their powers unanimously, and unless I could conclude that one of them was acting in breach

of duty, I could not simply act on the basis of the views of one rather than the other. As Aabar was not acting irrationally or obviously in breach of its duty as joint creditor in not seeking an immediate order, the only thing that the petitioners were agreed upon was that the petition should not be dismissed.

iv) Having heard views from creditors opposed to making an immediate bankruptcy order, the view of the class as a whole appeared to be against making an order. The majority by number and value of creditors had made a commercial judgment that there was some prospect of developments in Spain producing a benefit to Mr. Maud, and there was no real likelihood of any obvious or immediate benefit to those creditors if a bankruptcy order was made. I could not dismiss that view as unreasonable or irrational.

32. Given the length of time that elapsed between the hearing and the delivery of the First Judgment, I did not order a further adjournment, but invited the parties to address me as to the appropriate directions I should give for the future conduct of the Petition. That led to the 2019 Hearing.

The Commercial Court proceedings between Aabar and Edgeworth

33. As indicated above, prior to the hearing of the appeal against the Registrar's bankruptcy order in 2016, Edgeworth and Aabar had fallen out. Aabar had provided all of the finance for their acquisition of the Junior Loan and the Personal Loan in 2010, and it issued letters in June 2016 demanding repayment by Edgeworth of all amounts due under those arrangements. This resulted in Edgeworth issuing proceedings against Aabar in the Commercial Court seeking declarations that the demands were not valid, and an injunction restraining Aabar from exercising its rights under the financing documents, alternatively damages of up to €2 billion (the "Commercial Court proceedings"). Aabar defended the proceedings and counterclaimed for approximately €113m plus costs and other amounts. Edgeworth's claim was based on an assertion that Aabar and Edgeworth had an oral agreement governing a plan to acquire jointly the Junior Loan and the Personal Loan and to act as partners in the acquisition of the Santander Asset.

34. Following a trial in May 2018, on 29 June 2018 Popplewell J gave judgment for Aabar on the claim and counterclaim: Edgeworth Capital (Luxembourg) Sàrl v Aabar Investments PJS [2018] EWHC 1627 (Comm). As I shall explain, the potential relevance of those proceedings is not in the details of the claim or the outcome, but is in some of the documentary material disclosed in the evidence given in cross examination by Mr. Tchenguiz, and in the comments made by Popplewell J in his judgment as to the reliability of that evidence.

35. Edgeworth's loss of the Commercial Court proceedings led to it finding another funder to replace Aabar. In October 2018, Edgeworth took an assignment of Aabar's interest in the petition debt and associated security. The result was that Edgeworth appeared at the 2019 Hearing as sole petitioner in respect of the Edgeworth Petition.

36. Edgeworth's funding to buy out Aabar was provided by TFB (Mortgages) Designated Activity Company ("TFB") and was secured by security assignments to TFB of Edgeworth's interest in the various debts due. TFB is an entity connected with the Reuben Brothers, who are well-known property investors in the UK.

The LIA Petition

37. The LIA made a loan in 2008 of €12.5 million to a company called Propinvest Group Limited of which Mr. Maud was a director, the purpose of which was to fund in part the deposit paid by Marme to acquire the Santander Asset. Mr. Maud gave a personal guarantee for the loan. Propinvest went into administration and the LIA made a demand of Mr. Maud under the personal guarantee. Mr. Maud does not dispute the existence of the LIA's debt, and it formed the basis of the LIA Petition which was presented on 31 July 2014 when the debt was about €22.2 million which equated to about £17.6 million.

38. Although the LIA Petition was first in time, it was stayed for about a year in June 2015 after Mr. Maud successfully applied (out of time) to Rose J to set aside the LIA's statutory demand against him on the basis that it would be unlawful for him to pay the debt due to the LIA by reason of EU sanctions: see [2015] EWHC 1625 (Ch).

39. Although the LIA also gave notice to support Edgeworth's Petition, it then played no effective role in those proceedings until Rose J's decision to set aside its statutory demand was reversed by the Court of Appeal in July 2016: see [2016] EWCA Civ 788. By that time, however, due to the situation in Libya, the identity of the persons with authority to represent the LIA in the UK and to pursue the LIA Petition was unclear. As a consequence, although solicitors purporting to represent the LIA sent a letter to me in November 2016 supporting the Edgeworth Petition, which I considered in my First Judgment, I held that I could not accept those views as the views of the LIA.

40. The identity of the person or persons with authority to speak on behalf of the LIA was, however, subsequently resolved by a receivership order made by Flaux LJ in September 2017 which appointed joint receivers and mangers in the UK of the LIA's interest in the LIA Petition and certain other assets of the LIA.

41. Accordingly, at the 2019 Hearing, and without objection from Mr. Maud, I directed that the LIA Petition should be listed for hearing together with the Edgeworth Petition: and the LIA (acting by its court appointed receivers and managers) played a full role in that hearing.

The Receivers' Part 8 Claim

42. On the first day of the 2019 Hearing, before turning to the Edgeworth and LIA Petitions, I first heard the expedited trial of a Part 8 claim brought by the Receivers against Mr. Maud, Cruz and Mr. Quinlan concerning their rights against Ramblas in relation to the Shareholder Loans. Mr. Maud, Cruz and Mr. Quinlan were represented by counsel at the trial, but chose not to advance any argument in opposition to the relief sought by the Receivers.

43. Having heard arguments from the Receivers, I gave a judgment in which I accepted, as had always been undisputed in earlier hearings in the Edgeworth Petition, that the security granted over the Shareholder Loans by Mr. Maud, Cruz and Mr. Quinlan was to secure repayment of the Junior Loan: see [2019] EWHC 424 (Ch) at [11].

44. As a result, I made a declaration that, by reason of their appointment as receivers of the sums owed to the three defendants in respect of the Shareholder Loans, the Receivers were entitled to receive payment of any sums that would otherwise be payable by Ramblas to Mr. Maud, Cruz and Mr. Quinlan in respect of the Shareholder Loans. I also granted an

injunction requiring Mr. Maud, Cruz and Mr. Quinlan to give effect to the declaration by sending formal instructions to the Administrator to pay any distributions to be made by Ramblas in the Spanish proceedings in respect of the Shareholder Loans to the Receivers.

The 2019 Hearing of the Petitions

45. The 2019 Hearing then proceeded to consider the Edgeworth Petition and the LIA Petition. The approximate euro amounts of the debts claimed to be owed to them by the creditors who appeared (excluding interest after presentation of the petitions) were as follows:

    i) Edgeworth: Petition debt €42.6 million (the Personal Loan less security)

    ii) Edgeworth: Personal Guarantee €40 million

    iii) Navarro: €65 million

    iv) The LIA: Petition debt €22.2 million

    As indicated above, GAC had appeared at earlier hearings claiming to be owed €23 million. It did not, however, appear at the 2019 Hearing and its position was and is unknown.

46. The position of Edgeworth was that an immediate bankruptcy order should be made, and that Mr. Maud had no prospects of receiving anything from the Spanish insolvency that would be for the benefit of his unsecured creditors.

47. Mr. Maud again sought to strike out the Edgeworth Petition as an abuse of process on the basis that Edgeworth had never intended to use the bankruptcy proceedings to be paid its debts, but merely as a mechanism to remove him from his position as a shareholder in Ramblas. He submitted that this had originally been Edgeworth's sole motive in petitioning, namely to prevent him from interfering with its plan to gain control of the Santander Asset through the sale by auction of that property in the Spanish insolvency.

48. Mr. Maud further contended that this purpose had continued after Edgeworth had turned to TFB for finance after its relationship with Aabar turned sour, and had supported another Reuben Brothers vehicle, Sorlinda Investments SLU ("Sorlinda"), to win the auction in Spain in 2018 to buy the Santander Asset from the Administrator. Mr. Maud contended that even at that stage, given that the sale of the Santander Asset had not been completed due to continued litigation in Spain, Edgeworth was still attempting to deprive him of his status as a shareholder to stop him participating in a rival plan with AGC using Section 176 of the Spanish insolvency law ("Section 176"). In essence that section allows a company to be taken out of insolvency if an offer is made to the administrator which is agreed by all of the creditors or if full payment is made to those who do not agree. It was contended that this could still occur at any time up to completion of the sale of the Santander Asset, and Mr. Maud submitted that his consent as a continuing shareholder of Ramblas would be essential to such an offer being made.

49. For similar reasons, independently of his abuse of process argument, Mr. Maud resisted the making of a bankruptcy order either on the Edgeworth Petition or the LIA Petition on the basis that it would not be in the interests of his creditors. He submitted that if he were given more time and not made bankrupt, he would be able to "monetise his position as a shareholder in Ramblas and as a person of influence" for the benefit of his creditors by participating in a Section 176 offer.

50. Mr. Maud was supported in these arguments by Navarro, which opposed the making of a bankruptcy order. In addition to repeating the abuse of process arguments concerning Edgeworth, Mr. Rose submitted that Navarro took the view that there would be no assets available to creditors if Mr. Maud was immediately made bankrupt, whereas if an adjournment was granted there was at least a prospect that his creditors would benefit from Mr. Maud's involvement in a Section 176 offer to bring an end to the Spanish insolvency. He submitted that an adjournment would enable the court (and creditors) to form a clearer view of the prospects of a Section 176 exit route.

51. The LIA's position was complicated. Its primary position, firmly stated in its written submissions, was that it had waited long enough for payment and wanted a bankruptcy order made on its own petition, which, having been presented first, would give rise to a longer "look back" period for avoidance of any antecedent transactions. Alternatively, the LIA stated that it was willing to be substituted for Edgeworth on the Edgeworth Petition, if Edgeworth was not entitled to an order. Mr. Robins' written submissions of behalf of the LIA were scathing about Mr. Maud's prospects of obtaining any benefit from the Spanish insolvency proceedings, or from a potential offer under Section 176, or from being given any further time to pay.

52. However, in a change of position very shortly before the hearing, the LIA indicated that whilst maintaining its petition for a bankruptcy order, it would not oppose (but did not support) Mr. Maud's request for a short adjournment of two months. As explained by Mr. Robins, although the LIA remained "deeply sceptical that there is any real prospect of payment in any period, let alone the prospect of any material developments in the next two months", it took the view that the delay requested would not make any real difference, and that Mr. Maud could be given a "final chance".

The current position in the Marme Group insolvency proceedings in Spain

53. The early background to the insolvency proceedings of the Marme Group in Spain, and the proposal by the Administrator that there should be an auction of the Santander Asset, was addressed in some detail in my First Judgment.

54. In addition, in February 2018 the Administrator applied to the Spanish court for authorisation to explore a proposal put to him by Edgeworth which Edgeworth contended would satisfy the requirements of Section 176 and enable the Marme Group to be taken out of insolvency. On 8 May 2018, the Spanish Court made an order stating, in effect, that it would not approve the Administrator's request, because Section 176 does not provide for the Spanish Court to give advance authority for payment of claims, nor does it provide for the Spanish Court to provide advance authority for the financing operations necessary for such payment.

55. Thereafter, no offer under Section 176 was made by Edgeworth. Instead, after a large number of challenges to the proposed process, the auction of the Santander Asset originally proposed by the Administrator was finally approved by the Spanish court in July 2018 and it commenced on 25 July 2018.

56. After two rounds of bidding, three final bids were received, (a) from AGC, (b) from Banco Santander itself, and (c) from Sorlinda, supported by Edgeworth. The value of each bid was assessed by reference to the amount which it would produce for Ramblas and in that respect were as follows:

i) Sorlinda €283.7 million

ii) Banco Santander €232.2 million

iii) AGC €159.5 million

57. After extensive litigation over the auction process, on 15 January 2019 the Spanish Court announced that the Sorlinda bid was the best bid (the "Approval Ruling"). This in turn led to a further bout of litigation in Spain in which the Approval Ruling was subject to three further appeals. One of these was from Banco Santander; one was from a number of banks that were involved in litigation in the Commercial Court that had been brought by Marme in relation to a number of swap agreements; and one was from Edgeworth which, as the main creditor of Ramblas, asked the Spanish Court to accept a higher second bid that Sorlinda had apparently intended to submit in the process rather than the lower (but winning) bid which it had, in error, actually submitted. Additionally, Edgeworth issued separate proceedings challenging a decision of the Administrator to subordinate its claims against Ramblas in respect of the Junior Loan so that they would rank *pari passu* with the claims of Mr. Maud, Cruz and Mr. Quinlan in respect of the Shareholder Loans.

58. At the time of the 2019 Hearing before me, these challenges in Spain were still unresolved and it was unclear when they might be resolved or when the sale of the Santander Asset and the distribution of the proceeds might be concluded. As I have indicated, there was also a suggestion from Mr. Maud and Navarro that an alternative exit under Section 176 involving AGC was still possible, although the evidence on that point was hotly disputed.

59. After I reserved my judgment at the end of the 2019 Hearing, the parties continued to notify me of events in Spain in correspondence.

60. By 13 May 2019 all pending appeals in the Spanish insolvency proceedings concerning the outcome of the auction process had been dismissed and the two month period for completion of the sale of the Santander Asset to Sorlinda had commenced. Thereafter, following payment of the purchase price by Sorlinda on 5 July 2019, the Administrator sought confirmation from the Spanish court that Sorlinda had complied with the terms of its winning bid. By a decision on 16 July 2019 the Spanish court issued a definitive ruling awarding the Santander Asset to Sorlinda (the "Definitive Ruling").

61. Mr. Maud, Mr. Quinlan and Marme then sought to appeal the Definitive Ruling. At the same time, Mr. Maud's solicitors also suggested to me in a letter dated 22 July 2019 that a decision of the Spanish Supreme Court in certain other unrelated cases limiting interest on secured debts in a Spanish insolvency to simple, rather than default interest, meant that there would be a reduction in the preferred creditors' claims in the Marme Group insolvency and a consequent surplus available from the monies to be paid by Sorlinda which would ultimately be available to Mr. Maud and Mr. Quinlan as shareholders in Ramblas. The letter stated that Mr. Maud and Mr. Quinlan had commenced proceedings in Spain seeking a declaration that any interest savings should benefit Marme's estate (the "Interest Claim").

62. That contention was disputed by Edgeworth and Sorlinda who maintain that Sorlinda's bid had proceeded on the basis that Sorlinda would pay whatever necessary to satisfy the claims of the preferred creditors at Marme level, with fixed sums to flow up to Delma and Ramblas. Accordingly, they contend, any reduction in the amounts of interest owing by

Marme would be for Sorlinda's benefit and would not pass up the corporate structure. All potentially interested parties (including Edgeworth) are now joined to the Interest Claim.

63. The Spanish court dismissed the appeals against the Definitive Ruling on 22 October 2019 and in January 2020 Edgeworth discontinued its appeal against the decision of the Administrator that its claims under the Junior Loan were subordinated.

64. Thereafter, on 24 January 2020 the Administrator made a distribution of all funds available in the Ramblas insolvency to Edgeworth in respect of the Junior Loan and to the Receivers in respect of the Shareholder Loans. Mr. Maud, Cruz and Mr. Quinlan received nothing. According to the unchallenged evidence that I received at the 2019 Hearing from Ms. Martin on behalf of Edgeworth, this result was arrived at in the following way:

    i) On the Administrator's list of liabilities at the time of the 2019 Hearing, the claims in the insolvency of Ramblas (to one decimal point) were (i) state and ordinary creditors €7.9 million, (ii) Edgeworth €340.7 million, and (iii) the Shareholder Loans creditors €148.5 million.

    ii) From the €283.7 million payable to Ramblas under the Sorlinda bid, the state and ordinary creditors were to be first paid, leaving a total of €275.8 million to be divided *pari passu* between Edgeworth and the Shareholder Loans creditors. This was anticipated to result in a direct payment of €192.1 million to Edgeworth and €83.7 million to the Shareholder Loans creditors.

    iii) As a result of the orders that I made in the Part 8 claim, however, the €83.7 million payable to the Shareholder Loans creditors was to be paid to the Receivers, and was to be applied by the Receivers in further discharge of Ramblas's liabilities to Edgeworth in respect of the Junior Loan. The net result was that Edgeworth would receive all of the money from the Administrator, but would still suffer a shortfall on the Junior Loan of about €65 million.

65. In fact, it would appear that the amount distributed by the Administrator fell fractionally short of the anticipated amount because of further costs incurred in the insolvency in Spain. The result was that the amount paid to the Receivers was about €82.6 million, from which it can be deduced that the amount paid to Edgeworth would also have been about €2.5 million less than anticipated, leaving Edgeworth with a total shortfall on its claims against Ramblas of in excess of €68.6 million.

66. Two months after this distribution had been made, on 25 March 2020, Mr. Maud's solicitors wrote to Edgeworth's solicitors contending that on their construction of the security documents, the money paid to the Receivers should have been used to repay the Personal Loan owed by Mr. Maud and Mr. Quinlan in priority to repaying the Junior Loan owed by Ramblas. They contended that this would have been sufficient to discharge the amount of the Edgeworth Petition debt which, it was said, would not carry interest in a bankruptcy from the date of presentation of the petition. Mr. Maud's solicitors thereby asserted that Edgeworth was no longer a creditor in respect of its petition debt and that the Edgeworth Petition should be dismissed.

67. In response, Edgeworth's solicitors contended, among other things, (i) that the security granted over the Shareholder Loans was in respect of the repayment by Ramblas of the Junior Loan and not the indebtedness of Mr. Maud in respect of the Personal Loan, (ii) even if Mr. Maud's new construction was correct, not all of the money paid to the

Receivers would be available to discharge the Personal Loan because about a quarter of the money was payable to Cruz which was not a party to the document relied upon by Mr. Maud for his contention, and (iii) Edgeworth was in any event a creditor of Mr. Maud in respect of €40 million due under the judgment in respect of his Personal Guarantee, and that if need be, the Edgeworth Petition could be amended to include this amount. Edgeworth thereby continued to maintain its entitlement to seek a bankruptcy order.

68. Mr. Maud's solicitors responded disputing this analysis. They further contended that under Article 97.2 of the Spanish insolvency law, Edgeworth's withdrawal of its challenge to the subordination of its claim under the Junior Loan had the result that the Personal Guarantee had been extinguished.

ANALYSIS

The LIA Petition

69. I am in the unusual position of having two bankruptcy petitions before me simultaneously. The LIA Petition being the first presented, and there being no issue about the undisputed nature of its debt and its motives in petitioning, it makes sense to consider that petition first.

70. Following the same approach that I outlined in relation to a bankruptcy petition in the Appeal Judgment and the First Judgment, there are now essentially only two issues to be addressed in relation to the LIA Petition:

    i) The class question: what is the appropriate order to make having regard to the views of the general body of creditors?

    ii) Should the court decline to make a bankruptcy order on the basis that it would serve no useful purpose?

The class question

71. I dealt with the objective of the court in considering the interests of creditors as a class in the Appeal Judgment at [78] to [82]. For present purposes it is sufficient to refer to the summary from Re Leigh Estates:

> "Although a petitioning creditor may, as between himself and the company, be entitled to a winding-up order ex debito justitiae, his remedy is a 'class right', so that, where creditors oppose the making of an order, the court must come to a conclusion in its discretion after considering the arguments of the creditors in support of and opposing the petition: see Re Crigglestone Coal Company Ltd [1906] 2 Ch 327, in particular the statements of principle of Buckley J at first instance, and s. 195 of the Insolvency Act 1986…
>
> It is plain from the well-known authorities on the subject that, where there are some creditors supporting and others opposing a winding-up petition it is for the court to decide as a matter of judicial discretion, what weight to attribute to the voices on each side of the contest…

72. As I held in the First Judgment, it is also clear that this is a question on which Mr Maud, as the debtor, has no voice.

73. The approach the court should take to the exercise of its discretion in considering the views of creditors was a matter of some contention between the parties. For Edgeworth, Mr. Nash QC contended that the court's task is to assess the coherence and strength of the creditors' views and not to reach its own view and impose that on creditors. Mr. Robins emphasised that when weighing the views of creditors, the court should have regard to the circumstances and nature of their debts. In particular, he submitted, the views of connected creditors should ordinarily be given very little weight. In contrast, Mr. Rose for Navarro took the position that where the views of both the creditors seeking an order and those opposing were rational, it was not inevitable that the view of the majority in value would prevail but the court has to form its own view on the position that a hypothetical rational creditor would take.

74. I was taken to a number of authorities in addition to re Leigh Estates and Re Crigglestone Coal Company, of which the most useful were Re P&J Macrae Ltd. [1961] 1 WLR 229, Re Southard & Co Ltd. [1979] 1 All ER 582 and Re Demaglass Holdings Ltd. [2001] 2 BCLC 633.

75. In Re P&J Macrae, at page 235, Wilmer LJ emphasised the need not just to count numbers, but to consider the reason for a majority of creditors taking their position to oppose a petition supported by the minority:

> "It seems to me that before a majority of the creditors can claim to override the wishes of the minority, they must at least show some good reason for their attitude."

76. In Re Southard Brightman J said at page 586 B-D:

> "My proper course is to have regard to the value of the debts of the creditors supporting and opposing a winding up order, and the nature of those debts, to the reasons given by the minority for desiring the court to override the wishes of the majority and, since the majority have given reasons, to examine those reasons."

77. In Re Demaglass at page 639b and 639f-g, Neuberger J emphasised that the views of the creditors representing a majority in value should be given due weight, but would not be decisive in every case:

> "…I think it would require a wholly exceptional case before the court would deny a petitioning creditor a winding up order in circumstances where the majority of creditors supported the making of a winding up order….
>
> I should add that these points tend to underscore my view that the fact that the majority of creditors in value support the making of a winding up order is not necessarily decisive on the issue in every case."

78. In my judgment, the authorities demonstrate that the starting point for the court in determining whether to give effect to the right of the class *ex debito justitiae* to a

bankruptcy order or a winding up order, is to look at the value of debts of the creditors on each side of a disagreement among the class. However, it is also clear that the court's role in determining whether or not to give effect to the class remedy is not limited to a question of simple mathematics. The court will also look at the reasons advanced by the creditors on each side of the debate in order to assess whether those reasons are commercially rational and will have regard to other evidence to assess whether the weight and rationality of a particular creditor's approach is diminished by any extraneous factors such as personal antipathy or affection on the part of the creditor for the debtor (or those connected with it in the case of a company).

79. I do not think, however, that there is support in the authorities for Mr. Rose's proposition that it is for the court to formulate some view of a hypothetical rational creditor who is a member of the class, or (which may amount to the same thing) to impose its own view of the commercial merits or the best interests of the class.

80. Performing the task described in paragraph 78 above, as Mr. Rose accepted, subject to the LIA not opposing Mr. Maud being given "the final chance" of a two-month adjournment, the LIA (as petitioner) and Edgeworth (as supporting creditor) were in the majority in number and value in seeking a bankruptcy order, and Navarro was in the minority in opposing the LIA Petition.

81. However, the only reason given by the LIA for its non-opposition to a final adjournment of its own LIA Petition for a short period has now run its course. Mr. Maud has not received any funds distributed by the Administrator, and there is now no prospect that he will be in receipt of any monies from participating in any Section 176 offer.

82. It is also clear that Navarro's stated reasons for seeking an adjournment of the LIA Petition to see if anything would come of a possible offer under Section 176 involving Mr. Maud were speculative at the time of the 2019 Hearing and have not come to anything in fact.

83. Edgeworth's position is potentially complicated by the arguments very recently advanced by Mr. Maud in correspondence suggesting that all of Edgeworth's debts have been extinguished, and by the issue of Edgeworth's allegedly collateral and improper motives for wishing to see Mr. Maud made bankrupt.

84. The first, and simplest answer to those contentions in the context of the LIA Petition is that I cannot see how the provision of Article 97.2 could possibly have the result that Mr. Maud's liability to Edgeworth for €40 million arising from the Personal Guarantee given by him in relation to the Junior Loan can have been discharged.

85. As I have indicated, Edgeworth's claims under the Personal Guarantee were the subject of an English judgment in its favour in November 2015, and in giving that judgment, Knowles J expressly rejected the contention that Article 97.2 applied to, or could operate to discharge, the Personal Guarantee: see [2015] EWHC 3464 (Comm). That issue is now *res judicata* between Edgeworth and Mr. Maud. Accordingly, I cannot see how Mr. Maud can attempt to reargue that Article 97.2 was applicable to the Personal Guarantee as a matter of Spanish law. Still less can I see that Article 97.2 can possibly have operated in January 2020 to discharge an English judgment given in November 2015 based upon an English law governed guarantee.

86. Mr. Maud's argument concerning the proper destination of the monies paid to the Receivers is more complicated, but nonetheless also misconceived.

87. As I have indicated, in the Receivers' Part 8 Claim I gave a judgment in which I accepted that the security granted over the Shareholder Loans by Mr. Maud, Cruz and Mr. Quinlan was to secure repayment of the Junior Loan: see [2019] EWHC 424 (Ch) at [11].

88. The reason for that conclusion was based upon the construction of the relevant security document dated 12 September 2008 under which the Receivers had been appointed, namely the "Subordinated Creditors' Security Agreement" or "SCSA" between Mr. Maud, Mr. Quinlan and Cruz as "Chargors" and RBS as "Facility Agent".

89. In that document, the term "Secured Liabilities" was defined to mean all present and future obligations and liabilities of "the Company" to any "Finance Party" under each "Finance Document". Those terms were, by incorporation, to be found in the agreement for the Junior Loan, where "the Company" was defined as Ramblas, the "Finance Party" was defined as RBS or its assignees (i.e. Edgeworth), and the "Finance Documents" included the Junior Loan agreement itself as well as a document called the "Common Terms Agreement" or "CTA".

90. By clause 2.1(a) of the SCSA, the security created by the SCSA was created in favour of RBS as Facility Agent over the present and future assets of Mr. Maud, Mr. Quinlan and Cruz as "Chargors" as security for the payment and satisfaction of the "Secured Liabilities". Further, and in particular, under clause 2.2, Mr. Maud, Mr. Quinlan and Cruz as "Chargors" each assigned absolutely, subject to a proviso for re-assignment on redemption, all of their rights in respect of the "Subordinated Debt", which by cross-reference to the definitions in the Junior Loan, meant the Shareholder Loans.

91. Further, under clause 10 of the SCSA, any monies received by the Receivers (as receivers appointed under the SCSA) were to be applied, after payment of expenses, in discharge of the Secured Liabilities.

92. I have no doubt whatever that the effect of that documentation was to charge Mr. Maud's rights in respect of his Shareholder Loan as security for payment and satisfaction of the liabilities of "the Company" (i.e. Ramblas) to RBS (and hence Edgeworth as assignee) under the Junior Loan; and to require the Receivers to pay monies received in respect of the Shareholder Loan to Edgeworth in payment of those liabilities. The SCSA did not create any security in favour of RBS in respect of any personal liabilities or obligations of Mr. Maud, and the Receivers were not directed to apply any monies received in payment of any personal liabilities or obligations of Mr. Maud.

93. The argument now advanced by Mr. Maud's solicitors does not appear to take issue with that analysis of the security arrangements created by the SCSA as such, but depends instead upon the terms of the CTA which was entered into among various parties including Mr. Maud and Mr. Quinlan (but not Cruz) and RBS on 12 September 2008.

94. Reliance is placed upon clause 1.2(g) of the CTA which provides that if there is any conflict between the terms of the CTA and any "Finance Document", the terms of the CTA will prevail. It is said by Mr. Maud that the definition of "Finance Document" in the CTA includes "Common Security Documents" as defined in the CTA, and this includes the SCSA. Mr. Maud then points to clause 11 of the CTA which provides that the proceeds of enforcement of "Security" (including any security created by the "Common Security Documents") are to be applied by the "Common Security Agent" (which is defined as RBS

and its assignees) in an order of priority which places repayment of the Personal Loan ahead of the Junior Loan.

95. This argument turns on the definition of "Common Security Documents" in the CTA. The only two sub-clauses of that definition relied upon by Mr. Maud are (f) and (h). They provide as follows,

> "Common Security Document" means…
>
> (f) a Condition Subsequent Security Document;…
>
> (h) any other document evidencing or creating security over any asset of a Chargor to secure any obligation of [Mr. Quinlan or Mr. Maud] to a Secured Creditor under the Personal Loan Finance Documents and the [Personal Guarantee].

96. A "Condition Subsequent Security Document" is defined as follows,

> "Condition Subsequent Security Document means:
>
> (a) an English law security agreement in favour of the Secured Creditors in relation to properties at 41 Lothbury, London EC1, St George's Shopping Centre and Harrow & Triton Court EC2;
>
> (b) an English law security agreement in favour of the Secured Creditors in relation to the property at The Headrow Centre, Leeds;
>
> (c) an English law security agreement in relation to the property at 17 Grosvenor Street, London Wl; or
>
> (d) any other document reasonably required by the Common Security Agent for the purposes of evidencing or creating a Security Interest in favour of the Common Agent."

97. I am satisfied that neither sub-clause (f) nor (h) in the definition of Common Security Documents apply to the SCSA.

98. As regards sub-clause (f), it is clear from the definition that a "Condition Subsequent Security Document" was intended to catch security documents which were required to be entered into after the date of the CTA relating to a number of named properties, together with a catch-all provision in (d) for any other, as yet unidentified, security document that might reasonably be required in the future by RBS. It was plainly not intended to apply to the SCSA which was a known security document entered into at the same time as the CTA.

99. The fact that "Condition Subsequent Security Documents" were (as their name suggests) intended to be entered into in the future to fulfil a condition subsequent to the CTA is confirmed by the provisions of clause 4.2 of the CTA which provided for the subsequent execution of such documents, viz,

> "Subsequent Security

> (a) [Mr. Quinlan and Mr. Maud] must use their best endeavours to procure that no later than 60 days after the date of this Agreement:
>
> > (i) each of the Condition Subsequent Security Documents is entered into, in a form which, to the extent practicable, is based on existing Security Documents for similar assets or otherwise in a form which the Common Security Agent (acting reasonably) considers to be necessary or desirable for the purposes of the relevant Condition…"

100. As regards sub-clause (h) of the definition of Common Security Documents it is quite clear, as I have indicated, that the SCSA was to secure the obligations of Ramblas to RBS. It was not to secure the obligations of Mr. Maud and Mr. Quinlan under the Personal Loan or the Guarantee as required by sub-clause (h). Sub-clause (h) is thus not applicable.

101. This analysis also explains the apparent disconnect between the parties to the SCSA and the CTA. As I have indicated, Cruz was a party to the SCSA, but was not a party to the CTA. In short, the two documents were not intended to deal with the application of the proceeds of enforcement of the same security and there is no conflict between the two.

102. I should add that the argument now advanced by Mr. Maud's solicitors and based on the CTA had not been articulated at any time prior to the letter of 25 March 2020, and in particular it was not raised at the hearing of the Receivers' Part 8 claim. Nor was it put to Ms. Martin of Edgeworth in response to her evidence at the 2019 Hearing which described in detail how the monies available to Ramblas would be distributed by the Administrator and by the Receivers.

103. Indeed, when Mr. Wigley, acting for Mr. Maud, cross-examined Ms. Martin on the extra cost of an offer being made under Section 176 over and above Sorlinda's winning auction bid if the Shareholder Loans were waived, he did so on the express basis that the money caught by the security over the Shareholder Loans would be used to repay the Junior Loan,

> "Q. So if a section 176 [offer] was brought by those who had the ability to waive the Shareholder Loans, suddenly €148.5 million of that €213 million wouldn't need to be provided, would it?
>
> A. If the shareholders waived -- those who are owed money under those loans waived their entitlement, then you are correct. The question is whether or not they are entitled to waive their entitlement.
>
> Q. Well, that's a separate question, isn't it, because in relation to the security in relation to the Shareholder Loans, which are the subject of the Receivers' claim, obviously that security would fall away upon payment of the Junior Loans, so the entitlement in relation to the proceeds of the Shareholder Loans, if that was the issue you were referring to, goes away if all the Junior Loans are paid off, doesn't it?
>
> A. In respect of the Junior Loans, yes…"

104. I therefore reject these recent arguments by Mr. Maud relating to the claims of Edgeworth.

105. Moreover, for reasons that I will explain below in relation to the Edgeworth Petition, I find that Edgeworth has not been and is not now infected by any improper purpose in seeking to have Mr. Maud made bankrupt on the Edgeworth Petition. On any basis, therefore, Edgeworth must be entitled to add its support to the LIA Petition in respect of its €40 million judgment based upon the Personal Guarantee, and its debt of €42.6 million in relation to the Personal Loan.

106. In these circumstances, and given that the only suggested basis upon which Mr. Maud's creditors might have benefitted from an adjournment of the LIA Petition – namely to participate in a Section 176 offer – has now fallen away, I cannot see that there is any remaining rational basis upon which the LIA or Navarro could contend that there is any positive justification for a further adjournment. Indeed, in spite of the correspondence between the solicitors for Edgeworth and Mr. Maud being copied to the solicitors for the LIA and Navarro, neither of those two other members of the class of creditors has expressed any view on the points made in correspondence, or suggested in any communication to me that they have in any way changed their views on the LIA Petition as expressed at the 2019 Hearing.

107. Nor, logically, would I expect their views to have changed. That is for three reasons.

108. First, because, for the reasons that I have set out, there is no merit in the points made by Mr. Maud attacking the status of Edgeworth's debts.

109. Secondly, no-one has suggested that the Interest Claim which Mr. Maud and Mr. Quinlan have brought in Spain would, even if successful, enable all of Mr. Maud's debts to be paid in any foreseeable timeframe.

110. Thirdly, the Interest Claim is in any event simply a hard legal argument under Spanish law over the destination of a finite sum of money. As an independent office-holder, a trustee in bankruptcy can take an objective view of the claim on the basis of Spanish legal advice (cf. Ebbvale Limited v Hosking [2013] UKPC 1) and if it has any merit, can progress it and factor it into the sale price for Mr. Maud's shares in Ramblas pursuant to the pre-emption provisions in the articles, which if not agreed, is to be determined by three independent experts. As such, pursuit of the Interest Claim is quite unlike the suggestion that Mr. Maud should be allowed more time to "monetise his position of influence" as a shareholder of Ramblas in the more intangible manner which found favour with some of his creditors on previous occasions.

111. I therefore believe that I can take it that the LIA, supported by Edgeworth, would now unequivocally wish to see a bankruptcy order made on its own Petition. That is, in my judgment, an entirely rational view, it is not diminished by any extraneous considerations, and there is no rational reason for Navarro to oppose it.

112. In my judgment, therefore, the clear weight of votes and the reasons given by the members of the class lead inexorably to the conclusion that a bankruptcy order should now be made in respect of Mr. Maud on the LIA Petition.

113. I should also say, for the avoidance of any doubt, that I see no reason for the court to give Mr. Maud any more time to pay in the exercise of the court's case management function as discussed in Sekhon v Edginton [2015] 1 WLR 4435. There is no credible evidence that Mr. Maud has any reasonable prospect of paying the petition debt, still less his other debts, within a reasonable time.

Would a bankruptcy order be pointless?

114. Mr. Maud, supported by Navarro, also opposed the making of an order on the basis that to do so would serve no useful purpose as there are no assets, other than Mr. Maud's shares in Ramblas, from which he could satisfy the claims of his creditors.

115. I summarised my view of the law on this argument in the Appeal Judgment at [103],

> "…there are cases that illustrate that the court may, in exceptional cases, exercise its general discretion to decline to make a bankruptcy order or a winding-up order if it is satisfied that the order will serve no useful purpose because there will be no assets available in the insolvent estate for creditors. That was the main point of decision in Crigglestone Coal and also appears to have been the basis for the dismissal of the bankruptcy petition in Re Malcolm Robert Ross (a Bankrupt) (No 2) [2000] BPIR 636, where the Court of Appeal seems to have formed the view that the only asset in the debtor's estate was a cause of action against the controller of the debtor's only creditor that would not be pursued by a trustee in bankruptcy but which might be pursued by the debtor if no order was made. It is clear, however, that a debtor faces a heavy burden in persuading the court not to make an order on that basis: see e.g. re Field (a debtor) [1978] Ch 371 at 375, and Shepherd v Legal Services Commission [2003] BCC 728."

116. On behalf of the LIA, Mr. Robins supported and expanded upon that summary by reference to a long line of cases which included (in addition to those that I had cited) Re Leonard [1896] 1 QB 473, Re Betts [1897] 1 QB 50 and Re Jubb [1897] 1 QB 641. He advanced seven propositions based on the authorities. First, that the court has a discretion not to make an order if to do so would be completely pointless. Secondly, the test is whether there is no possibility of any benefit to creditors. Thirdly, that the impossibility of benefit must be obvious at the petition hearing without any detailed investigation. Fourthly, the concept of benefit includes a reasonable desire on the part of creditors that there should be an investigation by the trustee in bankruptcy. Fifthly, the evidence of the debtor is not relevant. Sixthly, most of the reported cases where an order was not made involved two bankruptcies. Seventhly, that there are very few cases where the order has not been made on this basis.

117. I accept that the first to fourth propositions can be derived from the authorities. I regard the sixth and seventh propositions as mere observations on the facts of earlier cases which, although accurate, do not amount to a legal principle that the court can apply. As to the fifth proposition, I consider that the debtor's evidence is potentially relevant, but it is clear that the courts will not simply accept an uncorroborated statement by the debtor that he has no assets or that a bankruptcy order would serve no purpose. That would, as Megarry V-C explained in Re Field [1978] 1 Ch 371 at 375 be an invitation to abuse:

> "Now it is plain that there is considerable support for some doctrine of this sort; but it is equally plain that the doctrine is hedged about by important precautions. After all, if it were open to a debtor to avoid having a receiving order made against him simply by alleging utter destitution, both present and future, such pleas of destitution

> might become popular; and prospective bankrupts might hasten to rid themselves of any assets or prospects which might hamper them in making such a plea. A man may indeed be too poor to be made bankrupt: but the burden of proof is heavy"
>
> (emphasis added)

118. Mr. Wigley did not seriously dispute these propositions, but submitted, however, that Mr. Maud had satisfied the heavy burden that they imposed. He referred to the many witness statements Mr. Maud has made which attest to his lack of means, the three separate occasions on which Mr. Maud has already been cross-examined before the court in proceedings under Part 71 CPR, and the disclosure he has made in that regard. Mr. Wigley also submitted that I should accept Mr. Maud's evidence in the absence of any application to cross examine him at the 2019 Hearing.

119. I reject the suggestion that I am bound to accept Mr. Maud's evidence in the absence of cross-examination. That is plainly not the law, as indicated by the authorities to which I have referred and the third and fourth propositions of Mr. Robins which I accepted above.

120. I also cannot conclude that the evidence establishes that Mr. Maud has demonstrably given a full and complete account of his assets and affairs so as to discharge the heavy burden of showing that he has no assets and that the investigation of his affairs by a trustee in bankruptcy would be pointless.

121. To the contrary, quite apart from the fact that Mr. Maud appears to be able to continue to find the finance to engage in substantial and relentless commercial litigation in both Spain and England, the evidence contained a number of examples of occasions on which Mr. Maud has made statements as to his assets which have then been found to be inaccurate or inconsistent with other statements, and which have had to be the subject of clarification or correction.

122. By way of example only, it is clear that at different times Mr. Maud made contradictory statements about the ownership of his shares in Ramblas. In August 2012 in response to an information requirement in a freezing injunction in proceedings in Guernsey, Mr. Maud stated that he owned 50% of the shares in Ramblas. However, on 1 August 2013, in a statement to an insolvency practitioner who was going to be the supervisor of an IVA which Mr. Maud was contemplating, Mr. Maud asserted that, "In March 2010 on advice from PwC the 50% shareholding in the Banco Santander asset which I own was transferred to a family trust". That was also the position that was adopted by Mr. Maud when he was the subject of a bankruptcy petition in 2014 by IHL. In a witness statement dated 30 July 2014, Mr. Maud stated,

> "In March 2010 and on the advice of PwC as my personal tax advisors (and in contemplation of a change in legislation anticipated to be introduced in the 2010 budget) the 50% shareholding in Ramblas which I own was transferred into the Trust in which my ex-wife, my 3 children and I am named as beneficiaries."

123. However, when the Edgeworth Petition was presented, in his first witness statement in opposition, asking for more time on the basis that he could extract value from the Ramblas shares, Mr. Maud then asserted (as he has ever since) that, "I hold 50% of the shares in Ramblas."

124. Seeking to explain these inconsistent statements, Mr. Maud's account, in his evidence and in his examination under CPR 71, was that they arose from a transaction planned in 2010 on the advice of PwC in anticipation of tax changes in the 2010 budget. Mr. Maud said in his examination that there had actually been a share transfer agreement which had been executed, and that at one time he believed that there had been a transfer of the shares to his family trust. However, he also explained that the tax changes anticipated in 2010 failed to materialise, and that he subsequently discovered that completion of the share transfer agreement had not taken place, "and indeed, need not take place". Hence Mr. Maud asserted that he still had full legal and beneficial ownership of the shares and had owned them at all times. In a schedule summarising the evidence, Mr. Wigley summarised the position now adopted by Mr. Maud as, "The Ramblas Shares [Transfer] Agreement was entered into for tax reasons and is for all intents and purposes a dead letter."

125. I confess I do not entirely understand how an executed share transfer agreement in respect of the shares in Ramblas which, prima facie, would transfer the beneficial interest in those shares, could then simply be disregarded and treated as a "dead letter" when it subsequently suited Mr. Maud to do so. But in any event, I accept the submission by Mr. Robins that this, and the other examples which he gave, show a pattern of inconsistent and inaccurate statements by Mr. Maud which, even if subsequently sought to be explained when Mr. Maud was challenged on them, mean that creditors simply cannot trust or rely at face value on what Mr. Maud says about his assets and affairs.

126. Further, whilst I take Mr. Wigley's point that it is not often that a bankrupt has already been examined a number of times under CPR 71 and still no assets have been found, it is also the case, as pointed out by Mr. Robins, and supported by an agreed schedule showing the relevant differences, that the investigatory powers available to a trustee in a bankruptcy will be different and more rigorous than those which have been available thus far to the creditors in investigating Mr. Maud's circumstances under CPR 71.

127. I therefore cannot conclude that making Mr. Maud bankrupt will be a pointless exercise for his creditors.

Conclusion on the LIA Petition

128. In conclusion, therefore, I propose to make a bankruptcy order in respect of Mr. Maud on the LIA Petition.

The Edgeworth Petition

129. As I have decided that an order should be made on the LIA Petition, it follows that I will make no bankruptcy order on the Edgeworth Petition.

130. However, as there has been full argument on that petition and because it may be relevant for the purposes of costs, I will express my view on whether I would have made an order if the Edgeworth Petition had been the only petition before me.

131. For reasons that I shall develop below, in addition to (a) the class question and (b) the issue of whether a bankruptcy order would serve no useful purpose, which I have already discussed in relation to the LIA Petition, two additional issues have to be addressed in relation to the Edgeworth Petition:

    i) Is Edgeworth a creditor with standing to pursue its petition?

ii) Has the Edgeworth Petition been, or is it now, an abuse of process?

132. There is also a preliminary issue in relation to (ii), namely whether it is open to Mr. Maud to raise the abuse of process argument again, having raised it unsuccessfully on two previous occasions (i.e. the judgment of Rose J refusing to set aside the statutory demand in 2015 and in the First Judgment).

Edgeworth's Standing

133. In his evidence, Mr. Maud challenged the standing of Edgeworth to bring the petition on the basis of the assignment by Edgeworth to TFB by way of security of all of its rights in respect of a number of contracts, including the Personal Loan. I was referred to two notices of these assignments sent to Ramblas, one by Edgeworth and one by R20 Investments One Limited ("R20"). The notices expressly specify that until the lender gives notice otherwise the person giving the notice remains entitled to "exercise all our rights powers and discretions under each contract" and asks for notices and payments to be given or made to that person.

134. Mr. Maud's skeleton argument suggested that this documentation showed that R20 had some hidden interest in the Personal Loan in addition to Edgeworth, which cast doubt upon Edgeworth's ability to seek payment of its debts from Mr. Maud or to petition without joining R20. This point was not developed at any great length in argument by Mr. Wigley and I do not accept it.

135. As I understand it, the documentation simply amounted to a composite security package under which Edgeworth charged all of its rights under various debts which it owned (including the Personal Loan) to TFB to secure repayment of the loans which TFB had made to it to buy out Aabar. R20 joined in that documentation and gave notice as security trustee for the Junior Loan. I therefore do not see how these matters have any bearing on Edgeworth's right to pursue its petition.

136. In addition, as I have indicated, in the last month since payment of monies to the Receivers from the Administrator on 24 January 2020, Mr. Maud has raised in correspondence an additional issue of whether payment to the Receivers should be regarded as discharging the Personal Loan debt upon which the Edgeworth Petition is based. For the reasons given above I also reject that argument.

Abuse of process – the law

137. As I held in the First Judgment, the basic principles of law which apply to the question of whether a bankruptcy petition is an abuse of process are those set out by Rose J in paragraph [29] of her judgment refusing to set aside Edgeworth's statutory demand,

> "29. In the light of these authorities I conclude that the pursuit of insolvency proceedings in respect of a debt which is otherwise undisputed will amount to an abuse in two situations. The first is where the petitioner does not really want to obtain the liquidation or bankruptcy of the company or individual at all, but issues or threatens to issue the proceedings to put pressure on the target to take some other action which the target is otherwise unwilling to take. The second is where the petitioner does want to achieve the relief sought but he is not acting in the interests of the class of

> creditors of which he is one or where the success of his petition will operate to the disadvantage of the body of creditors."

138. It has never been in doubt that Edgeworth wishes to make Mr. Maud bankrupt: as such, the first situation referred to by Rose J has no application in the instant case. It is the second situation which is potentially relevant.

139. As I indicated in my First Judgment, however, Rose J's statement of the second situation requires two points of further explanation. The first is that it will be an abuse of process if, even though the petitioner wants a bankruptcy order to be made, recovering its debt through the bankruptcy process is no part of its purpose. The example of that type of abuse in the authorities is the Irish case of McGinn v Beagan [1962] IR 364 which concerned the long-running personal feud between the town clerk of the Castleblayney Urban District Council and a town councillor. The town clerk took an assignment of debts owed by the councillor, and petitioned for his bankruptcy. The judge found, as a fact, that the town clerk did not have the purpose of recovering any money, but was motivated by the sole purpose of making the councillor bankrupt and unseating him from the town council.

140. As I indicated in my First Judgment, however, McGinn v Beagan was highly unusual because there was an express finding that the petitioner was not using the bankruptcy process to find assets which could be made available for creditors or to get payment. I expressed the view that in a commercial setting it is likely to be difficult to establish on the facts that a petitioner is not seeking to receive some payment on the debt which he is owed.

141. The second point which I explained in my First Judgment is that a petition will not be an abuse of process if, in addition to wishing to receive a dividend on his debt in the bankruptcy together with other creditors, the petitioner has a collateral purpose which is not shared with the other creditors, but which will not cause them any detriment if achieved. In essence that is the position which Rose J reached at the hearing before her when she concluded that Mr. Maud had not established that triggering the pre-emption provisions in relation to Mr. Maud's Ramblas shares would result in loss to his creditors, because a fair price would be paid for them under the mechanism in Ramblas' Articles of Association.

Consideration of abuse of process in the First Judgment

142. In the First Judgment I held that it was open to me to reconsider the claim of abuse of process at a subsequent stage of the petition proceedings in spite of that claim having been considered and dismissed by Rose J in her judgment declining to set aside Edgeworth's statutory demand. I said:

> "65. Mr. Zacaroli readily accepted that there could be no bar on GAC and Navarro raising the same points concerning the Petitioning Creditors' purposes and motives that would be relevant on the argument on abuse of process in the course of making their submissions on the class question. However, he contended that they could not do so in support of an argument that the Petition is an abuse of process. I do not accept Mr. Zacaroli's submissions on that point. It seems to me that an abuse of process argument based upon the petitioner's alleged collateral purpose in acting to the detriment of the class is an extension of the class question, and I cannot see

> the logical dividing line which would prevent an opposing creditor raising either or both arguments.
>
> 66. Secondly, in Turner v RBS plc [2000] BPIR 68 and in Coulter, Chadwick LJ in any event accepted that if there were a change of circumstances between the attempt to set aside the statutory demand and the hearing of the petition, the debtor would not be precluded from raising the issue again. In the case of a disputed debt it is very difficult to envisage what such a change of circumstance would be: in Brillouett v Hachette Magazines [1996] BPIR 518, Vinelott J gave as a possible example a change in legislation making the petition debt unenforceable. In contrast, cases in which it is contended that the petitioner is pursuing an illegitimate ulterior purpose may well require consideration of circumstances external to the bilateral relationship between debtor and creditor; and there may well be different evidence as to the purposes of the petitioner available by the time that the petition comes to be heard.
>
> 67. The instant case is just such a case: it is clear that the evidence that I have before me as to the purposes of Edgeworth and Aabar is more extensive and in some potentially significant respects different from the evidence that was before Rose J. Moreover, it includes further evidence from the Petitioning Creditors themselves rather than just further evidence from Mr. Maud.
>
> 68. Accordingly, I see no reason why I should be prevented from revisiting the question of the purpose for which this Petition is being pursued on the basis of the current evidence (including, in particular, the new evidence from Edgeworth and Aabar themselves)."

143. For the purposes of the First Judgment, in addition to evidence from Aabar, I had evidence before me as to Edgeworth's purposes from Mr. Tchenguiz. That evidence essentially referred to Edgeworth having two purposes, being (1) to recover the sums due from Mr. Maud in respect of the Personal Loan by invoking the class remedy of bankruptcy (which was referred to as the "payment purpose") and (2) to obtain a bankruptcy order to prevent Mr. Maud using his position as a shareholder of Ramblas to frustrate Edgeworth's attempts to acquire the Santander Asset (the "collateral purpose").

144. In the First Judgment I held that I could not dismiss the evidence as to Edgeworth and Aabar's payment purpose on the grounds that it was inherently incredible. I said, at paragraphs 87-90:

> "87. Although Mr. Zacaroli accepted that recovery of the Personal Loan was probably not Edgeworth's primary purpose in seeking to bankrupt Mr. Maud, he maintained that it was still a real purpose. With Mr. Allison's support, he pointed to the clear statements in the evidence filed on behalf of both Edgeworth and Aabar to the effect that the Petitioning Creditors wish to recover the amounts owing on the Personal Loan from Mr. Maud and that this

> motivated their service of the statutory demand. It was also pointed out in the evidence that the Petitioning Creditors spent considerable sums in pursuing their debt to judgment, seeking to negotiate terms with Mr. Maud, seeking to enforce the security for the debt in Holland, and examining Mr. Maud as to the whereabouts of his assets which would be available in his bankruptcy.
>
> 88. Mr. Clutterbuck's and Mr. Brisby's argument that I should reject such evidence was essentially based upon the fact that the Petitioning Creditors had bought the Personal Loan from RBS for the nominal sum of €5,000, which was said to demonstrate that they placed no value upon its recovery. That was coupled that with the submission that acquiring the Santander Asset was so obviously a more relevant and potentially lucrative opportunity, given the business interests of the Petitioning Creditors, that I could readily conclude that this was all that they were really interested in.
>
> 89. Those were powerful points which have lost none of their force in the light of the twists and turns that have occurred in relation to the Spanish insolvency proceedings since I reserved judgment. However, I do not think that the evidence on behalf of the Petitioning Creditors concerning their intentions as regards recovery of the amount outstanding under Teare J's order from Mr. Maud is inherently incredible, and in the absence of cross-examination in which Mr. Maud's contentions might have been put to Mr. Tchenguiz and Mr. Cobb, and their evidence tested, I do not consider that I can simply dismiss that evidence.
>
> 90. Moreover, whilst I might have been more inclined to believe that Mr. Tchenguiz's focus, as a property man, is exclusively on gaining control of the Santander Asset to manage as an investment property, I do not see that the same necessarily applies to Aabar, which is a sovereign wealth fund. As I will explain, I was not given any great insight into Aabar's current strategy. However, given that it has severed its relationship with Mr. Tchenguiz, it may be that Aabar is less interested in obtaining control of the Santander Asset itself, and is rather more interested, as its evidence stated, in simply maximizing its profits from its investment, which includes the debt owed by Mr. Maud."

145. So far as collateral purpose was concerned, I rejected arguments that two other alleged collateral purposes (of protecting Edgeworth's investment in the Junior Loan and attempting to acquire the Ramblas shares via the pre-emption mechanism in the articles) would cause any detriment to creditors of Mr. Maud. I then identified the third, and main, submission in this respect from Mr. Maud, at paragraph [99],

> "99. The majority of argument at the hearing focussed on the third alleged collateral purpose. Mr. Clutterbuck and Mr. Brisby contended that the real value of the Ramblas shares to Mr. Maud's creditors was in their continued ownership by Mr. Maud and his resultant ability to deploy his position as a shareholder in the

> Spanish insolvency process. They submitted that Mr. Maud had an opportunity to earn a substantial sum of money for the benefit of his creditors if he could retain his status as a shareholder of Ramblas and in that capacity could be rewarded by AGC for assisting it to make a successful bid for the Santander Asset. They submitted that the admitted purpose of the Petitioning Creditors of seeking to bankrupt Mr. Maud as a means of removing him from that position of influence would result in the loss of such opportunity, and therefore be to the detriment of creditors."

146. Having analysed the evidence then before me as to the prospects of any AGC bid, and of Mr. Maud's potential involvement in it, I concluded, at paragraph [104],

> "104. …I am not persuaded that I have any reliable evidence upon which to find that there is any clear or valuable benefit, arising from Mr. Maud's relationship with AGC that would be lost if Mr. Maud were to be made bankrupt. I therefore cannot find that the Petitioning Creditors' acknowledged intention to bankrupt Mr. Maud as a means of removing him as a shareholder of Ramblas would operate to diminish the value of his assets so as to prejudice his creditors. I therefore cannot conclude that the Petitioning Creditors' admitted intention in this regard amounted to an abuse of process."

Can abuse of process be revisited?

147. At the 2019 Hearing, Mr. Nash QC submitted that the First Judgment had decided that Edgeworth's purposes up to that stage of the proceedings did not amount to an abuse of process and that decision could not now be challenged.

148. Mr. Wigley contended that, applying the test in Turner v RBS plc [2000] BPIR 683, I could, and should, reconsider the purpose of Edgeworth prior to November 2016. He argued that there was a "real change of circumstances" (the test as expressed by Chadwick LJ in Turner v RBS at [50]) to justify doing so.

149. Mr. Wigley identified four things which he said amounted to a real change in circumstances:

i) The criticisms of Mr. Tchenguiz's veracity made by Popplewell J in his judgment in the Commercial Court proceedings.

ii) Edgeworth's decision no longer to rely on the evidence of Mr. Tchenguiz or Mr. Smalley of R20.

iii) The content of certain documents relating to the Commercial Court proceedings that I had ordered to be produced to Mr. Maud shortly before the hearing.

iv) The developments in the Spanish insolvency proceedings.

150. Mr. Nash QC objected to the exercise Mr. Wigley proposed. He submitted that the proper course would have been for Mr. Maud to appeal the order I made following the hearing of Edgeworth's petition in November 2016, or bring an action to set it aside. He suggested

that the observations of Chadwick LJ in Turner v RBS were confined to the statutory scheme for debtors to contest indebtedness at the statutory demand stage, and he instead directed me to Chanel Ltd v F W Woolworth & Co Ltd [1981] 1 WLR 485 and subsequent authorities to support his contention that the requirement for reopening an earlier decision was evidence of a material change of circumstances or evidence that the court had previously been misled. In Chanel, Buckley LJ said at 492H:

> "Even in interlocutory matters a party cannot fight over again a battle which has already been fought unless there has been some significant change of circumstance, or the party has become aware of facts which he could not reasonably have known, or found out, in time for the first encounter."

151. I do not think that the approach outlined in Chanel differs materially from the approach in Turner v RBS. I consider that even in the absence of any appeal against my earlier refusal to strike out the Edgeworth Petition, I can allow the issue of Edgeworth's alleged abuse of process in pursuing its Petition at an earlier stage to be reopened in these proceedings if there has been a significant change of circumstances or new relevant evidence which Mr. Maud could not reasonably have known at the time of the hearing in November 2016.

152. I therefore turn to consider the matters relied upon by Mr. Wigley. As to the fourth point, I can say at once that, as I think is obvious, it is always open to the court to have regard to all the current factual circumstances surrounding a petition when deciding whether a petition is currently being improperly pursued. So, for example, in deciding what Edgeworth's current motives in pursuing the Edgeworth Petition are, I can obviously have regard to the current situation in the Spanish insolvency proceedings. But that is not a reason for allowing me to re-open the question of whether Edgeworth had improper motives at an earlier stage in the proceedings.

153. As to the first point, the observations of Popplewell J on Mr. Tchenguiz were essentially contained in the following extract from his judgment at [38],

> "38. Mr Tchenguiz was not a good witness. He seemed to take little care in his language or the accuracy of his evidence, often contradicting something he had said previously. It was apparent that he had no real recollection of the detail of much of what he purported to recall, including the critical Oral Agreements at the heart of Edgeworth's case. His answers were often discursive and evasive. To some extent this was the result of his not listening to the question and wanting to use cross-examination as an opportunity to make the points which he wanted to get across on the general topic being addressed. On occasion, however, the evasion in his answers was the result of his having no satisfactory explanation for the many inconsistencies between his answers and (i) the contemporaneous documents (ii) his previous accounts and (iii) the inherent probabilities. He was unwilling to accept the obvious when faced with such inconsistencies, a number of which were not capable of being explained by mistaken recollection. On some occasions he admitted that what he had previously said was untrue (e.g. as to what was said at the 15 June 2016 meeting between Aabar and Mr Tchenguiz to discuss the terms of an offer from AGC Equity

> Partners ("AGC") to purchase the RBS Loans), in what can only be categorised as lying; and other lies were apparent from the documentation, for example in saying diametrically opposed things about the value of the Property in these proceedings from what he said in the Maud bankruptcy proceedings, because his interests on the point differed as between the proceedings. I am afraid that I was driven to the conclusion that he was prepared to say whatever he thought would assist Edgeworth's case, without any regard for its truth. Accordingly I have not felt able to place any reliance on his evidence save where it is supported by documentary material or the inherent probabilities."

154. These observations of Popplewell J were serious and damning, but in themselves I do not think that they amount to a change of circumstances. Even though he had declined the invitation at the hearing in November 2016 to cross-examine Mr. Tchenguiz, Mr. Maud had never accepted the truth of Mr. Tchenguiz's evidence. Indeed his counsel invited me to disbelieve it at that hearing, even without cross-examination. Mr. Maud cannot therefore have been surprised by what Popplewell J had to say on the subject of Mr. Tchenguiz's credibility.

155. I can take Mr. Wigley's second and third points together. Mr. Wigley took me to a number of passages in the transcripts of the evidence given by Mr. Tchenguiz at the trial before Popplewell J, together with some of the documents referred to at the trial. Mr. Wigley suggested that these showed that Mr. Tchenguiz had been lying in his earlier evidence in these proceedings. Mr. Wigley bolstered his point by drawing attention to the fact that a matter of hours after I had decided, prior to the 2019 Hearing, to compel Edgeworth to disclose various documents including the witness statements made by Mr. Tchenguiz and transcripts of Mr. Tchenguiz's oral evidence in the Commercial Court proceedings, and facing an application from Mr. Maud to cross-examine Mr. Tchenguiz and Mr. Smalley, Edgeworth notified Mr. Maud that it no longer intended to rely on the evidence previously given by Mr. Tchenguiz and Mr. Smalley. Mr. Wigley invited me to draw the conclusion that the earlier evidence given by Mr. Tchenguiz and Mr. Smalley in these proceedings was withdrawn because it was untruthful, and that in the absence of any other direct evidence from Edgeworth as to its historic motives, I should accept Mr. Maud's contention that those motives had been improper.

156. Mr. Nash QC disputed this analysis and objected to Mr. Wigley's approach of inviting me only to read selected passages from the hundreds of pages of transcript of the hearing before Popplewell J. He was rightly concerned that each piece of evidence referred to should be seen in its proper context. I invited Mr. Nash QC to intervene if he thought it necessary for me to read more in order to get the proper context. However, Mr. Wigley's presentation of the extracts was fair and Mr. Nash QC was only moved to intervene in this way on one occasion.

157. In my view the evidence and documents given to Popplewell J, and only disclosed to Mr. Maud shortly before the 2019 Hearing, do satisfy the threshold test which I set out above for reopening a question previously decided. They were materials not previously available to Mr. Maud, they do disclose a prima facie case that some of Mr. Tchenguiz's earlier evidence in these proceedings was untrue. Coupled with the withdrawal of Mr. Tchenguiz's and Mr. Smalley's evidence, they at least have the potential to cast a different light on the question of Edgeworth's motives.

158. I can illustrate that conclusion with one example. One of Mr. Tchenguiz's previous statements in paragraph [54] of his witness statement for use at the November 2016 hearing was that:

> "…neither I nor Edgeworth have been advised that the bankruptcy of Mr Maud would mean that I could obtain his shares in Ramblas and that this could somehow benefit my obtaining the Santander Asset."

159. However, this evidence appeared to have been contradicted by a note of advice provided to Edgeworth dated 7 November 2010 by its then solicitors, Linklaters. That note was referred to and quoted by Edgeworth's counsel in his oral opening submissions in the Commercial Court proceedings:

> "At paragraph 2.1 of that note, reference is made to the fact that there are two Dutch entities in the chain of ownership -- Ramblas, which is owned by Derek Quinlan and Glenn Maud; and Delma, which is wholly owned by Ramblas:
>
> > "To acquire the equity ownership you will need to acquire the shares of one of these companies. Assuming that there is no co-operation with DQ and GM in this respect , the acquisition of the shares will need to be effected by either (i) a sale of the shares to an entity controlled by you through the enforcement of security interests over the shares or (ii) a sale by a liquidator or receiver through an insolvency process affecting the owner of the shares."
>
> So far as Ramblas was concerned … the owners of the shares were respectively Mr Quinlan and Mr Maud. So obviously one of the potential pathways to securing ownership would have been through the commencement of an insolvency process against either of those individuals or both of them, if an agreement couldn't be reached with them."

160. Having regard to such inconsistencies with the previous evidence, I consider that Mr. Maud is entitled to reopen the question of Edgeworth's motives in pursuing its Petition from time to time.

The payment purpose

161. In my First Judgment at paragraph [70], I summarised the evidence then given by Mr. Tchenguiz as to the payment purpose in the following way,

> "…..Mr. Tchenguiz first asserted that Edgeworth has always been interested in obtaining repayment by Mr. Maud of the Personal Loan which it had acquired from RBS and which forms the Petition debt. He contended that this is what originally motivated Edgeworth to serve the statutory demand in June 2014 and to pursue three examinations of Mr. Maud to discover the whereabouts of his assets. Mr. Tchenguiz accepted that those investigations have thus far failed to reveal that Mr. Maud has any substantial assets apart from

> the Ramblas Shares and the Shareholder Loans with which to discharge his debts."

162. Mr. Wigley contended that, contrary to this evidence, which was now no longer relied upon, Mr. Tchenguiz and Edgeworth were never in fact interested in using the statutory demand and bankruptcy process against Mr. Maud as a means of obtaining repayment of the debts owed to Edgeworth.

163. In this respect, Mr. Wigley relied upon various parts of the evidence given by Mr. Tchenguiz to Popplewell J. So, for example, Mr. Tchenguiz stated,

> "We never bought the debt to sell the debt; the debt was always bought with the view of taking possession of the property."

And later,

> "The focus was owning the asset. So the question of how the securitisation proceeds was always once we knew we're going to own the asset, and part of it was Glenn Maud had to go bankrupt because that way he was the only one resisting us owning the asset."

164. Mr. Wigley also placed reliance on the following exchanges in cross-examination of Mr. Tchenguiz by counsel for Aabar,

> "Q. But when the particulars of claim were served in June 2016, Mr Maud had not been made bankrupt, had he?
>
> A. Yes, and I'm telling the courts, without Mr Maud there, I cannot -- with Mr Maud being there and not being bankrupt, I cannot raise the money. Yes, that's exactly what I've told the court .
>
> Q. So in 2016, you knew that Edgeworth was not in a position to make a credit bid because no financing was available, was it ?
>
> A. As long as Maud was there, it would be very, very difficult.
>
> Q. Right.
>
> A. And we started the process of getting Glenn bankrupt in 2014, and AGC and Aabar -- AGC has been supporting Glenn and delayed his bankruptcy until today. Judge Snowden, as I said, is 18 months behind and he still hasn't given his ruling.
>
> Q. No, so you're still not in a position to make any form of credit bid because Mr Maud hasn't been made bankrupt.
>
> A. Again, I'm saying with AGC's support. AGC's support to Judge Snowden that says we'll pay all of Glenn Maud's obligation -- which we will not because it's 200 million -- and that's fuelled your client supporting AGC, and that's always been the case. And from the word get-go Glenn had to be dealt with. That's why we had to buy the loan with the personal loan attached to it.

> Q. Even if Edgeworth could have raised the finance, Mr Tchenguiz, it's apparent that you thought, at best, that would avoid Edgeworth having to take a haircut on its investment.
>
> A. Yes, but if -- as I said earlier, all the people could pay -- repay the loan, I cannot stop people repaying the debt back, but nobody wanted to pay us par for our debt. They all wanted to buy our debt at discount, and I was not prepared to accept. If they wanted, they go straight to the receiver and say, Here is Robert's debt, repay his debt". I cannot stop that, your Honour, but all they wanted to do is buy me out at a discount and we were not prepared to do that, and use all their means."

165. I accept that the evidence given to Popplewell J supports a conclusion that Edgeworth's primary purpose was obtaining control of the Santander Asset ("with the view of taking possession of the property") and also that it wanted to make Mr. Maud bankrupt in order to stop him using his position of influence as a shareholder in Ramblas in the Spanish insolvency proceedings to obstruct Edgeworth's plans to acquire control of the Santander Asset ("Glenn Maud had to go bankrupt because that way he was the only one resisting us owning the asset."). But those points do not go to the payment purpose and had been admitted as a collateral purpose by the first time I heard the Edgeworth Petition in November 2016.

166. The evidence given to Popplewell J would also support a conclusion that it would not have suited Edgeworth's purpose to sell the debt owed to it by Mr. Maud to a third party. There was, however, no obligation on it to do so, and Mr. Tchenguiz's evidence was that no-one was prepared to offer par for the debt. Likewise, it would not have suited Edgeworth if Mr. Maud had actually paid the outstanding judgment on the Personal Loan (which Mr. Tchenguiz accepted that Edgeworth could not have stopped). But, of course, Mr. Maud had showed no signs of doing so.

167. I do not, however, consider that these points on the new evidence address the real issue. The issue is not how much or how little Edgeworth paid to acquire the Personal Loan from RBS, or whether Edgeworth was willing or unwilling to sell the Personal Loan to a third party, or even whether Edgeworth wanted to be repaid that debt by Mr. Maud outside a bankruptcy process. The issue is whether Edgeworth had no real purpose of seeking repayment of the Personal Loan through a distribution of Mr. Maud's assets in the bankruptcy process that it was attempting to invoke.

168. Mr. Tchenguiz's evidence before Popplewell J was silent on that point. Nothing which he said suggested that if Mr. Maud was made bankrupt, and was thus removed from his position of influence as a shareholder in Ramblas (as Edgeworth clearly desired), Edgeworth would have had no further interest thereafter in being repaid the Personal Loan if money could be found in the bankruptcy process.

169. I bear in mind that without Mr. Tchenguiz's or Mr. Smalley's witness statements, Edgeworth has no direct evidence from anyone as to its purpose in presenting and pursuing its Petition until the time at which Ms. Martin (who did give evidence) came on the scene in 2016. I also accept that I can draw adverse inferences from Edgeworth's decision not to rely on Mr. Tchenguiz's evidence and thereby not to expose him to cross-examination.

170. It would, however, be wrong for me to assume that because Popplewell J found that Mr. Tchenguiz had given untruthful evidence in the Commercial Court, it necessarily follows that he must also have been lying about all his evidence in this case. As explained in R v Lucas [1981] QB 720, juries in criminal trials are routinely told that people tell lies for all sorts of reasons, and the fact that a witness tells lies about some things does not mean that he or she tells lies about everything. In this case there are a number of other points in his evidence upon which Mr. Tchenguiz might have been taxed in cross-examination, and I do not think that it inevitably follows from his reluctance to be cross-examined that he would have been found wanting on the critical payment purpose point. Whilst the decision not to allow Mr. Tchenguiz to be cross-examined plainly does him no credit whatever, it may, to some extent be explicable on the basis that having been publicly and no doubt painfully exposed as a liar in the Commercial Court proceedings, Mr. Tchenguiz was simply unwilling to submit himself to a similar ordeal at the hands of counsel in these proceedings.

171. Taking all these factors into account, even though I am quite prepared to accept that Edgeworth's primary focus throughout has been on acquiring control of the Santander Asset, I am not persuaded that it never intended to recover the money owed to it by Mr. Maud in relation to the Personal Loan through a bankruptcy process. Edgeworth spent considerable time and efforts seeking to establish the whereabouts of Mr. Maud's assets before presenting its petition, and whatever else might be said about Mr. Tchenguiz's untruthfulness before Popplewell J, what does come through from his evidence is that he is a robust businessman out to make money. There is simply nothing in the evidence to support a conclusion that provided that Mr. Maud could first be bankrupted so as to remove him from his position of influence in Spain, Mr. Tchenguiz would thereafter have had no interest in Edgeworth being paid the substantial sums of money it was owed in his bankruptcy. And there is nothing inherent in the concept of Edgeworth receiving a dividend in Mr. Maud's bankruptcy, after he had been removed as a shareholder, to suggest that such a payment would have prejudiced Edgeworth's plans to acquire the Santander Asset in any way.

172. The evidence as to Edgeworth's current position in this regard is also quite clear. I heard evidence in that regard from Ms. Martin, the in-house counsel at Edgeworth, who, although not herself a director of Edgeworth, had direct knowledge of the decisions made at board level at the company since joining the company in 2016. In my judgment Ms. Martin was a careful and straightforward witness who gave her answers candidly and who was prepared to accept points made to her when appropriate to do so.

173. In cross-examination, Ms. Martin was taken to an extract from the early cross-examination of Mr. Tchenguiz in the Commercial Court proceedings in which Mr. Tchenguiz described the change in strategy from seeking to enforce the Delma Share Pledges in Holland to seeking to make Mr. Maud bankrupt. The following exchange then occurred,

> "Q. It wasn't in order to obtain a dividend in Mr Maud's bankruptcy, was it?
>
> A. If you mean to get repayment of the loan, the money that was owed, Mr Maud is always able to do that. He could do that now if he was in a position to do it.
>
> Q. But not to obtain a dividend in the bankruptcy, was it?

> A. I can't agree with that statement, Mr Wigley. My knowledge is that that was always one of the purposes of the bankruptcy proceedings.
>
> Q. What was?
>
> A. Was to obtain repayment of the money that was owed by Mr Maud and through the process, whether it was all or part of the payment, that was a purpose, remains a purpose today.
>
> Q. Mr Tchenguiz makes no mention of obtaining a dividend in the bankruptcy as one of the purposes of the Santander transaction in the Aabar-Edgeworth proceedings, does he?
>
> A. Because that was potentially not a purpose of the agreement/arrangement between Mr Tchenguiz and Aabar. I can't, again -- I've got no reason to disbelieve what I have been told, I have not seen anything, and we are talking about two separate sets of proceedings. The Aabar-Edgeworth proceeding was in respect of whether or not there was a joint venture agreement between Edgeworth and Aabar. These proceedings, to the best of my understanding, is whether Mr Maud owes money to Edgeworth and whether he should be required to make that payment from his assets.
>
> Q. And I'm putting to you, Ms Martin, that irrespective of whether Edgeworth may like repayment, for example, of the junior loans, the money that is owed via the junior loans, one of its purposes did not include obtaining a dividend in Mr Maud's bankruptcy?
>
> A. Mr Wigley, perhaps I'm misunderstanding. By dividend are you talking about a payment out of these proceedings, or a payment in part or in full of the money that is owed? Is that what is meant?
>
> Q. I'm talking about after a bankruptcy order is made a trustee is appointed who is appointed to collect and distribute assets and if there are any assets, and obviously Mr Maud says there aren't, will or may distribute a dividend and I'm saying that Edgeworth's purpose in instituting and pursuing bankruptcy proceedings did not and has never included obtaining a dividend in Mr Maud's bankruptcy?
>
> A. Well, that's wrong. I disagree with that."

174. Later, towards the end of her cross-examination, Ms. Martin was asked about a passage in her witness statement in which she stated that, as the auction process in Spain had concluded and Edgeworth had not participated as a bidder, its remaining interest was in recovering the money it was owed by Mr. Maud.

> "Q. So my question is it remains in Edgeworth's interests to remove Mr Maud from the scene in Spain, doesn't it?

> A. Would it be -- well, yes, I suppose it is still in Edgeworth's interests if Mr Maud was no longer involved, but the effect of Mr Maud is not the same as what it was prior to the auction having concluded.
>
> Q. And on that basis it's not right, is it, to say, as you do in paragraph 97, that Edgeworth's -- or at least it is not a full answer to say, as you do in paragraph 97, that Edgeworth's remaining interest now is in recovering money it is owed, unless what you mean by that is a reference to the junior loan?
>
> A. That is Edgeworth's interest, is recovering the money that is owed. It's not attempting to acquire the Santander asset, it has no opportunity to acquire the Santander asset, all it can do now is get back money that is owed under the loans.
>
> Q. But you just accepted that it remains Edgeworth's interests to remove Mr Maud from the scene in Spain, didn't you?
>
> A. But Edgeworth doesn't achieve that –
>
> Q. Through the triggering -- as you previously said, through the triggering of the -- through the appointment of a trustee in bankruptcy, as you just previously said; that's right, isn't it?
>
> A. Yes, look, if there was a trustee in bankruptcy in place then yes, it would make things easier, I suppose, but Edgeworth's motivation is not personal, not directed against Mr Maud, Edgeworth's motivation is to get repayment for its loans.
>
> Q. And it is right, isn't it, that in fact the sole purpose in pursuing this bankruptcy petition is and has always been to secure Mr Maud's bankruptcy in order to advance Edgeworth's interests in Spain; that's right, isn't it?
>
> A. No, that's not the sole purpose, no, that's not right."

175. I find this evidence credible and I accept it. I find as a fact that, at least since Ms. Martin became involved in the company in 2016, in addition to its other purposes of making Mr. Maud bankrupt to advance its interests in acquiring the Santander Asset, Edgeworth had the purpose of attempting to recover the money it is owed by Mr. Maud in relation to the Personal Loan through bankruptcy proceedings. That was also the case after Edgeworth gave up its own aspiration to acquire the Santander Asset and supported the bid by Sorlinda, which it wished to see completed so as to enable it to be repaid by a distribution in the Spanish insolvency in respect of its loans to the Marme Group.

176. In summary, the current state of the evidence before me does not cause me to alter the position that I reached in paragraph [92] of my First Judgment, namely that this was not a case like McGinn v Beagan. Mr. Maud has not satisfied me that being repaid its debt through the bankruptcy process was no part of Edgeworth's purpose in seeking to bankrupt him in the early stages of these proceedings; and I am entirely satisfied that from 2016 it has indeed had that purpose.

Collateral purpose

177. I therefore turn to consider the alternative argument, namely whether Edgeworth's admitted collateral purpose of seeking to remove Mr. Maud from a position of influence in the Spanish insolvency was likely to have a detrimental effect upon the general body of Mr. Maud's creditors in the same way, for example, as the landlord's forfeiture of the company's lease in Re a Company (No. 001573 of 1983) [1983] BCLC 492 to which I referred in my First Judgment.

178. In this respect, the core of Mr. Maud's argument was summarised in the following paragraphs of Mr. Wigley's skeleton for the 2019 Hearing,

> "Most significantly, depriving Mr Maud of his Ramblas shares altogether and of his status in the Spanish insolvency and connected disputes, as Edgeworth still aims at doing … will deprive him of his one opportunity to earn a substantial sum through the monetisation of his position as a shareholder and person of influence. This opportunity, which the Petitioners seek to shut off, represents Mr Maud's creditors' sole real prospect of receiving payment.
>
> The most persuasive evidence of the value and importance of Mr Maud's position in Spain to his creditors remains that provided by Mr Tchenguiz both in his Second Witness Statement in these proceedings and his written and oral evidence as contained in the Aabar Edgeworth Documents. His view of Mr Maud's status in Spain is perhaps even higher than Mr Maud's own.
>
> The essential feature of the situation is that success for Edgeworth in removing Mr Maud from the scene in Spain (which it admits to being one of its motivating aims in presenting and pursuing the petition and which in fact is their sole focus) means the falling away of any prospect of Mr Maud monetising his position. Success for Edgeworth means nothing for Mr Maud's creditors. In this way, Edgeworth's collateral purpose will have the effect of prejudicing the position of Mr Maud's creditors.
>
> Further, as Mr Maud submitted at the November 2016 hearing, if he is made bankrupt and his Ramblas shares are sold, whether pursuant to Mr Quinlan's pre-emption rights or otherwise, that will not benefit Mr Maud's creditors (unless such proceeds were to exceed the value of the Junior Loan). Any proceeds will be paid to Edgeworth pursuant to the Ramblas Share Pledge."

179. It is telling that Mr. Wigley's submission was that the best evidence of the value of Mr. Maud continuing to be a shareholder of Ramblas was the evidence of Mr. Tchenguiz which had been before me at the time of my First Judgment. But that is to confuse Mr. Maud's nuisance value to Edgeworth with the actual value that he could obtain for his creditors from elsewhere by reason of his shareholding in Ramblas. As to the latter, in my First Judgment, as I have indicated, I did not find any remotely clear or convincing evidence that Mr. Maud had any real prospect of "monetising his position" as a result of his supposed connections with AGC. Moreover, nothing that I was shown from the Commercial Court

proceedings (to which Mr. Maud was of course not a party) suggested that there was anything more concrete in that regard.

180. By the time of the 2019 Hearing, as I have indicated, the auction of the Santander Asset had taken place in Spain and the Approval Ruling had confirmed that Sorlinda had made the winning bid. AGC had come a very distant third and last place in the auction. Whilst it is true that various parties had subsequently challenged the Approval Ruling, there was no evidence whatever that Mr. Maud continuing to hold his "position as a shareholder and person of influence" in relation to Ramblas had any relevance to the outcome of those legal challenges.

181. Instead, the thrust of the submissions on behalf of Mr. Maud at the 2019 Hearing turned to the supposed possibility that, notwithstanding that the Spanish court had issued its Approval Ruling, there was a possibility that some third party might be contemplating an offer pursuant to Section 176 to take the Marme Group out of its insolvency process before the sale of the Santander Asset could be completed. As I have indicated, Section 176 in effect provides that an insolvency process in Spain can be concluded if all creditors are paid out in full or satisfied by some agreed means. The suggestion was that Edgeworth had the collateral purpose of bankrupting Mr. Maud to prevent him participating in such an offer by a third party, and that this would be to the detriment of Mr. Maud's creditors.

182. As a preliminary matter, Edgeworth and Mr. Maud disagreed about the technical feasibility of a Section 176 offer at this stage. Mr. Nash QC submitted that given the Approval Ruling, it was no longer possible for the Administrator to countenance a Section 176 offer. Mr Wigley submitted that in circumstances in which there were unresolved appeals against the Approval Ruling, the sale process was not yet concluded, and so a Section 176 offer could still be considered by the Administrator. Each side presented evidence from Spanish lawyers which supported the position they were taking. That evidence was not in the form of expert evidence and the contrary positions taken are hard to reconcile.

183. The evidence from Edgeworth's lawyer, Mr. Triadu (who practises bankruptcy law at the Spanish Law firm Cuatrecasas) was that he had spoken to the insolvency administrator who had confirmed that:

> "A section 176 application can only be made prior to the [insolvency administrator's] announcement, even prior to court confirmation of the winning bid".

184. This was contradicted by evidence from Mr. Álvaro Remón Peñalver (a partner at Spanish law firm De Carlos Remón) who stated:

> "In practice, this means that a 176 application can be filed at any stage of the liquidation process, even if an offer has been tentatively elected. The only moment went the right to perform a 176 application could clash with existing rights could be when the actual sale of the asset(s) has been performed, when a transfer of the property has been completed. Theoretically, a 176 could still be possible even then, but there would be a pre-existing right of the new owner of the asset(s) as a result of the liquidation activities that would need to be taken into consideration."

185. Mr. Maud also produced an email from the Administrator which stated (based on an informal translation by Mr. Adrián Thery, partner at the law firm Garrigues, counsel for Marme):

> "As a consequence of the foregoing, subject to hearing other opinions and without this position being considered binding or definitive, we, the Insolvency Administrators, as of the date hereof, and at the current stage of the Insolvency Proceeding (non-final announcement of the highest bid) do not consider the proceeding regulated in article 176.1.4 of the Spanish Insolvency Law to be unviable."

186. There was also a debate between the parties as to the extent to which, if at all, it would be necessary for a shareholder of a company in insolvency to participate in a Section 176 offer. There is no express mention of such a requirement in Section 176, but as a commercial matter I can see that no external funder would be likely to fund payment of all of a company's creditors to bring it out of insolvency without some understanding that the funder would be able to acquire ownership of the company afterwards, or at least without striking some commercial agreement with the continuing shareholders.

187. As it is, however, I do not have to resolve these issues, because even if a Section 176 offer had still been possible and Mr. Maud as a shareholder of Ramblas would have been a necessary component of such a proposal, in order for Mr. Maud to make good his argument on abuse of process it would still be necessary for him to demonstrate, as a matter of fact, that such an offer was a realistic prospect which carried the possibility of a return to his creditors if not thwarted by Edgeworth's attempt to make him bankrupt.

188. In that regard, and in a remarkably similar fashion to the way in which late evidence had been put before me at the First Hearing in the form of a letter from AGC suggesting that it was contemplating a bid for the Santander Asset and might make a payment to Mr. Maud if he were not made bankrupt and that bid was successful, Mr. Maud's only evidence relating to a Section 176 offer at the 2019 Hearing came in the form of letters produced very late in the day during the hearing from AGC (again) and from a second company called Adrem Capital, which simply appeared to be an adviser working for Mr. Maud.

189. The AGC letter came from the same director, Mr. Walid Abu-Suud, who had provided the earlier letter to Mr. Maud during the November 2016 hearing. It stated:

> "Further to our ongoing discussions, I am writing to confirm AGC's continued interest to acquire the Ciudad Financeria, Banco Santander's headquarters in Madrid. In our opinion, the Spanish liquidation process is likely to be protracted due to the various appeals and writs filed by Santander and other senior creditors to disqualify Sorlinda's bid, which could last several years before a final resolution is forthcoming.
>
> We are therefore working in conjunction with you to explore doing the transaction under section 176 as we believe this would be a more feasible and expedited route to unlock this valuable transaction based on the present situation.

> We look forward to continuing working with you in order to complete the transaction."

190. Adrem Capital's letter was no more detailed. It simply stated:

> "As discussed, we are delighted to advise you that, after our various meetings with yourself, Tony and Derek, and the provision of much information by us on your behalf, we are in advanced discussions with a well-known US alternative asset manager (with AuM in excess of USD 40 bn) to work with the owners of Marme and assist them in triggering and implementing the s176 process.
>
> The identity of the financial partner I am engaged with has been shared with you and Tony but cannot be disseminated to third parties because of strict confidentiality agreements.
>
> I look forward to continuing my engagement with you and assist in delivering a suitable s.176 solution."

191. These letters were hopelessly vague. In argument I pressed Mr. Wigley about whether Mr. Maud was prepared to give any more detail either as to the identity of the "well-known US alternative asset manager" referred to in the Adrem letter, or the likely timescale of any Section 176 offer, but I was told that he was not. Mr. Wigley indicated that Mr. Maud was concerned about revealing such details to Edgeworth, as the company that he alleged was attempting to derail his attempts to put together a Section 176 offer. But there was an obvious element of circularity in that submission, and, significantly, there was no inclination on the part of Mr. Maud to participate in a confidentiality club or other well-known methods by which the confidentiality in any more detailed evidence might be preserved.

192. Mr. Wigley nonetheless prayed in aid the fact that AGC had previously made substantial offers to acquire the Santander Asset and he urged me to find that these letters demonstrated that there was a serious ("better than merely fanciful") prospect of a Section 176 offer involving AGC which could bring a benefit to Mr. Maud.

193. Edgeworth's evidence from Ms. Martin on the subject of a Section 176 offer was very clear. In her written evidence she stated,

> "Edgeworth attempted to engage in a Section 176 process prior to the conclusion of the auction process but was not successful. It is now improbable that a Section 176 process could be implemented without the support of both Sorlinda and Edgeworth for the following reasons:
>
> 1. The auction process has concluded and established a market price, i.e. the highest price the market is willing to pay for the Santander Asset. A Section 176 process assumes that a higher price will be paid than Sorlinda's bid as Sorlinda's bid price does not pay out all of the creditors;
>
> 2. Sorlinda has been pronounced by the court as the highest bidder. While Sorlinda's bid has been challenged by Banco Santander

> (the second highest bidder) and the Swap Banks, the challenge is not to the auction process itself. Indeed, neither Banco Santander nor the senior banks suggest that a higher price should be paid for the Santander Asset. Banco Santander is in fact agitating that a lower price should be paid (its bid was €51.1m less than that of Sorlinda);
>
> 3. Sorlinda has incurred costs and obtained contractual rights as the highest bidder vis-à-vis the Administrator which it is not likely to walk away from. Sorlinda has not accepted that Banco Santander or the Swap Banks have any right to challenge its position as the successful bidder; and
>
> 4. A third party (other than Sorlinda) would have to argue it is right to bring a very late Section 176 application and pay a much higher price than the winning bid. The possibility of such a process taking place now is implausible. Even the prospect of Sorlinda carrying out a section 176 process is improbable, having been announced as the winning bidder, it has no reason to pay hundreds of millions more.
>
> ….
>
> Furthermore, [Mr. Maud] makes reference to the advantages of a Section 176 exit as "a noncontentious route which does not involve an auction". While this would have been the preferable route for creditors of the Marme Group, no such application was made out given that, in order for all creditors to be paid out, in excess of €250m of additional money would have to be spent…."

194. Ms. Martin was not seriously challenged on this evidence in cross-examination, save on the basis that I have referred to in passing earlier in this judgment, namely that the figure of €250 million of additional money quoted by Ms. Martin could be reduced by €148.5 million if the Shareholder Loans could be waived by those entitled to them. Since, as I have indicated, the person entitled to the benefit of the Shareholder Loans was Edgeworth pursuant to the security under which the Receivers had been appointed, I do not consider that this point assisted Mr. Maud.

195. In consequence, even as at the 2019 Hearing I consider that there was no credible evidence to support a conclusion that there was any realistic prospect of Mr. Maud playing any significant role in a successful offer by AGC (or anyone else) under Section 176, still less was there any real indication of what benefits that could have brought to his creditors.

196. Moreover, it was, I think, reasonably apparent that if such an offer under Section 176 was still conceptually possible under Spanish law, it nonetheless had to be brought forward with some speed because of the likelihood that the window of opportunity would close if and when the challenges to the Approval Ruling were decided and the sale of the Santander Asset completed. There was no indication in the evidence produced to me to indicate that such an offer was likely to be forthcoming in the necessary timescale.

197. Although I consider that the relevant legal test depends upon the motives of the petitioner and the likelihood of detriment to creditors at the time that the court is asked by the

petitioner to make a bankruptcy order, I also cannot fail to make an observation with the benefit of hindsight. As a result of the delay in production of this judgment, it is now readily apparent that even though his status as a shareholder of Ramblas remained intact, no Section 176 offer was ever forthcoming from AGC or anyone else connected with Mr. Maud. That was so even after the challenges to the Approval Ruling were dismissed in May 2019 which started the clock running for completion of the sale which occurred in July 2019.

198. As such, even on the basis of Edgeworth's admitted purpose of using the bankruptcy petition to trigger the provisions of Ramblas's articles to remove Mr. Maud from his position as a shareholder in Ramblas, I cannot find that at any stage such purpose was likely to have caused any material detriment to Mr. Maud's general body of creditors.

199. As the distribution of monies from the insolvency of the Marme Group has now been completed, there is no evidence that Edgeworth has any further collateral purpose in pursuing its petition other than to make Mr. Maud bankrupt for the purpose of seeking to recover its debts in that bankruptcy.

200. It follows that I find that there has not been and is not now any abuse of process in Edgeworth seeking an order on its petition. Accordingly, had I not been willing to make an order on the earlier LIA Petition in order to preserve an earlier "look-back" date, I would in any event have been prepared to make a bankruptcy order on the Edgeworth Petition.

CONCLUSION

201. For the reasons that I have given, subject to any application that I should not make an immediate order or should order a stay pending appeal, I would intend, at a consequentials hearing, to make a bankruptcy order in respect of Mr. Maud on the LIA Petition. I shall therefore adjourn both Petitions and all consequential matters to such a further hearing on a date to be fixed.