THE COURT OF APPEAL

Neutral Citation Number: [2021] IECA 145

Appeal Record No.: 2019/526

Bankruptcy Summons No. 5942

Baker J.

Noonan J.

Faherty J.

IN THE MATTER OF THE BANKRUPTCY ACT 1988 (AS AMENDED)
IN THE MATTER OF A PETITION OF BANKRUPTCY BY PROMONTORIA (ARROW) LIMITED AGAINST RICHARD DINEEN

BETWEEN/

PROMONTORIA (ARROW) LIMITED

Petitioner/Respondent

- AND -

RICHARD DINEEN

Appellant

JUDGMENT of Ms. Justice Baker delivered on the 14th day of May, 2021

1. This is the appeal of Richard Dineen of the order of Pilkington J. made on 25 November 2019 by which he was adjudicated bankrupt on the petition of the respondent. The sole question

in the appeal is whether the amount grounding the petition was a liquidated sum as required by s. 11(1)(b) of the Act of 1988.

Background

2. The appellant was a property developer with large borrowings from Anglo-Irish Bank PLC acquired by Promontoria (Arrow) Limited ("Promontoria") by Global Deed of Transfer on 11 December 2015.

3. Promontoria issued a bankruptcy summons on 23 October 2017 seeking payment of €20,025,170.00, said then to be due in principal and interest on the loan accounts. Mr Dineen applied to have the summons dismissed on the basis of inadequacies in the service and proof of Promontoria's title. This was refused by Costello J. for reasons set out in her written judgment of 16 July 2018 ([2018] IEHC 430). Mr Dineen's appeal from that order of Costello J. has now been withdrawn.

4. Thereafter a bankruptcy petition was presented by Promontoria on 15 October 2018 disclosing an indebtedness in the sum of €19,917,364.17, the same figure set out in the affidavit of debt, but less than the amount in the bankruptcy summons, as credits were allowed of sums realised from the sale of a number of secured properties in the interim.

5. The amount of debt had further reduced by 25 November 2019, the date of the hearing of the petition.

6. Mr Dineen opposed the bankruptcy petition.

The appeal

7. Mr Dineen lodged a notice of appeal that identified a number of grounds, but rests his argument now on one ground of appeal: that the sum grounding the petition was not a "liquidated sum" as required by s. 11(1)(b) of the Bankruptcy Act 1988 (as amended) (the "Act of 1988").

8. As part of this argument, Mr Dineen says that the High Court was obliged to, but had not, determined the exact sum owing before making the adjudication.

9. Promontoria contend that the amount owing was a liquidated sum as it was readily ascertainable, and can be calculated by simple arithmetic.

Mootness

10. Section 85 of the Act of 1988 provides for discharge from bankruptcy by operation of law after one year, and before dealing with the substantive point raised in the appeal, I pause to observe that the respondent does not argue that this appeal is moot notwithstanding that Mr Dineen had by the date of the hearing of the appeal emerged from bankruptcy by effluxion of time.

11. This is a welcome approach as bankruptcy is a matter of status and certain consequences arise by reason of an adjudication which can have long term effects on a person even after discharge. By way of example, under s. 55(1)(a) of the Charities Act 2009 a discharged bankrupt may not be appointed trustee of a charity; and pursuant to s. 5(4)(a)(i) of the Powers of Attorney Act 1996 a discharged bankrupt may not be appointed attorney with enduring power.

12. I would endorse the approach of Haughton J. in *Carney v. Ennis Property Finance DAC* [2020] IECA 281 that an appeal would not be meaningless, at para. 21 he states:

> "Bankruptcy is a question of personal status, and there is a stigma attached, although this may be less significant now that the bankruptcy period has reduced from twelve years to one year, and the process of going through bankruptcy is relatively straightforward. However the fact that a person is adjudicated bankrupt may have long term implications, particularly if they have occasion to seek credit after they have been discharged from bankruptcy."

The Act

13. Section 11(1), as amended, sets out the cumulative conditions to be met by a creditor presenting a petition for adjudication:

> "A creditor shall be entitled to present a petition for adjudication against a debtor if—
>
> (a) the debt owing by the debtor to the petitioning creditor (or, if two or more creditors join in presenting the petition, the aggregate amount of debts owing to them) amounts to more than € 20,000,
>
> (b) the debt is a liquidated sum,
>
> (c) the act of bankruptcy on which the petition is founded has occurred within three months before the presentation of the petition, and
>
> (d) the debtor (whether a citizen or not) is domiciled in the State or, within 3 years before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in the State or has carried on business in the State personally or by means of an agent or manager, or is or within the said period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager." (emphasis added)

14. The requirement that the debt be a "liquidated sum" in s. 11(1)(b) is engaged in this appeal.

15. The term "liquidated sum" is not defined in the Act of 1988, but it also appears in s. 8(1)(b) which sets out the conditions under which a bankruptcy summons may be granted.

> "A summons (in this Act referred to as a 'bankruptcy summons') may be granted by the court to a person (in this section referred to as 'the creditor') who proves that —
>
> […]
>
> (b) the debt is a liquidated sum, and […]"

16. The statutory provisions require the creditor to set out in the petition particulars of any security held and whether that security is to be given up for the benefit of the bankruptcy generally and consequential provisions to deal with unsecured debt if an estimate of the value of security intended to be relied on is given in the petition.

17. The Rules of the Superior Courts ("RSC") provide for the content of the petition to be verified by affidavit. O. 76, r. 19 RSC provides the relevant statutory form.

The appeal

18. The sole question for determination in the appeal is whether the adjudication of bankruptcy was wrongly made on account of failure to comply with s. 11(1)(b) of the Act of 1988, as it is argued that it was not shown that the appellant was indebted to the respondent in a liquidated sum at the date of presentation of the petition, nor at the hearing of the petition.

19. The argument of the appellant is that the sum claimed in the petition and verified by the affidavit of debt was inaccurate, and that the fact of such difference amounts to an error or inaccuracy in the figures or calculations on foot of which the adjudication was made, such that the amount cannot be said to be "liquidated".

20. It is further argued that the trial judge failed to make a calculation of the amount of indebtedness, and the appellant argues that the broad statement made by the trial judge of the amount owed at the date of the hearing as being "in the region of €18 million" amounts to an error of law, as the trial judge did not herself calculate the precise amount owed before she made the order for adjudication. The appellant argues that an approximation or estimation of the amount of debt could never suffice to meet the test in the Act of 1988, having regard to the far-reaching consequences arising from an adjudication.

The argument that the trial judge was unaware of the difference in the figures

21. Before dealing more fully with the proposition that there was a failure to meet the requirements of s. 11(1)(b) of the Act of 1988, I will consider a separate argument raised at the

oral hearing of the appeal, that the trial judge had not addressed herself at all to the difference between the figure for debt in the summons and that in the petition, that this had not been brought to her attention and she had been led into error as a result.

22. The hearing of the appeal was adjourned to allow the parties take up the DAR of the hearing, and to permit further written submissions, which both made.

23. From the transcript, it is apparent that counsel for the petitioner had drawn to the attention of the trial judge various facts: the amount of the debt stated in the summons was greater than that stated in the petition; that the difference reflected the sales of secured properties after the issue of the summons, and others sold after the date of the petition; and that the affidavit of debt contained a reconciliation and explanation of the calculations and the proceeds of sale or valuation of the secured properties. An affidavit sworn on 25 November 2019, the date of the hearing, corrected the calculation and set out the correct amount due on that date.

24. In the course of submissions counsel also referred to the schedule to the affidavit of debt showing the estimated value of the secured properties yet to be sold and the final amount of debt was less than the amount in the summons.

25. It is apparent to me from a reading of the transcript of the DAR that the trial judge was made aware of the difference between the amount of debt identified in the summons and the different amount in the petition, and that the sum claimed to be due at the date of the petition was less than that claimed in the summons. She was also told that at the time of the hearing of the petition, some 13 months after the petition had issued, that the debt had further reduced. I have no doubt from my reading that the trial judge was alerted to the different calculations, the reason for the differences, and that she expressly addressed her mind to the different sums of debt.

26. That argument on the appeal may in those circumstances be dealt with briefly and in my view the transcript unequivocally shows that the matter was brought to the attention of the trial judge, noted by her and taken into account for the purposes of her ruling.

27. For completeness, I also note that an updated affidavit setting out the correct calculations at the date of the hearing of the petition was available to the trial judge and opened to her, and that she expressed herself to be satisfied that the defects in the petition were cured by the supplemental corrective affidavit.

28. I would therefore reject that ground of appeal as there is no basis for the argument that the trial judge misdirected herself or was not fully apprised of the change in the amount due and the reasons for the change.

Precision in debt identified in a summons

29. The scheme of the Act of 1988 envisages accuracy in the calculation of a debt in a bankruptcy summons. This approach is also found in the old authorities analysed in the judgment of the High Court in *O'Maoileoin v. Official Assignee* [1989] 1 IR 647, where Hamilton P. refused to dismiss a debtor's summons under the Bankruptcy (Ireland) Amendment Act 1872 (now a "bankruptcy summons" under the Act of 1988) because he was satisfied that the debt was accurately described, notwithstanding that a receiver by way of equitable execution had been appointed in respect of a portion of the debt, but where monies had not yet come into the hands of that receiver. Having reviewed the old authorities and, in particular, the judgment of Cozens-Hardy M.R. in the case of *In Re A Debtor* [1908] 2 KB 684, from which he quoted extensively, and the other authorities to the same effect, he concluded that the sum claimed for debt in a debtor's summons must be accurate, and that the summons was correct as no monies had come into the hands of the equitable receiver which were to be credited against the debt.

30. Hamilton P. concludes at p. 654:

> "These cases clearly establish that the bankruptcy code, having regard to the consequences which flow from an adjudication of bankruptcy, is penal in nature and that the requirements of the statutes must be complied with strictly; that the debtor's summons to be served within the provisions of s. 21 Bankruptcy Ireland (Amendment) Act, 1872, must be served in the prescribed manner and the amount due in accordance with a judgment, when a judgment is relied upon, must be accurate and that a claim for an amount in excess of the amount due in accordance with such judgment would render the notice defective and a subsequent adjudication void."

31. Cozens-Hardy M.R. in the leading case of *In Re A Debtor* [1908] 2 KB 684 was not prepared to accept that an error in the figures was a mere formal defect as it amounted to a claim of payment, at p. 686: "from a man of that which was never due from him". That statement of the law was applied recently in the judgment of McGovern J. in the High Court in *Minister for Communications Energy and Natural Resources and M. O'C. v. M.W. and R.W.* [2010] 3 IR 1, where the application of the law led to the dismissal of the bankruptcy summons, as whether the debt was due as a matter of law remained to be determined in proceedings not yet concluded.

32. In *Danske Bank v. McFadden* [2011] IEHC 551, [2014] 2 IR 417 Dunne J. also reviewed the authorities and noted that they supported a strict reading of the requirements of the bankruptcy code having regard to the penal nature of bankruptcy and that the precise amount claimed in a summons was to be accurately stated.

33. Dunne J. concluded that the proper statement of principle was, at p. 428: "a defect in relation to the sum claimed to be due which is not prejudicial to the debtor will not amount to a failure to comply with the requirements of the statutory provisions". She also noted that in the authorities relied on, the defect considered was that the summons had claimed a sum greater than that which was in fact due and had led to prejudice to the debtor.

34. This was also the view of McGovern J. in *Murphy v. Bank of Ireland* [2011] IEHC 541 who accepted that a defect, even one that could be described as minimal or which arose due to an innocent mistake or oversight, would still lead to a dismissal of the summons. He was not, however, satisfied that a claim for a liquidated sum less than the sum actually due would have the same consequence, although his comment was clearly *obiter*.

35. It is readily apparent why accuracy and precision in the figures or calculation of debt in a bankruptcy summons would carry such importance, and why a miscalculation is not to be treated as a matter of form but rather one of substantial effect justifying the dismissal of a summons. The failure to pay the amount claimed in a bankruptcy summons is an act of bankruptcy sufficient to enable a creditor to petition for adjudication. Accuracy is of central importance in that context.

36. In the present case the challenge by the appellant is to the petition, he having abandoned his appeal against the order refusing to set aside the summons.

37. Whilst the case law supports the proposition that strict compliance is required in regard to the contents of a bankruptcy summons, a somewhat different approach emerges with regard to the contents of a petition. This is reflected in the judgment of Charleton J. in *Bank of Ireland v. O'Donnell & anor.* [2013] IEHC 395 at para. 91 where he noted that the amounts stated in a petition in bankruptcy "can be disputed and debated before the court and where the structures arising from the fear of the misuse of the procedure of the bankruptcy summons are misplaced". He also thought that a "minor error" in the petition is not necessarily fatal to the process.

38. I return later to the point regarding a "minor" error and for the present comment that it could not be said, in the present case, that the difference is minor, at least in the sense that the amounts in issue are not small.

39. Finlay Geoghegan J. in *Society of Lloyds v. Loughran* (Unreported, High Court, 2 February, 2004) while accepting that there should be compliance with the Rules of Court on a

petition as well as on the summons, said that, in a proper case, the court can exercise its discretion to excuse failure to comply with the Rules in a petition, and she commented that no prejudice was asserted by the debtor on account of the failure to seal and sign the petition:

> "I have concluded that the principles set out in the judgment of Hamilton P. in *O' Maoileoin v. The Official Assignee* do not preclude me from exercising the discretion which it is accepted the Court otherwise has under O. 124 of the Superior Court Rules in relation to the consequences of non-compliance with O. 76, r. 20 of a petition. Whilst, I note the distinction between the approach to a bankruptcy summons and petition made by Cave J. above, in general I accept that there ought to be compliance with the Rules of Court even on a petition but conclude that there is nothing on the authorities which appears to absolutely preclude the Court from exercising its discretion in a proper case under O. 124 of the Superior Court Rules where there is a failure to comply with the Rules on a petition."

40. Laffoy J. in *Re Sean Dunne* [2015] IESC 42, 2 ILRM 103, albeit in the context of service of a petition, quoted part of that paragraph and said at para. 76:

> "There is a distinction, in my view, between the statutory requirements in relation to the form, contents and service of a bankruptcy summons, service of which is designed to give rise to the existence of an act of bankruptcy, on the one hand, and requirements of the Rules in relation to service of petitions, whether to wind up a company or have a person adjudicated a bankrupt, on the other hand."

41. I accept as a broad principle the argument advanced by the appellant, that there exists an obligation on a petitioning creditor to comply with the statutory requirements for the presentation of a petition, and that the court will not readily ignore a breach of those requirements.

42. I draw this principle from the rationale behind the case law on the importance of the accuracy in a bankruptcy summons, that emphasises the far-reaching consequence of bankruptcy as to the status of a person, and that the legislation is to be treated as penal in nature.

43. Therefore, strict compliance with the bankruptcy code and the Rules of the Superior Court made under the Act of 1988 is a useful starting point.

44. The argument in the present case concerns the petition, and for reasons I now explain, the difference in the figures for debt between the date of the summons and the much later date of the petition may readily be explained by the sale of secured properties and the credit of the proceeds to the amount of debt.

45. This had the effect that the amount stated to be due had reduced by €1,175,122.07. This was to the ultimate benefit of the debtor, but apart from that factor it seems to me that the statutory requirements were met and the sum due was liquidated within the meaning of the Act of 1988.

What is a liquidated sum?

46. The Act of 1988 does not define a liquidated sum, but the concept is well known in the authorities. Mr Dineen's primary argument is that the sum was not certain or clear and that it is apparent from the language used by the trial judge in her ruling that she was not aware of, nor did she calculate, the exact amount due, but rather expressed herself satisfied that the statutory requirements had been met and that the debt was "in the region of €18 million". Mr Dineen argues that the assessment or estimate of debt meant the amount was vague and uncertain, or that it had been incorrectly calculated.

47. Promontoria argue that the debt must be regarded as a liquidated sum, as the debt arose under a series of loan contracts and the outstanding sum due was readily ascertainable in accordance with the terms of these loan contracts. The sum could be calculated by adding the

amounts advanced to Mr Dineen and the amount of interest accrued, and then subtracting the net amounts repaid by Mr Dineen or realised from the security.

48. Section 267(2)(b) of the UK Insolvency Act 1986 requires that a bankruptcy petition be founded on a liquidated sum, and some assistance may be drawn accordingly from its jurisprudence. The Court of Appeal for England and Wales *per* Patten L.J. in *McGuinness v. Norwich and Peterborough Building Society* [2011] EWCA Civ 1286 conducted a review of the cases, and concluded at para. 36:

> "These authorities indicate and I think establish that a debt for a liquidated sum must be a pre-ascertained liability under the agreement which gives rise to it. This can include a contractual liability where the amount due is to be ascertained in accordance with a contractual formula or contractual machinery which, when operated, will produce a figure. *Ex parte Ward* is the obvious example of that. Claims in tort are invariably unliquidated because they require the assistance of a judicial process to ascertain the amount due by way of damages. In some cases the calculation of the award will be straightforward and obvious but the unliquidated nature of the claim excludes it from being good petitioning creditor's debt which satisfies the requirements of s. 267."

49. I adopt that statement of principle.

50. Mr Dineen cites the less detailed and accordingly less useful, albeit broadly correct, definition from the Oxford Reference website:

> "A demand for a fixed sum *e.g.* a debt of £50. Such a demand is distinguished from a claim for unliquidated damages, which is the subject of discretionary assessment by the court."

51. Much of the relevant case law concerns the correct statement of the amount of debt in a summary summons, and the provisions of O. 2, r. 1 RSC, whereof provides for the summary summons procedure in an action to recover the debt or liquidated demand in money.

52. The concept of a liquidated amount or debt is now so well established in the authorities as to be properly treated as a term of art for the purposes of ascertaining the meaning of the phrase in bankruptcy legislation.

53. Peart J. in *Motor Insurers Bureau of Ireland v. Hanley* [2007] 2 IR 591 explains the evolution of the concept from s. 96 of the Common Law Procedure Amendment Act (Ireland) 1853 (the Act of 1853), which related to the making of judgment in default of defence in a claim for "a debt or liquidated demand in money, whether with or without interest, arising upon contact, express or implied".

54. Peart J. referred to a footnote to s. 98 of the Act of 1853 in Bewley and Naish, *The Common Law Procedure Act* published in 1871 where a "liquidated demand in money" was said to mean an amount that the plaintiff could by calculation ascertain or compute, and a later footnote to s. 98 of the Act of 1853 in which the authors said there was no precise rule.

55. The test identified by Palles C.B. in *Stephenson v. Weir* [1870] 4 LR Ir 369 at p. 373 gives what to my mind is a correct statement of the identifying characteristics of a liquidated sum, that the action for liquidated debt would lie "only for a sum certain" but that it was "sufficient that the sum should be capable of being ascertained by a jury by positive *data*, and not merely measured by opinion or conjecture". Thus if no enquiry, further evidence, argument, agreement or adjudication is required to ascertain the amount, and if the sum can be ascertained by calculation from available evidence, then the sum is liquidated.

56. I would draw from the case law the proposition relevant to the present case, that a sum is liquidated if it has been already ascertained or if it is capable of being ascertained as a matter of arithmetic calculation. The sum is liquidated not only if it has been calculated or has been correctly stated in the petition, but if it can be calculated or ascertained by arithmetic calculation from known or accepted figures.

57. It is therefore to be distinguished from damages in tort or contract not yet ascertained and incapable of being ascertained without either agreement or a determination by a judge.

58. The sum said to be due by the appellant in the petition was liquidated in this sense, and was calculated in subsequent affidavit opened to the trial judge. It was a liquidated sum, and was actually ascertained. The trial judge did not need to herself calculate the amount as she was not relying on the calculation to enter judgment, but rather to ascertain and determine whether the amount due was liquidated and in excess of €20,000. That is the statutory test and I am satisfied it was met in the present case.

59. This point of appeal must therefore in my view fail.

Statement of basis of claim in summary proceedings: a useful analogy?

60. Mr Dineen also seeks to rely on the judgment of the Supreme Court in *Bank of Ireland Mortgage Bank v. O'Malley* [2019] IESC 84 where Clarke C.J. held that a summary summons must set out the specific level of debt involved. Similarly, in *Allied Irish Banks PLC v. Marino Motor Works Limited* [2017] IEHC 522 Ni Raifeartaigh J. concluded that the plaintiff was not entitled to relief sought on the basis that the debt had only been stated generally.

61. That case law does not in my view offer much assistance in the interpretation of s. 11(1)(b) of the Act of 1988 and the statutory provision is that a summons issue for a liquidated debt in respect to which default of payment is an act of bankruptcy. The summary summons forms the basis on which judgment is entered and the proposition identified in these cases is that a defendant, and a court asked to enter judgment, should know with a degree of particularity how the debt has arisen and is calculated.

62. The presentation of a petition does not envisage judgment being entered for the sum therein stated. The principles from *O'Malley* are therefore not engaged, and there is ample authority on the contents of a bankruptcy petition as I have analysed above.

63. I would reject that ground of appeal.

Prejudice

64. Dunne J. in *Danske Bank v. McFadden* considered that an underestimation of the debt will not always give rise to the setting aside of an adjudication of bankruptcy:

> "It is clear from the judgment in *Murphy v. Bank of Ireland* [2011] IEHC 541, (Unreported, High Court, McGovern J., 12th April, 2011) that an understatement of the amount due is not a defect which will give rise to the setting aside of an adjudication of bankruptcy. In other words, it seems to me that a defect in relation to the sum claimed to be due which is not prejudicial to the debtor will not amount to a failure to comply with the requirements of the statutory provisions strictly."

65. On appeal in *Murphy v. Bank of Ireland* [2014] IESC 37, [2014] 1 IR 642 the decision of McGovern J. was upheld by the Supreme Court and Dunne J. noted that the determining factor was that the amount owing to the bank was significantly in excess of what was demanded, even where credit had not been given for a payment made.

66. I consider that her approach was correct and more recently Collins J. in this Court in *Gladney v. Tobin* [2020] IECA 49 endorsed that view.

67. For the reasons already explained, I am satisfied that the amount on foot of which the adjudication was made was a liquidated sum, but I wish to briefly deal with the argument that the debtor suffered prejudice by reason of the difference in the amount disclosed in the petition as set out above.

68. Many of the authorities on which the appellant relies are concerned with circumstances where the amount said to be owed to a petitioning creditor was greater than that identified in the summons. In those cases prejudice to the debtor may arise if the act of bankruptcy is the failure to pay the amount in the summons when that is greater than the amount actually due.

69. The opposite is the case in the present appeal and Mr Dineen suffers no prejudice on account of the fact that the sum calculated to be due at the date of the hearing of the petition was reduced.

70. The creditor was entitled to realise its security pending the adjudication and provided credit was given for the proceeds, there is not only no prejudice, but an actual reduction in the amount due with a consequential benefit in ongoing interest which was to the benefit of the debtor

71. I accept that the different calculations did not cause prejudice to the debtor and that they form no basis on which the bankruptcy can be annulled.

Conclusion and summary

72. The appeal was formulated as relying on one proposition, that the amount of debt stated in the petition was not a liquidated sum as is required by s. 11(1)(b) of the Act of 1988. For the reasons identified in the course of this judgment I am not persuaded by this proposition, and the debt disclosed in the petition by which the appellant was said to be indebted to the petitioner was a liquidated sum, one capable of being and actually calculated and arising as a result of a contractual debt.

73. There is nothing in the statutory provisions that requires the judge hearing a petition for adjudication to himself or herself calculate the debt, and the statutory test is met once the judge is satisfied that an act of bankruptcy has occurred by reason of failure to pay a liquidated sum, and provided that sum is in excess of €20,000.

74. Circumstances will often arise when at the date of presentation or hearing of a petition the amount of debt will be reduced by the realisation of security or the payment by the debtor of some of the debt. This is not merely something which often arises in practice, but it is in my view envisaged by the provisions of the Act of 1988 which allow a petitioning creditor to rely

on his or her security in the bankruptcy, and thereafter an obligation must be said to arise to account should any of the secured assets be realised.

75. The amount stated in the petition in the present case was liquidated in that sense, and no error of calculation or identification of the amount due actually occurred. The amount due was fully and accurately ascertained and ascertainable at the date of adjudication.

76. I would dismiss the appeal for these reasons.

77. As the respondent has been entirely successful in this appeal, it is my provisional view that it is entitled to the costs thereof, and of the appeal from the order of Costello J. now withdrawn. Should the appellant wish to dispute the making of an order that the costs of the appeal be awarded to the respondent he should deliver a short submission (of no longer than 1,000 words) of his reasons within ten days of the date of this judgment, whereupon the respondent shall have ten days within which to respond in a submission of the same length. In default of delivery of a submission by the appellant the proposed order for costs shall take effect

78. As this judgment is delivered electronically, Noonan and Faherty JJ. have authorised me to record their agreement with it, and with the order I propose.