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Case No: BR-2019-000404

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

Rolls Building
Fetter Lanes
London
EC4A 1NL

Date: 20/06/2019

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

- -

Between:

JONATHAN SANDELSON	**Applicant**
- and -	
KAREN MULVILLE	**Respondent**

- -
- -

PETER SHAW QC (instructed by **MEMERY CRYSTAL**) for the **Applicant**
JEREMY GOLDRING QC AND PHILLIP GALE (instructed by **HARBOTTLE & LEWIS LLP**) for the **Respondent**

Hearing dates: 20 June 2019

- -

Approved Judgment

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

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CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

Chief Insolvency and Companies Court Judge Briggs:

Introduction

1. This is an application to strike out a bankruptcy petition presented on 29 March 2019 by Ms Karen Mulville against Mr Jonathan Sandelson. The petition is based on Mr Sandelson's default in not paying the sum of £1.25m due to be paid on 31 January 2019 pursuant to a settlement agreement dated 10th January 2019 ("the Settlement Agreement").

2. By rule 12.1 of the Insolvency (England and Wales) Rules 2016 (the Rules) the Civil Procedure Rules (CPR) (including any related Practice Directions) apply for the purposes of proceedings under Parts 1 to 11 of the Insolvency Act 1986 (the Act) with any necessary modifications, except so far as disapplied by or inconsistent with the Rules. Part 6 of the Act falls within the application of the CPR. The parties agreed that there is nothing inconsistent between CPR 3.4 and the Rules. The court has power to strike out an unarguable bankruptcy petition.

The issue

3. Karen Mulville (KM) served a statutory demand on Jonathan Sandelson (JS) dated 7 February 2019. The details of the debt were stated (where relevant) as follows:

   "Pursuant to clause 2.1 of the [Settlement Agreement], the Debtor was obliged to make payment of the sum of £1,250,000 to the Creditor by no later than 31 January 2019…..the Debtor failed to make payment to the Creditor…."

4. The statutory demand was not set aside.

5. Although a debt may be present, certain or contingent and its amount may be fixed or liquidated or capable of being ascertained by fixed rules or as a matter of opinion, section 267(2)(b) of the Insolvency Act 1986 provides that only a liquidated sum can form a petitioning debt. To be liquidated the sum of money has to be "a specific amount which has been fully and finally ascertained". If a debt is subject to an account or a claim for damages it will not be liquidated: section 383 of the Act and see generally Personal Insolvency: Law and Practice fifth Edition at 8.35-8.39.

6. In the Companies Court a creditor's petition can only be presented by a creditor, and until a prospective petitioner is established as a creditor, he is not entitled to present the petition and has no standing: *Mann v Goldstein* [1968] 1WLR 1091. Mr Shaw argues that the same principle applies because the petition debt is not a liquidated sum. KM has no standing as she has no debt that is capable of satisfying section 267(2)(b) of the Act. If he is correct in that contention, the petition should be struck out as an abuse of process in a similar way as it would in the Companies Court.

7. It is not in dispute that the decision as to whether KM has a liquidated debt, and thus standing to bring the petition, is dependent upon an interpretation of the Settlement Agreement.

The Settlement Agreement

8. The Settlement Agreement was by way of a full and final settlement of disputes that had arisen between KM and JS and another person, a Mr David Meagher, concerning various joint venture companies in which they had become involved.

9. I start with the relevant Recitals which explain that KM and JS agreed to collaborate in the development of a luxury care home business. The "Auriens" brand was established and used for this purpose. The remainder of the Recitals are as follows

> (B) In very broad terms: KM provided finance for the venture and her focus was in developing the branding and the care business itself; JS also provided finance for the venture and his and DM's focus was on sourcing sites for the development of care home facilities;
>
> (C) The broad agreement between KM and JS was that, as "founders" of the venture, they were to have equal financial interests in it, equal equity stakes in the relevant corporate entities through which it was to be run, and to draw equal financial benefit from it. This broad agreement and further detail was captured in a series of agreements and draft agreements between the Parties and their Related Parties and the Leopard Companies (including shareholder agreements) (the Agreements);
>
> (D) A dispute has arisen as to whether in fact KM received the equal treatment agreed and regarding certain other specific matters, including certain payments made to JS and companies connected to him (without equivalent payments having been made to KM) and as to whether certain projects should have been conducted within the Auriens corporate umbrella or not (the Dispute); and
>
> (E) The parties have agreed to settle the Dispute without admitting any fault or liability on the part of any Party, and on the terms set out in this Deed.

10. The definitions provision (clause 1.1) of the Settlement Agreement set out that:

    i) KM and JS were directors and shareholders of 5 companies engaged in the luxury care home business - Auriens Limited; Auriens Ventures Limited, K&L Brompton Limited, Draycott College of Care Limited and Westward Consultants Limited ("the Companies");

    ii) KM and JS were (amongst other things) to provide finance. Mr Meagher was to focus on sourcing suitable sites for development of the care home facilities;

    iii) The Leopard Companies were also shareholders;

    iv) Loan Agreements were the loans made between KM and (i) Auriens Chelsea Property Holdings Limited and (ii) Auriens Limited; and

    v) OP Released Claims has the meaning provided in Clause 4.1.2

11. The payment provision is an operative provision and can be found in clause 2 of the Settlement Agreement:

i) JS will pay to KM "the sum of £1,250,000 (the Settlement Sum) by no later than 31 January 2019 (without any set-off, deduction, counterclaim, reduction or diminution of any kind or nature)";

ii) Time for payment of the Settlement Sum "shall be of the essence" and payment shall be made by bank transfer to a Coutts & Co account;

iii) Without prejudice to the time of the essence provision interest would accrue on the Settlement Sum at 4% above base and "JS shall pay the interest together with the overdue amount. The provision shall survive any termination of this Deed (unless expressly agreed otherwise in writing)"; and

iv) "In the event that at any time prior to 31 January 2019 JS is unable to pay his debts as they fall due, is the subject of a bankruptcy petition, is declared bankrupt, enters into any arrangement with creditors, or is otherwise subject to any insolvency procedure or process, the Settlement Sum shall become due and payable to KM immediately and in full."

12. Clause 3 concerns "Termination" and released KM from all obligations to "the Other Parties" (defined as JS and Mr Meagher) from the date "set out at the beginning of this Deed". It is not obvious where the date is (unless it is the date of the Settlement Agreement), but that is not material.

13. By clause 3.1.2 the Other Parties would be released from their obligations to KM on the receipt by her of the entire Settlement Sum.

14. In clause 4.1.1 subject to and with effect from her receipt of the Settlement Sum, KM (and any parties related to her) would release and discharge the Other Parties (and their related parties) from any claims arising out of or connected with the dispute between the parties or the Auriens business and the Companies.

15. Clause 4.1.2 provides that on the making of the agreement, the Other Parties would release and discharge KM (and her related parties) from any claims arising out of or connected with the dispute between the parties or the Auriens business and the Companies and clauses 4.2 - 4.5 further repeated that the releases to be granted by KM, and agreements not to sue were conditional upon her receipt of the Settlement Sum. And clause 5 provides that each party warrants and represents to the Other Parties that they own their respective interests in the Released Claims and have not sold transferred assigned or otherwise disposed of such interests.

16. Mr Shaw for JS and Mr Goldring for KM spent a considerable amount of the time during the hearing focussing on clause 6. Clause 6.1 provides that within 5 business days of receipt of the Settlement Sum, KM would resign as director of each of the Companies. The resignation "may properly be given and shall be effective if provided by email to" JS. Clause 6.2 provides:

"In connection with the passing of the Special Resolutions, a separate agreement or agreements in respect of the release of claims as between JS and the Companies and/or the Leopard Companies are to be entered into by those parties."

17. Clause 6.3 provides that:

> "Subject to the passing of the Special Resolutions (of which JS agrees to notify KM) and KM having received the entire Settlement Sum, KM shall, within 5 Business Days of notification by JS deliver to JS duly executed stock transfer forms for the transfer of the Shares [in the Companies] to such party as JS shall direct along with the share certificates (if available) for the Shares".

18. The Special Resolutions referred to in clause 6.3 were defined in clause 1.1 as being resolutions passed by the shareholders (i) of Auriens Limited and (ii) Auriens Ventures Limited disapplying pre-emption rights on the transfer of KM's shares in those companies to JS and (iii) of K&J Brompton Limited consenting to the transfer of KM's shares to JS.

19. Clause 6.6.2 provides that subject to payment of the Settlement Sum, KM would assign to JS her claims to recover loans pursuant to the Loan Agreements, while by clause 6.6.1 KM warranted that she had at no time sold, transferred, assigned or otherwise disposed of her rights or interests in respect of the Loan Agreements.

20. Following these operative clauses there is an entire agreement clause.

The Arguments

21. Mr Shaw argues that the payment of the Settlement Sum is a clause dependent upon the transfer of shares. In his written and oral argument, he contends that the timing of KM's "obligation to deliver the Shares was linked to 2 events – the payment of the Settlement Sum and within 5 days of her receiving notice of the passing of the Special Resolutions". He argues that it follows "that were she to be given notice of the passing of the Special Resolution more than 5 days before payment of the Settlement Sum then her obligation to deliver the Shares would immediately follow the making of that payment".

22. Mr Shaw relies on *Doherty v Fannigan Holdings Ltd* [2018] BPIR 1266; [2018] 2 BCLC 623 for the proposition that where there is a dependent clause it would be wrong if the vendor was entitled to sue in debt and enforce any judgment against the purchaser for non-payment. The rationale is that it "would lead to the conclusion that absent recovery in full the vendor could retain both the sums recovered and (even if less than the contract sum) the shares as well". Mr Shaw accepts that if the clause is interpreted as an independent clause, the Settlement Sum will be a liquidated debt.

23. Mr Shaw identifies the principles upon which the Court should decide whether contractual clauses are dependent or independent of one another by referring to paragraph 22 of the judgement given by Sir Colin Rimer in *Doherty*:

> "As to the law's recognition of the distinction between dependent and independent contractual promises, Mr Shaw referred to various text books. Chitty on Contacts (32nd Edn) Vol 1, para 24.036 says:
>
> > Relation of the promises. In the first place, it is necessary to discover the relation to one another of the promises which form the contract. They may be either independent or dependent. Promises are said to be independent when the obligation of one party is absolute and not conditional upon the performance by the other party of his part of the bargain. They are said to be dependent when the

> obligation of one party depends upon the performance, or the readiness and willingness to perform, of the other…"

The Interpretation of Contracts (6th edn), Lewison, discusses the same topic at 16.15, where it is said that:

> "…Which species of obligation has been created is a question of interpretation, but if the obligation constitutes the whole or a substantial part of the consideration for the contract, the court is likely to interpret it as a dependent obligation."

24. Chitty on Contract also says [24-037] that independent mutual promises are regarded as exceptions. The tendency of the court is against construing contracts as having independent promises. An example is given of mutual covenants to drain land by adjoining owners. These were held to be dependent on each other and not independent promises. It is not all one-way traffic, as Chitty explains that "it has long been established that a tenant's covenant to pay rent is independent of the landlord's covenant to repair the premises". Cited in support of the long-established rule is *Taylor v Webb* [1936] 2 KB 283. The case heard on appeal did not concern whether a repairing promise was independent of a promise to pay rent, but at first instance du Parcq J found that a landlord could not escape his liability to repair under a repairing covenant, even though the tenant had failed to perform his obligation to pay rent: "At first sight one would think that the landlord might say that, until the tenant had performed his duty to pay the rent, he could not sue on the covenant. That was the contention in *Dawson v Dyer* (1833) 5 B & Ad. 584, but it failed." Chitty on Contracts does not seek to explain why performance of these covenants falls within the category of "independent mutual promises". It may be that it is simply a long-established rule or that the rent covenant was not treated as a condition precedent because it did not go to the "root" of the contract (as it was expressed in the earlier authorities). It is not suggested that any agreement that involves a transfer of shares falls within a special category.

25. Relying on *Doherty* [para 43] Mr Shaw argues "that an agreement for the purchase of shares is in principle no different from an agreement to purchase land. Whilst the purchaser may have an obligation to perform its obligation (payment) first before the vendor performs its obligation (transfer of title), the obligations are plainly dependent. The vendor's remedy for breach is specific performance and/or damages, not a claim for debt."

26. The same principle applies to sales of goods. As observed in Andrews et al: Contractual Duties; Performance, Breach, Termination and Remedies 2nd ed (19-019):

> "Just as a seller can presumptively claim the price once ownership has passed, conversely he cannot do this if this has not occurred. In such a case his only action is for damages for non- acceptance"

27. Mr Shaw argues that the same principle applies (with very few exceptions) to all sale of goods and sale of service contracts. The range is vast, from purchasing goods on the internet to taking a bus journey. He says the same principles must apply and do apply in respect of the sale of shares. He accepts that there is a distinction in the share

sale agreement, the subject of Doherty, and the Settlement Agreement. In *Doherty* the vendor's obligation to transfer the shares was stated in the agreement to take place on the same day as the payments was made. The Settlement Agreement provides that upon the Settlement Sum having been paid, and upon having received notice of the passing of the Special Resolutions, JS is required to give notice. After the notice is given there is a 5 day period in which KM was to send executed stock transfer forms for the transfer of the shares.

28. Mr Goldring argues *Doherty* concerned an agreement for the sale of assets, in that case tranches of shares. In a contract for the sale of land, payment of the purchase price and conveyance are dependent obligations such that the vendor could not petition for the purchase price. *Doherty* applied this approach to an agreement for the transfer of shares. He argues that in *Doherty* the shares were to be "transferred in tranches and the agreement set out what the consideration for each transfer of shares was. It was clear that the respective obligations of payment and delivery were intended to be dependent. The parties' intention "was that completion of the sale and purchase of the Tranche E shares [which formed the basis of the petition] was to take place on the same day and at the same time; and that the making by Mr Doherty of his payment was dependent on his receiving the transfer documents in exchange": see *Doherty* at [33]."

29. Mr Goldring argues that the Settlement Agreement should not be viewed as a share sale agreement. It is distinguishable from *Doherty*. While acknowledging that *Doherty* is binding on this Court and acknowledging that it provides useful guidance for determining whether some provisions are dependent or independent, he submits that the general principles of construction are paramount.

30. The parties agree that the issue between them is one of interpretation or construction. In *Al Sanea v Saad Investments Co Ltd* [2012] EWCA Civ 313, Gross LJ, at paragraph 31, summarised the correct approach to contractual construction, in the light of the decision of the Supreme Court in *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, [2011] 1 WLR 2900:

"The ultimate aim of contractual construction is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant. The reasonable person is taken to have all the background knowledge which would reasonably have been available to the parties in the situation in which they were in at the time of the contract".

31. The Supreme Court has dealt with the subject on a number of occasions including recently, *Arnold v Britton* [2015] AC 1619 and *Wood v Capita Insurance Services Ltd* [2017] AC 1173. It is sufficient for these purposes to cite Lord Neuberger in *Arnold v Britton* he said:

"When interpreting a written contract, the court must identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean, focussing on the meaning of relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of, (i) the natural and ordinary meaning of the clause, (ii) any

other relevant provision of the [contract], (iii) the overall purpose of the clause and [contract], (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions." [14-15].

32. Mr Goldring argues that when putting the Settlement Agreement in context, the meaning of Clauses 2 and 6, (when using the natural and ordinary meaning of the language) will convey to the reasonable person, with all the relevant background knowledge that the intention of the parties was that the transfer of shares and the payment of the Settlement Sum cannot be construed as dependent clauses. He makes four forceful points. First the Settlement Sum is a sum payable in relation to an overall settlement not any specific assets. Secondly, the payment of the Settlement Sum is unqualified. The use of words such as "no set-off" demonstrates that the parties intended that JS was required to pay, come what may. Thirdly, clause 2 provides for an accelerated payment clause in certain events and interest for late payment. There is no penal requirement in clause 6 for non-transfer of the shares. The payment of interest and the accelerated payment provisions, when taken together would lead a reasonable person to conclude that the intention of the parties was to treat the payment of the Settlement Sum as independent of the share transfer. Lastly it is clear from the language used in clause 6.3 that the obligations were independent as there is no timing issue similar to that in *Doherty*. In *Doherty* [para 36] the Court regarded "as irresistible the inference that the intention of cl 5.1 is that there is to be an immediate delivery of such documents upon receipt of the price and that the parties' objective was to achieve what would in practice be a simultaneous exchange." It would not be irresistible to regard the provisions in the Settlement Agreement as seeking to achieve "what would in practice be a simultaneous exchange". That is because the stock transfer forms would only be executed "subject to the passing of the Special Resolutions [as defined] … and KM having received the entire Settlement Sum …[and] within 5 business days of notification."

Dependent or independent promises

33. The Court of Appeal in *Doherty* found that the title page of the agreement was relevant as it described the nature of the contractual relations and gave the contract a commercial context. In that case the title page described the agreement "as an agreement for the *transfer of shares* in OEHL". In this case the agreement is a "settlement deed". It is axiomatic that the context is different. KM and JS were seeking to settle a dispute.

34. In *Doherty* the Court of Appeal found relevant Recital B as it "records the parties' agreement respectively to make and take such transfers. Those provisions show that the agreement is about the transfer of shares." A flavour of the dispute is provided in Recitals C and D. The first of these explains that KM and JS were to draw equal benefits from the Companies as they had an equal financial stake and a "dispute has arisen as to whether KM has received the equal treatment agreed regarding certain other specific matters including regarding certain payments made to JS…" Recital E provides that the "Parties have agreed to settle the Dispute without admitting any fault or liability….and on terms set out in this Deed." The Settlement Agreement was an attempt by the parties to settle their difference and unravel their commercial relationship.

35. As in *Doherty* "there follows the definitions, the function of which is not to identify the parties' rights and obligations but to assist in the interpretation of the operative provisions". Focussing on the Doherty operative provisions it can be seen [paragraph 34] that "of those provisions, clause 2 provides for the transfer of the shares against payment for them. Clause 3 explains what the consideration for each tranche of shares is and provides that the payment for the Tranche E shares is to be made no later than 1 July 2015. Clause 5.1 provides that upon payment of the price to FHL's solicitors' client account on that day, FHL shall deliver the transfer documents to Mr Doherty." The operative provisions demonstrate that there was a relationship between the obligations, that when put in the commercial context of the agreement, identified themselves as dependent; and that the "obligation constitutes the whole or a substantial part of the consideration for the contract."

36. The definitions identify the multiple layers of the commercial relationship between KM and JS. It involved the Auriens business; five companies that fell within the definition of the "Companies"; the "Leopard Companies" comprised two companies incorporated in Guernsey and two in England and Wales; "Loan Agreements" between KM and one of the Companies and one of the Leopard Companies; and related parties such as Westborne Capital Partners Limited. In addition, it was thought necessary to pass "Special Resolutions" as defined. These related to three of the Companies.

37. The chronology for the operative provisions is that the "Payment" defined as the sum of £1,250,000 to be paid no later than 31 January 2019 by JS to KM, was to happen first. Unlike Doherty it cannot be inferred that the intention of clauses 2 and 6 when taken together was that there would be "an immediate delivery" or simultaneous fulfilment of their respective obligations. There are several observations to make about the Payment. First there was a deadline: 31 January 2019. Secondly the stipulation that "time for payment of the Settlement Sum….shall be of the essence" meant that the parties intended that the deadline was to be strictly adhered to. Thirdly, it is worthy of note that none of the other operative provisions provided a time of the essence stipulation. Fourthly that JS was obliged by clause 2.1 to make the payment of the whole sum without deduction "of any kind or nature". Fifthly a clear mechanism was provided in the Settlement Agreement as to how the Payment without deduction was to be made "no later than 31 January 2019". Sixthly a release from "all and any actual or potential causes of action…." was to take effect as a consequence of the Payment but separate release agreements were to be entered into by the Companies and the Leopard Companies. Seventhly, the Payment was to trigger an obligation upon KM to tender her resignation within 5 days as "director of the relevant Company" and the resignation was to have "immediate effect". Lastly, the transfer of shares was not to be transferred upon Payment. If JS wanted the shares transferred, he had to ensure that the Special Resolutions had been passed. He would then notify KM of the Special Resolution. After the resolutions and notification, he would have to take a third step by giving notification that he wanted the share transfer. Once these steps had been taken KM was obliged within 5 business days to execute and deliver the stock transfer forms.

38. In oral submissions Mr Shaw submitted that the Settlement Agreement comprised a "package of rights and measures" that give rise to a remedy of "damages or specific performance" for breach. He says that the "draftsman could not have done more to

demonstrate a dependent obligation". The observations I have made above point to an opposite conclusion as:

i) The timing of the Payment was paramount as time was of the essence. I infer that the intention of the parties was that the Payment of the Settlement Sum was a primary obligation in that it was to be performed before any of the other operational provisions could be performed. The obligation to make the Payment was unconditional;

ii) There was no obligation on JS to fulfil his requirement to pass a Special Resolution ahead of or at the same time as the Payment. I was informed by Mr Shaw that the resolutions had not been passed at the date of the hearing;

iii) The obligation imposed on JS to inform KM, that the resolutions had been passed was not subject to a specific deadline;

iv) The obligation on JS to notify KM that he required the stock transfer was not within any given time. It cannot be inferred that the notification obligation was one to be carried out at the same time as the Payment was made. Mr Shaw agreed in submissions that JS may not seek the stock transfer for many years. He was right to concede this as by operative clause 6.5, KM waived any rights or claims attaching to the shares including any right to receive dividends, expressly agreeing that she would not be entitled to exercise any rights or bring any claims pending the transfer, as set out in clause 6.3. There was no pressing or commercial reason for quick transfer; and

v) The assignment by KM to JS of her rights to receive or recover "all sums of money" including the repayment of the loans she had made to the Companies was not to take effect from the date of the share transfer, but to take effect from the date of the Payment. This is consistent with the Payment of the Settlement Sum being independent of the transfer of shares and not dependent.

39. I turn to my conclusions.

Conclusions

40. The authorities are clear that each agreement must be construed according to its own terms. The Settlement Agreement is very different, in my judgment, to the share purchase agreement considered by the Court of Appeal in *Doherty*. The reason for the Settlement Agreement is different, the commercial impetus is different, and the provisions are different. They cannot be treated as analogous. When considering the relation to one another of the promise to pay and the promise to deliver the stock transfer forms, the obligations on KM were not dependent (like the mutual covenants of drainage example provided by Chitty on Contracts), but independent so that that each party has a remedy on the promise. The obligation to transfer and deliver the executed stock transfer form does not, in my judgment, constitute "the whole or a substantial part of the consideration for the contract".

41. In my judgment it is to be inferred that the intention of the parties was that the Payment was unconditional and was to be paid in full by a date certain. Interpretation is an iterative process taking account of the whole of the Settlement Agreement.

Having carried out an iterative process construing clauses 2 and 6 against the background of the whole agreement, I conclude that the transfer of shares, was part of a tidying-up exercise to be done only after the Payment had been made to KM. KM had agreed to tender her resignation and walk away from the business, providing releases of liability and forsaking her right to recover loans she had made or any benefits ordinarily incident upon ownership of shares. I make this inference as it was anticipated that in the period prior to the transfer of the shares KM would not be entitled to benefit from the shares or exercise rights attached to the shares. The shares in her hands had no value. There was no requirement or necessity to wrestle the shares away from KM as soon as the Payment had been made due to her inability to make any use or gain any benefit from the shares. She was bound by the Settlement Agreement.

42. The time of the essence and non-set-off provisions, I find, will give KM a remedy by an action on the debt. When interpreting the Settlement Agreement, in order to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties, would have understood them to be using the language in the contract to mean", I find that the intention of the parties was the Payment was unconditional and not dependent upon the share transfer. The Payment was to be made in order to settle the dispute and once the Settlement Sum had been paid, KM would walk away from the business comprising the various corporate entities.

43. In my judgment the debt set out in the petition satisfies section 267(2)(b) of the Act. The application dated 7 June 2019 to strike out the petition presented on 29 March 2019 on the basis that the debt is not in respect of a liquidated sum must fail.

44. Order accordingly.