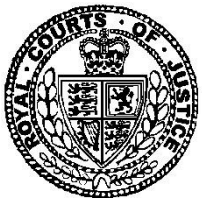

No. BR-2021-000034
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
[2021] EWHC 2870 (Ch)

Rolls Building Fetter Lane London, EC4A 1NL

Tuesday, 5 October 2021

Before:

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE SCHAFFER

B E T W E E N :

IV FUND LIMITED SAC — Applicant

- and -

FRANK JAMES MOUNTAIN — Respondent

MR SIMON DAVENPORT QC and MR PHILIP JUDD appeared on behalf of the Applicant.

THE RESPONDENT did not attend and was not represented.

J U D G M E N T

(Via Microsoft Teams)

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE SCHAFFER:

INTRODUCTION

1 The application before me today is made by IV Fund Limited SAC ("the Creditor"). It seeks the cancellation of a mental health crisis moratorium made in favour of Frank James Mountain ("Mr Mountain") on various grounds which I shall shortly describe.

2 Appearing on behalf of the Creditor was Simon Davenport QC of Counsel, leading Philip Judd, also of Counsel. Mr Mountain, who has acted in person since 11 August 2021, did not appear and was not represented.

3 When this application was made on 13 September 2021, I gave directions as to its conduct, to which I will later allude, but before doing so I need to set out the background to this application in some detail.

BACKGROUND

4 A bankruptcy petition was initially presented by the Creditor against Mr Mountain on 8 February 2021 based on two court orders. The hearing of that petition was expedited by order of Deputy ICC Judge Barnett on 19 February. That expedition order was unsuccessfully challenged before Mrs Justice Bacon on 10 May 2021 and the petition, by that time part-heard before me on 23 March 2021, was due to come back for determination on 16 June. Just prior to that adjourned hearing Mr Mountain applied on 10 June for a Breathing Space moratorium under the Breathing Space Moratorium and Mental Health Crisis Moratorium (England & Wales) Regulations 2020 ("the Regulations"). That application was not, at that time, opposed by the Creditor and was duly put into effect on 11 June.

5 I therefore had to make allowance for a 60-day period under the Regulations for the moratorium to take effect, which would have expired on 9 August. I duly relisted the adjourned petition for 17 August, a date convenient to both counsel instructed at the time by the parties. It cannot be disputed that the 60-day period afforded by the Regulations was to give Mr Mountain protection to enable him to obtain advice on his financial position and to enter into, as it was put at the time, some acceptable debt solution.

6 On 11 August, Mr Mountain's former solicitors, Gateley Plc, filed notice of change to come off the record. Mr Mountain, then acting as a litigant-in-person, three days later, on 14 August, after the expiration of the Breathing Space moratorium, applied for and secured a mental health crisis moratorium under the Regulations. That being accepted by the relevant debt advisor with evidence, which was not produced to the court at that time from an approved mental health professional, I had no alternative but to adjourn further the hearing fixed for 17 August, but directed any application to cancel the moratorium could be made on an expedited basis to this court.

7 That is the application before me now this afternoon. On 17 September, it having been issued, I gave directions which included disclosure of medical evidence by Mr Mountain by 30 September. Some evidence was served that day and was followed the next day, Friday, 1 October, with an application to adjourn with which I must now deal.

APPLICATION TO ADJOURN

8 The application to adjourn the hearing this afternoon is on medical grounds. Mr Mountain is not present to advance it but has sent through a written submission. In summary, he contends that he is mentally in no position to attend. The evidence he relies upon is the medical report filed on 30 September, to which I have just referred, and which includes advice that he should not attend the hearing today. The application is opposed by the Creditor. It maintains that the arguments raised in support of an adjournment are those said same arguments which address whether the moratorium should be cancelled. The court should deal with this matter on what was before it and the substantive application should proceed.

9 Having considered the matter, I am not prepared to adjourn the application. The medical evidence in support of the mental health crisis moratorium continuing has been filed and this court is perfectly able to consider its adequacy in the context of whether the moratorium should be cancelled or not. I accept that Mr Mountain is a litigant-in-person and he is not here nor able, he says, to attend, albeit it electronically through Microsoft Teams, but this court still has to consider an application of this nature on its merits, whether a party chooses to attend or not. Absence of attendance does not give a free pass to an adjournment. It is also pivotal in addressing this adjournment application based on medical grounds to consider the earlier evidence of Mr Mountain as the claims against him by the Creditor unfolded.

10 When analysing these, it is plain that Mr Mountain's problems stem, to a large extent, from the stresses of this litigation. In his second witness statement of 16 March 2021, Mr Mountain said at paragraph 23 that he found the proceedings, by which he meant the original proceedings on which the petition debts are based, "extremely stressful". At paragraph 26 of that same witness statement he said he had been mentally unwell for some time "particularly the stress of the legal proceedings", his company's difficulties and the pandemic. At paragraph 35 he refers to multiple stresses, including the proceedings with the Creditor.

11 In considering any application on medical grounds the court has a clear discretion and there are a number of authorities which guide it as to how that discretion is exercised. As to adequacy of evidence, in *Decker v Hopcroft* [2015] EWHC 1170 QB, Warby J relied on the observations of Norris J in *Levy v Ellis-Carr* [2012] BPIR 347 where, at paragraphs 32 to 36, in dealing with this type of application, he referred to the overriding objective, made clear the court's discretion and then after identifying the relevant factors which the court had to consider when an adjournment is sought on medical grounds, including a reasonable prognosis after an independent opinion is given after a proper examination said this in his concluding remarks at paragraph 36:

> "No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the *previous conduct of the case*). [My emphasis]. The letter on which the appellant relies is wholly inadequate."

12 That view was approved by Lewison LJ in *Forrester Ketley v Brent* [2012] EWCA Civ 324, when he said this at paragraph 25:

> "While the court must recognise that litigants in person are not as used to the stresses of appearing in court as professional advocates, nevertheless something more than stress occasioned by the litigation will be needed to support an application for an adjournment. In cases where the applicant complains of stress-related illness, an adjournment is unlikely to serve any useful purpose because the stress will simply recur on an adjourned hearing."

13 Here, it is clear that Mr Mountain relies on his mental state in seeking an adjournment, but there is no doubt this has been accentuated at the very least, if not exclusively, by this litigation, culminating in the presentation of the bankruptcy petition. I refer to his witness statements which I have identified above. I have to decide where the balance of justice lies in considering the overriding objective. Given the factual matrix here based on Mr Mountain's own evidence, it is plain that no purpose, in my judgment, is served by an adjournment and for these reasons, taking into account the earlier judicial guidance I have mentioned, which referred to how the court should deal with applications to adjourn based on litigation stress, the balance lies heavily in allowing the application to proceed. I therefore refuse the request for an adjournment.

THE LAW

14 I therefore now turn to the relevant law. The Regulations offer two ways forward to secure a stay, as here, on a presented bankruptcy petition; (1) a Breathing Space Moratorium which, as I have indicated, Mr Mountain availed himself of on 11 June and (2) a mental health crisis moratorium, which he obtained on 14 August. The relevant general parts of the Regulations for the latter are as follows:

> "17(1) Subject to paragraph (4), a creditor who receives notification of a moratorium under these regulations may request that the debt advice provider who initiated the moratorium or (as the case may be) the debt advice provider to whom the debtor has been referred since the start of the moratorium reviews the moratorium to determine whether it should be continued or be cancelled in respect of some or all of the moratorium debts on one or both of the following grounds, namely that
> (a) the moratorium unfairly prejudices the interests of the creditor, or
>
> (b) there has been some material irregularity in relation to any of the matters specified in para.2.
>
> (2) The matters in relation to which a creditor may request a review on the ground of material irregularity are that –

(a) the debtor did not meet the eligibility criteria when the application for the moratorium was made;

(b) the moratorium debt is not a qualifying debt; or

(c) the debtor has sufficient funds to discharge or liquidate their debt as it falls due.

(3) A request under paragraph (1) must be made within a period of 20 days, beginning on the day on which the moratorium started."

(4) and (5) …

(6) Any requests made under this regulation must
(a) be made in writing to the debtor's debt advice provider, and
(b) contain the following-
(1) the statement of the ground or grounds on which the review is requested ,and
(2) evidence which supports the statement.

18(1) Having received a request for a review in accordance with regulation 17, a debt advice provider must conduct the review and carry out the steps in paragraph (4) before the end of the period of 35 days beginning with –
(a) the day on which the moratorium started."
(b) …… …

(2) Subject to paragraph (3), having carried out the review in response to a request from a creditor, a debt advice provider must cancel a moratorium in respect of some or all of the moratorium debts if the debt advice provider considers that the creditor has provided sufficient evidence that-
(a) the moratorium unfairly prejudices the interests of the creditor or
(b) there has been some material irregularity in relation to any of the matters specified in Regulation 17(2).

(3) A debt advice provider is not required to cancel a moratorium under paragraph (2) in respect of moratorium debt if the debt advice provider considers that the debtor's personal circumstances would make the cancellation unfair or unreasonable.

(4) The steps referred to in paragraph (1) are that a debt advice provider must -
(a) inform the creditor to request a review of the outcome of the review.

(b)…

19(1) If a debt advice provider has carried out a review of a moratorium following a request made by a creditor under regulation 17 and the moratorium has not been cancelled under regulation 18 in respect of some or all of the moratorium debts as a result, then the creditor may make an application to the county court on one or both of the grounds in regulation 17(1).

(2) An application under this regulation must be made before the end of the period of 50 days beginning with –

(a) the day on which the moratorium started or

(b) …

(3) Where on an application under this regulation the court is satisfied as to either of the grounds in regulation 17(1) it may do either or both of the following, namely –

(a) cancel the moratorium in relation to the moratorium debt owed to the creditor who made the application to the court,

(b) cancel the moratorium in respect of any other moratorium debt.

(4)…

(5) In any case where a court cancels a moratorium in relation to a moratorium debt under paragraph (3) or requires a debtor to pay interest fees or charges under paragraph (4), the court –

(a) may give such supplemental directions as it thinks fit and

(b) must notify the creditor, the debtor and the Secretary of State that the moratorium has been cancelled in relation to the moratorium debt."

15 Turning now to the specific part of the mental health crisis moratorium and its Regulations as are applicable here:

"28(1) A mental health crisis moratorium is a moratorium under this part in respect of a debtor who is receiving mental health treatment.

(2) In these regulations, a debtor receiving mental health crisis treatment when the debtor,

(a)(b)(c)(d) …….

(e) is receiving any other crisis, emergency or acute care or treatment in hospital or in the community from a specialist mental health service in relation to a mental health disorder of a serious nature.

(3) In this regulation, "specialist mental health service" means a mental health service provided by a crisis home treatment team, a liaison mental health team, a community mental health team, or any other specialist mental health crisis service.

29(1) Any of the following persons may submit an application to a debt advice provider for a mental health crisis moratorium in relation to a debtor - (a) the debtor.

(2) The application must include the following information –
(a) sufficient information to identify the debtor, and

(b) evidence from an approved mental health professional that the debtor is receiving mental health crisis treatment.

(3) For the purposes of paragraph (2)(b), evidence from an approved mental health professional must include the following
(a) sufficient information to identify the debtor,

(b) the name and contact details of the approved mental health professional,

(c) the name and contact details of the debtor's nominated point of contact,

(d) a declaration by the approved mental health professional that the debtor is receiving mental health crisis treatment, and

(e) a signed statement by the approved mental health professional that the evidence is, to the best of their knowledge and belief, correct.

(4) In addition to the information specified in paragraph (2), the application may include the following information where it is known by the person submitting the application, is relevant and has not already been provided in accordance with paragraph (2)(a) –
(a) the debtor's full name, date of birth and usual residential address,

(b) the trading name or names and address of any business carried on by the debtor,

(c) details of the debts to which the debtor is subject at the date of the application and the contact details of the creditors to whom each debt is owed, and

(d) details of any enforcement agent or other agent instructed by the creditor for the purposes of collection or enforcement of the debt including the agent's contact details.

30(1)…

30(2) Having considered an application for a mental health crisis moratorium, a debt advice provider must initiate a mental health crisis moratorium on behalf of the debtor if the debt advice provider considers that –

(a) the debtor meets the eligibility criteria in paragraph(3),

(b) the conditions in paragraph (4) are met, and

(c) the debts to be included in the moratorium are qualifying debts."

Paragraph 30(3) sets out the eligibility criteria referred to in paragraph 2(a) which are met by the debtor, so I will not recount them.

"(4) The conditions referred to in paragraph (2)(b) are that, in the light of the information provided in accordance with regulation 29(2) and (4) and any other information obtained by the debt advice provider –
(a) the debtor is unable, or is unlikely to be able, to repay some or all of the debt as it falls due,

(b) a mental health crisis moratorium would be appropriate, and

(c) an approved mental health professional has provided evidence that the debtor is receiving mental health crisis treatment.

(5) For the purposes of paragraph (4)(b), when considering whether a mental health crisis moratorium is appropriate, the debt advice provider
(a) must consider whether the debtor has sufficient funds or income to discharge or liquidate their debt as it falls due, and

(b) may have regard to any other factor that the debt advice provider considers relevant."

Paragraph 31 I will not recount as the Regulation deals with the initiation of a mental health crisis moratorium by the Secretary of State and so is not relevant for the purposes of this application.

"32(1) A mental health crisis moratorium starts on the day following the day on which the Secretary of State causes an entry to be made on the register in accordance with regulation 31(2)(a).

(2) A mental health crisis moratorium ends on the earliest of –
(a) the end of the period of 30 days beginning with the day on which the debtor stops receiving mental health crisis treatment

(b) …
(c) the day on which the mental health crisis moratorium takes effect under regulations 18, 19 or 34.

33(1) Subject to paragraph(2), a debt advice provider must, before the end of the period of 30 days beginning with the day on which the moratorium started, request from the debtor's nominated point of contact –

(a) confirmation of whether the debtor is still receiving mental health crisis treatment, and

(b) if the debtor is no longer receiving mental health crisis treatment, confirmation of the date on which the treatment ended.

(2) The debt advice provider must not make the request to a nominated point of contact under paragraph (1) in the period of 20 days beginning with the day on which the moratorium started."

In addition to the regulations I have set out above, there is one authority to which I will need to refer to later in the course of this judgment.

THE APPLICATION

16 As I indicated earlier, the application before me this afternoon is to cancel the mental health crisis moratorium. It was issued by an ordinary application on a N244D form rather than by a claim form to the county court. When the matter came before me on 17 August, I noted the obligation to issue in the county court, but given that all these matters between the Creditor and Mr Mountain arose from the bankruptcy petition presented in February 2021 in this court, it appeared to me, as a matter of practicality, with a view to active case management, any challenge to the moratorium should be dealt with by this court. Accordingly, in the order I made on 17 August, I directed that any application under Regulation 19 to review the moratorium should be made to this court but with liberty to Mr Mountain to apply to set aside or vary no later than 14 days from service of that order upon him. No such application has been made by Mr Mountain.

17 Coincidentally, that very point came before His Honour Judge Matthews in *Axnoller Events Limited v Brake & Ors* [2021] EWHC 2308 (Ch) that same day, 17 August, where at paragraph 10 he found that jurisdiction to challenge under Regulation 19 was not exclusive to the county court and that in his case, similar to the matter here, the application was closely connected to existing High Court litigation. He concluded that it would be inefficient and of no advantage to have this matter transferred to the county court. I was of the same mind as the learned judge when all the relevant issues were already before this court.

18 Consistent with that view, I took the view that this application commenced on Form N244D issued by the Creditor was sufficient to engage the court. Like the court in *Axnoller*, I did not require a separate claim form to be issued. By an order I made on 17 September, I therefore permitted this application to proceed. I also ordered at that time that Mr Mountain disclose medical evidence of his mental health crisis treatment which supported his original application for the moratorium, including duration, severity, prognosis and timescale for improvement, that evidence to be filed and served by 4.00 p.m., 30 September 2021. Some evidence has been produced and I will need to address its adequacy later in this judgment.

THE CREDITOR'S SUBMISSIONS

19 Mr Davenport submitted that whilst the evidence indicated that there may have been a material irregularity on the basis there were funds available to discharge the petition debt,

his main focus was on unfair prejudice to the Creditor. He pointed out that the original bankruptcy petition had been expedited by this court as there was a serious risk of Mr Mountain dissipating his assets. That decision was upheld on appeal by Bacon J. To delay now would be inconsistent with those determinations. There was a collective risk to creditors which outweighed any prejudice to Mr Mountain. Furthermore, Mr Mountain was engaged as a litigant-in-person before the Court of Appeal in far more complex litigation next month, and had already produced a witness statement in September in those proceedings on the taking of an account. That appeal to the Court of Appeal was unaffected by the moratorium as it was in relation to a non-eligible debt under the Regulations. He submitted that Mr Mountain was using the Regulations as a shield. One only had to look at the timing of the moratoria; they were being cynically deployed. Everything was being done to frustrate the Creditor in the bankruptcy proceedings. Nothing had been achieved by the first moratorium and the medical evidence now produced to support the second moratorium was, in his words, "extremely limited". He went on to point out that the bankruptcy petition was well advanced and a series of adjournments for one reason or another had delayed its determination. Finally, he said one had to take into account the hollow medical evidence which had been produced; that clearly did not support Mr Mountain's position, so in all the circumstances, the moratorium should be cancelled.

MR MOUNTAIN'S SUBMISSIONS

20 Although Mr Mountain was not in attendance, he has forwarded to the court a 3-page note signed by him which I shall treat as his submissions this afternoon. Some of these are not relevant to what I have to determine, but he does make clear that he has been advised not to attend this hearing and that the threat to cancel the mental health crisis moratorium was causing him even more stress. He goes to criticise the breadth of the order I made on 17 August, criticises the circumstances in which he originally entered into the consent order of May 2020, challenges the various claims made against him and continues to assert that he is trying to re-finance to pay the petition debt. He also claims that the mental health consultant has provided the necessary medical evidence to the debt advice provider and that should be sufficient for the Creditor. That said, what is clear is that he maintains that due to his mental condition he should be allowed the time to get better so that he can deal with the petition the Creditor wishes to pursue.

MY CONCLUSIONS

21 A number of issues arise from these competing contentions and I shall deal with each in turn. Firstly, should the application proceed to be determined? I am in no doubt that this application should proceed. The following factors support this view –

21.1 The Creditor has complied with its obligations under the Regulations. It sought, on 2 September, within the 20 day period under Regulation 17(3), a review of the moratorium by the debt advice provider. That was declined without reasons being given under Regulation 18 and so this application was made and it, together with the order I handed down on 17 September, was served on the debt advice provider on 17 September.

21.2 The Creditor has serious concerns as to the circumstances in which this moratorium arose. Dismissing the application without analysing those concerns, which I will do, would be wrong. Nothing Mr Mountain has advanced convinces me to the contrary.

21.3 Mr Mountain originally put in place a Breathing Space Moratorium under the Regulations. This required the relevant debt advice provider to review the moratorium before the end of 35 days, beginning with the day that moratorium commenced. There is no evidence before this court that this was undertaken.

21.4 Mr Mountain was under an obligation under the first moratorium to inform his first debt advice provider if there was any change to his circumstances or financial position (see Regulation 16(2)(a)). There is no evidence he did so and one can only conclude that nothing has happened in the first 60-day period. That is plainly unsatisfactory and I will return to that point later in this judgment.

21.5 Mr Mountain changed his debt advice provider for the purposes of the mental health crisis moratorium. There was no explanation as to why he did so. I accept he was entitled to take that course, but the court does not know why he did so.

21.6 The Creditor submits this moratorium must be viewed in the context of the background of delay. It is unarguable that there has been delay. Whether that is a relevant factor to set aside the moratorium is not the issue under this head, namely, should the application proceed but it is a relevant factor in determining whether this court should look with a critical eye at the application given the historical background.

HAS THERE BEEN A MATERIAL IRREGULARITY?

22 I have set out the criteria to establish material irregularity (see Regulation 17(2) above). It is not argued by the Creditor that Mr Mountain does not meet the eligibility criteria under Regulation 17(2)(a) and it is not contended that this is not a qualifying debt under Regulation 17(2)(b). What the Creditor submits is that Regulation 17(2)(c) is not met as Mr Mountain, by his own admission, has sufficient funds to discharge or liquidate the debt under Regulation 17(2)(c). I do not agree. The evidence as to payment is, at best, equivocal. Mr Mountain's evidence on payment is not so much based on funds being immediately available, but on reasonable time being provided to raise funds for payment. At the moment, there is no evidence advanced to show an ability to pay now. I therefore conclude that there are no grounds based on material irregularity made out and I therefore dismiss that objection advanced by the Creditor.

HAS THERE BEEN UNFAIR PREJUDICE?

23 What is unfair prejudice in the context of the Regulations? In *Axnoller*, His Honour Judge Matthews, at para.27, noted that this phrase is not defined by the Regulations. At paragraph 30, in referring to Government guidance, he pointed out that the one example given there was the case where the terms of the moratorium are discriminatory against the particular creditor. He then said this at paragraphs 32 and 33:

> "32. I accept that unfairness is to be assessed objectively, and that this will require the court to embark upon a balancing exercise. I further accept that, where the moratorium discriminates unfairly between creditors, so that the impact on one is significantly more severe than on another, that may well be a proper basis on which the court can say that

> the moratorium "unfairly prejudices" the applicant creditor. But I also accept that the phrase "unfairly prejudices" should not be confined to that. These are ordinary English words, undefined in the legislation, and not obviously terms of art. They can properly be understood to go wider.
>
> 33. On the other hand, I am not going to try to lay down any firm guidelines for the future. It is too early in the life of the Regulations to do that. So, how much further these words go, and in what direction, will have to be determined on a case-by-case basis. That is, after all, how the common law (and for that matter the classical Roman law) developed: decide individual cases first, and infer a principle from the results later. So, I am going to focus particularly on the facts of this case."

24 He then went on to make three preliminary observations, the second of which I believe to be pertinent here at paragraph 35:

> "The second point is this. It is one thing to balance the interests of one creditor against another. It is another thing entirely to balance the interests of the creditor against those of the debtor: they are chalk and cheese. How does one tell at what level the amount of money that the creditor stands to lose justifies imposing the risk upon the debtor of further harm to his or her mental health? The answer may be that, like the elephant, you will know it when you see it. It is after all no objection to say, you do not know exactly where the line is to be drawn, as long as you can say, in a given case, that that case is either one side or the other of any reasonably drawn line: see e.g., *Wood v Wood* [1947] P 103, 106, per Lord Merriman P. Any uncertainties in a given case can be resolved by resort to the burden of proof."

25 Within this narrowly confined issue, His Honour Judge Matthews had to address the medical evidence before him in balancing these competing interests. He acknowledged that it was important in any Regulation 19 challenge on a mental health crisis moratorium to have appropriate evidence from a suitably qualified professional about the debtor's mental health, the treatment and the prognosis. At paragraph 37 he said this:

> "If this is not provided [I interpose to explain he was referring to the medical evidence] it will be very difficult to assess the debtor's interests for the purposes of any balancing exercise. If the patient is likely to respond to treatment within a short time and return to normal, that is a quite different situation from one in which the health problems are more intractable and will take a considerable time to resolve, or indeed may never be resolved."

26 I have earlier identified the absence of any definition of unfair prejudice and in those circumstances, I respectfully agree with His Honour Judge Matthews' observations that this is an objective approach where the court has to undertake its own balancing exercise. Before embarking on that exercise, and recognising I am moving into virgin territory vis-à-vis the Regulations I have to consider what I determine to be meant by unfair prejudice where here, the

Creditor is seeking the removal of the mental health crisis moratorium, I need to determine what unfair prejudice is suffered by the Creditor were the moratorium to remain in place. The Regulation only speaks to unfair prejudice to the creditor. Here, that prejudice is the stifling of its bankruptcy petition. There is no doubt that that is prejudicial, but is it unfair? On the facts of this case, I find it is.

27 The following 14 factors are relevant to that finding;

27.1 At a hearing in December 2020, the Chancery Judge rejected an application to adjourn made by Mr Mountain on the grounds of being medically unfit;

27.2 In the medical evidence now produced to this court, which I shall address in rather more detail later in this judgment, it is apparent that Mr Mountain was receiving medical treatment in December 2020;

27.3 Permission to appeal that judge's decision to the Court of Appeal was sought on a number of grounds and had to be undertaken on Mr Mountain's instructions. As I earlier said, part of that appeal for which permission to proceed was given by Nugee LJ and which is of a far more complex nature, continues to be pursued by Mr Mountain as a litigant-in-person;

27.4 Mr Mountain has been perfectly able to instruct solicitors and counsel since mid- December 2020, advancing defences to the bankruptcy petition since February 2021 and appealing adverse decisions to the Chancery Judge even though the medical evidence is that he was under supervision medically at that time;

27.5 The urgency of the bankruptcy petition was recognised by this court in February 2021. A challenge to that expedition order was rejected by the judge. It appears that although it is said that Mr Mountain remained under medical supervision at that time, no medical issues were raised as a discrete ground to that challenge;

27.6 His mental health did not impair him to make a substantive witness statement on 11 February 2021 in defending the petition consisting of 22 paragraphs and 168 pages of exhibits;

27.7 His mental health did not impair him to consider a lengthy witness statement made on behalf of the Creditor consisting of 73 paragraphs and over 1,000 page of exhibits on 15 February 2021 and prepare a detailed witness statement in answer on 11 March 2021 consisting of 58 paragraphs and 73 pages of exhibits;

27.8 His mental health did not impair Mr Mountain in filing a third witness statement on 17 May 2021 consisting of 18 paragraphs and 81 pages of exhibits which he accepts he prepared (see paragraphs 13 and para.14 of that witness statement);

27.9 His mental health did not impair him in filing a fourth witness statement on 1 June consisting of 20 paragraphs and 592 pages of exhibits;

27.10 His mental health did not impair him seeking to try to re-finance various corporate developments this year to fund the discharging of the petition debt (see paragraph 13 of Mr Mountain's third witness statement in May 2021 and paragraphs 5 and 6 of his fourth witness statement in June); clearly, his mental health at those times posed no impediment to his involvement in that process.

27.11 His mental health did not impair him to seek a Breathing Space Moratorium, not, I note, a mental health crisis moratorium, notwithstanding what is said to be his mental state at that time in June of this year, which he clearly did alone. His solicitors confirmed in a letter to the court dated 11 June that he did this without reference to them, they having been notified by Mr Mountain of this late the previous afternoon of 10 June;

27.12 His mental health did not impair him subsequently seeking a mental health crisis moratorium on 13 August having discharged his solicitors to act in person. His solicitors filed notice of change with this court on 11 August;

27.13 The medical evidence filed as ordered by me is wholly inadequate. By my order of 17 September, I asked for four things. (i) production of medical evidence which supported Mr Mountain's original application for a moratorium- that has not been produced; (ii) the duration of his treatment - the medical note with which I will deal with below blandly says that Mr Mountain has been under care since December 2020; (iii) the severity of his condition - that has not been provided; (iv) prognosis and timescale for improvement - that has not been provided. The undated note sent to this court by the community mental health nurse's summary states that Mr Mountain has seen a mental health consultant on two occasions for assessment and medication review, that Mr Mountain is following a treatment plan, that Mr Mountain is not well enough to attend court and that he should remain within the moratorium until his "mental health has significantly improved". That note raises a number of questions. (1) Why was a report not provided by the consultant who has seen Mr Mountain. With all respect to the community nurse, the quality of that evidence produced to the court is important (see my comments above when referring to the decision of Norris J *in Levy v Ellis-Carr*); (2) The medical evidence is very limited. As Mr Davenport contends, where is there evidence of what precisely is Mr Mountain's mental health condition? Generalities about diagnostic assessment, medication review and treatment plan will simply not do. Mr Mountain cannot hide behind confidentiality when the court has expressly ordered disclosure; (3) What does "significant improvement" mean? Even here, Mr Mountain has been able to prepare a 3-page coherent note outlining his objections to the stance taken by the Creditor;

27.14 Bankruptcy is a class action. Whilst the Regulations refer to creditor in the singular, there is no doubt in my view that the moratorium put in place to stay a class action for the benefit of all creditors is entirely different to a moratorium

put in place to stop discrete proceedings by one creditor against a debtor. The prejudice here is to all creditors.

28. In summary, therefore, that prejudice to which I have just referred is undoubtedly unfair, given the factors to which I have just alluded, the medical evidence being, in my judgment, entirely unpersuasive. To adopt the analogy of His Honour Judge Matthews, I see the elephant very clearly. Mr Mountain has been perfectly able to deal with these matters up to August 2021 and, indeed, continues to do so with regard to related proceedings (see the uncontradicted evidence of Mr Jones at paragraph 26 of his witness statement dated 13 September 2021.

29. As His Honour Judge Matthews opined at para.32 of his judgment, which I make no apology to repeat here, I have to embark on a balancing exercise and here where:

29.1 the court made clear that the petition must be determined expeditiously.

29.2 where the petition has already been delayed by earlier adjournments for one reason or another since the first hearing before me over six months ago.

29.3 where Mr Mountain, by experienced counsel, has already completed his submissions to me that first day, save for the issue of reasonable time to pay.

29.4 where a detailed skeleton argument on Mr Mountain's behalf has already been filed by that counsel with the court over the period of the adjournment (and which of course I will carefully consider) and

29.5 where the medical evidence offers no prognosis which can give the court any comfort whatsoever as to when this court will be finally determined, I am completely persuaded that, in accordance with the overriding objective, the balance lies very clearly with the hearing of the petition now resuming. There must be no delay in this matter.

30 There is one further point I must make. Having found that there is unfair prejudice, I do not need to go further, but, if I had to, I would have carefully considered whether any mental health crisis moratorium was ever properly put in place. After the false start in trying to get a moratorium in place but which could not proceed as it was made at a time when the earlier Breathing Space moratorium was extant, it would appear that this mental health crisis moratorium is flawed in the light of the failure to comply with my order of 17 February, no medical evidence being produced or declaration made so as to make it compliant with Regulation 29. These were requirements to initiate the moratorium. I can form no view on whether that evidence was ever sent to the debt advice provider. The letter of 13 August addressed to Mr Mountain by the debt advice provider says it was being sought from the mental health professional. In my order of 17 September, I asked specifically for that evidence to be produced; it has not. Mr Mountain, in his written note, says that the debt advice provider holds it. It was required by my order on 17 September - why has he not complied? That non-disclosure, however, in the light of what I have decided is not material, but if I had found there was no unfair prejudice, the creating of that moratorium may well have had to be closely reviewed.

31 In any event, in my judgment, for the reasons I have given, the mental health crisis moratorium must therefore be cancelled and I will duly make that order this afternoon.

32 Turning, therefore, to the way forward, notice of cancellation must be given to all relevant parties under regulation 19(5)(b) of the regulations. My order should direct this be done within the next two working days, subject to the order being drafted by counsel and sent through to my clerk by 10.00am tomorrow morning. I already, of course, have a draft order, which I will consider with counsel at the conclusion of this judgment.

33 I also direct that the stay on the petition put in place by my order of 17 August be lifted and the petition be relisted for hearing on a date convenient to counsel with a time estimate of one day. I already have skeleton arguments filed by the parties for the earlier hearing, which I assume will not require amplification. However for the avoidance of doubt, I make clear that Mr Mountain, who is now acting in person, can complete his submissions on two outstanding matters, namely, firstly, should he have further reasonable time to pay and, secondly, whether the petition should be struck out based on his application dated 1 June 2021 which remains extant.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF Tel:
020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

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