Neutral Citation Number: [2023] EWHC 2443 (Ch)

Case No: BR-2022-000188

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

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

Date: 5th October 2023

Before :

ICC JUDGE MULLEN

- -

In the Matter of the Insolvency Act 1986

Re Abdulla Al-Hindi

Between :

(1) Sunset Limited
(2) Morville Limited **Petitioners**

- and –

Abdulla Al-Hindi **Debtor**

- -
- -

Mr Sami Rahman (instructed by **Alomo Law Solicitors**) for the **Petitioners**
Mr Carlton Christensen (instructed by **Lexsure Solicitors**) for the **Debtor**

Hearing date: 30th June 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 5th October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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ICC JUDGE MULLEN

ICC Judge Mullen :

1. A bankruptcy petition was presented by Sunset Limited and Morville Limited in respect of Mr Abdulla Al-Hindi on 23rd June 2022, based on the failure to comply with statutory demands dated 29th March 2022. The petition debt is £248,750 said to be due by way of unpaid rent due under leases of four properties, being:

   i) Flat A, 102 Star Street, London W2 1QF;

   ii) Flat B, 102 Star Street, London W2 1QF;

   iii) Flat C, 102 Star Street, London W2 1QF; and

   iv) Flat 3b, Hyde Park Mansions, Transept Street, London NW1 SEP

2. Directions for evidence in answer and reply were given by ICC Judge Barber on 9th August 2022. Mr Al-Hindi did not file evidence in answer and, on 12th December 2022, Deputy ICC Judge Schaffer ordered that unless he do so by 4pm on 17th December 2022, together with a notice of opposition, he would be debarred from defending the petition. He adjourned the matter to 23rd January 2023.

3. Mr Al-Hindi filed a statement in answer, dated 19th December 2022, in which he agreed the arrears, although he disputed subletting in breach of the leases and raised questions as to whether the named petitioners were in fact the landlords of the premises. He also referred to an undated statement of Mr Garth Dooley included in the bundle for the hearing on 12th December 2022. I cannot see that statement on the court file but it was included in the bundle for the hearing before me. A statement in reply was filed by Riccardo Rovati of Rovati Consultants Limited, then acting for the petitioners, dated 22nd December 2022.

4. The petition returned to court on 23rd January 2023 on which occasion ICC Judge Barber gave directions for Mr Al-Hindi to make an application for relief from sanction. The relief application was made on 20st February 2023, together with an application to strike out the petition on the basis that Rovati Consultants Limited was not entitled to conduct litigation.

5. The relief application was dismissed by ICC Judge Prentis on 21st February 2023. He listed the matter for final hearing with a time estimate of one and a half hours and directed that Mr Al-Hindi could raise only the following matters in his defence:

   i) those contained in the strike out application;

   ii) that the debt relied on was not due and payable by reason of section 48 of the Landlord and Tenant Act 1987 (“the 1987 Act”);

   iii) that the petitioners could not put in evidence of the tenancies relied on by reason of the tenancy agreements not having been stamped.

   He gave directions for further evidence in relation to the strike out application, the details of which I need not set out now.

6. The matter returned before me and, regrettably, one and a half hours proved to be inadequate, with the result that it was necessary to reserve judgment in a case in which I would have ordinarily hoped to give an ex tempore judgment. This was particularly so given that I felt that I was not greatly assisted by the petitioners' skeleton on the question of the effect of section 48 of the 1987 Act or its account of the procedural history. For example, it said as follows:

> "2… Judge Barber granted a further adjournment through her case management powers because the Respondent claimed that he had not received the section 48 Notice of the Landlord's address. It is at least rather convenient that the Respondent only raised this issue after failing to comply with an 'unless order'. The Respondent was debarred from defending this petition, ultimately as a result of several breaches of an unless order.
>
> …
>
> 8. The issues in dispute between the parties are as follows:
>
> 8.1 At the hearing on 21 February 2023, ICC Judge Prentis ordered that following the dismissal of the Respondent's application for relief from sanctions emanating from breach of an 'unless order', the defendant remained 'debarred from defending the Petition on the basis of any fact raised by him' (**page 237**). It is respectfully submitted that that in line with ICC Judge Prentis' order, the Respondent's attempt to relitigate this interim application and seek relief from sanctions must be dismissed. At its highest, this serious breach of an "unless order" would be prohibit [*sic*] the respondent from defending any of the other three issues raised by him.
>
> 8.2 If the court is still minded to consider the issues raised by the Respondent, it is submitted that Rovati Consultants were not authorised to instruct Mr Rahman because they were not entitled to be on the record and conduct litigation. The Respondents further argue that that all of the important steps undertaken by Rovati would be held to be void or voidable.
>
> 8.3 The second issue is nothing more than another attempt by the Respondent claiming that he had not been properly served with notice as to where and to whom rent is payable. The Respondent argues that as such no rent was lawfully owed during the time both the Statutory Demand and Petition were served, because he was only served with notice on 3 February 2023.
>
> 8.4 Finally, the Respondent argues that as Stamp Duty Land Tax (SDLT) was due on account of arears, the Petitioner's failure to pay SDLT makes any agreement unenforceable.

> The Respondent argues that this is because it is the duty of the petitioner to ensure that the SDLT has been paid."

While they are somewhat opaque, the impression created by these paragraphs is that Mr Al-Hindi had been debarred from raising these issues and was seeking to do so improperly when in fact the order of ICC Judge Prentis is clear that it remained open to him to do so. The notice of adjournment giving the date of this hearing, prepared and served on Mr Al-Hindi on behalf the petitioners, also baldly states that "The Respondent is debarred from defending the petition on the basis of any fact raised by him", without referring to the three matters that Judge Prentis had expressly stated the debtor could raise, although it is fair to say that Judge Prentis's order was in the bundle. There was another error in the petitioners' skeleton that did not assist in the determination of the case in the time allowed, to which I shall refer below. The bundle, aside from not complying with the Chancery Guide as to the preparation of hearing bundles, also omits certain documents, such as Mr Al-Hindi's strike out application, so that the history of the matter was not as clear as it might have been. Having now had the opportunity to consider the court file in conjunction with the hearing bundle, however, I am satisfied that I have seen everything of relevance.

7. In fact, at the hearing before me, the only question was the effect of the section 48 of the 1987 Act, which provides:

> "**48 Notification by landlord of address for service of notices.**
>
> (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
>
> (2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.
>
> (3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant."

This is a matter which the debtor is expressly permitted to rely upon under the order of ICC Judge Prentis.

8. It is not in issue that the address for service given in the tenancy agreements in relation to the properties was an address in Jersey and not in England and Wales as required by section 48(1) of the 1987 Act. A notice of an address in England and Wales expressed to be given pursuant to section 48 was served on the debtor only on

6th February 2023, long after presentation of the petition. Mr Christensen's point on behalf of Mr Al-Hindi is thus a short one. No proper address for service of notices had been given and the rent was therefore not due when the petition was presented.

9. In *Dallhold Estates (UK) Pty Ltd v Lindsey Trading Properties Inc* [1994] 1 EGLR 93 the Court of Appeal considered a case in which the tenant of an agricultural holding failed to pay rent. A notice to pay rent dated 7th August 1991 was served pursuant to the Agricultural Holdings Act 1996 ("the 1996 Act"), followed by a notice to quit based on the arrears of rent. On 3rd December 1991 notice was served under section 48 of the 1987 Act, together with a further notice to pay rent. Chadwick J (as he then was) held that the notices were invalid. The further notice to pay rent set out that the rent had been due on the usual quarter days, in apparent compliance with the requirements of a notice to pay rent under the 1996 Act, but since a section 48 notice had not been served as at those times the notice to pay rent was inaccurate and invalid. The landlord appealed and the tenant cross-appealed on the ground that the failure to serve a section 48 notice before 3rd December 1991 meant any rent otherwise due before that date was forever irrecoverable, alternatively it was not due on 3rd December 1991.

10. Chadwick J considered various documents relied upon to show compliance with section 48 of the 1987 Act, including a statutory demand, which stated that any correspondence regarding the demand was to be sent to the landlord's solicitors in London. He said:

> "Second, reliance is placed on a statutory demand dated August 6 1991 made by or on behalf of the landlord under the Insolvency Act 1986. That asserts that the demand is served by the creditor, Lindsey Trading Properties Inc. It gives the registered office in Panama and includes an address 'care of' Franks Charlesly at Hulton House in London. The statutory demand, at Part A, indicates that any communication regarding that demand is to be addressed to Franks Charlesly. It does not anywhere contain notice that Franks Charlesly are authorised to receive notices which may be served by the tenant on the landlord in connection with matters under the lease other than the rent which is the subject-matter of the statutory demand."

11. The Court of Appeal agreed that no proper notice had been given prior to 3rd December 1991. Ralph Gibson LJ, with whom Hirst and Peter Gibson LJJ agreed, said at 97:

> "The requirement is that the landlord 'by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant'. By section 54(1) such a notice shall be in writing and may be sent by post. There is no prescribed form for such a notice. Chadwick J proceeded upon the basis that such a notice must state that the address given is the address at which notices, including notices in proceedings, may be served on the landlord by the tenant; and that it would not be sufficient to state an address which is shown to be such that, if notice in proceedings

> were served on the landlord at that address, it would in any particular circumstances be held to be effective service. In short, the tenant is to be told at what address notices, including notices in proceedings, may be served. In my judgment, Chadwick J was right to proceed on that basis."

12. The failure to serve a section 48 notice did not however extinguish the right to rent for all time and the notice to pay rent dated 3rd December 1991 was effective:

> "The letter of December 3 was a valid notice under section 48(1). This provision can be given no effect in derogation of the landlord's legal rights beyond that required by the terms of the enactment. The rent 'otherwise due', therefore, is to be treated as not due from the tenant 'at any time before the landlord does comply with' section 48(1); but such rent becomes due at the time when the landlord so complies and continues due thereafter. There is no justification for any extension of the period of time over which the rent is treated as not due whether until the end of that day, or for a reasonable time, or until the next rent day. The cases cited for this purpose are, in my judgment, of no relevance. No question of construction of contractual obligations arises as to when the rent was 'otherwise due from the tenant'. The rent in respect of which the notice was served was due from the tenant when he received the notice."

13. In *Rogan v Woodfield Business Services Ltd* [1995] 1 EGLR 72 the Court of Appeal again considered the operation of section 48 of the 1987 Act. In that case, a valid section 48 notice was served in August 1993, after the first day of trial in July 1993 and before its conclusion on 8th October 1993. The judge allowed the landlord's claim for arrears of rent. He found that rent had been paid at the landlord company's registered address and letters passed between the landlord and tenant at that address. It was the landlord's only address in country and was known to the tenant at all times.

14. The Court of Appeal held that the statement of the landlord's address in the tenancy agreement, being an address in England, was, without more, sufficient to comply with section 48. Sir Ralph Gibson said at 76:

> "If the landlord wishes to avoid the consequences of the unqualified statement in his address given in the agreement, he may serve a separate section 48(1) notice at once or at a later date if he changes his address. That result seems to me to be in conformity with good sense and with the provisions of section 4 and 5 of the Landlord and Tenant Act 1985, and with the intention of Parliament as expressed in the 1987 Act."

Stuart-Smith LJ said at 76:

> "What the section requires is that the tenant is told, so that he knows, the landlord's name and address in England or Wales at which he can be served with notices. If the name and address is

> stated in the lease or tenancy agreement without limitation or qualification, it is a necessary implication that he, or in the case of a corporation it, can be communicated with at that address and hence it is a place to which notices can be sent. The section does not require that the notice shall state that it is the address at which notices can be served. The mischief at which the section was aimed was the problem created where the landlord's identity was not known and/or the tenant did not know of an address within the jurisdiction to which notices could be sent and proceedings served. Mr Baker, in his attractive submissions, argued that notice within section 48(1) did not have to be written; oral notice was sufficient. There are, of course, occasions when notice of something can be given orally. Someone has notice of a fact when he knows it, and hence when he is told it. The means of telling is immaterial. But in some contexts the word 'notice' implies a written notice. In my opinion, quite apart from section 54 of the Act, it does so here, to give meaning both to the words 'furnish' and 'notice'.
>
> This is also consistent with the purpose of the section, which is to provide certainty and ease of proof, but provided the name and address is communicated to the tenant in writing, which it is if it is stated in the lease or tenancy agreement, there is no need for a separate notice."

All three Lord Justices held that, whether or not section 54 of the 1987 Act, requiring certain notices to be writing, covered a notice under section 48, it was implicit in section 48 itself that writing was required. It did not however require that the address given should be expressly stated to be the address to which notices should be sent pursuant to section 48 or to follow the statutory language.

15. Here the tenancy agreements do not give an address in England and Wales for the petitioners. They give their Jersey addresses. The proprietorship registers maintained by HM Land Registry in respect of the properties also give the petitioners' addresses in Jersey. Also in evidence are rent statements from an organisation called DFO Consulting, but no address is given for that organisation on the documents as far as I can see, still less an address which can be identified as being the landlords' address for service in England.

16. The petitioners' case is that the necessary details were provided both before and after presentation of the petition. Paragraph 13 of the petitioners' skeleton says:

> "The Respondent argued at Paragraph 7 in his skeleton that the only address for service was provided in cl. 42 of each of the tenancy agreements. This is incorrect as the Respondent was provided with an address for service in England and Wales (being the address for Bernard Graham [*sic*] found at **p. 22**) when he was served with the statutory demand on 8 April 2022 by Richard Lessing, the Process Server of Trademark Associates. Further at **p. 218**, Rovati Consulants [*sic*] Limited, the Landlord's agent wrote to the Respondent providing him

> with the Landlord's agent's [*sic*]. This was written in line with Section 48(1) of the Landlord and Tenant Act 1987. There have also been other instances of the Respondent being asked to pay off his arears by former solicitors to the Petitioner, JPS Law Solicitors at **pages 166-169**, Bernad Graham [*sic*] at **pages 170-171**, along with the Notice to Quit that also provided addresses for service at **p. 212**."

17. The statutory demands gave the Jersey addresses of the petitioners. They also gave the address of a firm of solicitors as the address of "the individual or individuals to whom any communication regarding this demand may be addressed". The address given is expressly limited to communications regarding the demand. That self-evidently cannot meet the requirements of section 48. It is not a "general" address in England for the landlord to which notices can be sent. Nor can the address printed on letter paper from solicitors in connection with the recovery of arrears or the address given for the landlords' agents on notices to quit constitute a section 48 compliant notice. They, like the addresses for service given in the court documents in these proceedings, are addresses given for a specific purpose. They do not suggest that they are addresses at which notices may be served on the landlords generally. The provision of a solicitor's address for service in connection with a set of proceedings does not imply that those solicitors are authorised to accept service of any other notice on behalf of their client.

18. I was given no other candidates for a valid address for the purposes of section 48 prior to notice being given on 6th February 2023. None of the documents that I have had my attention drawn to indicate an address for the landlords in England and Wales at which all notices may be served, rather than to which correspondence or notices might be sent for specific purposes. Section 48 was not complied with prior to 6th February 2023 and the arrears of rent were thus until then to be treated for all purposes as not being due.

19. I should say that if it were to be argued on behalf of the petitioners that the course of dealing between the parties was such that the debtor was left in no doubt as to the address in England and Wales at which notices, including notices in proceedings, could be served prior to service of the statutory demand and presentation of the petition such as to satisfy the requirements of section 48, the evidence in the bundle comes nowhere near to establishing that. Whether that was so would fall to be determined in ordinary proceedings and the petition would be dismissed on the basis that the matter was genuinely disputed on substantial grounds.

20. The question is then whether the section 48 notice dated 6th February 2023, provided after presentation of the petition, cures the defect. The petitioners' skeleton argument says this:

> "It is submitted that facts in ***Rogan v Woodfield Building Services Ltd*** **[1995] 1 EGLR 72** to the pertinent as in this case [*sic*], a s48(1) notice was served in the course of proceedings rectifying and 'perceived' [*sic*] failure to provide a s48(1) notice. The Court of Appeal dismissed the tenant's appeal, with Stuart-Smith LJ clarifying at **page 78** of *Rogan* that a landlord can provide a compliant notice after the point has been taken in

> a defence by a tenant in proceedings for arears [*sic*]. Therefore, once an address is provided, it has retrospective effect over all of the unpaid arears [*sic*] right from the beginning of the tenancy."

The report of *Rogan* runs to page 77 and I was left unclear as to the passage that Mr Rahman intended to refer. The word "perceived", appearing in quotes in the skeleton, does not appear in the report at all, as far as a word search of the PDF shows, and I cannot see that Stuart-Smith LJ's judgment says anything of the sort.

21. Sir Ralph Gibson, however, said as follows at 74:

> "I accept the submission of Mr Baker that, if this court is required to set aside the conclusion of Judge Rountree as based upon an erroneous reading of section 48(1) and as contrary to the decision of this court in *Dallhold*, justice requires that the defendants be permitted to amend the counterclaim so that it is to be treated as reissued in October 1993 and, accordingly, rent was lawfully due as the basis for upholding the suspended order for possession."

Again, at 75 he continued:

> "If the point of a purely formal failure to comply with section 48 should be taken, the county court would often be able to deal with it effectively by allowing a notice to be served followed by amendment. For my part, however, I am persuaded that the submissions of Mr Baker are, in substance, right on the construction of the tenancy agreement, correspondence and section 48(1), and that the appeal should be dismissed on that ground."

In *Rogan*, the point was academic because the giving of the landlord's address in England and Wales in the tenancy agreement, without more, was sufficient. Sir Ralph Gibson did not say that the giving of the section 48 notice during the currency of proceedings would be curative in all circumstances, though one can see that it may have that effect in some situations. Nor does he say that such a notice has retrospective effect. Indeed, he stated that the amended counterclaim would need to be treated as "reissued in October 1993" – i.e. after service of the section 48 notice, not that the effect of section 48 simply fell away.

22. I was not referred to any authority in relation to the failure to serve a section 48 notice until after presentation of a bankruptcy petition. Nor was any authority cited to me where some analogous step was taken after presentation and held to cure a procedural defect retrospectively. It appears to me that one must look at the requirements of the Insolvency Act 1986 ("the 1986 Act") as to the circumstances in which a petition may be presented. Section 264 of the 1986 Act provides:

> "(1) A petition for a bankruptcy order to be made against an individual may be presented to the court in accordance with the following provisions of this Part—

> (a) by one of the individual's creditors or jointly by more than one of them,

Section 267 then provides:

> "(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.
>
> (2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—
>
> (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
>
> (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
>
> (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
>
> (d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts."

Section 268 provides, insofar as is relevant:

> "(1) For the purposes of section 267(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—
>
> (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as 'the statutory demand') in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules…"

Was the debt due "immediately" or "at some certain, future time" "at the time the petition was presented" for the purposes of section 267? The answer must be no. The failure to serve the section 48 notice meant that the debt cannot be treated as due at the time the petition was presented. Nor was it due at some "future, certain time" as a compliant notice might never have been served.

23. The later service of a section 48 notice does not cure the defect. Section 267 of the 1986 Act is clear that one must look at the time the petition is presented. This is

consistent with Sir Ralph Gibson's observations in *Rogan* that the counterclaim in that case would have to be treated as having been re-issued in October 1993, *after* service of the section 48 notice. I cannot treat the petition as having been presented after 6th February 2023. Even if I could, the statutory demand, which was a necessary pre-condition to the presentation of the petition, would remain defective as it would not have been served at a time when the debt was payable immediately for the purposes of section 268.

24. The service of a section 48 notice after presentation of the petition does not cure the defect. The petitioners were not entitled to present the petition on 23rd June 2022 as the debt was not due as a matter of law.

Conclusion

25. The petition therefore falls to be dismissed and, in the absence of another creditor being entitled to take carriage of it, it will be dismissed at the next hearing. There is no injustice in this. The failure to serve a section 48 notice does not prevent recovery of the debt, or the presentation of a petition, for all time. All that is needed is for the landlord to comply with the requirements of section 48, which are not at all onerous, prior to service of the statutory demand.

26. I will list the petition on the first open date for disposal and any consequential orders.