Neutral Citation Number: [2024] EWHC 838 (Ch)

Appeal ref: CH-2023-000050

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

ON APPEAL FROM ICC JUDGE PRENTIS

IN THE MATTER OF OLENA TYSHCHENKO (IN BANKRUPTCY)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Rolls Building
Fetter Lane
London, EC4A 1NL

17 April 2024

Before :

MRS JUSTICE BACON

- -

Between :

OLENA TYSHCHENKO

Appellant

- and -

ADRIAN HYDE, MARK FRY AND GARY SHANKLAND
(Joint Trustees in Bankruptcy of Olena Tyshchenko)

Respondents

- -
- -

The **Appellant** appeared in person on 24 January 2024 and was represented by **Ella Vacani** (instructed by **Keystone Law**) on 25 March 2024
Peter Shaw KC and **Paul Wright** (instructed by **Charles Russell Speechlys LLP**) for the **Respondents**

Hearing dates: 24 January and 25 March 2024

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APPROVED JUDGMENT

This judgment was handed down remotely at 10 am on 17 April 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

MRS JUSTICE BACON:

Introduction

1. This is an application for permission to appeal two orders of ICC Judge Prentis dated 11 January 2023. In the first, the judge dismissed an application by the Appellant (**Mrs Tyshchenko**) seeking a stay of her bankruptcy proceedings and related orders. The hearing of that application had proceeded without the attendance of Mrs Tyshchenko, because she had applied for the adjournment of the hearing on medical grounds. Her application to adjourn was considered at the hearing itself, and was also dismissed by the judge in the second of the orders under appeal.

2. The first hearing before me on 24 January 2024 proceeded as a rolled-up hearing of the application for permission to appeal and the appeal itself. Mrs Tyshchenko attended the hearing remotely at her request, again on medical grounds. Mr Shaw KC and Mr Wright, for the Respondent trustees in bankruptcy (the **Trustees**), appeared in court in person.

3. Mrs Tyshchenko made her reply submissions in writing following the hearing. Thereafter I received (at my request) further written submissions from both parties on various specific issues which had not been addressed, or fully addressed, during the hearing.

4. On 4 March 2024 I circulated my draft judgment, embargoed in the usual way. Three days later, alongside the Respondents' corrections to typographical and similar errors in the judgment, I received a request to reconsider the part of the judgment entitled "Remaking the decision" on the basis that the Respondents wished to adduce further evidence. The Respondents asked that I delay handing down the judgment until their further submissions and evidence had been considered at a hearing. In light of that request I did not hand down judgment but gave directions for a further hearing (to take place entirely remotely) to consider the Respondents' further evidence, and reply evidence from Mrs Tyshchenko. At that hearing on 25 March 2024 the Respondents were again represented by Mr Shaw and Mr Wright. Mrs Tyshchenko had however by that time secured legal representation, and was represented by Ms Vacani.

5. At the end of the hearing both Ms Vacani and Mrs Tyshchenko asked for permission to file further evidence on certain specific points addressed at the hearing. In light of that request, I gave directions for one further (final) round of evidence and submissions to be filed by both parties, and I have taken account of both that evidence and further submissions in this judgment.

6. For the reasons set out further below I have reached the conclusion that, in the unusual circumstances of this case, and having considered the further evidence on both sides now before the court, it is appropriate to revise the substantive conclusions that I reached in my initial draft judgment.

Procedural background

7. The background to the applications before ICC Judge Prentis and the present appeal is rather convoluted and requires some explanation.

The WWRT proceedings

8. On 4 September 2020 WWRT Limited (**WWRT**) brought proceedings against Mrs Tyshchenko and her ex-husband Mr Serhiy Tyshchenko in the Chancery Division of the High Court under claim number BL-2020-001416 (the **WWRT proceedings**), following the grant of a worldwide freezing order against Mr and Mrs Tyshchenko. The basis of WWRT's claim is set out in earlier judgments in those proceedings, in particular *WWRT v Tyshchenko* [2020] EWHC 2409 (Ch) and [2021] EWHC 939 (Ch). In short summary, WWRT's claim alleges fraudulent activities by the Tyshchenkos in relation to a series of loans granted by the Ukrainian Bank JSC Fortuna Bank which were not repaid. The bank was subsequently declared insolvent and liquidated by the Ukrainian Deposit Guarantee Fund (**DGF**). In the course of that liquidation a package of the bank's assets, including the disputed loans, were sold to a Ukrainian company which in turn sold those assets to WWRT. WWRT's claim is brought on the basis of those loans.

9. The DGF has now been joined as a defendant to the WWRT proceedings, by order of Master Kaye dated 20 June 2023. Its interest is essentially adverse to that of WWRT: the DGF claims that the right to bring a fraud claim against the Tyshchenkos arising from the disputed loans was not assigned to WWRT but remained with the DGF.

10. The trial of the WWRT proceedings is currently listed to take place in January and February 2025.

Mrs Tyshchenko's bankruptcy

11. Following a hearing in March 2021 leading to the continuation of the freezing orders, costs orders were made against the Tyshchenkos, with an order for an interim payment on account in the sum of £150,000. That sum was not paid; instead Mrs Tyshchenko petitioned for her own bankruptcy on 31 May 2021 (apparently on the basis of advice from a branch of the Citizens' Advice Bureau). She was declared bankrupt on 1 June 2021 and the Trustees were then appointed by the Secretary of State on 6 July 2021. The largest creditor in the estate is WWRT, with a claim of over £65m representing its claim against the Tyshchenkos in the WWRT proceedings. Prior to making its application for joinder to the WWRT proceedings, the DGF also filed a proof of debt in the bankruptcy proceedings, with a claim of over £32m. Other than those two creditors, the only remaining confirmed debt is a sum of a little over £5000 which Mrs Tyshchenko has already said that she can pay.

12. Since both the WWRT and DGF claims are contingent on the outcome of the WWRT proceedings, the Trustees' position is that they will not and indeed cannot adjudicate on the claims and make any distribution in the bankruptcy until the WWRT proceedings have been determined. The Trustees have, however, continued to investigate Mrs Tyshchenko's assets. So far the only significant asset that has been identified is the family home in Surrey, Tanglewood Villa, which is a substantial property whose value I will discuss further below. Mrs Tyshchenko was the beneficial owner of the house, with her interest in the house held via an Isle of Man company, Copper Homes Limited.

13. The Trustees have obtained full control of the title to the property after their appointment, by obtaining an order of the High Court of Justice of the Isle of Man recognising the English bankruptcy and declaring that the beneficial interest in the shares of Copper Homes Limited vested in the Trustees. In February 2022 the Trustees asked Mrs

Tyshchenko to agree a timetable for vacating the property. Mrs Tyshchenko refused to do so on the grounds that she and her children had no other place to live. On 25 August 2022, therefore, the Trustees applied in the Kingston-upon-Thames County Court for an order for possession and sale of the property.

14. The Trustees' actions have led Mrs Tyshchenko to file applications in various County Courts and the Companies Court seeking to stay the bankruptcy proceedings, remove the Trustees from office or suspend their powers, and to stay or prohibit the possession and sale of Tanglewood Villa. Those applications included the applications which gave rise to the orders which Mrs Tyshchenko now seeks to appeal. There have, however, also been a number of related applications which it is necessary to describe.

15. Mrs Tyshchenko says that the reason why she has filed so many applications in different courts is that, as a litigant in person, she was unsure of the correct procedures under the relevant insolvency rules. The Trustees note that Mrs Tyshchenko was in fact represented for the purposes of her application to the Kingston-upon-Thames County Court. It is, however, fair to say that apart from that hearing Mrs Tyshchenko was acting as a litigant in person in the various applications described above. She also represented herself in this appeal, up to and including the first hearing on 24 January 2024 (though she was then, as explained above, represented at the second hearing on 25 March 2024). That does not justify applying a lower standard of compliance with rules of the court, but Mrs Tyshchenko's lack of representation may (for example) justify some allowances being made in case management decisions and in the conduct of the hearing: *Barton v Wright Hassall* [2018] UKSC 12, §18.

The applications before ICC Judge Prentis

16. The application before ICC Judge Prentis was issued on 2 February 2022 and amended on 4 April 2022. As amended, the application sought a stay of the bankruptcy proceedings, the suspension of the powers of the Trustees, and a prohibition on the sale of Tanglewood Villa, pending the determination of the WWRT proceedings. On 18 May 2022 the application was listed for a hearing on 11 January 2023.

17. On 5 January 2023, i.e. less than a week before the hearing, Mrs Tyshchenko applied to adjourn the hearing until 13 March 2023, the date of another hearing listed in the bankruptcy proceedings. The main reasons given were that she was having ophthalmic surgery in Poland and would be unable to attend court, and that she was in the process of securing legal representation.

18. That adjournment application was considered at the hearing on 11 January 2023, together with Mrs Tyshchenko's stay application. Mr Shaw attended and made submissions for the Trustees, but Mrs Tyshchenko did not attend or make further submissions (for the reasons given in her adjournment application). The judge gave an *ex tempore* judgment dismissing both applications. His orders following the hearing certified both applications as being totally without merit.

The November 2022 application

19. Meanwhile, on 7 November 2022 Mrs Tyshchenko had applied for an order setting aside the decisions of the Official Receiver and the Secretary of State to appoint the Trustees. That application was listed to be heard alongside Mrs Tyshchenko's stay application on

11 January 2023, but unfortunately neither the judge nor the Trustees were made aware of that, nor had the Official Receiver or Secretary of State been served with the application. As a result, no submissions were made on that application at the hearing.

20. Following the hearing the Trustees became aware of the matter, and Mr Shaw sent ICC Judge Prentis a note informing him of the listing and submitting that the application should be dismissed on the papers. The judge did not do so. Instead on 13 January 2023 he ordered that the November 2022 application should be served forthwith on the Trustees and the Official Receiver, and listed the application for directions or disposal on the first open date from 20 March 2023. The application was then listed for 24 March 2023, but the parties then agreed to vacate that hearing and adjourn the application pending the outcome of the present appeal.

The possession application

21. ICC Judge Prentis' dismissal of Mrs Tyshchenko's application to stay the bankruptcy proceedings meant that the Trustees' possession application in the Kingston-upon-Thames County Court could go ahead. That took place on 27 February 2023, and Mrs Tyshchenko was represented by solicitors and counsel. At that hearing DDJ Holmes-Milner accepted the Trustees' submissions and made an order for possession, requiring Mrs Tyshchenko to give vacant possession of Tanglewood Villa by 31 July 2023, and making provisions for the sale of the property.

22. Mrs Tyshchenko's application for permission to appeal that decision was dismissed by Meade J, both on the papers (28 April 2023) and following an oral renewal hearing (4 July 2023). Mrs Tyshchenko also applied in both the Central London County Court and the Kingston-upon-Thames County Court for a stay of the possession order. Those applications were dismissed on 11 and 14 August 2023 respectively. Mrs Tyshchenko eventually vacated the property on 23 August 2023 and the Trustees commenced the process of marketing the property for sale.

The present appeal

23. The Appellant's notice seeking permission to appeal the order of ICC Judge Prentis was initially filed (incorrectly) in the Court of Appeal on 2 February 2023. Mrs Tyshchenko had sent an unsealed draft of that to the Trustees on 27 January 2023. That draft of the application specified the 11 January 2023 order as being the order under appeal, but in Section 5 stated that the application was to set aside the orders of both 11 and 13 January 2023 "by which the adjournment application and the application to set aside the [Secretary] of State Croydon office [decision] to appoint bankruptcy trustees and remove bankruptcy trustees from office were dismissed".

24. It is not entirely clear what was meant by that, not least because the 13 January 2023 order had *not* dismissed Mrs Tyshchenko's November 2022 application, but had given directions for it to be listed on a later date. The scope of the appeal against the 11 January 2023 order was also not clear. It appears probable that Mrs Tyshchenko was confusing the orders made on 11 and 13 January 2023, and erroneously believed that the judge had determined the November 2022 application at the 11 January 2023 hearing.

25. On 10 February 2023 the Court of Appeal emailed Mrs Tyshchenko to say that it lacked jurisdiction to hear the appeal, and had transferred the papers to High Court appeals in

the Rolls Building. It appears that the Court of Appeal sent the Appellant's notice to the Chancery Division on the same day. The court does not, however, appear to have contacted Mrs Tyshchenko again until 21 February 2023, when the Chancery Division listing office sent her an email saying it had received her Appellant's notice from the Court of Appeal but could not issue the appeal until she had paid the relevant court fee (her appeal fee on 2 February 2023 having been paid to the Court of Appeal rather than to the High Court). Mrs Tyshchenko appears to have paid the fee around a week later, and her Appellant's notice was sealed on 1 March 2023.

26. The version of the Appellant's notice sealed on 1 March 2023 differs from the draft sent to the Trustees in January, and makes clear that the appeal is only brought in relation to the two 11 January 2023 orders dismissing the adjournment application and the stay application. Section 9 of the Appellant's notice nevertheless states that Mrs Tyshchenko is asking the court to vary the orders under appeal so as to:

> "1. Set aside the decision of the Secretary of State to appoint three private bankruptcy trustees under the application of the Official receiver based on the corresponding application of the claimant whose claim has not been adjudicated either by the Court or by the Official receiver in breach of the Bankrupt's and creditors' rights.
>
> 2. Remove trustees from the office."

27. As with the January draft, this conflates the matters determined at the 11 January 2023 hearing and the (different) relief sought in the November 2022 application. The grounds of appeal and skeleton argument filed with the appeal bundle suffered from the same confusion.

28. The Trustees' skeleton argument for the hearing on 24 January 2024 pointed out these problems with the order sought, and submitted that the court had no jurisdiction to grant the relief sought in circumstances where there had been no determination of the November 2022 application (and indeed no submissions made on that application by any party) at the 11 January 2023 hearing or thereafter.

29. In response, two days before that hearing Mrs Tyshchenko filed a document entitled "Appellant's witness statement" but which in substance was a revised skeleton argument, in which she said that she was asking for the orders made on 11 January 2023 to be set aside and for the court to remit the matter to the lower court for a rehearing. Alternatively, she sought the following orders:

> "1) To stay the bankruptcy proceedings until the adjudication of the claim BL-2020-001416 or to stay the sale of my familial home until the adjudication of the claim BL-2020-001416;
>
> 2) To remove the bankruptcy trustees and set aside relevant decision of the State secretary's office."

30. This therefore made clear that in this appeal Mrs Tyshchenko is indeed seeking a stay of the bankruptcy proceedings (in whole or in part) as well as the removal of the Trustees, at least if the matter is determined now rather than being remitted for a rehearing in the lower court.

31. The Trustees take issue with Mrs Tyshchenko's arguments as a matter of substance, but do not contend that the court should not address the relief as reformulated. They are right to take that approach. The court has a wide power under CPR r. 52.20(2)(a) to vary the order of the court below in relation to matters which are consequential upon a successful appeal and which are necessary in order for the court to do justice in the appeal which is before it: *Phillimore v Hewson* [2020] EWHC 499 (QB), §34. It is apparent from Mrs Tyshchenko's grounds of appeal and original skeleton argument that her two main objectives, in the present appeal as in her applications before ICC Judge Prentis, are (i) to remove the trustees and (ii) to stay the bankruptcy proceedings so as to postpone any sale of her property until the determination of the WWRT proceedings. While Mrs Tyshchenko's written submissions tend to elide those two issues, that is understandable for a litigant in person. Moreover, as Mrs Tyshchenko noted, her absence from the hearing before ICC Judge Prentis may have contributed to her confusion as to the scope of the decisions reached at that hearing.

32. In any event, both the trustee removal and the stay issues were addressed in the Trustees' skeleton argument, as well as in a supplemental skeleton argument filed by the Trustees the day before the 24 January 2024 hearing in response to the points in Mrs Tyshchenko's further written submissions. Both issues were also addressed fully in the oral submissions on both sides at the hearing. It is therefore appropriate to consider both issues notwithstanding the narrower terms in which the relief sought was originally framed in the Appellant's notice.

33. Finally, although not reflected in any of the versions of the relief sought in this appeal, it is clear that in addition to seeking the removal of the trustees and a stay of the bankruptcy proceedings, Mrs Tyshchenko is also pursuing an argument that the judge was wrong to refuse to adjourn the hearing given her absence on medical grounds.

Issues

34. The issues for determination are therefore as follows:

    i) Whether the court should extend time for the filing of the Appellant's notice.

    ii) The appeal in relation to the removal of the Trustees and the order appointing the Trustees, in relation to which the Trustees contend that there is no jurisdiction.

    iii) The appeal in relation to the dismissal of the adjournment application.

    iv) The appeal in relation to the dismissal of the stay application.

    v) Whether to remake the decision if any part of the appeal is allowed.

Extension of time for Appellant's notice

35. Since Mrs Tyshchenko's appeal was not filed with this court until 1 March 2023, she requires permission to file the appeal out of time. That is treated in the same way as an application for relief from sanctions: *R (Hysaj) v Secretary of State for the Home Dept* [2014] EWCA Civ 1633, [2015] 1 WLR 2472, §36. The three-stage *Denton* test is therefore applicable.

36. The first question is the seriousness and significance of the breach. In the present case, the appeal should have been filed by 1 February 2023, and was not in the event filed until 28 days later. The Trustees say that this must be considered a serious and significant delay, given that the normal period for filing an Appellant's notice is 21 days from the date of the order under appeal. It is necessary, however, to consider what part of that period represented a delay on Mrs Tyshchenko's part, as opposed to delays in the processing of her documents by the courts.

37. As set out above, Mrs Tyshchenko did initially file her appeal (albeit incorrectly) with the Court of Appeal on 2 February 2023. While that was a day late, that cannot be regarded as a serious or significant delay in the context of this appeal (which has been heard more than a year after the decision of ICC Judge Prentis). There was then a period of over a week while her appeal was processed by the Court of Appeal, and it was only on 10 February 2023 that Mrs Tyshchenko was told that the Court of Appeal had transferred the appeal to the Chancery Division. It is clear that Mrs Tyshchenko assumed that she did not need to do anything further herself at that point. That was in my judgment an entirely reasonable assumption on the basis of the correspondence she had received. She then received no further correspondence from the Chancery Division until 21 February 2023, when she was asked to pay a further court fee. Mrs Tyshchenko said that she was unable to resolve this until 1 March 2023. Her delay at that point was therefore a matter of eight days. Again, in the context of this appeal that cannot be regarded as a serious or significant delay.

38. The next question is the reason for those two relatively short delays, amounting to nine days altogether. That was not explained in Mrs Tyshchenko's Appellant's notice or written submissions prior to the 24 January 2024 hearing, but Mrs Tyshchenko did address it at the hearing. Her main explanation was that she was struggling during that period due to the competing pressures of preparation for the Kingston-upon-Thames possession hearing, managing her own medical issues and her children's health issues, and making contingency plans for alternative accommodation.

39. I consider that to be a reasonable explanation, in the circumstances. The time period for filing the appeal from the decision of ICC Judge Prentis fell, unfortunately for Mrs Tyshchenko, during precisely the same period in which she was also managing the Kingston-upon-Thames possession proceedings. On 1 February 2023 (the day in which the present appeal should have been filed) there was a pre-trial review in the Kingston-upon-Thames County Court, at which Mrs Tyshchenko applied for an adjournment of the hearing which had been set for 27 February 2023. That application was refused, with the consequence that Mrs Tyshchenko had to proceed to prepare for that hearing.

40. Although she had managed to obtain funds to instruct solicitors and counsel for that hearing, it appears that the arrangements for this took some time, and her solicitors were not formally instructed until 17 February 2023. Those solicitors immediately wrote to the Trustees' solicitors notifying them of the recent instruction and requesting (again) an adjournment of the hearing, but the Trustees refused. As a result, Mrs Tyshchenko was under considerable pressure during the second half of February to provide relevant instructions and evidence to her solicitors and counsel for the purposes of that hearing, which included a witness statement filed on 23 February 2023.

41. Mrs Tyshchenko's family and accommodation problems were set out in her 23 February 2023 witness statement and skeleton argument for the possession hearing, and reflected

in the judgment of DDJ Holmes-Milner. In particular, the judge recorded that four of Mrs Tyshchenko's five daughters (with ages ranging from 6 to 18 years old) were living at Tanglewood Villa, and that there was some evidence substantiating the submission that one of the teenage daughters was suffering mental health problems as a result of the family situation and the prospect of leaving her home. Mrs Tyshchenko had also said that she had no certain financial means by which to rent alternative accommodation, with no source of funds other than those provided to her by Mr Tyshchenko's mother in Ukraine (Mrs Motrona Tyshchenko). Mr Tyshchenko and the children's grandparents were (and remain) in Ukraine, and the local council had confirmed that it could not offer any emergency accommodation within the borough.

42. DDJ Holmes-Milner dismissed these considerations as not amounting to sufficiently exceptional circumstances to justify a postponement of the possession order (and as I have set out above, the application for permission to appeal that decision was dismissed). Nevertheless, the matters set out in the judgment and Mrs Tyshchenko's submissions and evidence for the hearing give a picture of the issues which Mrs Tyshchenko was managing during that time period. They explain why Mrs Tyshchenko struggled to manage two parallel sets of proceedings, and in particular why she failed promptly to take the necessary steps to make payment for her appeal to be refiled in the Chancery Division once she was told (on 21 February 2023) that a further fee was required.

43. The final stage of the *Denton* test requires the court to consider all the circumstances of the case. In the present case, I bear in mind the need for the appeal to be conducted efficiently and for Mrs Tyshchenko to comply with the relevant procedural rules. As set out above, the delay for which Mrs Tyshchenko was responsible was a single day at the outset when her appeal was filed with the Court of Appeal, and an eight-day period from 21 February to 1 March 2023. That latter period covered the week before the Kingston-upon-Thames possession hearing and a few days after the hearing, and for the reasons set out above I consider that Mrs Tyshchenko has provided a good explanation for her delay during that time.

44. The Trustees have not shown that there was any prejudice to their position during those short periods of delay. The Trustees were aware that Mrs Tyshchenko intended to file an appeal in respect of the decision of ICC Judge Prentis, since she had sent them her draft Appellant's notice. In reality, nothing was going to happen to Tanglewood Villa until the possession hearing on 27 February 2023, and the decision at that hearing then allowed Mrs Tyshchenko to remain in possession until 31 July 2023. The delay in filing the appeal did not therefore affect the Trustees' possession of the property in any way.

45. Mr Shaw referred to the fact that the Appellant's notice as eventually filed differed from the draft version which had been sent to the Trustees in January 2023. But it was not suggested that the change in wording of (in particular) the relief sought caused any particular difficulties for the Trustees. On the contrary, the wording of the final version of the Appellant's notice was somewhat clearer than the wording of the draft version, albeit that (as discussed above) both versions exhibited the same confusion as between the applications heard at the 11 January 2023 hearing and the November 2022 application which was not determined.

46. Ultimately, it is apparent that the short delays for which Mrs Tyshchenko was responsible have not caused any material prejudice to the position of the Trustees. In those

circumstances and given the other factors set out above it is appropriate to grant relief from sanctions so as to extend time for filing the Appellant's notice to 1 March 2023.

The removal of the Trustees

47. The Trustees submit that there is no jurisdiction for the court to consider, in this appeal, Mrs Tyshchenko's contentions that the Trustees should be removed from office and/or that the order appointing them should be set aside. That is because those issues were the subject of the November 2022 application, but that application was not determined at the 11 January 2023 hearing, and indeed could not have been determined then in circumstances where neither the Secretary of State nor the Official Receiver had been served with the application. As set out above, the November 2022 application has now been adjourned by agreement between the parties pending the outcome of this appeal. Mrs Tyshchenko did not really grapple with the jurisdiction problem in her submissions, focusing instead on her reasons why she said that the Trustees should be removed.

48. I consider that the Trustees' objection is well-founded. While ICC Judge Prentis noted at §27 that at one point in Mrs Tyshchenko's evidence for the hearing she described her application as an application to remove the trustees, he was right to say that the application before him was certainly not expressed as a removal application. He repeated at §33 that the question of removal did not arise on the applications before him. He therefore did not determine that issue, but instead on 13 January 2023 gave orders for that issue (as it arose under the November 2022 application) to be listed for a later hearing.

49. The issues concerning the removal of the Trustees and the validity of their appointment as Trustees therefore simply do not arise in this appeal. They are matters to consider in the determination of the November 2022 application. Moreover, if and when that application is eventually determined, that will require the participation of the Secretary of State and/or Official Receiver. I note that it is still not clear whether either of those have been served with the application.

50. It follows that I refuse permission to appeal in relation to the grounds of appeal which seek the removal of the Trustees and/or the setting aside of their appointment. It is therefore unnecessary to consider Mrs Tyshchenko's arguments that are solely directed at those points, namely the submission that WWRT is not a majority creditor, so should not have been able to nominate bankruptcy trustees, and the submission that the asset structure was not sufficiently complex to warrant the appointment of bankruptcy trustees.

51. There are, however, certain submissions made by Mrs Tyshchenko in relation to the appointment/removal of Trustees which could also be regarded as being advanced in relation to her appeal of the dismissal of the stay application (at least on the basis that ICC Judge Prentis appears to have considered those submissions in that context). Those are her submissions as to the Trustees' alleged conflict of interests, and the costs incurred by the Trustees. I will address those submissions below.

The dismissal of the adjournment application

52. The judge dismissed Mrs Tyshchenko's adjournment application on the grounds that the medical evidence provided was insufficient to justify the adjournment, applying the test set out in *Decker v Hopcroft* [2015] EWHC 1170 (QB). The judge noted that the

correspondence before him confirmed that Mrs Tyshchenko's ophthalmic surgery would take place on 9 January 2023, following which Mrs Tyshchenko would not be able to attend court for a period of 21 days. He noted however (at §39) that the hearing had been in the diary for eight months, and there was no explanation from Mrs Tyshchenko as to the nature of the surgery, whether it was emergency surgery (and the judge inferred that it was not), and why the application was made only very shortly before the hearing was due to take place.

53. As regards Mrs Tyshchenko's legal representation, the judge noted again that she had had a lot of time in which to arrange this in time for the hearing, and that Mrs Tyshchenko had represented herself in previous hearings.

54. It is well established that the adjournment of a hearing is a matter falling within the discretion of the court, to be exercised in accordance with the overriding objective. A balancing exercise is to be conducted in each case, and it is only when the decision of the first instance judge is plainly wrong that an appellate court will interfere with that decision. The first instance decision will therefore prevail unless it is shown that the judge has taken into account immaterial factors, omitted to take into account material factors, erred in principle or reached a decision that was impermissible: *Dhillon v Asiedu* [2012] EWCA Civ 1020, §33.

55. In the present case, the judge's decision to dismiss the adjournment application was a decision which fell well within his case management discretion. When considering an application for an adjournment on medical grounds, the court must give careful scrutiny to the evidence relied upon: *Decker v Hopcroft*, §24. That evidence should set out the details of the medical condition of the litigant in question, and why that condition prevents participation in the court proceedings: *ibid*, citing *Levy v Ellis-Carr* [2012] EWHC 63, §36.

56. Where the reason given for the litigant's non-attendance is that the litigant is undergoing surgery close to or on the date of the hearing, the evidence should include an explanation of whether that is emergency or elective surgery, and if the latter why it is necessary for the surgery to take place at that time. Where a hearing has been fixed for some time, a litigant should not expect that it will be adjourned simply because they have chosen to schedule elective surgery on a conflicting date.

57. In the present case, the evidence provided by Mrs Tyshchenko provided only the sparsest details of her surgery. In particular, it did not explain what ophthalmic surgery Mrs Tyshchenko was undergoing, or why that had to be scheduled to take place only two days before the 11 January 2023 hearing. There is no challenge to the judge's inference that the surgery was indeed elective rather than emergency surgery. Accordingly, absent any evidence to the contrary, the judge was entitled to find (at §40) that the appointment for surgery was arranged at the convenience of Mrs Tyshchenko. In those circumstances the judge was fully entitled to conclude that this was not a reason to stand out a hearing that had been in the diary for eight months.

58. Likewise, the judge's refusal to adjourn on the basis of Mrs Tyshchenko's last-minute attempts to secure legal representation was unimpeachable. There was no evidence before him as to why Mrs Tyshchenko could not have arranged this long before the date fixed for the hearing, instead of making an application to adjourn less than a week before the hearing was due to take place.

59. I therefore refuse permission to appeal in relation to the adjournment of the 11 January 2023 hearing.

The dismissal of the stay application

60. Mrs Tyshchenko advances her appeal in respect of the dismissal of the stay application on the following main grounds, some of which (as noted above) overlap with the arguments which she sought to deploy in relation to the removal of the Trustees:

    i) An allegation of conflict of interests on the part of the Trustees.

    ii) Criticisms of the costs incurred by the Trustees.

    iii) The fact that the Trustees will not be distributing the proceeds of sale of Tanglewood Villa until after the determination of the WWRT proceedings.

61. Before addressing these grounds, it is necessary to set out the basis for the court's powers to stay the bankruptcy proceedings, either completely or in part.

The law

62. The Insolvency Act 1986 does not provide an explicit basis upon which the court can stay bankruptcy proceedings (as opposed to the stay of a bankruptcy petition, which may be ordered under s. 266(3) of the Act). It is, however, not disputed that the court has an inherent jurisdiction to stay the bankruptcy proceedings. That question has typically been considered where a stay is sought pending an appeal against the bankruptcy order. In that context, David Richards J in *Foster v Davenport* (unreported 23 December 2011) said that:

> "21. The usual position in appeals against bankruptcy orders is that a stay will not be ordered. This is for the reasons which I earlier indicated, of the need to secure in particular the assets of the estate, to identify creditors and to obtain information. If there is a complete stay of a bankruptcy order and either permission to appeal is refused or, if allowed, the appeal is unsuccessful, there may well in the meantime have been dealings which will be to the disadvantage of creditors. The conduct of Mr Foster in the present case makes clear that this is a real, rather than a theoretical, risk in this case.
>
> 22. In the decision of the Court of Appeal in *Re A Debtor (No. 644) (1969)* reported some years later at [2001] B.P.I.R. 901, which concerned an appeal against the refusal of a stay of a bankruptcy order pending the hearing of the appeal, Russell LJ giving the only reasoned judgment, said, 'Only the rarest kind of circumstance can justify such a stay, and in my view such circumstances are absent here'.
>
> 23. There may of course be circumstances when it is appropriate to modify the full effect of a bankruptcy order, in circumstances where there appear to be substantial grounds for an appeal, and where a bankruptcy order would cause irreparable damage to the debtor. The court will be concerned if possible to fashion some remedy or order which holds the rein balancing the interests of the creditors on the one hand and the debtors on the other. An

> example of such steps being taken is the decision of Morgan J in *Emap Active Ltd v Hill* [2007] EWHC 1592 (Ch); [2007] B.P.I.R. 1228. In order for those interests properly to be balanced and for an appropriate regime to be put in place, it is essential that the interested parties are represented before the court, that is to say in particular, of course, the debtor on the one hand and the trustee in bankruptcy on the other and perhaps also the petitioner and supporting creditors, but their role I would apprehend would be less important. For that to occur of course notice of the application for a stay should be given to the trustee in bankruptcy or to the official receiver if a trustee has not been appointed. I would consider that save in exceptional circumstances a stay of a bankruptcy order pending an appeal should not be granted unless notice has been given to the official receiver or to the trustee in bankruptcy."

63. That passage was cited by Snowden J in *Aabar Block v Glenn Maud* [2016] EWHC 1319 (Ch), who observed that:

> "25. So far as possible given the very brief extract from the judgment, Mr Justice David Richards' comments have to be read in context. The judge was plainly considering a normal case in which the immediate benefits for creditors to which he referred (in particular the safeguarding of assets and obtaining information from the debtor) which result from a bankruptcy order being made, will be of considerable weight and generally tell heavily against a stay being granted. His comment that there might be some cases where a stay or a modification of the order would be appropriate where there appeared to be substantial grounds for an appeal and where irreparable damage would be caused to the debtor by a bankruptcy order, must be measured against that background. Usually, strong reasons will be required.
>
> 26. I do not think, however, that Mr Justice David Richards was otherwise intending to mark some departure from the general approach to a stay which is specific to bankruptcy cases."

64. Snowden J went on to grant a stay of the relevant bankruptcy order pending determination of Mr Maud's application for permission to appeal. His reasons, set out at §§29–50, were that there was a realistic prospect of permission to appeal being granted, and no urgent need to secure Mr Maud's assets, because the only asset capable of being realised to deliver any significant value to Mr Maud's unsecured creditors was namely his shares in a parent company whose subsidiaries were the subject of Spanish insolvency proceedings. The underlying assets were therefore under the control of the Spanish insolvency administrator and the Spanish courts, and the judge considered that the petitioners would suffer no prejudice if the bankruptcy order was stayed. There was, moreover, a risk of irreparable harm to Mr Maud's interest in the shares if a bankruptcy order was made without a stay, because that would trigger a process of compulsory purchase of those shares by the other shareholders, which could not be halted once initiated.

65. The more recent case of *Howell v Hughes* [2019] EWHC 1559 (Ch) was, by contrast, one in which the court considered that the circumstances were not sufficiently compelling for a stay of the bankruptcy order pending an appeal against that order. Fancourt J cited the judgment of David Richards J in *Floyd Foster v Davenport Lyons*, and noted that a

stay of a bankruptcy order will not usually be granted, given the potential prejudice to existing creditors and others with whom the bankrupt may deal (§12). On the facts of the case he referred, in particular, the real risk to creditors if the bankruptcy order were to be stayed, leading to the potential for the dissipation of assets, as well as the risk to others dealing with the applicant without knowledge of the bankruptcy (§§23–4).

66. Those cases all concerned the question of a stay of a bankruptcy order pending an appeal against the making of that order. Outside that context, the cases in which a stay might be considered appropriate are likely to be unusual, given the weight to be given to the interests of creditors (in particular) in safeguarding and realising the assets of the bankrupt. While this does not mean that a stay should never be granted in such a case, it will be for the bankrupt to put forward compelling reasons why the bankruptcy should not take its normal course. The factors which the court will need to consider are likely to be different depending on whether the application is for a complete stay of the bankruptcy proceedings or a more limited stay of some aspects of the proceedings only, such as a stay of the disposal of a particular asset. In each case, however, the court will need to consider whether the interests of creditors and other parties will be adequately safeguarded.

67. Mr Shaw sought to draw an analogy with the court's powers to control the conduct of a trustee of the bankrupt's estate, under s. 303(1) of the Insolvency Act 1986. In particular, the authorities have established limitations on the standing of a bankrupt to seek the intervention of the court under that section. As explained in *Brake v The Chedington Court Estate* [2023] UKSC 29, [2023] 1 WLR 3035, §§9–11, Parliament cannot have intended a bankrupt to be able to interfere in the administration of an estate in which the bankrupt has no interest. The bankrupt must therefore (in general) show that there is or is likely to be a surplus of assets once all liabilities to creditors and the expenses of the bankruptcy have been paid. Mr Shaw submitted that the same limitation on standing should apply to an application by a bankrupt for a stay of the bankruptcy proceedings. If that were the case, Mrs Tyshchenko would not have standing because she cannot show that she is likely to succeed in the WWRT proceedings; that is, at most, a possibility.

68. I do not accept that analogy. In the first place, the authorities which consider the basis for stays of bankruptcy orders do not suggest any such limitation on the standing of the bankrupt to make such an application. Furthermore, the question before the court in a s. 303(1) application is quite different from the question before the court in a stay application. In a s. 303(1) application, the premise of an application is that the bankruptcy is proceeding, and the question is whether the court should intervene in the process of administering the estate. Different considerations will, however, necessarily apply when the application is to stop the bankruptcy from proceeding at all (either in its entirety, or in part), whether because there is a pending appeal against the making of the bankruptcy order, or because there is some other compelling reason which gives rise to the potential for irremediable harm to the interests of the bankrupt if the bankruptcy proceedings were to continue unabated.

Alleged conflict of interests

69. ICC Judge Prentis considered two grounds on which the Trustees were said to be conflicted. The first was that, according to Mrs Tyshchenko, WWRT sent Mr Tyshchenko a document in March 2022 which among other things describes the Trustees as "WWRT's managers" and that the bankruptcy procedure has "given WWRT carte

blanche to manage assets and official access to financial information". The document makes what Mrs Tyshchenko describes as an "extortion demand" that Mr Tyshchenko should pay WWRT £55 million to settle the proceedings.

70. This letter has been referred to in the course of the WWRT proceedings, and WWRT has denied that the document emanated from it or its solicitors. In any event, however, the judge noted at §29 that whatever might be claimed in that document regarding the position of the Trustees, they "are not, on any view, WWRT's managers: they are trustees of the bankruptcy estate of Mrs Tyshchenko. That is a position of which, as confirmed to me today by Mr Shaw, the trustees are, not surprisingly, entirely aware." The Trustees' evidence for the hearing before the judge (consisting of Mr Hyde's 5th, 7th, 11th and 13th witness statements, together with exhibits) also confirmed that the Trustees had not seen the document before, and that they remained neutral as to the outcome of the WWRT proceedings.

71. Mrs Tyshchenko in this appeal maintains that the March 2022 letter is relevant to the alleged conflict of interests on the part of the Trustees, but does not identify any error in the judge's analysis. Any appeal on this point is, therefore, hopeless.

72. The second ground addressed by the judge in relation to the alleged conflict of interest was that the Trustees are partners at Begbies Traynor (London) LLP (**BTG**), and that another entity in the BTG group, BTG Advisory LLP, had provided a forensic accounting report for the purposes of the WWRT proceedings, which was one of the foundations for the initial freezing order made against the Tyshchenkos. The Trustees' evidence about this was described by the judge as follows, at §30:

> "The report was compiled by BTG Advisory LLP, whereas the trustees belong to Begbies Traynor (London) LLP. These are said, in Mr Hyde's 11th witness statement, and I accept, to be different entities within the wider BTG group. He reveals that the bankruptcy team and the advisory team work in separate offices the majority of the time, so they work in the same office some of the time, but confirms that from the outset of the appointment, the trustees have put in place protections, so there has been a blocking of access of accounting team records to the bankruptcy team. The accounting team have been told that they must not discuss their work concerning the [fraud] proceedings with the bankruptcy team …"

73. Again, while Mrs Tyshchenko appears to pursue this point in her appeal, she does not identify any error in the conclusions set out above. Her appeal on this basis is therefore also hopeless, and I refuse permission in this regard.

74. Mrs Tyshchenko advances other objections which are said to demonstrate the Trustees' conflict of interest; in reality, however, they are not allegations of a conflict of interest as such but are simply objections to various aspects of the Trustees' conduct. I will therefore address this separately below.

The costs incurred by the Trustees

75. Mrs Tyshchenko makes various complaints about the Trustees' conduct. At their heart they come down to a claim that the Trustees are intentionally incurring unnecessary and disproportionate costs in their administration of the estate. The judge erred, she says, by

describing those costs (at §25) as amounting to around £280,000, and rejecting this as a reason for a stay of the proceedings. In fact, she says, the Trustees' current costs claim is in excess of £1.4 million, which she contends is wholly unjustified in circumstances where the only significant asset in the estate is Tanglewood Villa.

76. Mr Shaw noted that Mr Hyde's 11th witness statement, provided for the purposes of the 11 January 2023 hearing, stated that the Trustees' remuneration claim in the period from 6 July 2021 to 10 October 2021 amounted to £468,412.50. It is therefore not clear where the lower figure referred to by the judge came from. I have also now seen a "Progress report" for the period July 2022 to July 2023, which gives a figure to July 2023 of £655,719 in relation to the Trustees' costs, plus over £1.2 million in legal fees. (As set out further below, the Trustees' evidence filed after the 25 March 2024 hearing gives a total figure for their fees and legal fees which is now in excess of £3m.)

77. Nevertheless, as Mr Shaw said, the precise quantum of the Trustees' remuneration is not material. There is no doubt that the Trustees have incurred significant costs in administering the estate. Mrs Tyshchenko will be able to challenge the reasonableness of those costs in due course under rule 18.35 of the Insolvency Rules if there is or is likely to be a surplus of assets (or would be a surplus but for the disputed remuneration of the Trustees), a point acknowledged by the judge. That is, however, not a reason to stay the bankruptcy proceedings.

78. Again, while Mrs Tyshchenko maintained her objection to the proportionality of the costs incurred by the Trustees, she did not explain why that should lead the court to stay the proceedings now, in circumstances where the amount of the costs incurred will be able to be scrutinised and determined further down the line on the application of any interested parties. I therefore refuse permission on this ground of appeal.

79. For completeness, I note that while at several points in her submissions Mrs Tyshchenko suggested that the court should exercise its power of control over the Trustees, the application before ICC Judge Prentis was *not* an application for the court to intervene in the decisions of the Trustees, or to control the Trustees' remuneration, but was an application to stay the bankruptcy proceedings, suspend the powers of the Trustees and/or prohibit the sale of Tanglewood Villa. The judge therefore did not have before him any application to exercise any control over the Trustees' remuneration. Mrs Tyshchenko's application to the Central London County Court (see §22 above) did, however, include an application for a declaration that the Trustees' costs are excessive and should be reduced to a reasonable amount. That application was dismissed on 11 August 2023, and was declared to be totally without merit.

The possession and sale of Tanglewood Villa

80. The final ground for the appeal against the dismissal of the stay application is the submission that the judge should have given more weight to the fact that the Trustees have said that they will not distribute the proceeds of sale of Tanglewood Villa until after the determination of the WWRT proceedings. On that basis, Mrs Tyshchenko says that even if the bankruptcy proceedings are not stayed in their entirety, they should at least be stayed in so far as they relate to the possession and sale of the property, since it follows from the Trustees' position that it is not necessary to proceed with this until the WWRT proceedings have been determined.

81. This ground of appeal requires some unpicking. I start with the Trustees' evidence. The Trustees' position in Mr Hyde's 23rd witness statement, provided for the 24 January 2024 hearing, is that:

> "Both WWRT's and the DGF's claim are intrinsically linked to the Civil Proceedings and are contingent on the outcome and so the Trustees have decided that until such time as the Civil Proceedings are determined, we cannot and will not adjudicate upon either claim."

82. Mr Hyde's 11th witness statement, filed for the purposes of the hearing before ICC Judge Prentis, made comments to essentially the same effect save that it referred only to WWRT's claim (the DGF not having been joined to the WWRT proceedings by then). It is common ground, therefore, that the distribution of Mrs Tyshchenko's assets to her creditors will not and cannot take place until after the determination of the WWRT proceedings.

83. One possible outcome of those proceedings is that Mrs Tyshchenko will be wholly successful in such a way as to determine, in her favour, both the WWRT and the DGF's claims against her in the bankruptcy proceedings, leaving only the question of the Trustees' costs. Mrs Tyshchenko said in her 23 February 2023 witness statement that in that event she would almost certainly be able to borrow money, secured against the property, to pay off her remaining debts including the Trustees' reasonable expenses. She had made similar statements in previous witness statements dated 22 February 2022 and 4 April 2022. Mrs Tyshchenko of course contends that she is likely to succeed in the WWRT proceedings, but I cannot take a view on that for the purposes of this appeal. The Trustees notably do not take any position as to the merits of the WWRT proceedings and certainly do not contend that Mrs Tyshchenko has no realistic prospect of success.

84. What the Trustees do now say is that they consider there to be no realistic prospect that Mrs Tyshchenko would in that eventuality be able to refinance to pay (in particular) the expenses of the bankruptcy. This was the subject of further evidence on both sides provided after the 25 March 2024 hearing, and I discuss that evidence further below. For present purposes, however, it suffices to say that none of that evidence was before ICC Judge Prentis, nor do there appear to have been any detailed submissions on the point at the hearing. What the judge had before him was, on the one hand, the Trustees' point that there would inevitably be some costs due to them, whatever the precise quantum of those costs, and on the other hand Mrs Tyshchenko's contentions as to her ability to pay her remaining debts if she was successful in the WWRT proceedings, such that Tanglewood Villa would not need to be sold.

85. It is fair to say that, as in the present appeal proceedings, Mrs Tyshchenko made many other arguments which were not clearly separated in her witness statement, including extensive submissions as to her health, the needs of her children and Ukrainian refugees staying at her house, and the merits of the claim against her in the WWRT proceedings. It is apparent, however, that at the heart of Mrs Tyshchenko's submissions was an objection to the Trustees' eviction of her family from their family home, and one of the main reasons for that objection was that the bankruptcy proceedings turn on the vehemently opposed claim of WWRT, the trial of which will not take place until 2025.

86. The judge dealt with this point at §§24 and 26 of his judgment as follows:

> "So the bankruptcy seems to be taking its usual course and part of that course is the proceedings in Kingston. In so far as Mrs Tyshchenko has concerns as to the housing of her minor children or refugees who may be living with her or, indeed, her own health, or the date on which the [WWRT proceedings] may be realised, then those are all matters for the Kingston-upon-Thames court to deal with on 27th February. There is an insufficient basis for this court to intervene and take away the ability of the Kingston-upon-Thames court to make those determinations. The trustees are entitled to ask the court to make those determinations in the ordinary realisation of the estate. Likewise, Mrs Tyshchenko is entitled to raise her own arguments against.
>
> …
>
> In respect of the home, the claim that there ought to be a suspension of powers or a prohibition of sale seems to me to be hopeless; likewise, the claim for a general stay of the bankruptcy. There are plainly interests, both of the creditors and of the trustees themselves, in realising assets to meet either creditors' liabilities or the trustees' own remuneration."

87. The judge therefore considered that Mrs Tyshchenko's submissions as to the continuation of the bankruptcy proceedings pending the determination of the WWRT proceedings – along with her other submissions regarding her health and the needs of her children and refugees living with her – were all matters for the possession proceedings in the Kingston-upon-Thames County Court, rather than for him. That led him to refuse the application for a stay, given the interests of the creditors and Trustees (in general terms) in realising the assets of the estate. Accordingly, the judge did not consider, for himself, the question of the necessity of proceeding with the bankruptcy proceedings or all aspects of those proceedings, in circumstances where the WWRT proceedings were pending and would not be determined for some time.

88. In that regard I consider that the judge fell into error. The issue before the Kingston-upon-Thames County Court was the Trustees' application for possession and sale of Tanglewood Villa pursuant to s. 335A of the Insolvency Act 1986. That application was brought on the premise that the bankruptcy proceedings were continuing and were not stayed. The County Court did not have before it the (logically prior) question of whether the bankruptcy proceedings or some aspect of those proceedings should be stayed: that was the subject of the hearing before ICC Judge Prentis.

89. The proceedings in the Insolvency and Companies Court and the County Court were therefore addressing different questions. In particular, s. 335A(3) provides that where such an application is made more than a year after the vesting of the bankrupt's estate in the trustee in bankruptcy, the court must assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations. Accordingly, since the Trustees' application was made more than a year after the vesting of Mrs Tyshchenko's estate in the Trustees, the starting point for the purposes of the possession application was that the interests of the creditors should prevail unless exceptional circumstances could be shown. (I note that it was for this very reason that once Mrs Tyshchenko had secured legal representation for the possession hearing, she abandoned an application which she had made in the Kingston-upon-Thames County Court seeking a stay of the possession proceedings pending adjudication of the

WWRT proceedings: as she explained in her 23 February 2023 witness statement, the effect of s. 335A was that she was realistically no longer in a position to oppose the principle of an order for possession and sale of her family home.)

90. As DDJ Holmes-Milner noted in his judgment at the possession hearing, the authorities establish that creditors are deemed to have an interest in the order for sale being made, and the exceptional circumstances which may displace that interest must go beyond the usual "melancholy consequences of debt and improvidence". The fact that a family evicted from a property may not be able to buy a comparable property elsewhere, and may not be able to remain in the same area, is therefore not regarded as exceptional for these purposes: *Dean v Stout* [2004] EWHC 3315 (Ch), §§9–11.

91. By contrast, the court considering an application to stay the bankruptcy proceedings, under its inherent jurisdiction to do so, is not so constrained. There is no doubt that the interests of the bankrupt's creditors will carry considerable weight in the assessment. The bankrupt seeking a stay will also, in my judgment, need to make out a compelling case for such an order, and as I have already said the circumstances in which that will be appropriate, other than cases where the stay is granted pending an appeal against the bankruptcy order, are likely to be unusual. There is, however, no presumption as to the order which should be made; rather, whether or not a stay is appropriate must be determined on an assessment of all of the relevant circumstances of the case, weighing the injustice to each side if a stay is, or is not, granted.

92. A determination by ICC Judge Prentis of whether the impact of the WWRT proceedings (and the timeframe for those proceedings) on the bankruptcy justified a stay of all or part of the bankruptcy proceedings would not, therefore, have trespassed into the matters for determination by the Kingston-upon-Thames County Court. Rather, that was a determination which fell squarely within the competence of the Insolvency and Companies Court in its assessment of the stay application before it.

93. Indeed, the effect of the judge's postponement of consideration of this issue to the Kingston-upon-Thames hearing was that there was no consideration at all of the question of whether the bankruptcy proceedings needed to continue in respect of the realisation of Tanglewood Villa as an asset pending the determination of the WWRT proceedings, having regard to the evidence of both the Trustees (as to their intentions regarding the distribution of the assets in the bankruptcy) and Mrs Tyshchenko (as to the potential injustice arising if she was ultimately successful in the WWRT proceedings). The point was not considered by the judge, because he considered it a matter for the Kingston-upon-Thames hearing. DDJ Holmes-Milner then considered that, applying the test under s. 335A in the light of the relevant authorities, the WWRT litigation did not carry any weight, the relevant factors being the interests of the children and refugees.

94. Mr Shaw's submission that all of the arguments before ICC Judge Prentis in support of Mrs Tyshchenko's application for a stay were capable of being deployed at the Kingston-upon-Thames hearing therefore misses the point: while Mrs Tyshchenko did, indeed, refer to essentially the same factual matters in her evidence and submissions before ICC Judge Prentis and the Kingston-upon-Thames County Court, the questions before the two courts were different questions. That led the County Court to conclude that the WWRT proceedings were (effectively) irrelevant to its assessment of exceptional circumstances. In the assessment of the stay application before ICC Judge Prentis, however, that was a relevant matter and should have been considered by the judge.

95. For the same reasons, I do not accept Mr Shaw's submissions that the stay application has in substance already been considered and determined in the course of the appeal against the possession order made on 27 February 2023, and subsequent applications by Mrs Tyshchenko to stay the possession order (as set out at §22 above). Pending the determination of Mrs Tyshchenko's application for permission to appeal, a temporary stay of the possession order was granted; that stay was, inevitably, lifted by Meade J once permission to appeal was dismissed. That stay was, however, confined to a stay of the specific order made by the Kingston-upon-Thames County Court on 27 February 2023, pending the application for permission to appeal that order, and in order not to frustrate the purpose of the appeal if it were ultimately successful. Likewise, the stay applications in the Central London County Court and Kingston-upon-Thames County Court (dismissed on 11 and 14 August 2023 respectively) were applications to stay the 27 February 2023 possession order. No stay of the bankruptcy proceedings in general was considered, whether in the context of the appeal from the possession order, or the two subsequent stay applications.

96. In my judgment, therefore, the judge erred in failing to consider the impact of the WWRT proceedings on the application for a stay of the bankruptcy, and instead deferring that to the Kingston-upon-Thames possession hearing. The appeal in relation to the dismissal of the stay application must therefore be allowed, in so far as that application concerned the Trustees' possession and sale of Tanglewood Villa.

Remaking the decision

Remaking or remittal, and the scope of the decision to be remade

97. The remaining question is whether this court should remake the decision or remit the decision to the Insolvency and Companies Court. I do not consider that remittal is necessary or appropriate, and neither party has asked for a remittal. The evidence considered by ICC Judge Prentis is before this court, and I have had full submissions from both parties at two hearings, at the second of which Mrs Tyshchenko was represented by counsel. I have also had substantial further evidence submitted by both parties. This court is therefore in as good a position as the lower court to determine Mrs Tyshchenko's application for a stay.

98. As to the scope of the stay sought by Mrs Tyshchenko, while her primary position is that she seeks a stay of the bankruptcy proceedings in full, it follows from my conclusions above that the judge's only error was in his assessment of whether the bankruptcy proceedings should continue in relation to the possession and sale of Tanglewood Villa. In light of the conclusions I have reached, there is no basis for any more general stay of the bankruptcy proceedings: the Trustees are entitled to continue to investigate and preserve Mrs Tyshchenko's assets, and I have rejected Mrs Tyshchenko's submissions as to the Trustees' alleged conflict of interests and the costs which they are incurring.

99. The question is therefore whether a limited stay of the bankruptcy proceedings should be ordered, solely in so far as those proceedings relate to the possession and sale of Tanglewood Villa.

Conclusions in draft judgment

100. My initial draft judgment considered the submissions and evidence before me by the time of the 24 January 2024 hearing, and the further submissions provided after that hearing. On the basis of everything before me by that point, I concluded that it was appropriate to stay the bankruptcy proceedings in so far as they relate to the possession and sale of Tanglewood Villa, until the determination of the WWRT proceedings.

101. The key factors in that conclusion were, on the one hand, the fact that there was no evidence of any significant prejudice to the creditors or any third parties which would arise from a limited stay of the bankruptcy proceedings to that extent, and on the other hand the clear and obvious risk of irreparable prejudice to Mrs Tyshchenko if the house was sold, given the possibility that that sale might turn out to be unnecessary if Mrs Tyshchenko is ultimately successful in the WWRT proceedings. I noted that the Trustees' evidence, before me, had referred to ongoing insurance costs if the property was not sold, but without providing any evidence of those costs. In addition, while there was some evidence suggesting that the property value may have decreased somewhat between November 2021 and June 2022, no more recent valuation had been provided by the Trustees, and there was no evidence before me (at that time) suggesting that the Trustees expected any further significant decrease in the property value if it was not sold before the determination of the WWRT proceedings.

Further submissions and evidence following draft judgment

102. As I have described at §4 above, following circulation of my draft judgment the Trustees sought to persuade me to revisit the conclusions set out above on the basis of new evidence filed by them. I have now received two further witness statements from each side: two witness statements from Mr Hyde (his 25th and 26th witness statements), and two witness statements from Mrs Tyshchenko, with exhibits to all of these. That evidence was the subject of submissions from Mr Shaw and Ms Vacani, in their skeleton arguments for the 25 March 2024 hearing, orally at that hearing, and in further submissions accompanying the evidence filed after that hearing. There can now be no further suggestion on either side that they have not had a full opportunity to say whatever they want to about this matter.

103. In short summary, the further evidence from the Trustees paints a wholly different picture to the evidence before me by the time of my draft judgment. The Trustees now provide substantial evidence of significant ongoing costs which have already been and will continue to be incurred by the Trustees in connection with the maintenance of Tanglewood Villa as an asset in their possession, and the sale of that property, and they contend that there is insufficient evidence that Mrs Tyshchenko will be able to cover those costs if she is permitted to reoccupy the property. They also say that she has not provided any convincing evidence that she will be able to pay the costs of the bankruptcy proceedings, and thus apply for the annulment of her bankruptcy, in the event that she is successful in the WWRT proceedings. The Trustees contend that the property will therefore on any basis need to be sold to meet their own expenses. The Trustees also provide evidence of ongoing deterioration in the condition of the property and a significant (and ongoing) decline in its value.

104. Mrs Tyshchenko disputes these submissions. She says that she will be provided with funds from Ukraine, from Motrona Tyshchenko, to enable her to discharge the ongoing

costs associated with the property and keep it in reasonable repair. She also maintains her position (as previously expressed) that if she is successful in the WWRT proceedings she will be able to borrow funds against the equity in the property so as to repay outstanding debts, including any reasonable costs of the Trustees in relation to the bankruptcy proceedings.

Whether to revisit the conclusions in the draft judgment

105. The first question is whether I should in principle accede to the Trustees' request to revisit my conclusions in the light of the further evidence and submissions now before me. The courts have on numerous occasions emphasised that the practice of sending a draft judgment to the parties for correction of typographical and similar minor errors is not an invitation to the parties to attempt to reopen the issues argued at the hearing, whether on the basis of further submissions or new evidence. There is a public interest in finality in litigation, which would be wholly undermined if parties could, after receiving an adverse draft judgment, simply have another go at persuading the judge to change their mind: see e.g. *Royal Brompton NHS Trust v Hammond* [2001] EWCA Civ 778, §11; *Watchtower Investments v Payne* [2001] EWCA Civ 1261, §4; *R (Edwards) v Environment Agency* [2008] UKHL 22, [2008] WLR 1587, §66; *Gosvenor London v Aygun Aluminium* [2018] EWHC 227 (TCC), §§46–52.

106. There is, however, no dispute that the court does have the power to amend the substantive conclusions in a draft judgment before it is handed down. In *IG (Child Abduction: Habitual Residence: Article 13(b)* [2021] EWCA Civ 1123, §73, the Court of Appeal set out the circumstances in which this might be appropriate, as follows:

> "There are several circumstances in which the first version of a judgment may be amended. First, in the case of a reserved judgment, it is now the almost invariable practice in the civil and family courts, including this Court, for a reserved judgment to be sent to the parties' legal representatives in draft a few days before it is formally handed down. The purpose of doing so is to enable the lawyers to identify typographical or factual errors. Judges normally warn the parties that this process does not provide an opportunity to re-argue the merits of the case, and usually the lawyers comply with this warning. Secondly, the judge may be asked to clarify or amplify his or her reasons for the decision. This process was endorsed by this court in *English v Emery Reimbold and Strick Ltd* [2002] EWCA Civ 605, [2002] 1 WLR 2409, and is commonly, perhaps too commonly, used in family cases, following the decision of this court in *Re B (Appeal: Lack of Reasons)* [2003] EWCA Civ 881, [2003] 2 FLR 1035. Thirdly, the judge may have omitted to deal with an issue in the case. In those circumstances, a supplemental judgment addressing that issue may be appropriate, perhaps after receiving further submissions. Fourthly, the judge may himself or herself conclude that an amendment is required. On some rare occasions, the judge may on further reflection change his mind about the decision. A judge has jurisdiction to change his or her mind, at least until the order carrying the judgment into effect is drawn up and perfected: *Re L-B (Children) (Preliminary Finding: Power to Reverse)* [2013] UKSC 8, [2013] 1 WLR 634. Finally, when a judgment is delivered ex tempore, a judge may amend the transcript when it is delivered for approval. In most cases, such amendments are confined to typographical errors or changes in wording. The judge may take the

> opportunity to rephrase what he or she has said to add greater clarity. It is unusual, however, for a judge to undertake an extensive rewriting of the transcript of the judgment."

107. More recently in *AIC v Federal Airports Authority of Nigeria* [2022] UKSC 16, [2022] 1 WLR 3223, the Supreme Court considered the amendment of an order on the basis of new information which became available after the order was made but before it was sealed. In doing so it reviewed the authorities concerning applications to reconsider both final judgments and orders before the sealing of the relevant order. The court's conclusions may be summarised as follows:

    i) The task of a judge faced with an application to reconsider a judgment and/or order before the order has been sealed is to do justice in accordance with the overriding objective (§30).

    ii) The overriding objective affirms the principle of finality, namely that a party should bring his "whole and best case" to bear at the trial or other hearing when a matter in dispute is finally to be decided, subject only to appeal (§31).

    iii) It may be a useful discipline for a judge, when considering such application, to ask first whether it is right in principle to entertain the application at all, and only if the answer to that is in the affirmative to go on to consider the application on its merits. But there is no rule of law or practice that such an application must always be addressed by a two-stage process of that nature, particularly where it is impossible to separate the two questions. Ultimately the judge has to determine the single question of whether to set aside the order that has been made and replace it with a different one (§§32–4).

    iv) An evaluative judgment must be made which reflects and respects the importance of the principle of finality. Finality is not, in that context, simply treated as one factor among many, but is a strong factor which must be given real weight. The question is whether the factors favouring re-opening the order are in combination sufficient to overcome the weight of the finality principle, together with any other factors pointing towards leaving the original order in place (§§37–9).

    v) The weight to be given to the finality principle will, however, vary depending on the nature of the order already made, the type of hearing at the end of which it was made and the type of proceedings in which it was made. Finality is likely to be at its highest importance in relation to orders made at the end of a full trial and other orders ending the proceedings at first instance. Case management and interim orders lie towards the other end of the scale. Indeed, many such orders reserve liberty to the parties to apply to vary or discharge the order (§35).

108. In the present case, the decision by its nature is not simply a procedural case management decision, but is a decision of significant consequence for Mrs Tyshchenko, since it concerns the sale of what was her family home for 15 years. While I do not agree with Ms Vacani's submission that this turns the decision into the equivalent of a final decision terminating first instance proceedings, the practical importance of the decision is such that the interest in finality should be given greater weight than might be the case with (for example) a purely procedural decision.

109. It is also apparent that, with the exception of one piece of evidence concerning outstanding fees due to Mrs Tyshchenko's former solicitors Harbottle & Lewis (who represented her at the possession hearing in the Kingston-upon-Thames County Court on 27 February 2023), all of the new matters put forward by the Trustees since receipt of the judgment consist of submissions and/or evidence that could have been referred to at the 24 January 2024 hearing.

110. Mr Shaw, at the hearing on 25 March 2024, candidly and fairly accepted that it would have been better for the submissions now advanced to have been put forward at the 24 January 2024 hearing, and did not seek to offer any excuse for failing to do so. He acknowledged that it was not being suggested, at that hearing, that in the event the appeal was allowed on one or more grounds the matter should be remitted to the ICC Judge. Both parties were, therefore, well aware that it the appeal was allowed this court would most likely wish to remake the decision on the basis of the evidence before it. As such, it was the responsibility of the parties to ensure that the court had before it all the evidence that they considered relevant to that decision.

111. There was also no suggestion that the Trustees had been lacking in opportunities to put forward relevant evidence for the 24 January 2024 hearing. As set out above, four witness statements from Mr Hyde were provided before the original hearing before ICC Judge Prentis, with a further witness statement provided for the appeal hearing on 24 January 2024. The Respondents were represented by leading counsel (Mr Shaw) at the hearing before ICC Judge Prentis, and by both leading and junior counsel at the 24 January 2024 appeal hearing. They filed a skeleton argument and a supplemental skeleton argument before that hearing (see §32 above) and further written submissions after the hearing. This is, therefore, a case where on any basis the submissions made now could and should have been made at the appeal hearing, but were simply overlooked by the Trustees and/or their legal representatives.

112. Notwithstanding those facts, I have concluded following careful consideration that it is appropriate to revisit the substantive conclusions that I reached in my judgment in light of the new evidence provided. I reach that decision for five reasons.

113. First, unlike the situation considered in the *AIC* case, this is not a case where there is a final judgment and an order which has been made albeit not sealed. It is a case where, as matters stand, all that has been issued is a draft judgment. As the Court of Appeal in *IG* made clear, it is possible for a judge to change their mind at that stage, albeit that the circumstances in which that will occur are likely to be rare.

114. Second, the request is for reconsideration of a section of a draft judgment made in relation to an interim decision as to the stay of the bankruptcy proceedings, in the context of the interaction between the bankruptcy proceedings and the pending WWRT proceedings. While (for the reasons given above) that decision has considerable practical importance for Mrs Tyshchenko, it is not a decision reached at the end of a trial, nor any equivalent decision which brings the first instance proceedings to an end. Moreover, the interim nature of the decision means that if a stay were now to be granted it would be open to the Trustees to seek to lift that stay on the basis of further evidence obtained in due course. Accordingly, while the finality principle remains a strong factor in the assessment, the comments in *AIC* indicate that it will carry less weight in this context than it would in relation to a final determination of a claim following a trial or similar hearing.

115. Third, given the terms of the appeal, the draft judgment was specifically limited to the question of whether the bankruptcy proceedings should be stayed in so far as they relate to the possession and sale of Tanglewood Villa. The draft judgment did not determine the question of whether Mrs Tyshchenko should be permitted to reoccupy the property, and if so on what conditions. Those would therefore be matters to address at the hearing of consequential issues, at which the Trustees would be entitled to rely on the evidence now put forward (or at least some of it), as matters going to the question of whether the court should permit reoccupation by Mrs Tyshchenko and her family. It would be illogical for that evidence to be considered in relation to the consequential question of Mrs Tyshchenko's possession of the property, but shut out from consideration now in relation to the prior substantive question of whether the bankruptcy proceedings should be stayed in relation to the disposal of the property.

116. Fourth, it is necessary to take into account the fact that the present bankruptcy proceedings are not brought for the personal benefit of the Trustees, but are proceedings initiated by Mrs Tyshchenko herself, in which the Trustees' objective is to realise Mrs Tyshchenko's assets for the benefit of third party creditors. For the reasons already discussed, compelling reasons will be required for the court to decide that the normal course of the bankruptcy should be stayed, and the court will need to consider whether, in the event of a stay, the interests of creditors and other parties will be adequately safeguarded. The court must, therefore, carefully scrutinise all relevant facts before it before making such an order, and should only exclude relevant and material evidence if there are particularly cogent and weighty reasons for doing so.

117. Finally, as the Supreme Court acknowledged in the *AIC* case, it is not always possible to draw a clear distinction between the question of whether to revisit a draft decision (or an unsealed order) on the basis of new evidence and argument, and the merits of the new evidence and argument put forward. In the present case, as set out below, consideration of the new evidence and further submissions of the Trustees establishes that, contrary to the conclusions reached in the draft judgment, there are in fact compelling reasons *not* to stay the bankruptcy proceedings, but to allow those proceedings to take their normal course as regards the possession and sale of Tanglewood Villa.

Assessment of the evidence now before the court

118. I therefore reconsider the question of whether to stay the bankruptcy proceedings, as regards the possession and sale of Tanglewood Villa, on the totality of the evidence now before me from both parties.

119. The starting point is to acknowledge the Trustees' position that there will be no adjudication of the WWRT and DGF claims in the bankruptcy until after the determination of the WWRT proceedings. The Trustees have therefore explicitly confirmed that even if Tanglewood Villa is sold, those creditors will not receive any distribution of the proceeds until after the determination of the WWRT proceedings. The Trustees have also not said that they would seek to recover their own fees and their legal costs before the determination of the WWRT proceedings. The trial of those proceedings is listed for January and February 2025. Once judgment is given there may well be an appeal. Realistically, therefore, it is very unlikely that the proceedings will be determined much before the summer of 2025, and quite possibly not until 2026 if there is an appeal.

120. The further evidence put before the court establishes, however, that the Trustees have incurred various disbursements in relation to the sale of Tanglewood Villa which they will seek to recover immediately from the proceeds of sale of the property. The most significant of these is an invoice for £30,340.39 plus VAT for the costs of clearing the property after the departure of the Tyshchenko family, to make it ready for sale. In addition to those costs, the Trustees' evidence is that the monthly cost of insuring the property is currently £855.20 including Insurance Premium Tax, amounting to £10,262.40 per annum. Further ongoing costs include council tax charges of £4,665.60 per annum, estate charges of £6,231.52 per annum, and the cost of maintaining Copper Homes Limited as an Isle of Man company, currently £7,040 per annum. Those are also costs which the Trustees will seek to recover from the proceeds of sale. Mr Hyde has explained that it is not viable for the Trustees to rely on third party funding for these costs until the conclusion of the WWRT proceedings.

121. The Trustees refer to potential further costs associated with the marketing of the property by the estate agents (Pantera Property and Knight Frank) if the property does not now proceed to sale. There is, however, no quotation or invoice or other statement from the various estate agents to confirm the extent of any charges by them if the property is withdrawn from sale, and Mrs Tyshchenko disputes that such charges will arise on the basis of enquiries made by her. I do not, therefore, take account of these costs in my assessment.

122. More significantly, however, the Trustees have now provided evidence of deterioration of the physical state of the property, leading to a decrease in its value. A 2013 valuation report stated that the property required "complete modernisation or more likely demolition and replacement". A 2021 valuation report of the property noted in similar vein that little maintenance and repair had been undertaken in recent months/years, identifying a number of maintenance issues to the fabric of the house as well as the exterior grounds. It stated that the property was dated by contemporary standards and that any purchaser would be likely to carry out a major programme of improvement, or would demolish and rebuild the property.

123. Aside from those general points, in December 2023 the estate agents engaged by the Trustees identified a leak in the property causing damp and progressive damage to the affected area. The Trustees have obtained quotes for remedial work of £11,184 (full remedial work) and £5,904 (temporary work pending sale of the property). Any reoccupation of the property would require full remedial work rather than simply temporary measures, to prevent further damage to the property.

124. It is apparent from the evidence now provided that the value of the property has significantly declined since its initial purchase. The property was purchased by Copper Homes Limited in 2008 for £5.4m. The two valuation reports in 2013 and 2021 valued it at £5m and £4.75m respectively. In 2022 the property was valued at £4.4m. It is currently on the market for £4.5m and three offers have been made ranging from £2.25m to £3m. In the circumstances the Trustees say that they have been advised to reduce the asking price to £4m. They are concerned that if they are precluded from progressing the sale of the property until the determination of the WWRT proceedings its value may continue to decline, resulting in a smaller realisation to the prejudice of the estate's creditors.

125. The Trustees also contend that even if Mrs Tyshchenko were to be successful in the WWRT proceedings, there is insufficient evidence to show that she would be likely to

be able to discharge the Trustees' significant costs of the bankruptcy proceedings, such that she could annul the bankruptcy without needing to sell the property.

126. Mrs Tyshchenko states in her evidence that she discharged the ordinary costs and expenses associated with ownership and occupancy of Tanglewood Villa while she lived there, and would continue to do so if she were permitted to retake possession of the property. She explains that she paid the estate charges and insurance costs until some time in 2023. She contends that she kept the property in a good state of repair, and that she intends to carry out repairs to the swimming pool to render it useable if she is able to return to the property.

127. As to Mrs Tyshchenko's source of funds, she says that she has in the past received income from running a gymnastics school, but does not contend that this was significant. It is apparent that the main source of funds for her and her family, since the commencement of the WWRT proceedings, has been remittances from Motrona Tyshchenko, who has paid for school fees and at least some of the family's living expenses including the costs of maintaining the house. Mrs Tyshchenko states that Motrona is willing to pay the estate charges and council tax if Mrs Tyshchenko moves back into Tanglewood Villa. She relies on a witness statement from Motrona, which states that Motrona is also willing to pay the reasonable costs of maintaining the house. Motrona's witness statement acknowledges that Mrs Tyshchenko did not insure the house during the "last period" of her occupancy there, but she undertakes to properly insure the house if Mrs Tyshchenko is permitted to return. Some evidence is provided of Motrona Tyshchenko's wealth, in the form of a statement from Asvio Bank dated 20 March 2024, referring to current account and savings account balances.

128. Mrs Tyshchenko contends that if she is ultimately successful in the WWRT proceedings she is likely to be able to obtain finance secured on the property, enabling her to discharge the costs of the bankruptcy. She relies on a "letter of preliminary guarantee" provided by Asvio Bank on 27 March 2024, confirming that it had "previously considered" an application by Motrona Tyshchenko, and that it considered her to be a "suitable client" for a long-term loan of up to £2m, with security in the form of a mortgage over Tanglewood Villa, on the basis that Tanglewood Villa had a value of £4m. A witness statement has also been provided by Mrs Tyshchenko's oldest daughter Mariia Tyshchenko, stating that she and her sister Viktoriia are the owners of a house in Ukraine gifted to them by their grandfather, which is currently on the market for $2.6m. She states that she is willing to use the proceeds of that sale to enable Mrs Tyshchenko to pay the reasonable costs of the bankruptcy and regain ownership of Tanglewood Villa.

129. I do not doubt, in light of the evidence provided, that Motrona Tyshchenko will indeed use her available means to finance her granddaughter's school fees and at least some of the family's living expenses in England. While there are currently restrictions on the transfer of funds from Ukraine, due to the ongoing war in that country, the evidence of Mrs Tyshchenko and Motrona Tyshchenko refers to payment mechanisms through the use of companies with subsidiaries outside Ukraine, and it is apparent that despite the controls on foreign payments from Ukraine Mrs Tyshchenko was, prior to her eviction, able to receive some funds for her living expenses and her daughters' school fees.

130. The problem is, however, that neither Mrs Tyshchenko nor Motrona Tyshchenko have proposed any transfer of funds to the Trustees to cover the significant expenses already incurred by them in preparing Tanglewood Villa for sale and meeting the ongoing

charges relating to the property pending its sale. There is, therefore, no evidence of how those costs are to be met other than through the sale of the property.

131. It is, moreover, now also apparent from the evidence set out above that the Trustees will incur substantial further costs if Mrs Tyshchenko were to reoccupy the property. Those include the costs of maintaining Copper Homes Limited as an entity, and the costs of insuring the property. Both of these costs will continue to fall on the Trustees, given that they have control of the legal ownership of the property, and as set out above there is no viable source of third party funding available to the Trustees. There is no evidence before the court which enables me to be satisfied that those costs will be paid by Mrs Tyshchenko or others on her behalf, to the Trustees, if Mrs Tyshchenko returns to the property, particularly given that Mrs Tyshchenko disputes the reasonableness of both the insurance figures given by the Trustees and the costs claimed by them in relation to the maintenance of Copper Homes Limited.

132. Even leaving aside those points, the evidence now provided in relation to the deterioration of the property and its ongoing decline in value provides in itself a compelling reason why the property should now be sold. The Trustees have a responsibility to realise the best possible price for the property. It is apparent that the property has historically not been well maintained, with the consequence that its value has very significantly declined since it was purchased. While Mrs Tyshchenko contends that she will continue to maintain the property if she returns to it, there is no proposal to carry out any major refurbishment work, nor any evidence that she would have the funds to do so. In those circumstances the Trustees have a justifiable concern that if unsold now the value of the property will continue to decline, thereby prejudicing the interests of the creditors of the estate.

133. The evidence as to the declining value of the property also casts considerable doubt on the question of whether it would be possible for Mrs Tyshchenko to obtain financing, on the security of the property, sufficient to discharge the costs of the Trustees if she were to be successful in the WWRT proceedings. Mrs Tyshchenko relies on the 27 March 2024 letter from Asvio Bank to Motrona Tyshchenko. That letter is in rather equivocal terms, referring to a previous application without confirming that any loan would in fact now be granted in the specified amount of £2m. Nor is there any suggestion that any funds would be paid to Mrs Tyshchenko; rather, the letter refers to the possibility of a loan to Motrona, who has given no undertaking to pay the Trustees' costs in the event of success by Mrs Tyshchenko in the WWRT proceedings.

134. In any event, however, the Trustees' evidence is that their total costs plus disbursements (including legal fees) to date are in excess of £3m. Even if that were to be reduced by a significant amount on assessment of reasonableness and other factors (including any costs orders made following this judgment), those costs may well exceed £2m, and there will no doubt be further costs incurred by the Trustees between now and the conclusion of the WWRT proceedings. Moreover, the Asvio letter is predicated on a valuation of Tanglewood Villa at £4m. The Trustees' evidence, however, is that no offer for the property has been made in excess of £3m; and for the reasons given above the value of the property may well have declined further by the conclusion of the WWRT proceedings if it is now reoccupied by Mrs Tyshchenko without significant refurbishment and renovation work.

135. I bear in mind that there may of course be other lenders who might be approached, and that Mrs Tyshchenko could herself seek to obtain financing directly, on the security of the property. However, given the scale of the Trustees' fees, and the evidence now before the court as to the condition and declining value of the property, the proposition that Mrs Tyshchenko would be able to raise funds, secured on the property, sufficient to cover the entire costs of the bankruptcy is highly questionable to say the least.

136. That problem is not resolved by the witness statement from Mariia Tyshchenko regarding the property in Ukraine owned by her and her sister. It appears that that property has been on and off the market for some years. There is no evidence before the court from which it can be inferred that it will be possible to sell that property at any time in the near future; nor is there any cogent evidence as to the property's current value in any event. I do not, therefore, consider that I can place any weight on this as a potential source of funds available to Mrs Tyshchenko.

137. On the basis of the evidence before me, therefore, I am not satisfied that in the event of success in the WWRT litigation Mrs Tyshchenko is likely to be able to meet the costs and expenses of the bankruptcy without selling Tanglewood Villa. On the contrary, it appears probable that even if Mrs Tyshchenko is successful in the WWRT proceedings, the property will have to be sold in any event. That is a factor which strongly weighs in favour of the bankruptcy proceeding in this regard.

138. The overall position is that on the basis of the evidence now before the court, I am not able to conclude that there are compelling reasons why the bankruptcy should not take its normal course, in respect of the possession and sale of Tanglewood Villa. Quite the contrary, I consider that the reasons set out above weigh heavily in favour of the possession and sale of the property now proceeding unhindered so as to enable the Trustees to recoup their expenses already incurred in relation to the preparation and marketing of the property, avoid further ongoing expenses which will diminish the value of the estate, and achieve the best possible price for the property in the interests of the creditors of the estate.

139. While, therefore, the appeal has been allowed, in light of the further evidence now before the court I ultimately reach the same conclusion as ICC Judge Prentis, and conclude that Mrs Tyshchenko's application to stay the bankruptcy proceedings in relation to the possession and sale of Tanglewood Villa must be dismissed.

Conclusion

140. For the reasons set out above:

    i) Time for filing the Appellant's notice is extended to 1 March 2023.

    ii) Permission to appeal is refused in relation to the grounds of appeal relating to the removal of the Trustees and the setting aside of the order appointing the Trustees.

    iii) Permission to appeal is refused in relation to the dismissal of Mrs Tyshchenko's adjournment application.

iv) Permission to appeal is refused in relation to dismissal of the stay application, on the grounds of the alleged conflict of interests of the Trustees, and the costs incurred by the Trustees.

v) The appeal is allowed in so far as it relates to the dismissal of the application to stay the bankruptcy proceedings in respect of (solely) the possession and sale of Tanglewood Villa.

vi) On remaking the decision, however, I reach the same conclusion as the lower court albeit on the basis of further evidence not before that court. The application to stay the bankruptcy proceedings in respect of the possession and sale of Tanglewood Villa is therefore dismissed.

141. I will hear further submissions from the parties as to the consequential orders that are appropriate in the light of these findings.