THE HIGH COURT

[2021] IEHC 169

[2020/410 COS]

IN THE MATTER OF M.U.T. 103 LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2014

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 10th day of March, 2021.

A. Background

1. The Petitioner, Ms. Kathleen Dineen, is a 78 year old lady who has lived with multiple sclerosis for over 40 years. In 2018 she suffered a stroke from which she has not fully recovered. The previous year, in February 2017, Ms. Dineen invested in German real estate through M.U.T. 103 Limited ("the Company"). The form of investment was relatively simple. Ms. Dineen placed €127,000 with the Company; interest on that amount was to be paid twice a year, with the final interest payment (along with repayment of the capital sum) to be made by the Company to Ms. Dineen in February 2020. The amount due to be paid at that time to Ms. Dineen was €135,890. That sum has not been paid. Ms. Dineen therefore seeks the winding up of the Company on the grounds that it is insolvent, unable to pay its debts as they fall due, and/or that it is just and equitable that such an order be made.

2. There are some other relevant facts which I should set out before engaging with the arguments made in support of, and in opposition to, this Petition.

3. Firstly, the sums advanced by Ms. Dineen to the Company were in turn to be loaned on by it to the German Property Group GmbH ("GPG"): this entity was previously known as Dolphin Capital GmbH and (subsequently) Dolphin Trust GmbH. On the evidence before me, over €107,000,000 remains outstanding to Irish investors in GPG; these investments were made through the Company or through another vehicle (M.U.T. 106 Limited).

4. Secondly, a company called Wealth Options Trustees Limited ("WOTL") acted as administrator of the Company (and of M.U.T. 116 Limited) "regarding the investment of funds into the GPG Products from 2011 and as distributor of the GPG Products in Ireland from June 2018". I take this description from the Affidavit of Mr. Eanna McCloskey sworn in opposition to the Petition; Mr. McCloskey is a director of WOTL and of the Company.

5. Thirdly, the investments made by many (and possibly all) of the Irish investors were made through brokers. In the case of Ms. Dineen, she appears to have made her investment through Kavanagh International Wealth Management. This is of some relevance when the correspondence regarding the failure of the investments is considered; Ms. Dineen observes that a string of letters sent (on her behalf) by her son were not always replied to directly by the Company or WOTL, while Mr. McCloskey comments that correspondence was sent to Ms. Dineen's broker (in his view, at least, "quite appropriately").

6. Fourthly, at a meeting in Berlin on the 28th of November 2019 WOTL (and certain Irish brokers) were told by GPG that there would be a delay of a month in the making of

payments due to investors in December 2019. In January 2020, GPG announced that the payments due that month would not be made to investors. According to Mr. McCloskey, no further payments were made by GPG to the Company (or the other M.U.T.) since November 2019; accordingly, no payments have been made by the M.U.T.s to the Irish investors since that time.

7. Fifthly, since June 2020 GPG had been involved in insolvency proceedings in Germany. These proceedings now engulf approximately 200 companies in the GPG group.

B. The Correspondence with the Irish Brokers

8. As I have mentioned, there was correspondence between WOTL and the brokers for the investors, and correspondence from Mr. Dineen's son; this was followed by letters from Clark Hill (Ms. Dineen's solicitors) which were answered by the Company's solicitors (DAC Beachcroft, to which I will refer as "DAC").

9. Given that the Petition is resisted by the Company on the basis of what the Company and/or WOTL has done for the investors, and what will be done for the investors, I will summarise what I believe are the more relevant parts of the correspondence leading up to the presentation of the Petition.

10. Even before the meeting in Berlin in November 2019, there were clearly concerns about Dolphin Trust/GPG. In a letter to brokers dated the 19th of July 2019, WOTL referred to "an article regarding Dolphin Trust which circulated in the UK media several weeks ago". WOTL continued:-

> "We only lend funds to Dolphin when we have security in place for a value in excess of the funds loaned. As at the end of May 2019 the face value of security we hold is circa 182% of the loans advanced. The security is held (or has been ordered) as a first legal charge assigned to the Irish [M.U.T.s]"

11. The letter came with some enclosures; one of these was a letter from Bottermann Khorrami, lawyers based in Berlin. This stated:-

> "We refer to your request for an updated letter regarding securities following our letter dated 18 January 2019.
>
> As requested, we confirm that we are now satisfied that land charges and a total face value of EUR 167 million have been ordered for assigned to Dolphin MUT 116 Ltd (MUT 106) or MUT 103 Ltd (MUT 103). Securities of the total face value of EUR 40 million have been ordered or assigned to MUT 103; and securities with a total face value of EUR 127 million have been ordered or assigned to MUT 116.
>
> Dolphin is legally obliged to deposit the assignment documents and securities at a notary's office in Hanover. We are in the process of agreeing with the notary conditions for safekeeping the documents for the lifetime of the investment."

12. Another enclosure was a press release from a Mr. Mike Boyle, apparently a client relations executive with Dolphin Trust. This document began with the unforgettable sentence:-

> "If Lower Saxony Project developer and developer Charles Smethurst (59) with his German Property Group GmbH from Hannover-Langenhagen cannot immediately rehabilitate real estate, he cuts himself into his own flesh."

13. Mr. Smethurst was the principal of Dolphin Trust/GPG. He was also a director of the Company until the 6th of October 2020.

14. The press release was clearly designed to address concerns expressed in a recent broadcast on Bavarian Broadcasting (Bayerischer Rundfunk) that Mr. Smethurst was unable to pay investors out of profits, as he was "not working at all with the money of the investors […]". I have no evidence about whether this allegation (that Dolphin Trust was basically a Ponzi scheme) is well founded; however, it is clear that in July 2019 there were very serious concerns being expressed about Dolphin Trust/GPG. The gravity of these concerns no doubt made the assurances being provided by WOTL all the more welcome. Indeed, the whole purpose of this correspondence from WOTL seems to have been to comfort the Irish investors.

15. The letter sent by WOTL to brokers on the 4th of December 2019 carried the news, communicated by Mr. Smethurst at the Berlin meeting the previous week, to the effect that there would be a delay in payments to investors. However, a letter from WOTL of the 11th of December 2019 repeated that existing loans (as opposed to new investments in Dolphin Trust) were fully secured. Two days later, WOTL told the brokers that Dolphin Trust was suffering "cashflow difficulties", but that WOTL had met with the Territory Leader of the PWC real estate division based in Vienna, and that WOTL was awaiting a proposal from PWC about extracting "maximum value from the secured assets".

16. On the 10th of January, brokers were told by WOTL that the opinion of PWC on the suggested timing of the enforcement of securities was awaited; it is not clear whether PWC had provided the proposal described in the update of the 13th of December. Brokers were also told that Dolphin Trust was working closely with advisers (CFE) "to overcome the current cashflow difficulties".

17. In an update of the 29th of January 2020, WOTL restated the proposition that the sums advanced by the Irish investors were fully secured:-

> "MUT 116 Ltd and MUT 103 Ltd currently hold security over €111m worth of GPG assets. The security held has been confirmed by both our German lawyer and recently by CFE. This means that none of these assets can be sold as we have a charge over them. The assets have been independently valued at €111m based on the residual valuation method in accordance with international standards, i.e. the net value after the sites are developed. If we were to immediately sell the assets, the values realised will be significantly lower than the final development value as it would effectively be a fire sale of undeveloped GPG assets. We are free to enforce

this security at any time, however, our initial advice is not to rush into taking the security as realising the full value of these assets will take some time and in the meantime we await the outcome of the CFE process/GPG offer."

18. On the 25th of March 2020, WOTL sent on to brokers two letters. The covering letter from WOTL, while expressing a continuing desire to work to ensure the best possible outcome for the Irish investors notwithstanding the delays now caused by the arrival of Covid-19 in Germany, is bland. The letter from GPG is, in contrast, alarming from the perspective of the investors. It reads:-

> "Dear Investors,
>
> We are writing to you further to our letter dated 27th January 2020, in the letter we explained that we were working on arranging a proposal to offer to our investors within 6-8 weeks.
>
> We have been working tirelessly with our operational management team and potential partners, there have been various unforeseen events in the last few weeks for which GPG could not have prepared despite careful handling with our partners.
>
> The Coronavirus (COVID-19) has seen all schools close in Germany whilst in Berlin they have imposed closures of schools, Bars, clubs and fitness centres to name a few. Germany has tried to resist closing its borders to try to keep the Schengen agreement working, but now traffic crossing the three borders and also Luxembourg have been restricted for all but goods.
>
> Both ourselves and potential partners feel at this stage that during the current world pandemic, it is most prudent to postpone the meetings and reconvene at a later date due to COVID-19. Currently like the rest of the world we are unclear as to the timeline needed to further prepare for meetings and release the offer to our investors.
>
> We sincerely apologise for this additional delay, in the meantime we would like again to relay our message, we hope that you allow us time and we hope that you will follow our path for preparing for returns.
>
> Our personal goal at GPG is to avoid a total loss for our investors."

19. There are two striking aspects of this brief note.

20. Firstly, the best part of eight weeks had passed since GPG had promised in late January a "proposal to offer to our investors [...]". The proposal should have been almost ready by the time Covid-19 struck, yet there is no hint at all of what type of proposal would be available to Ms. Dineen or her fellow investors. Indeed, no such proposal has ever been made.

21. Secondly, the conclusion of the letter is even more disturbing. If there was any substance in the repeated statements by WOTL that the Irish investors were fully secured, there was no possibility that there could be a "total loss" for them. Notwithstanding this, WOTL sent on the GPG note to the Irish brokers without commenting at all on this potentially apocalyptic scenario.

22. The following day, WOTL apologised for the confusion caused by its circulation of the letter from GPG. A fresh letter was sent to the brokers, in which GPG amended the last paragraph to read:-

> "Our personal goal at GPG is to avoid a total loss for our investors, our Southern Ireland investors security is important, in the event you choose not to follow our path then the value of any return would be determined by the value attained on the disposal of those assets by the holders of the security."

23. The investors would also have been reassured by the statement, in the WOTL email enclosing the revised GPG note, that WOTL had engaged with "both PWC and German restructuring and insolvency experts to assess the options for enforcement of this security in Germany." An update for Irish brokers would be provided once WOTL had "identified a clear path forward with German advisors and Counsel [...]".

24. Dentons Europe LLP were engaged as counsel by WOTL in March 2020. In June 2020 the Irish brokers were informed by WOTL that Dentons were liaising with other lawyers to put together "a joint investor solution compatible with German law", were advising on "the best way forward for Irish investors", and were "reaching the end of their investigations relating to the security".

25. On the 28th of July, WOTL told the brokers that it remained its intention to present an options paper to Irish investors by the end of August. The end of August came and went. On the 1st of September 2020 WOTL told brokers that the promised Options Paper would not be available until mid-October as the options had to be revised in light of the initiation by GPG of an insolvency process "while [the] advisors were preparing the Options Paper". However, the insolvency process had been commenced prior to the WOTL letter of the 28th of July; this fact is mentioned in the WOTL letter but, as already noted, the Options Paper was still to be delivered by the end of August.

26. Just as the end of August passed without the Options Paper being circulated, the middle of October did not see the production of the promised document. This time, the problem was the "unexpected" announcement on the 16th of October by the Bremen District Court that the preliminary insolvency administrator had been replaced with a different insolvency administrator. The upshot of this, WOTL told the investors, was that "it would be premature to issue an Options Paper at this juncture until we establish the view of the new administrator regarding his insolvency process and his view on the security held on behalf of Irish Loan note holders".

27. At the time of this judgment, no analysis or report from PWC has been provided to Ms. Dineen, or to the Court, despite the fact that this firm is stated to have been first consulted in December 2019. No proposal was ever made by Dolphin Trust/GPG. The Options Paper prepared by Dentons was only circulated on the 5th of March 2021; it was signed off on the same day, four days after the petition was heard. It will be remembered that Dentons was first engaged by WOTL in March 2020. One year later, the Options Paper which has been produced is described by Dentons in the following terms:-

> *"In March 2020, Dentons Europe LLP ("Dentons" or "we") has been instructed by Wealth Options Ltd. ("WOTL") to examine various legal questions in connection with the financial distress and resulting insolvency of German Property Group GmbH ("GPG"). In this regard, this options paper (this "Options Paper") was prepared by Dentons with regard to the enforcement of security granted by GPG (the "Security") to M.U.T. 103 Limited (CRO Number: 506661) ("MUT 103") and Dolphin M.U.T. 116 Limited (CRO Number: 519223) ("MUT 116"; the MUT 103 and MUT 116 (together the "MUTs").*
>
> *Dentons was only engaged to review the situation and documentation of the Security already issued to the MUTs and to obtain outstanding documents with regard to the Security.*
>
> *This Options Paper merely contains a descriptive summary of the current options with regard to the enforcement of the Security and is not a comprehensive and reliable legal report on, or comprehensive legal evaluation or assessment of the Securities. In particular, no legal examination of possible objections or contestation rights of the insolvency administrator to the Securities was carried out as of today."*

The Options Paper is, obviously, quite restricted in its scope. I will return in due course to what it said at the end of the paper.

28. In summary, despite the fact that profoundly worrying allegations had been made about Dolphin Trust/GPG as of July 2019, despite the fact that Dolphin Trust/GPG suspended all payments in December 2019, and despite the fact that GPG entered an insolvency process in July 2020, the efforts of the company and WOTL appear to have achieved little or no palpable benefits for the investors with the exception of the nineteen page Options Paper produced by Dentons five days ago. Notwithstanding this, the company wants this petition to be dismissed or to be adjourned for some months.

C. *The Correspondence from Paul Dineen and Clark Hill*

29. In May 2020, Paul Dineen (on his mother's behalf) wrote a letter setting out concerns about her investment in GPG. It concluded that (unless detailed information was received within six to eight weeks about what was happening in GPG) there should be a meeting between the Board of the Company and the investors; Mr. Dineen asserted that such engagement was provided for by Clause 1 of Schedule 4 of the Loan Note Instrument. The letter was sent to Kavanagh International Wealth Management for transmission on to WOTL.

30. This request was repeated by Mr. Dineen in a letter of the 16th of June 2020, which also stated that Ms. Dineen was exploring proceedings against the Company and WOTL, filing a complaint with the Financial Services and Pensions Ombudsman, and filing a complaint with the ODCE for breach of directors' duties. In fact, none of these complaints or proceedings have been launched by Ms. Dineen.

31. Despite again seeking such a meeting on the 17th of July, the 7th of August, the 10th of September, and the 27th of October, Mr. Dineen failed to secure the engagement between the Board and the investors to which he claimed to be entitled. I express no view on whether or not Mr. Dineen is correct in saying that he (or, more precisely, his mother) had a legal entitlement to have this meeting. However, I think that it would have been helpful for the Company to engage more proactively with the investors to whom it owes large amounts of money. Ironically, the Company now asks that Ms. Dineen's Petition be dismissed or adjourned precisely to allow meetings between the Company and the investors to take place. While I do accept that the meetings which the Company proposes should now take place will have available to them the long awaited Options Paper, I do think that the investors may well have appreciated whatever information and interaction that would have resulted from a meeting even before the Options Paper was finalised; certainly, Ms. Dineen would have welcomed the meeting which her son sought on about half a dozen occasions.

32. The position taken by the Company and WOTL is comprehensively set out in the DAC letter of the 30th of October 2020. No meeting of the type sought by the Dineens would be held "until such time as definitive information and advices are available to WOTL AND the Government restrictions are lifted." [my emphasis] I do not understand why remote hearings could not have been held once the definitive advices were available to the Company and, indeed, the Company appears now to have retreated from the position that restrictions would have to be lifted before the meetings could occur.

33. DAC went on to state that there was no sustainable cause of action available to Ms. Dineen against either WOTL or the Company. As far as the Company is concerned, that position was clearly untenable and there is now no dispute that the Company is indebted to Ms. Dineen in the amount claimed.

34. The formal Letter of Demand was sent by Clark Hill on the 24th of November 2020. This was met by a slightly puzzling reply by DAC. Firstly, DAC suggested that the Petition which would follow the statutory demand was designed "in some way, to improve [Ms. Dineen's] position relative to that of other Irish loan note holders [...]" There is no reason to believe that this was or is Ms. Dineen's motivation, and quite properly this suggestion has been carried no further either by DAC or counsel instructed by the Company.

35. Secondly, DAC state that the winding up of the Company "would only have the effect of preventing it from enforcing the security on behalf of the Irish loan note holders, including your clients". I do not understand how it could be said that this is the case, and no evidence is placed before me to the effect that the Company would be prevented from enforcing its security in the event that a liquidator is appointed to it. While reference is

made to the earlier part of the letter, this merely records that WOTL has instructed advisers in Germany to register the necessary claims in the German insolvency proceedings. It has been made clear both in the Affidavit of Mr. McCloskey and in the hearing before me that WOTL is giving no commitment to assist the investors once the proposed meetings with the investors have taken place. Indeed, the Affidavit of Mr. McCloskey is perfectly plain:-

> "60. I say that the very substantial expenses as are being incurred in this work are being incurred by WOTL in its capacity as administrator of the MUTs. Since WOTL is no longer in receipt of administration fees from the GPG Products, WOTL does not see itself being in a position to continue this work beyond the organisation of the Investor Meetings."

36. While this was slightly moderated in the instructions obtained by counsel for the Company during the course of the hearing, in that I was told that WOTL would review the position after the meetings had taken place, as things stand the investors may well be left to their own devices without any help from WOTL after the proposed meetings have been held.

D. *The Company's Financial Position*

37. There is no real dispute about the contention that the Company is insolvent. It is unable to pay monies to Ms. Dineen which, it is clear, are owed to her. There are, however, two aspects of the Company's evidence which I should record.

38. Firstly, Mr. McCloskey avers that €107,100,000 remain outstanding by either the Company or M.U.T. 116 Limited; €41,300,000 in the case of the Company and €65,800,000 in the case of M.U.T. 116 Limited. However, despite drawing the distinction between sums which are outstanding and sums which have actually fallen due for repayment Mr. McCloskey does not say what amounts were due and owing by the Company at the date of his Affidavit. I do not understand why this information is not forthcoming, and it would have been helpful if this detail had been provided.

39. Secondly, under the heading "The Financial Position of the Company" Mr. McCloskey gives the following evidence:-

> "48. The MUTs function solely as investment vehicles and accordingly balance activities are limited to the transfer of loan monies to GPG and administering the coupon and maturity payments to loan note holders.
>
> 49. As a result of non-payment of sums due to it from the GPG Group, the Company's current balance sheet asset is €73,574.32 with liabilities of €44,070 to the Revenue Commissioners, and €11,425 owing to PWC.
>
> 50. The August 2019 accounts of the Company should originally have been filed within nine months of the end of August 2019. However, additional time was provided for filings due to Covid, and these accounts were ultimately filed with the CRO on 13 October 2020. At that time, the Directors of the Company, in consultation with their

auditors, decided that it was appropriate to put a post-balance sheet event in the accounts regarding non-payment of a coupon."

40. The debt owed to Ms. Dineen is not mentioned at paragraph 49. Counsel for the Company suggested that his may be because the balance sheet mentioned at paragraph 49 is that as of August 2019. This may be the case, and of course August 2019 predates GPG's defaults, but it is not at all clear that this is the date of the balance sheet position about which Mr. McCloskey is giving evidence. In any event, it would be expected that Mr. McCloskey would give details of the current financial position of the Company rather than a historical position made all the more irrelevant given the turmoil caused to the Company's affairs by the difficulties of GPG.

E. *The Law*

41. I have considered carefully all submissions made by the parties as to the relevant law, and its application to the facts of this case. Without downplaying the significance of any of authorities opened to me, the following principles appear particularly important.

42. In general, a petitioning creditor is normally entitled to a winding-up order *ex debito justitiae* where it is established that the company is unable to pay its debts; Laffoy J. in *Burren Springs Limited* [2011] IEHC 480.

43. Even in such circumstances, there remains an overriding and unfettered discretion to refuse to order a winding up; however, this will only be exercised sparingly and where good cause is shown. There is also a discretion to adjourn a petition, described as "a true discretion", which should be exercised in "" principled manner that is fair and just"; Laffoy J. in *Burren Springs*, in turn referring back to MacCann and Courtney, and to McCarthy J. in *In re Bula Ltd*. [1990] 1 I.R. 440.

44. In considering what is the appropriate order to make on a petition to wind up a company, there are "a plenitude of powers" available to the court as described by Charlton J. in *Dublin Cinema Group Limited* [2013] IEHC 147. However, here the options boil down to granting the petition, adjourning it or dismissing it. The principles governing the exercise of these specific powers are now well established.

45. An order winding up a company will be made even if there is no real likelihood of any resulting advantage to the petitioning creditor; Laffoy J. in *Albion Enterprises Limited* [2012] IEHC 115.

46. The fact that a company is no longer trading will be a factor in considering whether or not to adjourn a petition. However, in my view it is not in itself sufficient to justify the adjournment of a petition; if other considerations support an adjournment, it is more likely to be granted in the absence of what Laffoy J. calls "the factors which usually deter a court from granting a lengthy adjournment [...]" - *Goode Concrete (In Receivership*) [2012] IEHC 439. These factors, such as the voiding of transactions, are less likely to arise where the company has ceased to trade.

47. Section 566 of the Companies Act 2014 allows the court to direct meetings of creditors or contributories to be held, in order to ascertain their wishes, which may then be taken into account by the court in deciding whether or not to wind up the company. The section has been described as "permissive, not mandatory"; Costello J. in *Decobake Limited* [2019] IEHC 169. In truth, the section is permissive in two respects; it permits the court to have regard to (but not be bound by) the wishes of creditors and contributories, and it further permits the court (in ascertaining these wishes) to direct these meetings. I have decided that there is no reason in this case to direct these meetings; any interested creditor or contributory was free to appear and be heard on the petition, yet none did so. There is no reason to believe that there is a body of opinion among the creditors or contributories (either in number or value) which is resistant to the making of a winding up order. Not only was the petition advertised in the normal way, WOTL also wrote on at least two occasions to the brokers setting out the fact that the petition had been brought, that it was being resisted, and that it had been adjourned. Despite this direct contact with the investors' representatives, no investor has shown any appetite to support the Company's position.

48. Finally, the meetings proposed by the Company did not apparently have the potential winding up of the company on the proposed agenda; instead, they are to consider "information forthcoming from the review of the security and to identify to the investors the options open to them in that regard [...] and to ascertain whether [...] there is any consensus amongst investors as to how to proceed." I will deal shortly whether the petition is to be adjourned for some months in order to facilitate meetings of this sort under the stewardship of the current directors (who are also, I understand, the directors of WOTL).

F. *Decision*

49. The Company submits that I should dismiss the Petition or adjourn it so that I can take into account the outcome of the Investor Meetings. I agree with counsel for Ms. Dineen that no credible case is made out for dismissing the Petition. There is no "good cause" shown for doing so. Were I to dismiss the Petition, the current unsatisfactory situation would persist indefinitely. The Company, which is plainly insolvent, would continue in being if not in business. The only entity dealing with the investors would be WOTL, which for some months has refused to deal with individual queries and has instead communicated by sporadic updates sent to brokers. While it is the case that the appointment of a liquidator will involve costs, as counsel for Ms. Dineen observes this is true of every liquidation. Equally, I am not taken with the argument that the Petition should be dismissed or adjourned because of advice from Dentons that "liaising with a single point of contact in respect of all Irish investor claims and regarding security is an efficient and effective way to proceed for the insolvency administrator"; paragraph 57 of the Affidavit of Mr. McCloskey. This advice suggests what would be convenient for the German insolvency administrator; there is no suggestion that the appointment of a liquidator to the Company would disadvantage the investors in their dealings with that official.

50. I will therefore not exercise my discretion to dismiss the Petition.

51. The outstanding issue is whether the Petition should be adjourned to June or July of this year in order to allow the proposed investor meetings take place. This would involve the current directors remaining in control of the Company, and these individuals (either in their capacity as directors of the Company or directors of WOTL) summoning and running meetings of investors to describe the options available and to obtain their views on what should be done.

52. I see no reason why the liquidator could not ascertain the views of the investors, either in the way proposed or in some other fashion. A liquidator would have the benefit of Denton's analysis and advice. There is no evidence that the directors have any advantage over the liquidator in hearing, considering or acting on the views of the investors, or in seeking to enforce the company's security. Neither justice nor fairness requires that the petition be adjourned. In itself, that disposes of the application to adjourn the Petition.

53. However, there is another factor which I should describe. While not the basis of my decision, it does constitute a consideration which supports the view which I have reached. Since July 2019, the investors have been continually assured by WOTL that the sums advanced by the Company are fully secured. The Dentons Options Paper describes a much more uncertain position.

54. According to the Paper, the only asset charged in favour of the Company is property at Zehdenick in Brandenburg. Dentons advise that certain steps must be taken "to complete the land charge documentation regarding the land charges on the Zehdenick property [...]"; this might require legal action. It therefore appears that the security provided to the Company is not, as of yet, complete.

55. In addition, the Paper records the fact that the insolvency administrator of GPG, appointed by the Bremen court, has notified Dentons that "based on the information provided so far he assumes that all loan claims of the MUTs against GPG companies are subordinated and therefore the granted securities could be challenged." This position was taken as recently as the 1st of March 2021. I have no idea if this challenge has any merit, or whether it will even be maintained, but the fact remains that the validity of the Company's security is under threat.

56. Finally, Dentons propose that "investigations regarding the role of MUT's former professional advisors should be initiated." Given that the role of Dentons is to advise on options regarding enforcement of the Company's security, it is not unfair to extrapolate from this proposal that the enforcement of this security may not be plain sailing and that former advisors may be held to account for any flaws in the security obtained by the company.

57. In their letter of the 3rd of December 2020, Clark Hill say:-

> "We have no confidence in your Client's ability to administer the debts of M.U.T. 103 Limited [...] on behalf of the Irish loan note holders and believe that a liquidator is best placed to do so."

The loss of confidence on the part of the petitioning creditor is important. She is the only creditor who has appeared before me.

58. I am proceeding on the basis that the directors of the Company have no culpability, either moral or legal, for the potential problems with the security provided to it. Nonetheless, there is a stark difference between the position on security described to the brokers by WOTL and the situation as set out by Dentons. The security obtained by the company, central to the protection of investors, was taken on the watch of (among others) the current directors. For the purpose of enforcing this security, and seeing off any challenge to it, it would be preferable that the Company now comes under the stewardship of a liquidator supervised by the Court. Such a person would not be coming to the task with a history of involvement in putting in place what is now alleged to be ineffective security. In as much as the liquidator requires the assistance of the directors in carrying out his function, I am sure that this will be forthcoming.

59. I will therefore make an Order winding up M.U.T. 103 Limited. I will hear submissions from counsel before making any consequential orders.