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

No. BL-2019-000572

Neutral Citation Number: [2019] EWHC 1124 (Ch)

Rolls Building
Fetter Lane, London

Thursday, 11 April 2019

Before:

MR JUSTICE FANCOURT

B E T W E E N :

DEREK QUINLAN

Claimant/Applicant

- and -

EDGEWORTH CAPITAL (LUXENBOURG) S.A.R.L.

Defendant/Respondent

MR D MARGOLIN QC and MR A ROSE (instructed by Aaronsons Solicitors) appeared on behalf of the Claimant/Applicant.

MR J NASH QC (instructed by Farrer & Co LLP) appeared on behalf the Defendant/Respondent.

J U D G M E N T

MR JUSTICE FANCOURT:

1 This is the return date on an application by Mr Quinlan for an interim injunction restraining the respondent, Edgeworth Capital (Luxembourg) SARL ("Edgeworth"), from serving on Mr Quinlan a bankruptcy petition which was presented on 7 February this year. The application was heard by Mann J on 25 March this year. On that occasion an undertaking was given on behalf of Edgeworth until the return date today.

2 Mr Quinlan contends that the petition was presented in breach of a covenant in a deed made in 2011 between, amongst others, him and Edgeworth. The covenant was one by which Edgeworth agreed not to present a bankruptcy petition against Mr Quinlan in respect of certain debts and Edgeworth accepts for today's purposes that those debts are the relevant debts in respect of which the petition is presented. The very obligation in the deed was qualified, however, because it ceased to bind Edgeworth in circumstances of non-compliance by Mr Quinlan with any of his obligations under the deed. Edgeworth contends that Mr Quinlan is plainly in breach of his obligations under clauses 7.3 and 7.4 of the deed. Mr Quinlan contends that these allegations of breach, which he says were made for the first time in evidence in response to his application, are wrong, and that he is not in breach of the covenant and that, therefore, Edgeworth is itself in breach of covenant in having presented the petition.

3 That relatively simple description of the circumstances of the application belies the factual complexity of the underlying events in this matter between about 2008 and now and indeed the relative complexity of the terms of the deed itself. The general background is the acquisition of a very large property asset in Madrid with a very high value, which is the global headquarters of Banco Santander. It was acquired in 2008 by companies at the time owned and controlled by Mr Maud and Mr Quinlan. Part of the debt and the principal lender security was then acquired by Edgeworth and another company in 2010 and that included some loans that were made to Mr Maud and Mr Quinlan personally. There then followed attempts by Edgeworth to enforce those loans and other security, including share pledges that would have given Edgeworth control of the companies and the asset, and then the Spanish companies holding the asset became insolvent.

4 The attempt by Edgeworth to obtain control has involved a long-running attempt to bankrupt Mr Maud but Edgeworth says that more recently its attention is focused on debt recovery rather than attempting to obtain control of the relevant companies, and so it now pursues Mr Quinlan for a substantial debt that is owed to it.

5 The question of who is right about the allegations of breach by Mr Quinlan and his obligations under the deed is not one that I can resolve today. The true interpretation of the contractual obligations against the full commercial background to the deed, and the application of that interpretation to the true facts as they were in late 2018 and early 2019, is clearly a matter for a trial. I am satisfied that the issues are properly arguable both ways; in other words, in the *American Cyanamid* approach, there is a serious question to be tried as to whether Mr Quinlan was in breach of any of his obligations in the deed. That conclusion is necessarily made on a preliminary review only of the deed and the evidence and the arguments that I have heard, because the matter comes before me in the Applications Court with an overall time estimate of two hours and a perfectly accurate pre-reading estimate from Mr Nash QC of Edgeworth of one and a half hours. Although each side seeks to argue that the other side's case is hopeless, I am satisfied that there is a serious issue to be tried.

6 The main issue that I have to decide today is whether, applying the *American Cyanamid* approach, the injunction as it is sought should be granted or refused and in particular with

regard to the extent of prejudice to either party and in the first instance any prejudice to Mr Quinlan that could not be adequately compensated later by damages should he succeed in the end on the underlying dispute about breaches of the deed. Mr Quinlan has issued a claim form seeking declarations that he was not in breach of the deed and accordingly that Edgeworth was in breach in presenting the petition and seeking final injunctions restraining Edgeworth from taking any further steps in the conduct of the petition.

7 In that context, Mr Quinlan contends that the right way in which to resolve the issue of the validity of the petition effectively is to have a trial of his claim relating to the allegations of breach of the deed. He contends that he would be prejudiced by having to fight and possibly lose the petition and that even if he succeeded on the petition, it would then be too late for the court to grant the relief to which he says he is in principle entitled; that is to say, the enforcement of the obligation in the deed. He argues that it would be harmful to him to have the bankruptcy proceedings hanging over him, although to some extent that has effectively been the case since 2011 because on any breach of his obligations in the deed, Edgeworth would have been entitled to present a petition in respect of debts now amounting to about €80 million.

8 The particular prejudice identified by Mr Margolin QC, who appears on behalf of Mr Quinlan at this hearing, is, first, that to conduct the issues that I have identified in the context of bankruptcy proceedings would run the risk of being more expensive because the scope of the bankruptcy proceedings in principle is greater. Secondly, that there is reputational damage to Mr Quinlan in being involved in bankruptcy proceedings that ought to be avoided and, thirdly, that he is at greater risk by reason of having these issues decided in the context of a bankruptcy petition because, as was graphically put on his behalf, he is fighting the issues in a last chance saloon.

9 I am not persuaded that there is substance in these contentions. The bankruptcy proceedings do of course have a greater scope in principle than the narrower issues raised in the claim form issued by Mr Quinlan, but the way in which the issues that are sought to be raised are dealt with in the bankruptcy proceedings is a matter for case management in the bankruptcy petition. If it makes sense, as it may well do, though I may make no decision about that, to have a preliminary issue on the validity of the petition, then the matter will be dealt with in that way. Other issues that may arise on the bankruptcy petition will not be dealt with at all in the event that Mr Quinlan is successful on the preliminary issues.

10 So far as reputational damage is concerned, damage has already been done in the sense that the petition has been presented and as a consequence of that there will be notice of the bankruptcy proceedings in the register of pending actions. I accept that there may be a degree more publicity as a result of the listing of the proceedings in the cause list but that is a relatively minor matter as compared with the impact form the presentation of the bankruptcy petition, which has already happened.

11 So far as the last chance saloon point is concerned, I am not persuaded that there is any difference whether the issues that I have described are dealt with in separate proceedings or whether they are dealt with as part of the petition itself. If Mr Quinlan loses the separate proceedings, what will happen is that the petition will be served and then there will be a bankruptcy hearing. In substance, the position is no different in dealing with these issues as a self-contained issue within the bankruptcy proceedings.

12 Edgeworth argues that once, as has happened, the petition has been presented, it is more convenient and more appropriate for the petition itself to be disposed of rather than leaving it in limbo for an extended period. That is particularly so since invalidation of transactions

runs from the date of the presentation and the period for setting aside earlier transactions is calculated back from the date of presentation. In general terms, it is in the public interest for a petition to be progressed and determined rather than stayed. Edgeworth says that there is a risk for it of potential prejudice if the petition is effectively stayed and another bankruptcy petition is presented at a later time resulting in a bankruptcy order.

13 Edgeworth argues that Mr Quinlan suffers no real detriment at all in having the injunction refused because any argument that Mr Quinlan could raise at a separate trial could be raised on the determination of the bankruptcy petition, the bankruptcy court having a wide discretion under s.266(3) of the Insolvency Act 1986 to dismiss a petition if that is what the interests of justice require.

14 I could see the possibility of prejudice to Mr Quinlan if in some way the arguments that he could advance for restraining or dismissing the petition against the background of success on the trial of the breach of covenant issues were more restricted in some way in the bankruptcy court than would be his prospects of obtaining injunctive relief after a separate trial. I therefore asked Mr Nash in the course of argument whether Edgeworth accepted in principle that the same arguments should be available to Mr Quinlan in those circumstances, in the context of the bankruptcy petition, and that the bankruptcy court in principle should approach the matter in the same way. He accepted, after taking instructions, that that was so and that Edgeworth would not seek to argue that a somewhat narrower approach should be taken in the context of a determination in the bankruptcy proceedings as compared with the approach that the court should take having decided a separate trial of the issues.

15 In the light of that, if the procedure for determining the issues in the petition is no less advantageous to Mr Quinlan than the trial that he proposes, there appears to me to be no further detriment caused by refusing the injunction, given that substantial detriment has already been incurred by reason of the petition having been presented and having been registered and, as Mr Quinlan would say, by reason of Edgeworth's breach of covenant. I am not persuaded that fighting the issue about breaches of the deed in the context of the petition itself is any more prejudicial to Mr Quinlan than fighting them in separate proceedings while the petition is effectively stayed. If Mr Quinlan loses the dispute about those issues, then the petition will proceed subject to other issues such as jurisdiction.

16 In that regard there is another factor in my decision. Mr Quinlan has indicated an intention to contest the jurisdiction of the English court to entertain bankruptcy proceedings against him on the basis that he is an Irish citizen and, more significantly perhaps, resident and domiciled in Monaco. There will, therefore, if that challenge is pursued, be substantial issues about the residence and domicile of Mr Quinlan and what business connections he has with England and Wales. If the petition is not stayed, then the bankruptcy court will have to consider as a matter of case management what is most convenient and appropriate to deal with first. In my judgment, it is more beneficial for the bankruptcy court to have that opportunity of weighing up the interests of the creditor and the debtor and other creditors, and to have the whole matter before it, before deciding which of those issues should be determined first.

17 In summary, it does not seem to me, given that the petition has already been presented, that there is any real advantage in restraining service of the petition and having a separate trial. The position of Mr Quinlan in terms of his ability to argue all points relating to breaches of the deed and the validity of the petition would be the same whether or not an injunction is granted. In *American Cyanamid* terms, therefore, if Mr Quinlan succeeds in establishing that the presentation of the petition was in breach of a covenant, he will not suffer any loss or injury by reason of the court not restraining service of the petition that cannot be

compensated in damages for breach of contract. Success on the hearing of the petition will entitle Mr Quinlan in principle to seek final injunctive relief, if necessary and appropriate, and of course he can pursue a claim for damages in those circumstances to the extent that costs awarded are not adequate compensation for the breach of the covenant.

18 For all those reasons, I exercise my discretion not to grant the injunction sought.

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