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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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14 May 2021

CHANCERY DIVISION (BANKRUPTCY)

2019 No 52407

BETWEEN:

ULSTER BANK LIMITED

Petitioner

-and-

ADRIAN McLAUGHLIN

Debtor

MASTER KELLY

Introduction

[1] This is a creditor's bankruptcy petition presented by the Ulster Bank ("the petitioner") against Mr McLaughlin ("debtor") on 29 May 2019. It is grounded on a statutory demand dated 3 April 2019. Both the demand and petition state that the debtor is indebted to the petitioner in the sum of £1,183,909.24.

[2] The debtor opposes the making of the bankruptcy order against him for two reasons. First, he contends that the sum claimed in the petition is disputed on grounds which are substantial, and second, he contends that neither the petitioner's claim nor its petition meet the requisite statutory criteria necessary for the court to exercise jurisdiction to make an order.

[3] The petition was heard remotely on 23 March 2021 with Mr Gibson BL appearing for the petitioner and Ms King BL appearing for the debtor. I wish to record my gratitude to counsel for their helpful and learned skeleton arguments and oral

submissions. I have taken all of them into consideration for the purposes of this judgment even if I do not expressly refer to each one in this judgment.

[4] The presentation of the bankruptcy petition was accompanied by an affidavit under rule 6.011 of the Insolvency Rules (Northern Ireland) 1991 ("the Rules") as to the truth of statements in the bankruptcy petition. That affidavit was sworn by Mr Conor Barrett, a Senior Asset Manager employed by Link ASI Limited. In his affidavit, Mr Barrett avers:

> "I have the requisite knowledge of matters referred to in this affidavit as I am responsible for the management of the Debtor's loan accounts and have reviewed the petitioner's books and records in this respect. I have responsibility for collecting the amounts due and owing to the Petitioner in respect of this matter.
>
> The statements in the Petition now produced and shown to me…are true to the best of my knowledge, information and belief".

Two important issues immediately arise from this. The first is the use of the word "collecting" within the context of this petition ("this matter"), and the second is the words "reviewed the petitioner's books and records". I will return to this affidavit and its significance to the proceedings in due course.

The legal framework

[5] Article 245 of the Insolvency (Northern Ireland) Order 1989 ("the Order") provides:

> " (1) the High Court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition is presented is either –
>
> (a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or
>
> (b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due."

Rule 6.022 of the Insolvency Rules (Northern Ireland) 1991 ("the Rules") provides:

> "On the hearing of a petition, the court may make a bankruptcy order if satisfied that the statements in the petition are true and, where it is founded on a debt, that Article 245(1) has been complied with."

Article 245 must be read and interpreted together with the provisions of Articles 241 & 242 of the Order. Article 241 deals with the grounds of a creditor's petition and Article 242 deals with the definition of "inability to pay" and the prescribed form of a statutory demand. They provide as follows:

> **241.**—(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and ***the petitioning creditor*** or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.
>
> (2) Subject to Articles 242 to 244, a creditor's petition may be presented to the High Court in respect of a debt or debts only if, at the time the petition is presented—
>
> (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
>
> (b) the debt, or each of the debts, is for ***a liquidated sum*** payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
>
> (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
>
> (d) there is no outstanding application to set aside a statutory demand served (under Article 242) in respect of the debt or any of the debts.
>
> **242.**—(1) For the purposes of Article 241(2)(c), the debtor appears to be unable to pay a debt *if, but only if,* the debt is payable immediately **and** either—
>
> (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as "the statutory demand") in ***the prescribed form*** requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules; or
>
> (b) a certificate of unenforceability has been granted under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981 in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed."

{Italics and emphasis mine}

[6] As the petitioner's statutory demand is not based on a judgment or any prior proceedings Article 242(b) does not apply. Therefore, it is the provisions of Article 242(1)(a) which are important in this case, and in particular, the question of whether the statutory demand was in "the prescribed form".

[7] The prescribed form of the statutory demand discloses that it applies to "Debt for Liquidated Sum Payable Immediately". Under the section described as "Particulars of Debt") it states: "(These particulars must include (a) when the debt was incurred, (b) the consideration for the debt (or if there is no consideration the way in which it arose) and (c) the amount due as at the date of this statutory demand)". The word "must" denotes that compliance with the statutory criteria is mandatory.

The petitioner's statutory demand

[8] In the section "Particulars of Debt" the petitioner's statutory demand states:

> "The Facility and Demand
>
> 3. The Debtor is liable to the Creditor on foot of loan facilities (the **Facilities**") made available to inter alia, the Debtor by the Creditor pursuant to a facility letter dated 18 April 2011 (as may have been amended from time to time) (the "**Facility Letter**").
>
> 4. The Debtor is also liable to the Creditor on foot of a limited guarantee and indemnity provided by the Debtor to the Creditor on 21 September 2006 for the liabilities of Sean McLaughlin and Patricia McLaughlin ("the **Borrowers**") and limited in recourse to £220,000 (Two Hundred and Twenty Thousand Pounds Sterling) plus interest, costs and expenses (the "Guarantee"). As of 29 March, the Borrowers are indebted to the Creditor in the sum of £158,256.63 (One Hundred and Fifty Eight Thousand, Two Hundred and Fifty Six Pounds and Sixty Three Pence Sterling).
>
> 5. As of 29 March 2019, the Debtor in indebted to the Creditor in the sum of **£1,025,652.61 (One Million and Twenty Five Thousand, Six Hundred and Fifty Two Pounds and Sixty One Pence Sterling)** in respect of the Facilities and **£158,256.63** (**One hundred and Fifty Eight Thousand, Two Hundred and Fifty Six Pounds and Sixty Three Pence Sterling)** in respect of the Guarantee. The total amount outstanding by the Debtor to the Creditor is **£1,183,909.24 (One Million, One Hundred and Eighty Three Thousand, Nine**

Hundred and Nine Pounds and Twenty Four Pence Sterling).

6. By a letter of demand dated 21 March 2019, the Creditor formally demanded the sums of £1,024,779.88 (One Million and Twenty Four Thousand, Seven Hundred and Seventy Nine Pounds and Eighty Eight Pence Sterling) which were the sums then due and owing by the Debtor to the Creditor pursuant to the Facilities. By a letter of demand dated 22 March 2019, the Creditor formally demanded the sums of £158,162.91 (One Hundred and Fifty Eight Thousand, One Hundred and Sixty Two Pounds and Ninety One Pence Sterling) from the Debtor, which were the sums then due and owing by the Debtor to the Creditor pursuant to the Guarantee.

Amount Due and Owing

As at the date of this Statutory Demand, the total unsecured amount due and owing by the Debtor to the Creditor pursuant to the Facility is **£1,183,909.24 (One Million, One Hundred and Eighty Three Thousand, Nine Hundred and Nine Pounds and Twenty Four Pence Sterling**).

Total amount due and owing is: £1,183,909.24 (One Million, One Hundred and Eighty Three Thousand, Nine Hundred and Nine Pounds and Twenty Four Pence Sterling)."

{emphasis – petitioner's}

[9] However, what the Particulars of the petitioner's statutory demand do not disclose is the following:

(i) the date on which default occurred in or about the facility;

(ii) that the petitioner first formally demanded repayment of the facility & Guarantee from the debtor on 27 September 2013 and not 21 & 22 March 2019 as the demand implies;

(iii) that the facility letter of 18 April 2011 referred to in the statutory demand as the basis for the demand is unsigned;

(iv) what, if anything, occurred between 27 September 2013 and 22 March 2019;

(v) how the sum claimed is made up or how and when it became a liquidated sum;

(vi) how interest, if claimed, was calculated; and

(vii) that the petitioner previously held security for the loan facility and that the limited guarantee was purportedly given by deed.

The debtor's submissions

[10] The debtor denies that he ever obtained any loan facilities from the petitioner. His case is that the facilities referred to in the statutory demand, and therefore the petition, arise from loan facilities which the petitioner extended to his parents in respect of their business. He states that he had no involvement or interest in that business. Consequently, he denies that he has any liability for the sum which the petitioner claims to be due and owing by him.

[11] He also denies that the limited guarantee purportedly given by him to the petitioner on 21st September 2006 is valid. While he does not deny that he signed a guarantee, he says that he did so at his father's request and in the absence of independent legal advice. He also claims that he signed the guarantee in the presence of his father and in his parents' business premises, and not in the presence of the solicitor/legal executive who claimed to have witnessed his signature on the deed of guarantee. He further contends that any claim which the petitioner believes it has against him is either statute barred or arguably so.

The petitioner's submissions

[12] The petitioner maintains that it is entitled to seek a bankruptcy order against the debtor because of facility letters signed by him which it claims entitles it to seek repayment of the facilities on demand. These particular facility letters are not referred to in in the statutory demand.

[13] With regard to the guarantee, the petitioner points to a Certificate Concerning Legal Advice signed by the debtor. This certifies that he received independent legal advice. The petitioner also points to a letter dated 21 September 2006 which was forwarded to it from the debtor's solicitor confirming that legal advice was given to him about the signing of the guarantee and the implications thereof.

[14] As to the issue of limitation, the petitioner argues that the relevant limitation period is 12 years in relation to a deed of guarantee and not 6 years, and that the relevant limitation period began to run on 27th September 2013.

Consideration

[15] A debtor may object to the making of a Bankruptcy Order pursuant to rule 6.018 of the Rules. If the objection arises from a dispute over the petition debt, the court can consider this issue at the hearing of a bankruptcy petition provided that it does not involve an issue previously raised and determined at a hearing of an application to set aside a statutory demand. However, rule 6.018 is effectively an additional statutory protection for a debtor. It is not intended to replicate the vigour of a trial. The very reason that a bankruptcy petition is heard summarily is because the debtor's liability for the debt and inability to pay is expected to be clear and unequivocal according to the provisions of Articles 241 & 242 of the Order and the Particulars of the statutory demand. Other legal remedies and processes exist within the legal system to determine liability and quantum for disputed claims expeditiously, and if appropriate, cases can be readily referred for admission to the Commercial Hub for robust case management to "(i) Ascertain the issues; (ii) Control the evidence gathering process; and (iii) Ensure a final hearing on those issues as soon as possible. (**Practice Direction No.1 of 2019** paragraph 16)

[16] A disputed bankruptcy petition will attract the same legal principles as those which apply in an application to set aside a statutory demand. These principles are to be found in rule 6.005 (4) of the Rules and in the relevant case law. The rule provides:

> "The court may grant the application if-
>
> (a) the debtor *appears* to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt or debts specified in the statutory demand; or
> (b) the debt is disputed on grounds which *appear* to the court to be substantial; or
> (c) it *appears* that the creditor holds some security in respect of-the debt claimed by the demand, and either rule 6.001(6) is not complied with in respect of it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
> (d) the court is satisfied, on other grounds, that the demand ought to be set aside."

{Italics mine}

[17] The use of the words "appears" and "appear to the Court" in the rule together with long established and key authorities of **Moore v Commissioners of Inland Revenue [2002] NI26**; **Allen v Burke Construction Ltd [2010] NICh9, [2011] NIJB 62**; and **Sheridan Millennium Ltd v Odyssey Property Company [2003]NICh7, [2004]NI 117** are clear that an application to set aside a statutory demand does not involve a trial or the testing of evidence. Not being in the nature of litigation, it contains no means for a debtor to 'defend' the case being made against him

including the opportunity to exchange pleadings or otherwise engage in pre-trial interlocutories, seek discovery or cross-examine witnesses. In **Moore** at 32 Girvan J (as he then was) stated:

> "It is true that the statutory demand procedure is intended to be a short and quick procedure in clear cut cases. It is not designed to be a form of trial of a dispute between the parties nor is it intended to have the attributes of ordinary litigation."

[18] The only question that the court has to consider here is the question of whether the debt is disputed on grounds which are substantial. In considering that question, the court is entitled to look at the matter in the round. It is not limited to any specific points that either party raises. If it appears to the court that the debt is disputed on grounds which are substantial then the criteria of Articles 241 & 242 are not met, and the court cannot make a bankruptcy order under Article 245. It is of no consequence whether the language used is "triable issue", "potentially viable defence requiring investigation" or some other similar phrase. For the purposes of the rule, the issue is merely whether it appears to the court that the debt is disputed on grounds which are substantial. If it does not appear to the court that the debt is disputed on grounds which are substantial, then the court may (but not necessarily will) exercise its discretion to make a bankruptcy order.

[19] In considering that question I find that there are a number of problems with the present petition**.** I will now turn to those.

The facility letter of 18 April 2011

[20] It is noteworthy that the petitioner did not provide a copy of the facility letter of 18 April 2011 until the court directed it to do so. This direction should not have been required. A document which purports to form the basis of a statutory demand is a document which both the individual and the court are entitled to see as of right. Therefore, any such documents should be appended to the demand. To do otherwise may indicate a lack of transparency. Any lack of transparency offends the debtor's right to a fair trial under Article 6, as well as the fundamental duty of candour owed to the court by the petitioner. Where the court considers that a lack of transparency has occurred, it is entitled to draw its own conclusions from it.

[21] It is now clear that the facility letter of 18 April 2011 is unsigned. The petitioner's solicitor avers that this is a true copy of the original, but this is merely a bald assertion. Unless the deposing solicitor has personally had sight of a fully executed facility letter or was a witness to the execution of the facility letter, he is not in my view in a position to make this averment. Rule 6.022 requires the court to be satisfied that the statements in the petition (and thus the statutory demand), are true. In this context, I cannot accept a bald averment with regard to such a pivotal and crucial legal document without some form of indisputable corroboration. Nor can I reasonably accept the petitioner's argument that it is immaterial whether the facility letter is signed or not because this is inconsistent with the provisions of rule 6.022

and these proceedings generally. The plain fact of the matter is that the debtor denies that loan facilities were advanced to him, and so the veracity of an unsigned facility letter is a live issue which warrants investigation and enquiry. It is not a matter for a summary procedure such as this. What is clear is that the primary basis for this petition is a document to which no evidential weight can be attached. This leads me to conclude that this aspect of the petition debt is not sustainable and never was.

The letters of demand

[22] The letters of demand made on 21 & 22 March 2019 and referred to in the statutory demand are not in evidence before the court. In any case, I do not consider that a letter of demand or facility letters are sufficient to establish beyond any need for proof how an asserted debt arose, when it became due and owing, how it is a liquidated sum and how that sum was calculated. I also consider that the words "repayable on demand" without qualification infer that a creditor has the right to arbitrarily, unilaterally and without reason or warning demand repayment of a facility at will. I very much doubt that to be the case. I consider it much more likely that any right to repayment on demand occurs when a facility goes into some form of default. I can find no evidence of default by the debtor to be before the court.

[23] By virtue of Article 241 (b), the debt asserted in a statutory demand must be for a liquidated sum. Within the context of the Article, and this summary process, it may in my judgment be readily inferred that the words "liquidated sum" means that the specific sum stated in a statutory demand is not reasonably open to question, dispute, doubt or challenge. A letter of demand for repayment of facilities merely proves that a demand was made. It does not prove the debt. This may be sufficient for the purposes of a pre-action claim but it is not in my view sufficient to satisfy the criteria of Articles 241 & 242 which are required to be satisfied to a standard which, viewed objectively, obviates any need for formal proof.

The guarantee

[24] This then brings us to the second part of the sum claimed on the statutory demand. This purports to arise from a limited guarantee executed by the debtor on 21 September 2006. On oath, the debtor denies that he received independent legal advice. While it is noted that a solicitor wrote to the petitioner on 21 September 2006 to say that advice had been given, it is also noted that while the debtor signed the Certificate Concerning Legal Advice, the solicitor did not.

[25] The debtor also denies that the solicitor/legal executive who claims to have witnessed his signature did so. His evidence is expressed in clear and unambiguous terms. It cannot be interpreted as anything other than denial. Mr Gibson submits that I should prefer the solicitor's letter over the debtor's sworn evidence and conclude that there is no dispute as to the validity of the guarantee. But, in my view, for me to

do so would be quite wrong. This is a clearly a trial issue between the debtor and the solicitor, the jurisdiction for which lies elsewhere.

[26] As to the limitation issue, that is not now relevant to this matter in view of the conclusions I have reached and set forth in the preceding paragraphs. Nevertheless, it seems to me that when properly analysed, this case is in truth a mortgage shortfall case, and instead of bringing an appropriate action the petitioner has invoked the jurisdiction of the insolvency court as a court of first resort without any apparent justification. This it did mere days after the letters of demand of 21 & 22 March 2019. The prejudice to a debtor would be obvious if the same action was taken in relation to an individual who had lost their home to a re-possession which gave rise to a mortgage shortfall. In the context of the insolvency process, the two situations are the same.

[27] It also seems to me that by not disclosing that the debt arose from an all monies mortgage the true facts of the debt were withheld from the Particulars in the statutory demand – the purpose of which is to clearly set out the factual matrix of the debt (i.e. "how it arose"). I also take the view that if the petitioner failed to state that the sum claimed in the statutory demand arose from a deed or charge, then the debtor is entitled to raise a limitation point consistent with the implication that it did not. I also take the view that the petitioner cannot subsequently introduce matters not particularised in the statutory demand in order to dismiss this or any other point because I consider that this would be akin to attempting to amend the Particulars. There is no authority for doing so within this process. That aside, whatever the limitation period is, or when it began, it would seem that it is still running unimpeded by the bankruptcy petition because a bankruptcy petition is *sui generis* and not an action.

[28] As a court of equity, what matters to this court is not the question of limitation but rather the question of the unexplained inactivity on the petitioner's part between 2013 and 2019. For my part, I should say that it is difficult to reconcile such prolonged inactivity with either the concept of insolvency or this particular summary process. There must be a reason for why no action was taken following the first demand letter of 27 September 2013. Whatever that reason is, it seems to me that the debtor is entitled to have the issue investigated and adjudicated upon in the proper legal forum. This court, and this process, is not that forum. In **Sheridan Millennium Ltd-v-Odyssey Property Company [2003]** Girvan J (as he then was) stated at paragraph [8] of his judgment:

> "If the company can show that there is a genuine dispute on grounds showing a potentially viable defence requiring investigation then the matter should be tried out by action and the issuing of a winding-up petition would be inappropriate and an abuse of process."

Although the case involves a company, the same principle applies to an individual and a bankruptcy petition.

The Bank's evidence

[29] Mr Barrett's affidavit of 23 May 2019 is insufficient to satisfy the criteria of Articles 241 & 242 as it is based on nothing more than his having "reviewed the petitioner's books and records in this respect". Noting what I have said in the previous paragraphs regarding the letters of demand and the unsigned facility letter, there are legitimate queries over precisely what documentation Mr Barrett reviewed. It seems to me that the words "in this respect" must be seen as carefully chosen, and that they in truth relate only to the documents referred to in the statutory demand. These documents, as it is now clear, include a copy of an unsigned facility letter.

[30] In his evidence, Mr Barrett does not say what form that "review" took. He does not say where it took place or whether original or certified copies were reviewed. But I consider it unlikely that he either has in his possession or access to historical books and records of the petitioner. If it were otherwise, I would have expected that to be clearly stated on oath once any issue arose as to the vouching documentation in this case. This leads me to conclude that Mr Barrett's affidavit as to the truth of statements in the petition cannot be accepted because he was not in a position to verify that the criteria of Articles 241 & 242 were satisfied.

[31] Following on from that, I am also led to conclude that there where a dispute is raised following the service of a statutory demand, but particularly at the petition stage, there is an onus on any creditor who invokes the jurisdiction of the court to keep its evidence under review. By invoking the jurisdiction of the court the creditor also invokes the relevant legal principles which apply to the dispute, and it must submit to them. This means recognising and accepting that if the court concludes that a debt is disputed on grounds which are substantial, it is merely concluding that the proper jurisdiction for the matter lies elsewhere. The court is not engaging in the dispute itself. This is consistent with the Article 6 test set out by Girvan J (as he then was) in **Moore v Commissioners of Inland Revenue [2002] NI 26** where at page 8-9 of his judgment he states:

> "To deprive an alleged debtor of an opportunity to litigate his dispute a fair statutory demand procedure requires that that the creditor spells out clearly and accurately what his debt is, establishes that the debt is due and gives the debtor a full opportunity to show cause why in the interests of fairness and practice he should have the opportunity to defend the claim by litigation.

It is particularly important for a creditor to bear this in mind in circumstances where the creditor has invoked the jurisdiction of the court as a court of first resort and not as a court of last resort.

[32] This leads me to further conclude that when the debtor filed his affidavits in opposition to the making of the Bankruptcy Order, Mr Barrett was required to reconsider this affidavit under his duty of candour to the court. For example, how could he maintain the truth of the statements in the petition when Mr McLaughlin, on oath, denies (i) any indebtedness to the Bank and (ii) that he received independent legal advice either before executing the guarantee? The specifics of these denials are unanswerable in these proceedings either by himself, the petitioner, or the petitioner's solicitors. They can only be answered in a trial where all parties can give evidence on the relevant issues (including the solicitor who claimed to have given the advice or witnessed the signing of the guarantee), pleadings can be exchanged, discovery sought and appropriate interlocutory applications brought.

[33] I consider that the same duty of candour applies to affidavits filed by the petitioner's solicitor. Quite apart from the substantive issues raised in the paragraph above, the solicitor's affidavits sought to support and maintain the bankruptcy petition against the debtor by introducing facility letters which were not particularised in the statutory demand. It is difficult not to conclude that the purpose of this evidence, which I have no doubt was on the petitioner's instruction, was to bolster the petitioner's case once it came to light that the facility letter of 18 April 2011 was unsigned and effectively worthless. However, an evolving case is completely inconsistent with the provisions of Articles 241 & 242.

[34] In addition, it may in my view be readily inferred that Mr Barrett's use of the word "collecting" within the context of "this matter" means that this court's jurisdiction was invoked for the purpose of debt collection. That is prima facie evidence of abuse of the insolvency process, and any attempt on the petitioner's part to rebut that now is, in my view, undermined by the petitioner's failure to take action in respect of the debt – if it was confident that it was due and owing - following the letter of demand of 27 September 2013. I also observe that the petitioner's demand for payment of a seven-figure sum by letters of demand dated 21 & 22 March 2019 were followed by a statutory demand dated 3 April 2019. These dates are mere days apart. But as it is now clear, the first letter of demand was dated 27 September 2013, almost 6 years earlier. Regrettably, this leads me to conclude that not only was the statutory demand an abuse of process but that there was a lack of transparency on the petitioner's part with regard to the information provided therein.

[35] Finally, and for the sake of completeness, I should also point out that the petitioner's affidavits of service of both the statutory demand and bankruptcy petition are defective. The affidavit in respect of the service of the statutory demand does not specify the mode of service. There is therefore no evidence as to how the

statutory demand was served or how the process server identified the person being served if service was personal service. The affidavit of service of the petition states that it was personally served on the debtor but does not state how the process server satisfied himself as to the identity of the person being served. It also refers to the document being served as "A true copy of the Bankruptcy Petition for Possession". I am not aware of the existence of any such document. These issues are not raised as mere pedantry. They are raised because the affidavits were imprecise and therefore inadequate for the purposes of the process.

Conclusion

[36] Taking all matters into account, I am led to conclude that the debt which forms the basis of this petition is disputed on grounds which appear to me to be substantial. As such, it falls outside the provisions of Articles 241 & 242. I also consider that the issues that arise in this case can only be justly determined by a writ action and trial. As Vinelott J held in the case of **Re A Debtor No. 32 of 1991 (No. 2) [1994]** at 526:

> "The court must therefore always be alert to the danger that a Statutory Demand may be used to put pressure on a debtor to pay a debt, liability for which has not been established by judgment and which is disputed …
>
> The court must be confident that the debt is one liability for which cannot be honestly and reasonably disputed if it is to refuse to set aside the Statutory Demand which is not founded on a judgment."

[37] The wording of Articles 241 & 242 is clear. Furthermore, when combined with the provisions of rule 6.005(4) (b) or (d), and the relevant legal principles, together they are also clear that a debt which is wholly disputed on grounds which appear to the court to be substantial will not satisfy the criteria of Articles 241 & 242. Accordingly, a debt in those circumstances cannot lead to either the presentation of a bankruptcy petition or a bankruptcy order. I am therefore obliged to dismiss the petition under Article 245. I will now hear argument as to costs.