Neutral Citation Number: **[2025] EWHC 1349 (Ch)**

Case No: BR-2024-000205

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

IN BANKRUPTCY

IN THE MATTER OF MICHEL MARIE RAOUL GERARD PÉRETIÉ
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 3 June 2025

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE PARFITT

- -

Between :

MICHEL MARIE RAOUL GERARD PÉRETIÉ

Applicant

- and –

EDEN FARM SRL

Respondent

- -
- -

Stefan Ramel (instructed by Keystone Law) for the **Applicant**
Matthew McGhee (instructed by Steptoe International (UK) LLP) for the **Respondent**

Hearing date: 31 January 2025

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JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10:00am on 3 June 2025 by circulation to the parties or their representatives by email and by release to The National Archives.

Deputy Insolvency and Companies Court Judge Parfitt:

1. This is an application to set aside two statutory demands.

2. The Respondent, Eden Farm SRL (the "Respondent") is an Italian company which has served two statutory demands on the Applicant, Mr Péretié (the "Applicant"). The statutory demands both relate to the same alleged debt. The first statutory demand is dated 12 February 2024, and is addressed to the Applicant at 3 Linden Mews in London; the second statutory demand is dated 14 February 2024 and is addressed to the Applicant at an address in Dubai. The present application was issued on 18 March 2024. Although the application only applies to set aside the 14 February 2024 statutory demand, I am invited by the Applicant to deal pragmatically with the two statutory demands together, and the Respondent does not object to this course.

3. The Applicant is an investment banker. He was a director and shareholder of an English company called London Equity Property Projects Limited ("LEPP") from its incorporation in 2017 until it was struck off the register and dissolved on 16 May 2023. LEPP borrowed £700,000 from the Respondent by way of a Loan Note Deed dated 18 August 2020. This created loan notes which were repayable on 31 July 2021, with an optional extension to 31 December 2021. The loan notes carried interest at 12% per annum. There is no dispute that LEPP has not paid the Respondent any of the amounts due under the loan notes. Having been dissolved, it appears that it will not do so.

4. The alleged debt which is the subject of the statutory demands arises from a document which the Respondent characterises as a guarantee bearing a date of 17 August 2020 (which I will refer to, neutrally, as the "Letter"). The Letter is

headed on the left hand side with the Applicant's name and the 3 Linden Mews address. On the right hand side of the document, the Letter states "By Email", is described as being "Strictly Private and Confidential" and carries a date of 17 August 2020.

5. I will set out the text of the Letter in full, matching the typography and other idiosyncrasies of the document:

> Dear Mr Sir.
>
> **Note purchase to The Space – Letter of Guarantee**
>
> **Edenfarm srl**
>
> I refer to the note that you purchased from LONDON EQUITY PROPERTY PROJECTS LIMITED (LEPP) on 18th August 2020 in the amount of 700,000 GBP and subject to the terms of the note agreements of the same date as this letter (together the **NOTE**").
>
> This letter records my personal guarantee to repay you the note if LEPP fails to do it. In order to be able to satisfy this guarantee (if it becomes necessary that I do so), I will seek to liquidate various investments so that I have cash available to repay you if LEPP fails to do so.
>
> This letter shall be governed by English law and the English courts shall have exclusive jurisdiction to determine any dispute in connection with it.
>
> Kind regards,
>
> Yours sincerely,

[Signature]

Michel Péretié

6. Above the Applicant's name on the Letter is a mark which appears to be an electronic copy of his signature.

The Respondent's case

7. The Respondent's case is that the Letter was a guarantee which it has called upon. Its case is that LEPP was the primary obligor, and has defaulted on its obligations. Its case is that the Applicant's obligations to the Respondent under the Letter are a debt for a liquidated sum; the liquidated sum is said to be £821,972.60, being the principal amount of £700,000 plus interest at 12% p.a. to 31 December 2021 when the loan note was originally due for payment. The Respondent claims it has repeatedly demanded payment of this sum from the Applicant, whose refusal to pay has led to the statutory demands.

The Applicant's case

8. The Applicant's case is that the alleged debt is disputed on substantial grounds, and/or the court should set aside the statutory demands on "other grounds" because the Applicant's residence in Dubai means that the English court would not be able to entertain a bankruptcy petition presented against him.

9. As to the substantial dispute, the Applicant says this:

   (a) He claims not to have signed the Letter; he says the signature on the document was applied by someone who did not have his authority to do so;

(b) He claims that the Letter is too vague to be enforced;

(c) Finally, he claims that if the Letter is a guarantee, it is of a "see to it" obligation which does not give rise to a debt for a liquidated sum.

10. As to jurisdiction, the Applicant acknowledges that in recent first-instance decisions this court has declined to entertain jurisdiction arguments when considering whether to set aside a statutory demand. At the least, though, the Applicant invites me to stay the present application on jurisdiction grounds so that there can then be an argument as to whether there should be an anti-suit injunction and/or permission to serve any bankruptcy petition out of the jurisdiction.

The test

11. Rule 10.5 of the Insolvency (England and Wales) Rules 2016 ("IR 2016") sets out what the court can do at a hearing of an application to set aside a statutory demand. Under IR 10.5(5), the court may grant the application if (so far as relevant):

> "(b) the debt is disputed on grounds which appear to the court to be substantial;…
>
> (d) the court is satisfied, on other grounds, that the demand ought to be set aside."

12. If the court dismisses the application to set aside the statutory demand, IR 10.5(8) provides that "it must make an order authorising the creditor to present

a bankruptcy petition either as soon as reasonably practicable, or on or after a date specified in the order."

13. Whether the debt is disputed on substantial grounds for the purposes of the test in IR 10.5(5)(b) involves seeing whether there is a genuine triable issue or a real prospect of the dispute succeeding. The burden lies on the applicant. The bar is a low one. It was described in these terms by Arden LJ (as she then was) in *Collier v P & M J Wright (Holdings) Ltd* [2008] 1 WLR 643 at 653:

> "There has to be something to suggest that the assertion is sustainable. The best evidence would be incontrovertible evidence to support the applicant's case, but this is rarely available. It would in general be enough if there were some evidence to support the applicant's version of the facts, such as a witness statement or a document, although it would be open to the court to reject that evidence if it were inherently implausible or if it were contradicted, or were not supported, by contemporaneous documentation: see also per Lawrence Collins LJ in the *Ashworth* case, para 34. But a mere assertion by the applicant that something had been said or happened would not generally be enough if those words or events were in dispute and material to the issue between the parties. There is in the result no material difference on disputed factual issues between real prospect of success and genuine triable issue."

14. The Respondent referred me to this passage; the Applicant referred me to *Ashworth v Newnote Ltd* [2007] BPIR 1012 (the *Ashworth* case referred to in Arden LJ's judgment in *Collier*) as well as two cases which cited *Collier*, *Alexander-Thedotou v Michaelf Kyprianou and Co LLC* [2016] EWHC 1493

(Ch) and *Hancock v Promontoria (Chestnut) Ltd* [2020] EWCA Civ 907. The *Alexander-Thedotou* case in turn cited the decision of Roth J in *Crossley-Cooke v Europanel (UK) Ltd* [2010] ECHC 124 (Ch), which described the court's approach in the following way:

> "It is not appropriate on an application to set aside a statutory demand to conduct anything approaching a mini-trial. The question, as I have said, is whether Mr Crossley-Cooke has raised a genuine triable issue or whether what he says can be dismissed as virtually incredible."

15. The "other grounds" for the purposes of IR 10.5(5)(d) in the present case relate to the Applicant's apparent residence overseas. Whether a jurisdiction challenge amounts to "other grounds" involves a question of law and practice on which the recent jurisprudence is as follows.

16. In two decisions in the same proceedings in *Harfield v GML* [2021] EWHC 713 (Ch) (ICC Judge Prentis) and [2021] EWHC 3299 (Ch) (ICC Judge Burton) it was held that arguments regarding the court's territorial jurisdiction could be heard on an application to set aside a statutory demand. At paragraphs 14-22 of his ex tempore judgment in the first *Harfield* decision, ICC Judge Prentis said this, which I set out in full:

> "14. In its terms, rule 10.5(5)(d) is an openly expressed provision. Neither Mr Ramel nor Mr Briggs have found any direct authority on this point and thus each of the authorities I have had cited to me is at best analogous with this case on the facts. In *Ronald Martin v McLaren Construction Limited [2019] EWHC 2059 (Ch)* Judge Barber stated that:

> "Any residual discretion conferred upon the Court under r.10.5(5)(d)…must be considered and exercised in a manner consistent with primary legislation."

15. That follows earlier authorities, the primary one of which certainly in time is the *Re A Debtor (1 of 1987) [1989] 1 WLR 271* case. Before we look at that and for high authority on the open nature and deliberately open wording of this provision I can turn to Peter Gibson LJ in *Budge v Budge Construction Limited [1997] BPIR 366* in which he rejected Jacobs J's limiting the application of what was then rule 6.5(d) just to two instances saying this:

> "…it is quite impossible, I would have thought, to foresee all the circumstances which may arise and which may justify the proper application of that sub-paragraph."

16. Turning to the *Debtor (1 of 1987)* , Nicholls LJ in a much cited passage said this:

> "When therefore the rules provide, as does rule 6.5(4)(d), for the court to have a residual discretion to set aside a statutory demand, the circumstances which normally will be required before a court can be satisfied that the demand 'ought' to be set aside, are circumstances which would make it unjust for the statutory demand to give rise to those consequences in the particular case. The court's intervention is called for to prevent that injustice."

Those words are in my utterly respectful view a reflection of the open nature of this provision. Thus although, of course, Chadwick LJ was correct in *Coulter v Chief Constable of Dorset Police [2004] EWCA Civ 1259* to describe the object of the statutory demand procedure as being to provide the debtor with an opportunity to pay so much of any of the debt as he admits is due and to challenge so much of the debt as he disputes is due, that appears to me to be a description given the facts of that case just of one aspect of the regime allowing the set aside of statutory demands. I am given further and again authoritative comfort by Rose J, as she then was, in *Maud v The Libyan Investment Authority [2015] EWHC 1625 (Ch)* in which she said:

> "The present case demonstrates the wisdom of including an 'other grounds' discretion in r 6.5(4)(d) to cover situations like the present one which were probably not foreseen by the drafters of the rule. It would, in my judgment, be unjust to allow a statutory demand to found the ability of a creditor to present a bankruptcy petition when the payment of the debt referred to in the demand would contravene a sanctions regime and expose the debtor to criminal penalties. I do not see that it matters whether his is otherwise able to pay the debt or not."

17. As I put to Mr Ramel, if his argument is right, then what should happen, and I accept these are unusual facts, in a case where one had a debtor who had a single creditor, there was no question of time elapsing to the prejudice of that creditor either under section 265(2) or under section 341, the creditor and the debtor agreed that there was an issue under section 265 and they

wanted the court to determine that issue without presentation of the petition and without the ensuing consequences under, for example, section 284? If rule 10.5(5)(d) cannot be engaged, what can be?

18. In my judgment, it is wrong to view the scheme of the Insolvency Act and the Insolvency Rules as providing an implicit and total bar to raising section 265 jurisdiction at the statutory demand stage and that is notwithstanding that it is only on presentation of the petition that the date will be crystallised at which such jurisdiction should be placed under consideration. However, it would also be wrong in my view to say that if the point is raised at the set aside of a statutory demand stage, the court must deal with it at that stage. Everything will depend upon the nature of the debt and the surrounding facts. I am asked this preliminary question against a background of the respondents holding a judgment after a trial in this jurisdiction. While they are not at the stage of a section 268(1)(b) return of enforcement and hence a statutory demand is required, they are judgment creditors by a judgment of this court which has found a basis for jurisdiction. It may, of course, have done so on a basis which does not tally with section 265 but it has found jurisdiction. Thus they are indisputably owed money by the applicant and, to state the obvious, they are owed it now because he has not paid the judgment.

19. The general policy of this court is expressed at para.11.4.4 of the current Insolvency Proceedings Practice Direction:

> "Where the debt claimed in the statutory demand is based on a judgment, order, liability order, costs certificate, tax assessment or

> decision of a tribunal, the Court will not at this stage inquire into the validity of the debt nor, as a general rule, will it adjourn the application to await the result of an application to set aside the judgment, order, decision, costs certificate or any appeal."

20. The policy behind that provision which is given effect by in a judgment case the court in general simply striking out the application under its power given under rule 10.5(1) is to enable a petition to be presented as soon as possible based upon this debt which is treated for these purposes as being uncontested and which has been founded on a judgment or assessment or whatever, the presentation of the petition at the early stage being of benefit to all creditors of that debtor as a class. It therefore seems to me that it would be for the applicant to raise reasons bearing in mind that policy and bearing in mind as well section 265(2) which allows the court only to look back three years from date of presentation to see whether it has jurisdiction and the court would doubtless be alert to time wasting exercises to avoid jurisdiction. It would be for the applicant to raise reasons as to why on the particular facts and, as I apprehend, exceptionally, the court should address the dispute now when it can be delved into fully and properly and with knowledge of the date of presentation of the petition at that later stage.

21. Where, as here, one has a judgment creditor, the applicant's points as to the unfairness of section 284 and the land register entries must weigh very little because they are simply a consequence of non-payment of a judgment debt. One would therefore expect that evidence in support of such an application would have to provide the fullest details not only of the debtor's

> connections with this jurisdiction but of his current assets and liabilities so that the court can consider the class as a whole as well as identifying transactions which might be open to challenge or perhaps more easily identifying business dealings and residences, looking at section 265(2) , and dealings with which might be challenged under 339 or 340.
>
> 22. Thus, subject to those embroiderings and looking at the literal terms of the preliminary issue which has been put in front of me, I determine as a preliminary issue that an application to set aside a statutory demand, I cannot say on any facts that it is an appropriate time for the court to determine a jurisdictional challenge but it is a possibly appropriate time for the court to determine a jurisdictional challenge. Put the other way round, it is not necessarily the case that such a challenge can only be brought at the post-petition stage. The effects of that I will discuss with the parties now."

17. In the second *Harfield* case, ICC Judge Burton went further than ICC Judge Prentis, and held that not only could a jurisdiction challenge be entertained on an application to set aside a statutory demand, but it would be wrong to require a jurisdiction challenge under IR 10.5(5)(d) to be "exceptional". ICC Judge Burton compared the position in corporate insolvency, in which litigation prior to the issue of a petition takes the form of an injunction to restrain presentation of a petition, potentially on jurisdiction grounds. She held that because a statutory demand is a necessary precursor to a bankruptcy petition, that is the context in which pre-petition litigation takes place. She thought that there should be no need for a separate anti-suit injunction, as IR 10.5(5)(d) could act as the procedural anchor for resolving a jurisdiction challenge. She also

considered it important that on the dismissal of an application to set aside a statutory demand, the court was required by IR 10.5(8) to permit the respondent to the application to present a bankruptcy petition, either immediately or after a specified date. If the court was apprised of the likelihood of a jurisdiction challenge to that petition during the course of the application to set aside the statutory demand, she considered there might be "no point" in allowing a petition to be presented. I can certainly see the force in that: the court is required to permit the presentation of a petition, but may have had material shown to it which indicates that such a petition would be bound to fail on jurisdiction grounds. That is a conundrum which cries out for a just answer.

18. Mr Ramel, who appears here for the Applicant, appeared for the Respondent in the *Harfield* case; the argument he is running here is one on which he was unsuccessful in that case. Unfortunately, the *Harfield* decisions are not the last word on this matter, and two more recent cases have gone the other way.

19. The first contrary decision was by Chief ICC Judge Briggs in *Lyons v Bridging Finance Inc* [2023] EWHC 1233 (Ch). He held that an application to set aside a statutory demand was concerned with the integrity of the debt, and wider considerations could not be taken into account. At paragraph 10 of his judgment, he cited Nicholls LJ's decision in *In re a Debtor, No. 1 of 1987* [1989] 1 WLR 271, extending the quoted passage beyond the extract included in the judgment of ICC Judge Prentis in *Harfield*. In the next passage in the *In re a Debtor* case, Nicholls LJ held that the "other grounds" in what is now IR 10.5(5)(d) were "in line with the particular grounds specified in sub-paragraphs (a)-(c).". Chief ICC Judge Briggs therefore read the "other grounds" in a restrictive way, "in line"

with the preceding three grounds, so that it would not include a ground unrelated to the debt or the form of the demand. He said he was fortified in reaching this conclusion by a comparison between the requirements for presenting a statutory demand, which do not include any jurisdictional component, and the prescribed matters for the presentation of a bankruptcy petition, which do (by section 265 IA 1986 and IR 10.7). For these reasons, he held that it was not open for the court to consider a jurisdiction challenge when determining whether to set aside a statutory demand.

20. Despite taking this view, Chief ICC Judge Briggs agreed with the Judges in the *Harfield* cases that it was better that any jurisdiction challenge be dealt with at an earlier stage prior to the presentation of a petition, thereby avoiding the negative consequences which flow from the presentation of a petition. He did not need to decide the point, as there was no application before him, but he considered that it may be possible for the debtor to apply for an anti-suit injunction notwithstanding that such an application was "not commonly made."

21. The most recent first-instance case on this issue is the decision of HHJ Cawson KC, sitting as a Judge of the High Court, in *Jones v Aston Risk Management Ltd* [2024] EWHC 2553 (Ch). The respondent was represented by leading counsel. The applicant was acting in person. The applicant did not challenge the court following the approach taken in *Lyons*. HHJ Cawson nevertheless reviewed it, and at [30] agreed with Chief ICC Judge Briggs' approach, that an application to set aside a statutory demand was concerned with the integrity of the debt or the form of the demand. However, in the same way as the Chief ICC Judge, he

recognised the force of the observations in the *Harfield* cases that something might need to be done before a petition is presented:

> "30. I agree with the approach taken by Chief ICCJ Briggs in holding that sub-rule (d) of r. 10.5(5) is to be read in the context of the preceding grounds, and that the better view is that it does not include a ground unrelated to the debt or unrelated to the form statutory demand as prescribed. I further agree that this approach is fortified by the fact that whilst r. 10.7 of the 2016 Rules requires a bankruptcy petition to contain a statement that England and Wales is the correct forum to make a bankruptcy order, there is no similar requirement in r. 10.1 so far as the contents of a statutory demand is concerned. There is force in ICC Judge Burton's point that by dismissing an application to set-aside a statutory demand, one engages with r. 10(8) IR 2016 and the mandatory requirement to authorise the issue of a bankruptcy petition, which would conflict with the grant of an anti-suit injunction. This is an issue that I address in paragraph 68 below, where I conclude that, in circumstances such as the present at least, the solution is to stay the application to set-aside the statutory demand rather than dismiss it. In these circumstances, the force of ICC Judge Burton's point does not lead me to a different conclusion as to the scope of r. 10(5)(d) IR 2016.
>
> 31. Chief ICCJ Briggs went on, at [16], to say that he considered that the fact that there is no jurisdiction to deal with the issue of forum under the grounds in r. 10.(5)(a) to (d) IR 2016 does not mean that a debtor is without remedy. He expressed the view that whilst an anti-suit injunction is not

> commonly made in a bankruptcy context, without deciding [the] point, he consider[ed] that it may be possible to apply for such an injunction. Further, at [13], he said that he tended to agree that if there were a challenge as to forum, it may be better to deal with it before a petition was presented."

The minor typographical emendations in paragraph 31 of this quotation are mine.

22. The Respondent invites me to conclude that the law on this issue should be considered as settled at first instance under the rule in *Colchester Estates (Cardiff) v Carlton Industries plc* [1986] 1 Ch 80 at 85 (per Nourse J). The principle in that case is that where there are conflicting High Court decisions on the same point, the High Court should prefer the later in time if it was given after full consideration of the earlier, unless the judge is convinced that the later decision was wrong in not following the earlier decision (the Court of Appeal has a freer hand: *Young v Bristol Aeroplane Co. Ltd* [1944] KC 718; and a High Court Judge is bound to follow a Court of Appeal decision even if convinced it is wrong). The principle applies to any courts of co-ordinate jurisdiction, so it does not matter that of the four decisions which were cited to me none are strictly binding on each other or on me as a matter of precedent, nor that three were made by Insolvency and Companies Court Judges, with the most recent by a Deputy High Court Judge. If the position had to be reviewed in this court every time the point arose, with a judge being free to reach his or her own view each time, the law would become a hopeless mess. As Nourse J noted in *Colchester Estates* at 85:

> "…it is desirable that the law, at whatever level it is declared, should generally be certain. If a decision of this court, reached after full consideration of an earlier one which went the other way, is normally to be open to review on a third occasion when the same point arises for decision at the same level, there will be no end of it. Why not in a fourth, fifth or sixth case as well?"

23. I agree that under this principle I should follow the decision in *Jones* unless I am convinced that it is wrong. I am not convinced that it is wrong, and the Applicant in the present case did not press me towards this conclusion. Instead, the Applicant invites me to grant some sort of a stay of the set-aside application to allow a jurisdiction challenge to be brought and determined. That is consistent with the approach taken in the *Jones* case by HHJ Cawson KC.

24. However, the procedural situation at the time of the *Jones* decision was different from the present case: the court had before it an application for permission to serve a bankruptcy petition out of the jurisdiction, which was fully argued, and which the court dismissed on the basis that the respondent creditor was unable to satisfy the jurisdiction requirements in section 265 IA 1986. It is not surprising that the court wanted to achieve a result which recognised that outcome, thereby dealing with the tension which would otherwise arise by the mandatory requirement to give permission to present a bankruptcy petition on the dismissal of the set-aside application under IR 10.5(8). HHJ Cawson KC stayed the set-aside application so that if the jurisdiction position were subsequently to change (e.g. by the debtor returning to the jurisdiction, or

starting a business in the jurisdiction), the creditor could come back and have the stay lifted.

25. Where, as in this case, the only application before the court is to set aside a statutory demand, it does not seem to me that an open-ended stay of that sort is likely to be appropriate. The effect of the stay in the *Jones* case was to put the burden on the respondent creditor to come back to court if matters changed, that creditor having lost the application for permission to serve out. In the present case, though, neither party has won or lost the jurisdiction arguments, and neither party is in a position to do so. It is not open to this court to determine those questions on this application, following *Lyons* and *Jones*. The most the court can do, it seems to me, is to recognise the possibility of such an argument being raised and – unless it is entirely hopeless – accommodate the possibility of the debtor bringing an anti-suit injunction in reliance on those arguments by extending the period after which the creditor is permitted to present a bankruptcy petition by IR 10.5(8) to a date which will allow an orderly but expeditious application for an injunction. It seems to me that that approach is likely to promote the overriding objective, ensuring the just resolution of the dispute, and allocating the burden appropriately as between the debtor and the creditor. If the debtor is concerned about the consequences which would flow from the presentation of a petition, and is not content simply to defend the petition in due course in reliance on jurisdiction grounds, it should be for the debtor to make an application to court and justify obtaining relief.

26. Such an application would involve the debtor pre-empting the creditor's case on jurisdiction, and negativing it, which is the opposite of what would happen

if the challenge were raised following the presentation of the petition. If the challenge occurs after presentation, the petition will have set out the creditor's case on s. 265 IA 1986, so the debtor knows the case that has to be met. A pre-petition anti-suit injunction would potentially require a debtor to address an unknown case. That is procedurally awkward, but the only way for a debtor to obtain relief prior to the presentation of a petition. For that reason, it seems to me that anti-suit injunctions of this sort should be on notice to the creditor so that the parties can narrow the issues between them before they get to court and ensure that they are fighting about the same points.

27. This proposed approach would mean that the Insolvency and Companies Court will have to entertain anti-suit injunctions, despite the apparent novelty of that process. However, this court is very familiar with injunctions to restrain presentation of petitions in the context of corporate insolvency, and it does not seem to me that there will be any grave practical concerns with the same sort of applications having to be made in relation to personal insolvency.

28. Accordingly, if in the present case I were not satisfied that the debt is disputed on substantial grounds, but I did consider that there may be some force in the jurisdiction challenge, I would be minded to dismiss the set-aside application but build in a suitable window for an orderly injunction application to be determined.

29. For the benefit of future applicants, it seems to me that the appropriate procedure where the debtor's only challenge to a creditor's entitlement to petition is whether the jurisdiction gateways in s. 265 IA 1986 are satisfied would be to issue an application for an anti-suit injunction immediately on receipt of the

statutory demand. In such a case, there would be no basis for applying to set the statutory demand aside, so it would not be appropriate to issue such an application unless, of course, the debtor wished to challenge *Lyons* and *Jones* in a higher court. The injunction application would have to come on for hearing (or be dealt with by an undertaking) prior to the expiry of the three-week period during which the statutory demand would need to be complied with, otherwise the creditor would be able to present a petition. The need for urgent relief is unfortunate, in circumstances where the effect of an application to set aside a statutory demand is to stop time running automatically and such applications can be dealt with expeditiously but fairly in an appropriate timeframe; but it seems to me that this is the necessary consequence of the *Lyons* and *Jones* decisions. Parties would be well advised to consider whether suitable undertakings can be given to mitigate the urgency of any injunction application, and a party which unreasonably fails to seek or offer an undertaking and thereby requires the court to hear an urgent application may face consequences either in costs or substantively to reflect the inconvenience inflicted by such conduct on the other party, the court and other court users.

30. Where, as here, there are said to be grounds which fall within IR 10.5(5) as well as a jurisdiction argument, the right course would be for an application to set aside the statutory demand to be made, but only on the grounds other than jurisdiction. It seems to me that a debtor who wants to take a jurisdiction point as well should couple the set-aside application with an injunction application issued at the same time, as a fall-back in case the set-aside application fails. The likelihood is that the court will deal with both applications at the same time as a matter of efficient case management. In this way, there will be no need for the

court to be faced with the difficulty identified in the *Harfield* cases, and there would be no need for an extension of the time after which a petition may be presented to accommodate a separate injunction application. This recommended procedure has not been followed in the present case, with the Applicant inviting me to stay the set-aside application following the course taken in *Jones*; but for the reasons set out above I do not think that the justification for a stay in that case applies here. A different course is required, which puts the onus on the Applicant rather than the Respondent.

Is this debt disputed on substantial grounds?

31. As outlined above, the Applicant's case on this ground has three components:

    (a) He claims not to have signed the Letter and that the signature on the document was applied by someone who did not have his authority to do so;

    (b) He claims that the Letter is too vague to be enforced;

    (c) Finally, he claims that if the Letter is a guarantee, it is of a "see to it" obligation which does not give rise to a debt for a liquidated sum.

32. If any of these arguments stands a real prospect of success, the statutory demand should be set aside.

33. I start with the signature and authority question. Some more background is required to understand the arguments here.

34. As noted above, the Respondent is an Italian company which lent £700,000 to a now-defunct English company called LEPP. The Respondent's advisers are

f.lex Studio Legale Ferreri, for whom a Mr Ferro works. Mr Ferro is the individual who has provided witness statements on behalf of the Respondent in these proceedings, and is a witness of fact for events from 2022 onwards.

35. The Respondent was a client of a Swiss asset manager called Agenda Invest AG ("Agenda"). The Respondent's key contact there was Agenda's executive director, Pierluigi Ciccone.

36. LEPP was an English company whose directors and shareholders were the Applicant and his business associate Jean-Paul Tolaini.

37. Agenda proposed to the Respondent that it should invest in LEPP in or around July 2020. The Respondent's case is that it was prepared to enter into the proposed investment but only if the Applicant gave a personal guarantee.

38. Between 1 and 3 July 2020, Mr Tolaini of LEPP had an exchange of emails with Mr Ciccone of Agenda on which the Applicant was copied. The subject line of the emails is "Draft guarantee – for your review". It appears that the emails, to which the Applicant was copied, included a draft of the Letter (including the Applicant's name at the bottom).

39. The Applicant's evidence is that this document was sent to Mr Ciccone to provide him (alone) with comfort that the Applicant was "behind the transaction". He says it was never intended to be a legally enforceable guarantee in favour of any third party. At the time of these emails, the Applicant claims that the possibility that the Respondent might be the investor was not known to him. The Applicant's evidence is that he thought Mr Ciccone or his firm Agenda

would be the counterparty, which is why he was prepared to offer comfort to him.

40. It is not disputed that the Respondent's involvement seems to start from a few days after these emails on 1-3 July 2020. On 7 July 2020 the Respondent was sent a draft of the Loan Note Deed by Mr Maffei, an associate of Mr Ciccone at Agenda. This timeline does not sit entirely easily with the Respondent's case that it was only prepared to invest if it received a personal guarantee from the Applicant; the document which became the Letter was already in existence when the Respondent became involved, and does not seem to have been created at the Respondent's behest.

41. On 18 August 2020, Mr Tolaini sent Mr Maffei and Mr Ciccone an email with the signed version of the Letter on which the Respondent now relies. The Letter bore an electronic imprint of the Applicant's signature and was in the form set out at the start of this judgment. The Applicant was copied into this email from Mr Tolaini. The subject line of the email was "LEPP – Signed PG - £700k – EDENFARM". The email body simply read "As requested. Kind regards" and included Mr Tolaini's email signature. The attachment to the email had the document name "Michel Peretie – PG – LEPP – Loan Note – Edenfarm signed 2.docx". It is apparent from that file extension that the Letter was at this stage a Word document.

42. There is no evidence before the court of any communications directly between the Applicant and the Respondent (or Agenda) in relation to the investment in LEPP or the Letter. Mr Tolaini is the only individual on the LEPP side who appears to have taken an active role. Mr Tolaini copied the Applicant into his

emails to Mr Ciccone. The Applicant's evidence is that he receives between 200 and 500 emails a day, and it is impossible for him to read them all. His evidence is that he had no particular reason to review the transactional documents that were being handled by Mr Tolaini and he does not recall reading them. His evidence is that if he had read the email (which he does not recall), his view would have been that he was providing comfort to Mr Ciccone of the Applicant's personal involvement in the deal (in line with his evidence about the earlier draft of the Letter which was sent to Mr Ciccone at the start of July 2020). His evidence is that he did not authorise anyone to sign a personal guarantee on his behalf, and he did not sign the Letter.

43. In my judgment, the contemporaneous evidence from 2020 is not wholly inconsistent with the Applicant's case. It may be challenging for him to establish that he was not aware of the Letter, or the application of his signature, or its provision as an apparent personal guarantee, but these are matters which will require his evidence to be tested by way of cross-examination. The Applicant's case is not inherently incredible, and it is not flatly contradicted by the contemporaneous documents. Testing this case is simply not possible on a set-aside application.

44. The Respondent seeks to criticise the way the Applicant has raised this point, which was not squarely advanced at the earliest stage. The Respondent also criticises the Applicant for failing to lead evidence about what Mr Tolaini was doing, on the Applicant's case, when he sent the Letter. The Respondent drew attention to previous cases in which guarantors or borrowers failed to set aside statutory demands based on documents they had apparently signed including

Knight v ABS Recycling Ltd [2015] BPIR 569 and *Swallow v Mashreqbank PSC* [2022] BPIR 580. Those cases are of limited assistance to resolving the present dispute, as this is an area which is very fact-sensitive. There is some force in the points made by the Respondent, but a surprising feature of this case is that there is no contemporaneous evidence from 2020 of the Applicant having knowingly offered the Letter as a form of guarantee to the Respondent. While the Respondent criticises the Applicant for failing to lead evidence from Mr Tolaini, the Respondent also fails to lead evidence from Mr Ciccone, and Mr Ferro has no first-hand evidence to give about what happened in 2020.

45. The Respondent seeks to draw inferences about what the Applicant knew or agreed in 2020 from the Applicant's subsequent conduct, to fortify its case and undermine the Applicant's version. It is not in dispute that after LEPP failed to repay the Loan Note, there were discussions between the Applicant, Mr Ciccone, and Mr Ferro (among others) about a consensual solution. The Applicant's evidence is that he considers he "still" has a "moral obligation to ensure the well-being" of Mr Ciccone's clients, and he "intends to see the project through and for them to be repaid their investment by the company". The tenses used by the Applicant in his evidence are somewhat unclear here, given that LEPP's project has in fact failed and it is not possible for LEPP (which has been dissolved) to repay anyone's investment. The Applicant seems to make these assertions in order to explain why he subsequently made proposals which would be consistent with the obligations which the Respondent says arise from the Letter.

46. As to those subsequent proposals, there is a dispute on the evidence about who said what to whom and what they meant by it. Not everything was recorded in writing and there was no ultimate agreement. There were oral discussions on which the parties' evidence conflicts. In August 2022 the Applicant sent an email to Mr Ciccone in which he offered to pledge seven classic cars "following our various discussions regarding the reimbursement of the £1,5m loan plus interests from London Equity" (sic). In a subsequent internal document, Mr Ciccone subsequently claimed to have accepted this pledge, although it is apparent that a completely different settlement structure was in contemplation in November 2022. Mr Ciccone drafted heads of terms for this structure, which involved the Applicant giving a personal guarantee (backed by a pledge of classic cars). These negotiations were inconclusive.

47. The parties differ in the reliance they place on these subsequent discussions. The Respondent asks why the Applicant was willing to stand behind the repayment of the LEPP Loan Notes, if he was not already personally liable having given a guarantee by way of the Letter. The Applicant says it is surprising that he would have been negotiating to give a personal guarantee backed by his classic car collection if there was already an effective personal guarantee in place.

48. The later discussions may well be evidence from which inferences can be drawn about what was intended and agreed in 2020, but their significance is clearly open to debate. The only way to get to the bottom of this matter would be by having a trial on the merits.

49. Drawing all the evidence together, it seems to me that the Applicant's case on the Letter has a real prospect of success. It may well have its challenges, but the threshold the Applicant needs to cross is a low one. In my judgment, he has crossed it. That finding is sufficient to dispose of the present application.

50. As a result, I do not need to consider the proper construction of the Letter, or whether (on its proper construction) the Letter is a "see to it" guarantee. The exercise of construing the Letter (if it has effect at all) is to be undertaken in the light of the admissible background. Given the disputes about how the Letter came into being, this court is in no position to determine what the background is. Its most fundamental components are the subject of a dispute with a real prospect of success. I therefore leave these matters to be considered in the course of any subsequent proceedings which the Respondent may pursue by way of a Part 7 Claim against the Applicant.

Jurisdiction

51. It follows from my decision that the debt is disputed on substantial grounds that the jurisdiction question does not arise. The statutory demands will be set aside, and the court does not need to provide a window in which the Applicant can apply for an anti-suit injunction in the manner I have outlined above.

52. Nevertheless, if I had reached a different view as to the dispute, I would have been minded to grant a suitable window between my decision on the set-aside application and the time when the Respondent would have been able to present a bankruptcy petition under IR 10.5(8). The Applicant has raised a jurisdiction argument which goes to the heart of whether a bankruptcy petition may be presented against him in this court, and in my judgment he would have been

entitled to an opportunity to have that argument heard before facing the negative consequences which arise from the presentation of a bankruptcy petition. I would have invited the parties to address me as to the appropriate period but it would ultimately have been set by reference to the overriding objective and the need for insolvency proceedings to be prosecuted reasonably expeditiously.

Disposal

53. I invite the parties to attempt to agree an order setting aside the statutory demands and dealing with consequential matters including costs. In the event that agreement cannot be reached, a short consequential hearing will need to be listed.