

# New High Court guidance for considering bankruptcy orders where an ‘ulterior object’ is identified

A three-stage consideration - the High Court has clarified the approach required when a court is faced with a bankruptcy petition, an alleged ulterior object and opposition to the petition by other creditors.

This guidance in *Maud v Aabar Block SARL & Anr* [2016] EWHC 2175 (Ch) emerged amidst complex and high value proceedings relating to a substantial office and real estate complex in Spain worth billions of euros.

## Brief background to the appeal

Judgment had been entered against the debtor by consent following default on a loan advanced to him for the express purpose of onward investment. He was not successful in setting aside the statutory demand but did secure two adjournments of the hearing of the bankruptcy petition after persuading the court of a reasonable prospect of payment.

The bankruptcy order was subsequently granted upon the third hearing, with the Registrar finding that the petitioners did not have an ulterior object in the bankruptcy and there was no prospect of the debt being paid within a reasonable time. The debtor applied for permission to appeal.

Prior to the appeal hearing, it was revealed in a supplemental skeleton argument that a petitioner was partially motivated to make the debtor bankrupt as he perceived that the debtor was frustrating his attempts to recover full value for his investment.

After noting that the presence of an ulterior motive did not automatically render the petition an abuse of process, the High Court highlighted that it was necessary for the court to evaluate and attribute weight to the wishes of each creditor in determining whether or not to make the order sought, in the interests of the class. By passing over this question, the Registrar below had erred as a matter of law in approaching the petition.

## The three distinct questions for a court faced with an alleged ulterior purpose:

1. *Assuming the debt is undisputed, does the petitioner have an ulterior purpose that is so contrary to the nature of bankruptcy as a class remedy or to collective insolvency proceedings that it constitutes an abuse of process?*
2. *If it is not an abuse but the order is opposed by other creditors, should the court grant or refuse the bankruptcy order in the interests of the class having weighed the views of all the creditors in the class?*
3. *In the exercise of its general case management discretion, should the petition be adjourned upon finding there is a reasonable prospect that the petition debt will be paid within a reasonable time?*

## Conclusion

This three-stage enquiry as set down in this case by the High Court offers debtors and creditors alike a focussed

framework upon which the likely success of a petition can be weighed.

This is likely to reduce the delays to bankruptcy proceedings caused by ulterior object arguments. However, given the emphasis on bankruptcy offering a collective remedy, these arguments may well be utilised much more readily to promote creditors' competing wishes.

If you would like advice on bankruptcy proceedings, proposed or existing, or to discuss the latest developments in more detail, please contact Hannah Laithwaite at [HannahLaithwaite@lambchambers.co.uk](mailto:HannahLaithwaite@lambchambers.co.uk).

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