IN THE SUPREME COURT OF GIBRALTAR

Neutral Citation Number 2024/GSC/012

2024/COMP/001

IN THE MATTER OF THE INSOLVENCY ACT 2011

BETWEEN:

ROSSOCORSA LIMITED

Applicant

-and-

CASCADE MARINE LIMITED

Respondent

Christopher Miles (instructed by **Verralls)** for the **Applicant**

Darren Martinez (instructed by **Hassans)** for the **Respondent**

Judgment date: 4 April 2024

JUDGMENT

YEATS, J:

1. This is an application by Rossocorsa Limited ("Rossocorsa") to set aside a statutory demand served on it by Cascade Marine Limited ("Cascade"). The application is made pursuant to section 142 of the Insolvency Act.

2. The background facts are the following. On the 16 September 2021, Cascade entered into an agreement with Rossocorsa to purchase a brand new Ferrari motorcar model 812 GTS. It was an express term of the contract that the vehicle was to be the last of its kind to be built by Ferrari and that the

esteemed Italian manufacturer should certify that to be so. On or about June 2023, whilst the car was in production, it became clear that although the car would indeed be the last in its line, Ferrari was refusing to provide a certificate confirming this. It appears that this was because Ferrari reserves the right to resume the manufacture of any model should they consider it appropriate. As the certification condition of the contract was not to be fulfilled, Cascade demanded that it be refunded the deposit of 75,000 euros it had paid to Rossocorsa. Rossocorsa initially agreed. However, by October 2023 it became apparent that Rossocorsa had to itself complete the purchase of the vehicle from Ferrari. Rossocorsa informed Cascade that it could not return the deposit until the vehicle was sold on. This was not acceptable to Cascade and on the 13 December 2023, it served a statutory demand for the sum of 75,000 euros at Rossocorsa's registered address.

3. In the event, in January 2024 Rossocorsa sold the car to a third party. Rossocorsa then offered to return the deposit after deducting the following sums: 30,759 euros which is said to be the difference between the sale price agree with Cascade and the amount the vehicle was sold for to the third party; 10,000 euros said to be the cost of the financing that Rossocorsa obtained in order to be able to complete the purchase from Ferrari; and 5,800 euros in legal costs. The balance that Rossocorsa was therefore willing to return to Cascade was 28,441 euros. This offer has not been accepted by Cascade.

4. On the 19 January 2024, Rossocorsa filed the application to set aside the statutory demand.

5. Section 141(1) of the Insolvency Act provides that a creditor may serve a demand on a person for payment of a debt owed by that person to him. If this is not paid, then an application for bankruptcy or for the appointment of a liquidator can be made. Section 142 allows the person served with a statutory demand to apply to have it set aside. The application has to be made within 21 days. Section 143 then provides that the court may set aside a demand if it is satisfied that one or more of the conditions set out in the

section applies. These include that there is a substantial dispute as to whether the debt is owing.

6. Rossocorsa says that there is a substantial dispute as to whether the amount set out in the statutory demand is owing and that consequently the court should set it aside. Cascade says that the application was made out of time and the court does not therefore have the power to deal with the application. Alternatively, it says that the court should find that there is no substantial dispute on the facts and that the application should fail. I shall deal first with whether the court has jurisdiction to hear the application.

7. Cascade says it served the statutory demand on the 13 December 2023 by delivering it to Rossocorsa's registered office. As I understand it, it is not disputed that the demand was left at the registered office on that date. (The registered office is a company services provider.) The demand was left with an employee who is said to be a junior member of staff. It came to the attention of the director of Rossocorsa on the 15 January 2024. By then, the time for filing an application to have the demand set aside had elapsed.

8. It was submitted on behalf of Rossocorsa that leaving the demand with a junior member of staff did not constitute proper service and that the court should take the 15 January 2024 as the date of effective service. Alternatively, it is said that time for filing the application should be extended to the 19 January 2024 (the date on which the application was filed).

9. Mr Miles submitted that by rule 6.5 of the Civil Procedure Rules ("CPR"), when a Claim Form is served personally on a company it must be left with a person holding a senior position within the company (CPR 6.5(3)(b)). The Practice Direction to the rule explains that a person holding a senior position is a director, the treasurer, the company secretary, the chief executive, a manager or other officer (CPR 6APD 6.2(1)). It was said that the CPR applies because the Insolvency Act does not contain any relevant provision as to service. Mr Miles relied on *Aaron Parody v Gibdock Limited* (Neutral

Citation Number 2024/GCA/004) where at paragraph 33 Sir Adrian Fulford, JA said the following:

> "*It is clear from the wording of [section 38A of the Supreme Court Act] that instead of creating subsidiary legislation, the Civil Procedure Rules are applied directly within Gibraltar. The section additionally makes the operation of the Civil Procedure Rules subject to any relevant Gibraltar Acts, past or present, which is a clearly necessary provision."*

10. That case concerned service of a Claim Form in ordinary civil proceedings. I agree with Mr Martinez that the position with insolvency proceedings is different. The starting point is that the CPR does not apply to insolvency proceedings except to the extent that they are applied to those proceedings by another enactment (CPR rule 2.1(2)). As Jack J said in *Re eSeekers Ltd* (unreported 30 June 2016) at paragraph 57:

> "*If there is a lacuna in the Insolvency Rules 2011, the gap should in my judgment be filled firstly by reference to the Insolvency Rules 1986 (UK) and only secondly by reference to the CPR*."

Be that as it may, as will be seen, the distinction does not make a difference in this case.

11. Section 141(2)(g) of the Insolvency Act provides that a statutory demand shall "*comply with, and be served in accordance with, the Rules*." ("*The Rules*" are the Insolvency Rules 2011.) Rule 76 of the Insolvency Rules deals with service on an individual, as follows:

> "*76.(1) A creditor shall make all reasonable attempts to effect personal service of a statutory demand on an individual.*
>
> *(2) Where a creditor is not able to effect personal service, a statutory demand may be served on an individual by leaving the demand addressed to the individual at such of the places specified in sub-rule (3) as would be most likely to bring the demand to his notice.*
>
> *(3) The places referred to in sub-rule (2) are his last known place of residence, place of business or place of employment.*

> *(4) Where the creditor has no knowledge of the last known place of residence, place of business or place of employment of the individual, he may serve the statutory demand by advertisement in one or more local newspapers."*

There is no equivalent provision for service on a company.

12. The next step would be to look at the English Insolvency Rules 1986. It has not been said by either party that those assist. A quick review of the English rules show that personal service is expected on an individual but there does not seem to be any provision relating to service on a company of a statutory demand.

13. So does the CPR assist? Mr Miles says a statutory demand is akin to a Claim Form and therefore CPR 6.5 applies. I am not sure that this is correct. Nevertheless, even it were to be the same thing, CPR 6.5 starts with the following statement:

> "*(1) Where required by another Part, any other enactment, a practice direction or a court order, a claim form must be served personally.*
>
> *(2) In other cases, a claim form may be served personally except…"*

[The rule then explains what personal service means, as I have referred to above in paragraph 9.]

14. This CPR provision on personal service would only apply if there was a requirement under the Insolvency Act or Rules to serve a statutory demand personally on a company. There is no such requirement and therefore, in my judgment, CPR 6.5 does not assist.

15. I agree with Mr Martinez that the answer lies in section 475 of the Companies Act. This provides as follows:

> "*A document may be served on a company by leaving it at or sending it by post to the registered office of the company*."

16. In the absence of an express provision in the Insolvency Act or Rules, this provision of the Companies Act dictates how service of a document on a company is effected. Service is effected by leaving it at the registered office or sending it there by post. That is what Cascade did. In my judgment, service was properly effected.

17. Does the court have power to extend time? Section 142 of the Insolvency Act provides as follows:

> "*(1) Where a person has been served with a statutory demand he may apply to the Court for an order setting it aside.*
>
> *(2) An application under subsection (1) shall be made within 21 days of the date of service of the demand on him.*
>
> *(3) The Court is not to extend the time for making an application to set aside a statutory demand."*

18. Section 142(3) is clear. The court cannot extend time. Mr Miles nevertheless submitted that the court retains a power to extend time and that it should do so applying the provisions of CPR 3.9. In my judgment, the court's discretion to extend time under the CPR is overridden by the express statutory provision contained in section 142(3).

19. Finally, I shall deal quickly with a further point made on behalf of Rossocorsa, namely that Cascade has not filed a certificate of service. There is no obligation to do so. A certificate of service only needs to be filed if and when an application for the appointment of a liquidator is made.

20. As I have determined that the court does not have jurisdiction to deal with the application, it is unnecessary to decide whether there is a substantial dispute between the parties on the actual debt.

21. Dismissing this application is not, of course, the end of the matter. As Mr Martinez helpfully pointed out, at any eventual hearing of an application for the appointment of a liquidator on the grounds that the statutory demand has not been complied with, Rossocorsa could still seek leave to rely on any

ground that it could have relied on at an application to set aside the statutory demand. This much is clear from section 158 of the Insolvency Act.

22. In my judgment, the application to set aside the statutory demand must fail. The application was not made within 21 days of service and the court does not have the power to extend time.

Liam Yeats
Puisne Judge

Date: 4 April 2024