



Neutral Citation Number: [2022] EWHC 1053 (Ch)

Case No: BR-2021-000078

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

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

Date: 06/05/2022

**Before :**

**ICC JUDGE MULLEN**

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**IN THE MATTER OF HEORHII ROSSI (AKA YURI MAKSAKOV)**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**Between :**

**ARSEN KARAPETIAN**

**Applicant**

**- and -**

**(1) RONAN ANTHONY DUFFY**

**(as nominee of the proposed voluntary arrangement  
of Heorhii Rossi)**

**(2) SERGEI FOSTER**

**Respondents**

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**Ms Aileen McErlean** (instructed by **Druces LLP**) for the **Applicant**  
**Mr Andrew Brown** (instructed by **Blaser Mills LLP**) for the **First Respondent**  
**Mr Daniel Lewis** (instructed by **LK Baltica Solicitors**) for the **Second Respondent**

Hearing date: 25<sup>th</sup> February 2022  
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**Approved Judgment**

Handed down by circulation to the parties.  
The deemed time of hand-down is 10:00am.

.....  
**ICC JUDGE MULLEN**

**ICC Judge Mullen :**

1. A bankruptcy petition was presented in respect of Mr Heorhii Rossi, also known as Mr Yuri Maksakov, on 19<sup>th</sup> March 2021 by the second respondent, Mr Sergei Foster. At a virtual meeting of creditors held on 19<sup>th</sup> July 2021, Mr Rossi's creditors considered his proposal for an individual voluntary arrangement. The first respondent, Mr Ronan Anthony Duffy, was the nominee under the proposal and chaired the meeting. All of the creditors voted in favour of the proposals, save for Mr Foster. The proposal was rejected, having failed to reach the 75% majority required.
2. The applicant, Mr Arsen Karapetian, one of the creditors who voted in favour of the proposal at the meeting, appealed under rule 15.35 of the Insolvency (England and Wales) Rules 2016 ("IR 2016") on 6<sup>th</sup> August 2021. His application notice, as originally drafted, sought an order that the decision "be revoked" and a new meeting summoned on the ground of material irregularity.
3. Initially, Mr Karapetian was under the impression that his debt had been admitted for voting purposes by Mr Duffy in the sum of \$500,000 only. In fact, it had been admitted in the sum of £500,000. This is the sum that Mr Duffy accepted to be due under a loan agreement dated 17<sup>th</sup> September 2020 ("the Loan Agreement"). Mr Karapetian's case, however, is that he is owed a further €1,283,847 under a personal guarantee entered into on 10<sup>th</sup> October 2018 ("the Personal Guarantee"). Had this further sum been admitted, his total debt for voting purposes would have been £1,687,000 and his vote in favour of the IVA proposal would have meant that it would have been approved. The application was amended with the permission of the court on 6<sup>th</sup> October 2021 so as to seek the reversal or variation of the decision taken at the meeting, with the direction for a new meeting sought only in the alternative.
4. The circumstances in which the material irregularity is said to have arisen are set out in Mr Karapetian's first witness statement dated 2<sup>nd</sup> August 2021. Mr Duffy's witness statement dated 1<sup>st</sup> November 2021 sets out his account of events leading to the meeting and the provision of information by Mr Karapetian. The following summary is uncontentious.
5. The creditors' meeting was originally convened to take place on 5<sup>th</sup> July 2021. On 17<sup>th</sup> June 2021 the IVA proposal and accompanying documents were sent out. Mr Duffy's statement says that they were sent to all creditors, including Mr Karapetian. Some creditors however informed Mr Duffy's office that they had not received the documents and so the meeting was adjourned for 14 days and the proposal and accompanying documents were again sent out on 5<sup>th</sup> July 2022. The list of unsecured creditors set out in the proposal sent to creditors showed a total debt of £1,687,000 due to Mr Karapetian.
6. Mr Karapetian's first statement explains that he was made aware of Mr Rossi's intention to propose an IVA on about 15<sup>th</sup> July 2021. Mr Rossi told him of the date of the meeting and that he should have received papers from Mr Duffy's firm, McCambridge Duffy. Mr Karapetian's evidence is that he had received nothing so he contacted McCambridge Duffy by an email, written in Russian, on 16<sup>th</sup> July 2021. The translation of that email, the accuracy of which is not challenged, suggests that Mr Karapetian must have received something by way of documentation prior to this point as it reads as follows:

“Good day,

I received a letter sent to me, from which (with the help of a translation made by an online translator) I was able to find out about the next meeting of George Rossi’s creditors, which is to take place on July 19.

I would be glad if you would clarify to me the format of this meeting and how my participation will be ensured, given that I do not speak English. All my negotiations and relations with Georgy Rossi were in Russian. Please provide me with a professional translator to ensure my full participation in the meeting.

Yours faithfully,

Arsen Karapetyan”

That translation was made using a online translator by Mr Darren Curran of McCambridge Duffy, though it was confirmed to be accurate by Mr Rossi’s Russian-speaking solicitor.

7. Mr Curran replied on the same day by an email translated into Russian using online translation software. This email attached the IVA proposal documents in PDF format and said:

“Hi Arsen,

Apologies if my translation is poor, I also rely on an online translator. The meeting of creditors will be held on Monday at 10:00 Moscow time. The meeting will be held via Zoom Video Conference and will be available at the link in the email below this. Mr. Rossi’s legal representative Sergey Litovchenko will be present at the meeting and will be able to translate for you into Russian during the conversation.”

I have not seen the English draft of the email prior to its translation into Russian. I understand the above to be the English translation from the Russian. Again, however, there is no dispute that it accurately reflects the meaning of the email sent to Mr Karapetian in Russian. The “email below” referred to is an email sent generally to creditors including the Zoom link for the virtual creditors’ meeting. That email stated that the time of the meeting was “10am BST” and went on:

“All creditors and legal representatives of creditors who have received this email are welcome to attend. If you do not wish to attend please forward a completed copy of our proof of debt form and proxy form (Pages 20 and 21 of the attached proposal document) to me prior to the meeting of creditors.”

8. Mr Curran’s email in Russian was misleading in that the meeting was not at 10am Moscow time but at 10am British Summer Time, as correctly stated in untranslated

email containing the Zoom link. It is not quite clear how the error as to the time of the meeting in the email translated into Russian happened. In particular it is not apparent whether the error was introduced by the translation software or was contained in the English draft of the email composed by Mr Curran prior to its translation into Russian.

9. Mr Karapetian therefore logged on to the meeting at the wrong time. He was three hours too early. He realised his error about 15 minutes after having logged on, having spoken to Mr Rossi. His evidence is that could not wait for the meeting to start as he had a business meeting to attend. His first witness statement says:

“My understanding of the email in English... that followed the email in Russian quoted... above was that I need to provide a proxy form and proof of debt only if I do not wish to attend or if I am unable to attend the creditors meeting.”

That indeed reflects what the email to creditors including the Zoom link said but Mr Karapetian does not say how he came to have that understanding given that he says that he does not speak English and does not suggest that he used a translation program to translate that email into Russian.

10. As he could not now attend the meeting he tried to email various documents to Mr Curran and his colleague, Mr Michael Peoples, shortly before 10am BST. These were also copied to Mr Rossi.
11. The documents and emails that Mr Karapetian sent over following the discovery that the meeting was not to happen as he expected were as follows –
- i) An email timed at 9.51am attached a PDF of the proxy form signed by Mr Karapetian and dated 16<sup>th</sup> July 2021. The attachment name is “provide.pdf”. The proxy form had the correct date and time of the meeting printed on it.
  - ii) An email timed at 9.52am attached a copy of an advice of a payment of US\$500,000 to Allwin Ltd. The file name of the attachment is “PC HSBC (500000) TGR CC, Allwin.pdf”. This was a bank statement showing a payment in US dollars from TGR Corporate Concierge Limited to Allwin Limited in September 2020.
  - iii) An email timed at 9.52am including a screen shot of the Personal Guarantee, which is a one page handwritten document in English.
  - iv) An email timed at 9.57 am attached a pdf copy of the Loan Agreement in Russian. The file name of the attachment is “Договор займа Карапетян-Росси.pdf”, meaning “Loan Agreement Karapetyan-Rossi.pdf”.

The emails, which are exhibited to Mr Karapetian’s first statement, simply attached the documents without any explanation of them.

12. Further emails, attaching a reconciliation of the sums said to be due under the Personal Guarantee, referred to in the evidence as the “Reconciliation Act” remained stuck in Mr Karapetian’s mobile telephone outbox. I have seen a screenshot of his

outbox showing four copies of an email with an attachment called “RA 10.09.2020 (1).pdf”. I will refer to the terms of the Reconciliation Act later.

13. At 10.20am Mr Peoples emailed Mr Karapetian to ask him to confirm the total amount owing. He did not receive an answer during the meeting. Mr Duffy explains that he did not have a proof of debt from Mr Karapetian but, on the basis of the Loan Agreement and bank statement, he admitted the debt in the sum of £500,000. It was only at 2.31pm that Mr Peoples received an email in reply from Mr Karapetian stating that he was owed £500,000 under the Loan Agreement and €1,283,847,

“under personal guarantee for the overdue debt occurred from TGR Corporate Concierge Ltd to AvtoSayl OOO”.

The email further complained that he was aware that the meeting had concluded without this latter sum being admitted for voting.

14. Mr Peoples replied on 22<sup>nd</sup> July 2021 to say as follows:

“Dear Mr Karapetyan

I refer to your email of 19th July.

I can confirm that the only information received by us was for a document in Russian which mentioned £500,000 and an authorisation to transfer \$500,000 from TGR Corporate to Allwin Limited. Nowhere on the authorisation was Mr Rossi mentioned by name. Both documents were dated 17th September 2020 and received minutes before the IVA meeting was due to commence. No actual proof of debt was submitted detailing uncapitalised interest, any payments to date or the current balance due and we have no trace of any other document from you relating to any personal guarantee.

At the meeting the Chairman counted the valid votes received and Mr Foster held sufficient votes to reject the IVA. The Chairman could only act with what he had at the meeting which had already been adjourned for two weeks due to lack of votes. At all times the Chairman acted in accordance with the Act so if you somehow disagree with the outcome of the meeting you could consider independent legal advice.

It is unfortunate that the IVA was not approved as we felt it best for creditors and Mr Rossi alike but ultimately it came down to the valid votes cast on the day of the meeting.

Kind regards,

Michael Peoples.”

It would seem from Mr Peoples’ email above that the documentation received by the nominee was limited to the documents related to the Loan Agreement.

15. Mr Rossi in his first witness statement characterises the conduct of the meeting as “a mess” and says that Mr Duffy declined to check his spam folder to see if he had received the emails sent by Mr Karapetian and ignored appeals to allow Mr Rossi to forward them to him. Mr Duffy accepts that the meeting was heated but does not accept the description of the meeting as a mess.
16. Mr Duffy’s position, as set out by his counsel, Mr Brown, is that he does not accept that there was a material irregularity in the conduct of the meeting – Mr Karapetian sent certain documents through shortly before the meeting and these did not include the Reconciliation Act, any proof of debt or even the most informal statement of what Mr Karapetian claimed was due. The Personal Guarantee did not reach him. He could not admit a debt which had not been claimed by a creditor. He is, rightly, neutral on the question of whether the Personal Guarantee creates a debt due from Mr Rossi to Mr Karapetian, recognising that that is a contest between Mr Karapetian and Mr Foster in which he should take no part.
17. Mr Foster, through his counsel, Mr Lewis, accepts that it is not open to him to contend that the Personal Guarantee is not a genuine document. No order for cross-examination on the provenance of the document was sought so that a case that it is not genuine could be put. He does however say that the Personal Guarantee does not create a liability owed to Mr Karapetian. Indeed, it is too vague to be enforceable at all. Moreover, it is unenforceable for want of consideration, the consideration relied upon by Mr Karapetian being past consideration.

### **The legal principles applicable to creditors’ meetings to consider an IVA Proposal**

18. Having set out that brief summary of the issues, I shall set out the legal principles. The obligations of a nominee are set out in section 257 of the Insolvency Act 1986 (“IA 1986”) as follows, insofar as relevant:
  - “(1) This section applies where it has been reported to the court under section 256 or to the debtor’s creditors under section 256A that the debtor’s creditors should consider the debtor’s proposal.
  - (2) The nominee (or the nominee’s replacement under section 256(3) or 256A(4)) must seek a decision from the debtor’s creditors as to whether they approve the proposed voluntary arrangement (unless, in the case of a report to which section 256 applies, the court otherwise directs).
    - (2A) The decision is to be made by a creditors’ decision procedure.
    - (2B) Notice of the creditors’ decision procedure must be given to every creditor of the debtor of whose claim and address the nominee (or the nominee’s replacement) is aware.”
19. The right of appeal is set out in section 262 IA 1986 as follows:

“(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

(a) that a voluntary arrangement approved by a decision of the debtor’s creditors pursuant to section 257 unfairly prejudices the interests of a creditor of the debtor;

(b) that there has been some material irregularity in relation to a creditors’ decision procedure instigated under that section.”

20. The voting rights of creditors and provision for appeal of the decision of the chair or convener of meetings are supplemented by the IR 2016. I was referred to a number of the rules and the associated case law. IR 15.28(5) is as follows:

“In a decision relating to a proposed CVA or IVA every creditor, secured or unsecured, who has notice of the decision procedure is entitled to vote in respect of that creditor’s debt.”

Calculation of voting rights is dealt with in IR 15.31:

“(1) Votes are calculated according to the amount of each creditor’s claim —

...

(e) in a proposed IVA—

(i) where the debtor is not an undischarged bankrupt—

...

(bb) ... at the decision date,

...

(2) A creditor may vote in respect of a debt of an unliquidated or unascertained amount if the convener or chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) But in relation to a proposed CVA or IVA, a debt of an unliquidated or unascertained amount is to be valued at £1 for the purposes of voting unless the convener or chair or an appointed person decides to put a higher value on it.”

21. The meaning of “unliquidated or unascertained amount” in the context of the predecessor to the IR 2016 was considered by Judge Weeks QC, sitting as a judge of the High Court, in *Tager v Westpac Banking Corporation* [1997] 1 BCLC 313. He said:

“Secondly, Mr Davis has submitted that Britannia’s debt was a debt for an unliquidated amount, or a debt whose value was not ascertained, and therefore should have been disallowed under r. 5.17(3) unless the chairman agreed to put an estimated minimum value on it for voting purposes. It is submitted that the chairman, in effect, put a maximum and not a minimum on Britannia’s vote. The expressions in r. 5.17(3) have a long history and carry a lot of what Hoffmann J called ‘intellectual freight’.

Section 16(3) of the Bankruptcy Act 1869 provided that a creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

In *Ex parte Ruffle, Re Dummelow* (1873) 8 LR Ch App 997 Mellish LJ said at p. 1001: ‘The question really is, what is meant by an “unliquidated debt” in the 3rd sub-section. The fair construction of the clause seems to me this: “a contingent debt” refers to a case where there is a doubt if there will be any debt at all; a debt, the value of which is not ascertained, means a debt the amount of which cannot be estimated until the happening of some future event; and “an unliquidated debt” includes not only all cases of damages to be ascertained by a jury, but beyond that, extends to any debt where the creditor fairly admits that he cannot state the amount. In that case there must be some further enquiry before he can vote.’

In *Doorbar v Alltime Securities Ltd* [1994] BCC 994; [1995] BCC 1,149; [1996]1 WLR 456 Knox J and the Court of Appeal treated liability for future rent as an unliquidated or unascertained claim, and therefore something on which the chairman should put a minimum value.”

22. The procedure to be adopted is set out in IR 15.33:

“(1) The convener or chair in respect of a decision procedure must ascertain entitlement to vote and admit or reject claims accordingly.

(2) The convener or chair may admit or reject a claim in whole or in part.

(3) If the convener or chair is in any doubt whether a claim should be admitted or rejected, the convener or chair must mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.”

23. This process was described by Harman J in *Re A Debtor (222 of 1990)* [1992] BCLC 137 at 144 as follows:



“The scheme is quite clear. The chairman has power to admit or reject; his decision is subject to appeal; and if in doubt he shall mark the vote as objected to and allow the creditor to vote. That is easily carried out upon the basis advanced by Mr Moss QC, Mr Mann and Mr Trace. It provides a simple clear rule for the chairman, not a lawyer, faced at a large meeting with speedy decisions necessary to be made to enable the meeting to reach a decision. On that basis the chairman must look at the claim; if it is plain or obvious that it is good he admits it, if it is plain or obvious that it is bad he rejects it, if there is a question, a doubt, he shall admit it but mark it as objected.”

24. In *National Westminster Bank v Yadgaroff* [2011] EWHC 3711 (Ch), Norris J cited with approval *Chittenden v Pepper* [2006] EWHC 1511 (Ch), a case concerning a company voluntary arrangement, at paragraph 15:

“In *Re Newlands* [2006] EWHC 1511, the Chancellor said,

‘The chairman should not speculate nor is he obliged to investigate the creditor’s claim. But he must examine such evidence (and I do not use that word in any technical sense) as the creditor puts forward and any relevant evidence provided by any other creditor or debtor. If the totality of that evidence leads him to the conclusion that he can safely attribute to the claim a minimum value higher than £1, then he should do so.’

If Deputy Registrar Frith had concluded that Mrs Sophie Yadgaroff’s claim was unliquidated or unascertained, that is the approach which he would have been bound to adopt.”

25. IR 15.35(1) provides for appeal to the court by a creditor, amongst others. Such an appeal is not a true appeal, confined to a review of the decision of the chair; instead, the court must consider the question afresh. In *Revenue and Customs Commissioners v Maxwell* [2010] EWCA Civ 1379 per Lord Neuberger of Abbotsbury MR at paragraph 42:

“the judge should not merely review the decision of the chairman which is sought to be impugned: the judge should form his or her own view, based on the evidence and arguments advanced in court. 43. In my opinion, that agreement correctly reflects the law. Rule 2.39(2) refers to an ‘appeal’ as opposed to a ‘review’, which suggests that a fresh decision is envisaged.”

IR 15.35(3) then provides:

“If the decision is reversed or varied, or votes are declared invalid, the court may order another decision procedure to be initiated or make such order as it thinks just but, in a CVA or IVA, the court may only make an order if it considers that the

circumstances which led to the appeal give rise to unfair prejudice or material irregularity.”

26. Judge Davis-White QC, sitting as a judge of the High Court, considered the distinction between unfair prejudice and material irregularity in *Richmondshire DC v Dealmaster Ltd* [2021] EWHC 2892 (Ch) at paragraph 5 as follows:

“I deal with the test for ‘unfair prejudice’ below. As a generality though, it seems to me that unfair prejudice is directed at the effect of the scheme on the relevant creditor(s) whereas material irregularity is directed at some problem in the procedure by which the CVA becomes in force, usually connected with the process of the creditors’ meeting. Examples of material irregularity might include misleading or incomplete information to those voting at the meeting, and other defects in procedure at or about the meeting (such as a person being admitted to vote who should not have been or in the correct amount).”

In *Narandas-Girdhar and another v Bradstock* [2016] EWCA Civ 88. Briggs LJ, as he then was, noted at paragraph at 53 that, in the case of material irregularity, the irregularity must be material in the sense of more than *de minimis* or irrelevant and should have occurred at or in connection with a creditors’ meeting.

27. Where the appeal is a challenge to the chair’s decision as to the existence of a debt, the court’s task is to determine whether a debt is proven on the balance of probabilities. It is true, as Registrar Barber, as she then was, noted in *Adlon Limited v Sale* at paragraph 169, that the cases do not speak with one voice on this question. She referred to Lord Neuberger’s observation in *Maxwell*, at paragraph 65, that the creditor had made out “a clear prima facie case” in support of a given minimum claim that had not been met with an arguable case, or indeed any case, in response. Lord Neuberger was not, in my view, suggesting that any lesser standard of proof than the ordinary civil standard is required on an appeal against a decision not to admit a debt for voting purposes. Rather he was noting the evidential position before the judge below. It seems to me that that Judge Purle QC, sitting as a judge of the High Court, in *Re McNally* [2013] EWHC 1685 (Ch) explained the proper approach to determining the existence of a debt as follows at paragraph 22:

“The test on an appeal against a voting decision is whether the challenged indebtedness is, on balance, owed. The legal burden must, in my judgment, be on the creditor (in the case the Bank) to establish the claimed indebtedness. Where the creditor has made a bona fide assessment of the unsecured element of a debt based on a respectable professional valuation, the evidential burden shifts to the debtor, though the legal burden remains on the creditor throughout. Once, therefore, the debtor puts in respectable evidence the other way, the question the court must ask is whether the creditor has on balance satisfied the court that the unsecured element of its debt is established in the amount claimed.”

Judge Purle's approach is consistent with that of Lord Neuberger, although he was using slightly different language. The burden is on the creditor to prove his or her debt on the balance of probabilities. If the creditor has a clear prima facie case, or "respectable" case as Judge Purle put it, it will succeed in the absence of opposition from the debtor or other opposing party. If that other party meets the creditor's case with case of his or her own, at least one that would survive summary judgment, the debt must be proven on the ordinary civil standard.

28. In summary then, the chair of a meeting must consider the claims presented to him or her. If the chair is satisfied that the claim is good at the time, it is admitted. If the chair is satisfied that the claim is bad, it is rejected. If there is doubt, it is admitted and marked that it is objected to and the creditor will be allowed to vote. Where the claim admitted is for an unascertained or unliquidated amount it will be valued at £1 unless the chair can safely place a higher minimum value on it. He or she does not need to investigate the claim but must consider the evidence provided to determine whether it is established. It is clear from the wording of the rules that it is for the creditor to make a claim and substantiate it to the chair's satisfaction. On an appeal by a dissatisfied creditor the court will consider whether, on the balance of probabilities, the debt is established and is not limited to reviewing the decision of chair. The legal burden of proving the existence of the debt is on the creditor.

### **The Personal Guarantee**

29. The Personal Guarantee is written in English in manuscript as follows:

"I, Heorhii Rossi... guarantee personally to Mr Arsen Karapetyan [*sic*], to repay the debt that has been occurred [*sic*] or to be occurred [*sic*] by the company TGR Solutions Ltd... to the company AutoSale LLC based on the contracts to deliver various construction equipment for prospective sale via Ritchie Brothers Group."

It is signed by Mr Rossi and bears the date 10<sup>th</sup> October 2018.

30. The copy of the Reconciliation Act in evidence is dated 10<sup>th</sup> September 2020 and is as follows:

"We, the undersigned, TGR Solutions Ltd, from the one hand, and OOO «AVTO-SEYL»..., from the other hand, concluded this reconciliation act in that the status of mutual accounts according to the accounting data is the following:

According the TGR Solutions Ltd data

The debt to 10.09.2020 in favor OOO «AVTO-SEYL» 1 283 847 euro."

It is signed by a Mr Lapidus on behalf of TGR Solutions Ltd ("TGR"). "OOO «AVTO-SEYL»" is accepted for the purposes of this hearing to be a reference to the entity referred to in the Personal Guarantee as "AutoSale LLC" ("AutoSale"). It

seems that this is the document that was attached to the emails stuck in Mr Karapetian's outbox.

31. Mr Karapetian's explanation as to how this gives rise to a debt due from Mr Rossi to him is set out in his first witness statement as follows:

"5. On 12 April 2018, a contract, brokered by me and by Mr Rossi, was entered into by AutoSale LLC and TGR Solutions for the supply of equipment for which payment was to take place within 80 days after the equipment is delivered.

6. The equipment was delivered in parts in the summer of 2018, the payment was to occur in the fall of 2018. However, it did not happen in full.

7. In October 2018, negotiations were held, as a result of which Mr Rossi provided Personal Guarantee and in return he received a 49 percent stake in TGR Solutions. As far as I understand it, these shares were later transferred to Mr. Foster. I was an investor into AutoSale LLC for the equipment supply contract and, therefore, I was (and still am) the beneficiary of Mr Rossi's guarantee.

8. As of 10 September 2020, the debt was €1,283,847 (£1,187,000), which was recorded by a reconciliation act between AutoSale LLC and TGR Solutions.

9. TRG Solutions has not paid this amount and, therefore, this amount is payable under the Personal Guarantee."

In summary, sums due under a contract between AutoSale and TGR were not paid. Mr Rossi agreed to guarantee the debt and Mr Karapetian's claim to be the beneficiary of it lies in his status as an investor in AutoSale.

32. His second statement is to like effect though it gives some more detail. He says:

"In April 2018 contract negotiations between TGR Solutions and AutoSale concluded, and the first contract was executed on 12 April 2018... and the initial supply of equipment was made on 02 May 2018 (see waybill by logistics company Transfennica...). Subsequent contracts for further supply of the equipment were signed on 24 April 2018 and 26 March 2019  
....

15. Powers of attorneys confirming the authority of Mr Lapidus to act on behalf of TGR Solutions were presented to AutoSale and me. The initial power of attorney dated 03/04/2018 was signed by Ms Eliza Legzdina... who was a director of TGR Solutions at that date. Then it was followed by the notarised power of attorney dated 19/12/2018 signed by Mr Foster... who was a director of TGR Solutions at that date.

16. As TGR Solutions had no initial financial resources to pay for the equipment purchased from AutoSale, it was agreed that the contract would stipulate a deferred payment to allow the equipment to be sold at RB's auction and TGR Solutions to receive relevant sale proceeds to its account in order to repay the debt to AutoSale. I guaranteed project success to AutoSale by providing assurance that the debts incurred by TGR to AutoSale on the sale of equipment and their receipt of the sale proceeds from RB, would be paid to AutoSale.

...

20. TGR Solutions defaulted on its payment obligations to AutoSale, and in October 2018 various negotiations were held to mitigate this contractual default, as a result of which Mr Rossi provided his Personal Guarantee to me to cover the existing and any prospective outstanding debt by TGR Solutions to AutoSale. I was told that this was verbally agreed with Mr Foster. Both Mr Foster and Mr Rossi at that time became shareholders of TGR Solutions (Mr Rossi 49% and Mr Foster - 51%) and I assume that Mr Rossi received 49% of TGR Solutions as a form of compensation for providing his personal guarantee to me.

21. I invested in AutoSale's project with TGR Solutions and I was (and still am) the beneficiary of Mr Rossi's guarantee covering the outstanding debt of TGR Solutions to AutoSale related to the equipment supply.

22. Despite the default on its contractual obligation to AutoSale to pay for the equipment supplied, TGR Solutions managed to successfully sell equipment supplied by AutoSale via RB, who agreed to extend its contract with TGR Solutions and provide TGR Solution with the status of the exclusive supplier from Russia and CIS countries. However, such extension of the contract required additional financial support as TGR was no longer able to purchase from AutoSale on a deferred payment basis following its failure to pay for the equipment supplied.

23. I was told by Mr Lapidus that Mr Foster assisted with looking for an additional credit line for TGR Solutions and that both Mr Lapidus and Mr Foster met a Mr Usman Qureshi and a Mr Mark Hernaman, who are both representatives of Natwest Bank, on 11 February 2019 to discuss a credit line for TGR Solutions Ltd to support this project...

24. On 13 February 2019 in light of a positive feedback from Mr Lapidus regarding his and Mr Foster's meeting with Natwest Bank representatives, AutoSale agreed to extend payment terms until 31.05.2019 on its first contract with TGR Solutions (see the addendum to the agreement dated 13.02.19

at...) and continued to supply TGR Solutions with further equipment. In this respect AutoSale continued to rely on my assurances and I continued to rely on the personal guarantee of Mr Rossi.”

Mr Rossi also asserts in his evidence that the shares were issued to him because of the Personal Guarantee.

33. Mr Foster denies all of this. He was a director of TGR from 2<sup>nd</sup> February 2018 to 7<sup>th</sup> May 2020 and he states that he had no knowledge of the Personal Guarantee or the contracts now said to have lain behind it. He does not accept that they are genuine and says that there are no records of any such transactions or any sums due from TGR to AutoSale, although, as Ms McErlean points out, he accepts that the records of TGR were in disarray when he was appointed as a director and it took him a year to establish some sort of order. He also identifies the absence of any liability corresponding to the claimed sum in AutoSale’s filed accounts.
34. His account of the transactions involving Ritchie Bros is that Mr Karapetian had brokered a sale of some of equipment to Ritchie Bros. Ritchie Bros could not transfer the sales proceeds from the Netherlands to Russia as a result of sanctions. Mr Rossi therefore used a chain of his associated companies, in particular a Turkish company called Altair Lojistik Ve Ticaret Anonim Şirketi, to make the payments to Russia.
35. He says that Mr Karapetian’s contention as to the consideration for the Personal Guarantee, being the allocation of shares to Mr Rossi, is wrong. He says at paragraph 30 of his first witness statement:

“At Paragraph 7 of his first witness statement, and again at paragraph 20 of his second witness statement, the Applicant refers to Mr. Rossi providing the said “guarantee” in October 2018 in return for a 49% stake in TGR as compensation for providing his personal guarantee to the Applicant. This is not correct. The issue of the share distribution between myself and Mr Rossi had absolutely nothing to do with the personal guarantee purportedly given by Mr Rossi to the Applicant. It was in fact agreed by me and Mr Rossi that we were each to own half each of the issued share capital in TGR and I was to hold 1% of his shares (held by Eliza Legzdina) as part security for the debt owed to me by Mr Rossi which is the basis for the debt upon which my bankruptcy petition is based. This was confirmed in the email I sent to Mr Lapidus and Mr Rossi dated 17 October 2018 from which, it can be seen clearly that the Applicant’s assertion at paragraph 7 of his witness statement is not correct.

36. The email of 17<sup>th</sup> October 2018 to which Mr Foster refers is as follows:

“Alexander

the way I see the shares to be transferred is as follows:

current structure - the company has 1 share issued to Eliza Legzdina

future structure - the company to have total 100 shares issued to:

49 shares to Heorhii Rossi

50 shares to Sergei Foster

Eliza Legzdina transfers her 1 share to Sergei Foster and it will be held by him as extra security under the terms of The Guarantee dated 20 May 2018 issued by Heorhii Rossi to Sergei Foster. Upon expiry of the Guarantee the above 1 share is to be immediately transferred by Sergei Foster to Heorhii Rossi unless it will be mutually agreed by both of them otherwise.

Alexander in view of the above mentioned please kindly prepare

1) instruments of transfer of Shares of TGR Solutions Ltd to be signed by the parties involved

2) an Addendum to the Guarantee dated 20 May 2018 to reflect transfer of 1 share of TGR Solutions Ltd to Sergei Foster during validity of the Guarantee

Thank you

Yours sincerely,

Sergei

The guarantee of 20<sup>th</sup> May 2018 referred to is a much more formal document than the Personal Guarantee, evidently having been professionally drafted. The addendum to the 20<sup>th</sup> May 2018 guarantee drafted following this email states:

“THIS ADDENDUM is dated 19<sup>th</sup> October 2018

**PARTIES:**

(1) HEORHII ROSSI of Flat 204, 5 Pearson Square, London W1T 3BQ 9 (The Guarantor)  
and

(2) SERGEI FOSTER of Flat 303, 55 Victoria Street, London SW1H 0AF (The Co-Lender)

It has been agreed to introduce the following amendments into the above Guarantee:

I. CLAUSE 2. GUARANTEE to be added with the following wording:

2.2. Not later than the 31 October 2018 the shares in the ownership of the Borrower to be re-issued in such a manner that The Guarantor has got 49% shares and the Co-Lender has got 51% shares. As soon as the Guarantee expires the Co-Lender is to transfer 1% share to the Guarantor.

II. CLAUSE 6. TRANSFER. PARAGRAPH 6.2 to be added with the following sentence:

Such Assignment is always subject to prior written approval by the Co-Lender.”

It is executed as a deed by Mr Rossi and Mr Foster. It is fair to say that there appears to be no reference in any of the documents associated with the shares to be issued to Mr Rossi to the Personal Guarantee.

37. Mr Karapetian’s third witness statement gives further detail:

“21...I guaranteed the success to AutoSale by providing assurance that the debts incurred by TGR to AutoSale on the sale of equipment and their receipt of the sale proceeds from RB would be paid to AutoSale. I persuaded the suppliers of the equipment to AutoSale to do so on an open account basis whereby AutoSale would pay them when it was paid by TGR and I persuaded AutoSale to supply TGR on an open account basis also, on the footing that AutoSale would rely on TGR paying them from the proceeds of sale of the equipment by RB at auction or otherwise. I gave assurances to AutoSale and to the ultimate suppliers to AutoSale that if the equipment which they supplied was made available via TGR to RB for sale in Holland and was sold that they would be paid and I therefore became personally responsible for the financial exposure of the suppliers and AutoSale.

22. When TGR first defaulted on its payment obligation to AutoSale and negotiations took place in October 2018 to mitigate this contractual default, I asked for and obtained from Mr Rossi the guarantee upon which I rely in my application. Effectively, I was obtaining a degree of security from Mr Rossi of my exposure to AutoSale and its suppliers as the risk of TGR not accounting as it should to AutoSale had already occurred.

23. Despite Mr Foster’s insistence at paragraph 30 of his witness statement that the allocation of 49% stake in TGR to Mr Rossi on 23 October 2018 had nothing to do with the provision of his personal guarantee to me less than 2 weeks earlier on 10 October 2018, it remains my understanding that the shares were given to Mr Rossi as a compensation for his



provision of the guarantee to me, as I referred to in my email at 14:31 on 19 July 2021 to McCambridge Duffy. The email... on which Mr Foster relies does not disprove this fact. The email simply tells Mr Lapidus that the share structure of the company changes with 49 shares to be transferred to Mr Rossi and 50 shares to Mr Foster, and with Mr Foster also receiving an additional share as security for Mr Rossi's guarantee to him given earlier in May 2018."

38. Ms McErlean, counsel for Mr Karapetian, distilled his case as follows. The Personal Guarantee was entered into against the background of TGR's default in payments under the sale of goods contracts entered into as part of negotiations to mitigate the effect of that default. Mr Karapetian provided good consideration by continuing to arrange for sales via AutoSale and TGR and to provide necessary, as she put it in her skeleton, "upstream guarantees" to suppliers in respect of AutoSale's liabilities to enable the arrangement to continue and for AutoSale to enter into further agreements with TGR. She did not rely upon the issue of shares in TGR in her skeleton at all.
39. Ms McErlean took me through some of the underlying documents. I was shown three contracts, in English and Russian, between TGR as purchaser and AutoSale as vendor. The first is dated 12<sup>th</sup> April 2018 for €2,040,000.00. The payment was due within 80 days of delivery of the goods. The contract was varied on 13<sup>th</sup> February 2019 so as to provide for payment by 31<sup>st</sup> May 2019. There are waybills showing AutoSale having caused to be shipped to TGR in May 2018. A further contract dated 24<sup>th</sup> April 2018 provided for €1,200,000 with payment terms of 80 days from delivery. Another, dated 26<sup>th</sup> March 2019, provided for payment by 30<sup>th</sup> September 2019.
40. There are also in evidence contemporaneous contracts to auction between Ritchie Bros Auctioneers BV and TGR for the shipping of goods and later complaints from AutoSale, from the middle of 2021, addressed to TGR, that goods have not been paid for. Ms McErlean submits that it cannot be contended that these were not genuine transactions between TGR and AutoSale. Nor, in a hearing such as this where there has been no oral evidence and cross-examination, can Mr Karapetian's account be gainsaid. He has presented respectable evidence, to use Judge Purle QC's phrase, and there is no evidence to the contrary.
41. Mr Lewis, while highlighting certain troubling features of the Personal Guarantee, such its informality when compared to other agreements between the parties and the fact that it is written in English, which Mr Karapetian professes not to speak, nonetheless recognised that he could not challenge its authenticity or the nature of the transactions said to be behind it. He submitted that it is simply too vague as to the debt to be paid and to whom it was to be paid. Moreover, the consideration, in the form of issuing of shares, relied upon in evidence, is in the past and unrelated to the provision of the Personal Guarantee.
42. While I accept Ms McErlean's submission that the documentation in evidence, limited though it is, suggests that transactions between TGR and AutoSale did happen, there remains the question of whether Mr Karapetian has discharged the burden of demonstrating that there is a debt due to him. In my view he has not. If I am wrong

about the nature of the burden on him I am similarly not satisfied that he has put forward a clear prima facie case of the existence of the debt.

43. As a preliminary observation I should say that both counsel approached the construction and enforceability of the Personal Guarantee as a question of the law of England and Wales. Were either party to have suggested that foreign law should be applied they would have had to prove that law as a question of fact. In the absence of evidence of foreign law, the court will apply the principles of English law and that is the approach that I take.
44. I am troubled by the absence of any contemporaneous documents that tie the alteration of share capital in TGR to the Personal Guarantee, given the reliance placed upon it in Mr Karapetian's case as originally put in his evidence. It is curious, to say the least, that a formally documented transaction between Mr Rossi and Mr Foster, prepared with the benefit of legal advice, should make no reference to the assumption of a liability by Mr Rossi in relation to a company in which they were both interested. Mr Rossi is supportive of Mr Karapetian's application but has produced nothing that would tend to show that the transaction was connected to the giving of the Personal Guarantee. I am not satisfied on the basis of the documents that I have seen that it is related to the Personal Guarantee at all. To the contrary, the share issue appears to be unrelated to it. To the extent that the share issue is relied upon as consideration for the Personal Guarantee I am entirely unpersuaded that it had anything to do with it, still less that it could amount to good consideration. It is trite law that consideration must move from the promisee, though not necessarily to the promisor. The issue of the shares here had nothing to do with Mr Karapetian and cannot confer upon him a right to enforce the Personal Guarantee. Ms McErlean was right not to press the argument that it could.
45. Mr Karapetian's case on consideration is now that it was provided by him in the form of continued upstream guarantees to suppliers. It is fair to say that this element of his case has emerged as his case as to how the Personal Guarantee creates a debt due to him has shifted over time. This started in his first statement as a claim that it was due to him simply because of his investment in AutoSale. In his second, he said that he had "guaranteed project success" by giving assurances to AutoSale, on which *it* relied, that it would be paid. By his third, he claimed he had incurred personal liability to suppliers by providing "assurances" that they would be paid by AutoSale. He does not say how this personal liability arose as a matter of law but it is no doubt this that led Ms McErlean to characterise them as upstream guarantees in her submissions.
46. I accept for the purposes of this judgment that an agreement to continue to provide guarantees to suppliers under which Mr Karapetian incurred personal liability himself could amount to good consideration for a promise to meet the obligations of TGR. There is, however, simply no evidence of Mr Karapetian having given such assurances or guarantees, beyond bare assertion. Indeed, not a single example is given or evidenced. Strikingly, Mr Rossi does not say that he entered into the Personal Guarantee in return for this continuing support, whether in the form of persuasion, assurances or upstream guarantees. He does not mention it at all. Given the shifts in Mr Karapetian's case on why the debt should be regarded as due to him personally and the unparticularised "persuasion", "assurances" or "guarantees" offered I would have expected him to offer illustrations and evidence of these. This is all the more so given that he was an investor in the projects underlying the contracts between TGR

and AutoSale. If he is seeking to rely on something less than undertaking personal liability the court has to know what it was, whether it was done before or after the Personal Guarantee and whether it appears that it was done because he was an investor or in consideration of the Personal Guarantee. The validity of the Personal Guarantee and the consideration given for it were all put in issue in Mr Foster's witness statement in answer to the application but remained inadequately addressed. As it is, I am unable to accept Mr Karapetian's latest account at face value without supporting evidence and his assertions are far too vague to determine whether the actions he asserts could amount to good consideration in context.

47. Even if that is not right, the Personal Guarantee does not on a proper construction establish a debt due to Mr Karapetian. First I should say that I see no reason to strain the plain words of it. Assuming it to be a genuine document embodying the terms of an agreement between Mr Rossi and Mr Karapetian made in 2018, it is a promise by Mr Rossi to Mr Karapetian to pay a debt owed *by* TGR *to* AutoSale in relation to the contracts. I use the term "pay" although the Personal Guarantee uses the word "repay". It was not suggested that anything turns on this. The "debt" to be paid is the debt owed to AutoSale. In ordinary usage a debt is "paid" when it is paid to the person to whom it is owed. If A promises to B that he will pay the debt due to C, it seems to me clear that this is a promise to pay C. Something more would be required in order to suggest that a sum equivalent to the debt is to be paid to someone other than C.
48. For that reason, Ms McErlean relies on the words "guarantee personally to Mr Arsen Karapetian" and suggested that are they rendered redundant or deprived of meaning if they do not mean that payment is to be made to Mr Karapetian. I do not agree. If Mr Karapetian's case is right, he had incurred liability to suppliers of AutoSale. It would be understandable that he should seek to create an obligation to make payment to AutoSale enforceable by him as promisee. The principal contractual relationship, on Mr Karapetian's case, was however between TGR and AutoSale. The concern was that TGR would not meet its liabilities to AutoSale to enable it to meet its own liabilities to upstream suppliers. Mr Karapetian therefore guaranteed the obligations of AutoSale to those suppliers.
49. His second statement says at paragraph 16,

"I guaranteed project success to AutoSale by providing assurance that the debts incurred by TGR to AutoSale on the sale of equipment and their receipt of the sale proceeds from RB, would be paid to AutoSale." (emphasis added)

His third statement suggests that at least some of these assurances were simply that AutoSale would be paid and that the supplier would be paid by AutoSale itself. For example, in paragraph 21 he says,

"I guaranteed the success to AutoSale by providing assurance that the debts incurred by TGR to AutoSale on the sale of equipment and their receipt of the sale proceeds from RB would be paid to AutoSale. I persuaded the suppliers of the equipment to AutoSale to do so on an open account basis whereby AutoSale would pay them when it was paid by TGR" (emphasis again added).

The emphasis is on AutoSale being paid and the transaction proceeding as envisaged. Mr Karapetian's liability to AutoSale's suppliers was contingent on AutoSale's ability to meet those obligations itself and AutoSale's ability to do so was dependent on it being paid. The commercially sensible and straightforward solution to ensure as far as possible that Mr Karapetian's assurances that AutoSale would be paid and would pay its suppliers would be for a third party to pay AutoSale so that it could meet its own liabilities in the ordinary way, not to pay Mr Karapetian. There is nothing in evidence to satisfy me that the Personal Guarantee should be construed as Mr Karapetian and Mr Rossi now suggest. It would have been quite easy to say, in such an informal document, that Mr Rossi would pay the debt to Mr Karapetian. It does not.

50. Nor, I should say, do I accept the Reconciliation Act as sufficient evidence of any liability of TGR to AutoSale. It is dated some nine months before the meeting and is contradicted by the contemporaneous accounts of TGR. I have seen documents described as "complaints" sent by AutoSale addressed to TGR demanding a total of €1,325,041.54, a different figure to that in the Reconciliation Act and that claimed by Mr Karapetian until his third witness statement of 13<sup>th</sup> December 2021. These are dated 1<sup>st</sup> July 2021, shortly before the creditors' meeting and, apparently, with there having been no correspondence between AutoSale and TGR as to the outstanding sum in the meantime. They have not been accepted as due by TGR. Given the changing nature of Mr Karapetian's case as set out in his three witness statements I am unable to accept these complaints as accurate without sufficient supporting evidence. Mr Karapetian's evidence is not sufficient. For example, there are no internal accounts from AutoSale to show how these sums have been calculated.
51. I should finally deal with Ms McErlean's argument that the Personal Guarantee might be said to give rise to an action in damages by Mr Karapetian for breach of an obligation on the part of Mr Rossi to make payment to AutoSale. There is not the shred of any evidence of any liability owed by Mr Karapetian a result of a failure on the part TGR to meet an obligation owed to AutoSale or on the part of Mr Rossi to discharge that obligation. This is a striking omission. It does not follow that because AutoSale failed to pay a supplier that there would inevitably be a corresponding liability on the part of Mr Karapetian arising from that failure that might sound in damages in an action against Mr Rossi. Any amount due from TGR is not necessarily co-extensive with any liability to which Mr Karapetian might be liable as a result of a default on TGR's part. A supplier might have been content to enter into a transaction without a guarantee from Mr Karapetian or on the basis of some lesser "assurance" by him. Again, without details of the persuasion, assurances or guarantees deployed by Mr Karapetian one cannot determine what the extent of his liability might be, if any. I am not satisfied that Mr Karapetian is under any liability. Apart from assertion, he has not evidenced it at all.
52. For those reasons I am not satisfied that the Personal Guarantee creates an obligation upon Mr Rossi pay any sum to Mr Karapetian. On its true construction the Personal Guarantee does not create a liability in debt to him. Even if it did, Mr Karapetian has not discharged the burden of showing what that liability was so that any minimum value might be ascribed to it and there is simply no evidence of loss to Mr Karapetian that might sound in damages.

### **The conduct of the meeting**

53. The challenge to the conduct of meeting can only be on the ground of “material irregularity”, “unfair prejudice” arising only if an IVA proposal is approved. Mr Brown, for Mr Duffy, raised the question of whether it was open to the Applicant to raise incorrect notice as a material irregularity at all. He notes that, as originally drafted, the application specifically referred to the provision of the incorrect time and Mr Duffy’s alleged failure to consider or, alternatively, receive, the documents evidencing the debts.
54. On 17<sup>th</sup> January 2022 Druces LLP, the solicitors for the Applicant, wrote to the solicitors for the respondents and said:

“We therefore invite both of your clients to confirm: (1) whether the terms and effect of the guarantee remain in issue; (2) if only valuation remains in issue, your clients proposed time estimates including reading time together with counsel’s estimates for their submissions.”

This was followed by a letter dated 4<sup>th</sup> February 2022 which said:

“The issue before the court on 25 February 2022 is whether the nominee of Mr Rossi acted correctly, properly and fairly in relation to the claim of our client when, whilst admitting the claim of Mr Foster, he did not accept for voting most of the claim of our client, thereby facilitating the defeat of the proposed IVA.”

There was no reference in that letter to the incorrect notice given to Mr Karapetian.

55. Nonetheless it appears to me that this element of the application remains live. Mr Karapetian’s first witness statement in support of the application is focussed on this mistake and I do not read the correspondence or the amendment as abandoning this element of the application.
56. In relation to the provision of the incorrect time there was no obligation on Mr Duffy to cause notice of the meeting to be translated into Russian. No criticism is made of the provision of the notices required by the rules and both the email providing the link to the meeting and proxy form both contained the correct time of the meeting. The translated email was caveated as to its accuracy and it seems to me that in those circumstances it might be said that it was to the official notice of the meeting that Mr Karapetian should have looked. He was plainly able to understand the email containing the Zoom link because it is from that email that he derived his understanding that he was only required to provide a proof of debt and a proxy form if he did not attend the meeting. Nonetheless, none of that could be explored with Mr Karapetian in the absence of cross-examination.
57. I accept that the provision of an incorrect meeting time was an irregularity in that it had the effect of misleading a creditor as to the time that he should attend. In my judgment it was not, however, material in the circumstances, in that it was not a material reason why Mr Karapetian’s debt was not admitted. Rather, Mr Karapetian

did not send the limited selection of documents relevant to his claim until minutes before the meeting began some three hours after the start time that he had expected. He gives no explanation of why this was so. While he was misled as to the time of the meeting, he had the requisite notice of the date of the meeting and thus ample time to collate any documents to evidence or explain his claim. In any event, he does not say that he did not have the documents readily to hand or had, for example, to request them from his office. Nor did he attempt to return a proof of debt form in advance of the meeting, even though, on his own evidence, he was aware that he should return both this and the proxy form if he was unable to attend. Again, there is no explanation as to why he did not do so. He did not even send an informal explanation of what he claimed was due to him from Mr Rossi. This is particularly odd given that he was concerned to ensure his participation in the meeting when he wrote to McCambridge Duffy using online translation software. There is no explanation as to why he did not use such software to set out, in summary, what his claim was. He says that he trusted Mr Rossi to explain the position and simply left for his business meeting.

58. As is clear from the wording of the rules that I have set out above, the chair of the meeting is to evaluate claims made *by* creditors. He cannot evaluate a claim that has not been made or assume the existence of a debt from documents which do not state in terms what is due. It is the obligation of the creditor to put his or her claim forward with such evidence as may be appropriate. Mr Karapetian did not do so in relation to the Personal Guarantee. He did not state what he said was owed under the Personal Guarantee and he did not send the Reconciliation Act at all. The fact that the email attaching this was stuck in his outbox does not itself constitute an irregularity in the conduct of the meeting in circumstances in which he had more than adequate time to provide Mr Duffy with a statement of the sums he claimed were due together with the supporting documentation.
59. Nor do I consider that the alleged refusal to look at messages on Mr Rossi's mobile phone or to have those forwarded to him could amount to a material irregularity. It is understandable that the nominee should not place reliance upon the documents not supplied directly to him by the creditor. The creditor must make out his claim by returning the proof and supporting documentation. For the same reason I do not consider that there is anything in the point that Mr Duffy should have queried why the documents sent to him by Mr Karapetian showed a sum less than that set out in the proposal itself. While a proposal will set out what is believed by the debtor to be due to his creditors, it remains the obligation of the creditor to prove for his or her debt. If they do not do so, it is not for the chair to second guess that decision. Here the chair went the extra mile to ask Mr Karapetian to give full details of his claim. He did not receive an answer for over four hours, by which time the meeting was long over.
60. It would have been quite simple for Mr Karapetian to supply details of the debt said to be due to him. He had adequate time to do so but he did not, under the misapprehension that he could leave it to Mr Rossi to explain the position. It was his failure to do that that meant that the sums said to be due under the Personal Guarantee were not admitted by Mr Duffy, not the misstatement of the meeting time. That failure meant that Mr Duffy was not obliged to undertake the exercise explained by Harman J in *Re A Debtor (222 of 1990)* in relation to it at all. There was no claim on which he was required to adjudicate. Had he received both the Personal Guarantee and the Reconciliation Act, the most he could have done is place a minimum value on

a damages claim by Mr Karapetian for breach of contract. As I have said, those damages would not necessarily have been co-extensive with the debt set out in the Reconciliation Act and that document stated the sums to be due as at date some nine months previously. In the light of the lack of any evidence about Mr Karapetian's potential personal liability even now I do not see how Mr Duffy could have valued the damages claim at more than £1 at the meeting. That would not have affected the outcome of the meeting.

### **Conclusion**

61. The application fails for the reasons I have given. There is no basis on which to reverse or vary the decision or to order a new meeting. I will ask counsel to seek to agree a minute of order.