



Neutral Citation Number: [2020] EWHC 2090 (Ch)

Case No: CR-2016-004115

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

IN THE MATTER OF MELARS GROUP LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 28 July 2020

Before :

Deputy ICC Judge Baister

Between :

EAST-WEST LOGISTICS LLP
- and -
MELARS GROUP LIMITED

Petitioner

Respondent

Mr Edward Knight (instructed by **Vitaliy Kozachenkp**) for the **Petitioner**
Mr Reuben Comiskey (instructed by **Mackrell Solicitors**) for the **Respondent**

Hearing date: 16 July 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge at a remote hearing on 4 August 2020 and by release to BAILII. The date and time for hand-down is deemed to be 4 August 2020 at 11.00 a.m.

.....
Deputy Insolvency and Companies Court Judge

Deputy ICC Judge Baister:

The petition and the evidence

1. On 19 July 2016 East-West Logistics LLP presented a petition seeking the winding up of Melars Group Limited on a number of grounds: (a) that the company had ceased to carry on business; (b) that the company was unable to pay its debts; and (c) on the just and equitable ground. In reality the focus of the petition has been on the company's insolvency in that it has failed to satisfy a judgment obtained against it in the courts of the BVI awarding the petitioner \$657,000 odd in damages and costs. The petition recites further judgments said to have been taken by other creditors but none appeared at the final hearing to support or oppose the petition.
2. The petition states the petitioner's belief that the EC Regulation on Insolvency Proceedings applies (I will come to the applicable law later), admits that "it is difficult to locate the company's [centre of main interests] because it is a shell company" but goes on to recite a number of bases on which the petitioner contends that the company's centre of main interests is in the UK. The company opposes the making of a winding up order on the basis that the court has no jurisdiction to make one as its centre of main interests is in Malta, the location of its registered office.
3. In addition to what is said in the petition itself (which is supported by a statement of truth) the evidence in support comes in the form of a number of witness statements of Matthew Parish, the petitioner's solicitor, Vitaliy Kozachenko, another solicitor acting for the petitioner, and one from a Maltese lawyer, Dr Fiorentino, some of the content of which is of an expert nature (and as such inadmissible), some of it factual. The company relies on various witness statements of its solicitor, Thomas Crittenden, and a single witness statement of Mihhail Serebjanski, a director of the company.
4. I do not propose to deal with the history of the petition in any detail. I should, however, mention that an order allowing service out of the jurisdiction in the BVI was made in July 2017; and the petition was stayed in August 2017 to enable the company to take steps to set aside the BVI judgment. The company failed to take the necessary steps as a result of which the judgment stands. In September 2019 the petitioner applied for the petition to be relisted, which resulted in its coming on for final hearing on 16 July 2020. The stay is the explanation for the unusually long time that has elapsed between presentation of this petition and its final hearing and has contributed to some of the difficulties I have encountered in writing this judgment.

The background

5. The company was incorporated in the British Virgin Islands on 11 January 2005. It trades, or traded, in oil and petroleum. The petitioner is an English limited liability partnership and appears to be in the same line of business.
6. The petitioner and the company entered into a charterparty dated 14 December 2011 under the terms of which the petitioner agreed to ship cargo to Turkmenistan. The petitioner claimed that the company had breached the terms of the charterparty and began arbitration proceedings in London and later proceedings in the BVI court.

7. The company remained registered in the BVI until 10 December 2015 when it moved its registered office to Malta two months after service of the claim form in the BVI proceedings and a month after acknowledging service.
8. The petitioner obtained judgment in default on 1 March 2016, and damages and costs were assessed on 13 June 2016 in the total sum of US\$657,839.18.
9. At some point before 2015, it is said, the company ceased to trade. I am not certain that that has been proved or conceded, but it does seem likely: in spite of the fact that this petition has been on foot for some time, no application has been made to validate or ratify any transactions, and the evidence is that two of the company's bank accounts have been frozen for some time as a result of steps taken in Switzerland rather than because of presentation of the petition.
10. Initially the petition was opposed not only on jurisdictional grounds but also on the ground that the debt was disputed; but the company no longer disputes the petition debt.

The law

11. Mr Knight, counsel for the petitioner, submits that the EU Regulation on Insolvency Proceedings (2015/848, often referred to as the Recast Regulation) now applies to these proceedings rather than the EC Regulation on Insolvency Proceedings (1346/2000). Mr Comiskey, counsel for the company, agrees. The Recast Regulation came into force on 26 June 2017. Art 84(1) applies to insolvency proceedings "opened" thereafter. The "time of opening proceedings" is defined by article 2(8) as meaning "the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not". Article 2(7) provides:

“[J]udgment opening insolvency proceedings’ includes [...] the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings.”

For the purpose of “opening insolvency proceedings” a judgment must bring about “the partial or total divestment of a debtor and the appointment of a liquidator” (see paragraph 3 of the ruling in *In re Eurofood IFSC Ltd* [2006] Ch 508). No judgment given in these proceedings to date can be so described. It follows, then, that the court is concerned now with the recast EU Regulation rather than the predecessor EC Regulation.

12. Article 3(1) EU Regulation provides:

“The courts of the Member State within the territory of which the centre of the debtor’s main interests is situated shall have jurisdiction to open insolvency proceedings (‘main insolvency proceedings’). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main

interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.”

13. Assistance as to how a company’s centre of main interests may be ascertained can be gained from some of the recitals to the Regulation:

“(27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor’s main interests or the debtor’s establishment is actually located within its jurisdiction.

(28) When determining whether the centre of the debtor’s main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to a change of address in commercial correspondence, or by making the new location public through other appropriate means.

(29) This regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.

(30) Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of the Member State should carefully assess whether the centre of main interests is genuinely located in that Member State. In the case of a company, it should be possible to rebut this presumption where the company’s central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all relevant factors establishes in a manner that is ascertainable to third parties, that the company’s actual centre of management and supervision and the management of its interests is located in that other Member State. [...]

(31) With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the centre of main interests is at the place of the registered office, at the individual’s principal place of business or at the individual’s habitual residence should not apply where, respectively, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated its registered office or principal place of business to another Member State within the 3-month period prior to the

request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within the 6-month period prior to the request for opening insolvency proceedings.

(32) In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.

(33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings”.

14. Both Mr Knight and Mr Comiskey rely on *Interedil Srl v Fallimento Interedil Srl* [2012] BCC 851 as authority for the proposition that a debtor's centre of main interests is to be determined at the date on which the request to open proceedings is made. The following passages are relevant to that and other matters:

“43. With regard in particular to the term ‘the centre of a debtor's main interests’ within the meaning of art. 3(1) of the Regulation, the court held, at [31] of *Eurofood IFSC* [...], that that concept is peculiar to the Regulation, thus having an autonomous meaning, and must therefore be interpreted in a uniform way, independently of national legislation.

[...]

48. As the Advocate General observed at [69] of her opinion, the presumption in the second sentence of art. 3(1) of the Regulation that the place of the company's registered office is the centre of its main interests and the reference in recital (13) in the preamble to the Regulation to the place where the debtor conducts the administration of his interests reflect the European Union legislature's intention to attach greater importance to the place in which the company has its central administration as the criterion for jurisdiction.

[...]

50. It follows that, where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions of the company are taken, in a manner that is ascertainable by third parties, in that place, the presumption in the second sentence of art. 3(1) of the Regulation that the centre of the

company's main interests is located in that place is wholly applicable. In such a case, as the Advocate General observed at [69] of her opinion, it is not possible that the centre of the debtor company's main interests is located elsewhere.

51. The presumption in the second sentence of art. 3(1) of the Regulation may be rebutted, however, where, from the viewpoint of third parties, the place in which a company's central administration is located is not the same as that of its registered office. As the court held at [34] of *Eurofood IFSC*, the simple presumption laid down by the EU legislature in favour of the registered office of that company can be rebutted if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at that registered office is deemed to reflect.

52. The factors to be taken into account include, in particular, all the places in which the debtor company pursues economic activities and all those in which it holds assets, in so far as those places are ascertainable by third parties. As the Advocate General observed at [70] of her opinion, those factors must be assessed in a comprehensive manner, account being taken of the individual circumstances of each particular case.

53. In that context, the location, in a Member State other than that in which the registered office is situated, of immovable property owned by the debtor company, in respect of which the company has concluded lease agreements, and the existence in that Member State of a contract concluded with a financial institution—circumstances referred to by the referring court—may be regarded as objective factors and, in the light of the fact that they are likely to be matters in the public domain, as factors that are ascertainable by third parties. The fact nevertheless remains that the presence of company assets and the existence of contracts for the financial exploitation of those assets in a Member State other than that in which the registered office is situated cannot be regarded as sufficient factors to rebut the presumption laid down by the EU legislature unless a comprehensive assessment of all the relevant factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State.

[...]

55. The court has held that, where the centre of a debtor's main interests is transferred after the lodging of a request to open insolvency proceedings, but before the proceedings are opened, the courts of the Member State within the territory of which the

centre of main interests was situated at the time when the request was lodged retain jurisdiction to rule on those proceedings (*Staubitz-Schreiber* (Case C-1/04) [2006] ECR. I-701; [2006] BCC 639, at [29]). It must be inferred from this that, in principle, it is the location of the debtor's main centre of interests at the date on which the request to open insolvency proceedings was lodged that is relevant for the purpose of determining the court having jurisdiction".

Whilst they do no more in parts than repeat what is to be found in the Regulation itself, they make good the propositions summarised in Mr Knight's skeleton argument (paragraph 21):

- (a) COMI is to be given an autonomous meaning and interpreted in a uniform manner across member states;
- (b) COMI must be determined by attaching greater importance to the place of a company's central administration, as may be established by objective factors ascertainable by third parties;
- (c) Where the bodies responsible for management and supervision of a company were in the same place as its registered office and the management decisions of the company were taken, in a manner ascertainable by third parties, in that place, the presumption could not be rebutted; and
- (d) Where the company's central administration was not in the same place as its registered office, the presence of company assets and the existence of contracts for the financial exploitation of those assets in a Member State other than that in which the registered office is situated is not sufficient to rebut the presumption unless a comprehensive assessment of all relevant factors made it possible to establish, in a manner ascertainable by third parties, that the actual centre of management and supervision was located in the other Member State.

15. Mr Knight relies in addition on a passage from the CJEU's judgment in *Eurofood IFSC Ltd* (Case C-341/04) [2005] BCC 1021 (AG); 2006 BCC 508 (CJEU), in which the court held:

"34. It follows that, in determining the centre of main interests of a debtor company, the simple presumption laid down by the Community legislature in favour of the registered office of the company can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at the registered office is deemed to reflect.

35. That could be so in particular in the case of a ‘letterbox’ company not carrying out any business in the territory of the Member State where its registered office is situated.

36. By contrast, where a company carries on business in the territory of the Member State where its registered office is situated, the mere fact that its economic choices are or can be controlled by the parent company in another member state is not enough to rebut the presumption laid down by the Regulation.”

16. Lewison J, as he then was, considered the *Eurofood* judgment in *Re Lennox Holdings plc* [2009] BCC 155. He said,

“7. [The Advocate General] then quoted ([113]) the further submission that,

‘... the ‘ascertainability by third parties’ of the centre of main interests is not central to the concept of the ‘centre of main interests’. That can be seen from recital (13) [of the preamble] itself which states that the ‘centre of main interests’ ‘should correspond to the place where the debtor conducts the administration of his interests on a regular basis’, in other words, in the case of a corporation, where its head office functions are exercised. Recital (13) continues, ‘and [which] is therefore ascertainable by third parties’, in other words, it is because the corporation’s head office functions are exercised in a particular Member State that the centre of main interests is ascertainable there.’

The Advocate General again ([114]) agreed with that submission.”

Lewison J’s attention to what the Advocate General said about ascertainability is of note.

17. Although decided early in the life of the EC Regulation and in the context of individual rather than corporate insolvency, *Shierson v Vlieland-Boddy* [2005] EWCA Civ 974 still contains valuable guidance on matters relevant to the search for a debtor’s centre of main interests. The following propositions from the judgment of Chadwick LJ (largely to be found in paragraphs 47 and 55) seem to me to be relevant here:

- (a) An individual (and presumably a company too) is free to change his or its centre of main interests, even for a self-serving purpose.
- (b) If a debtor shifts his centre of main interests in the face of possible insolvency, the court must scrutinise the facts and determine whether the change is one of substance or illusory.

- (c) Regard must be had to the need for the centre of main interests to be ascertainable by third parties, in particular creditors and potential creditors.
 - (d) Whilst the date on which a debtor's centre of main interests is to be established is the date of presentation of the petition, evidence as to a debtor's activities and actions at other times may be significant to the extent that they cast light on the truth or otherwise of any claim to have had a centre of main interests in a particular location at the relevant time.
 - (e) A change of centre of main interests must have an element of permanence.
18. Finally, I mention two more cases. The first is *Northsea Base Investment Ltd* [2015] EWHC 121 (Ch), on which Mr Knight relies, in which Birss J began his conclusions by saying,

“[28] Considering the matter overall, there are a number of jurisdictions with which the operation of these companies is linked. This is unsurprising given the international nature of their business. The legislation makes it clear that the presumption is that the COMI of the company will be the State of its registered office which, in this case, is Cyprus. The burden is on the Applicant to establish a different COMI and that will involve a comprehensive review of all the facts with a particular focus on objective matters and matters ascertainable by third parties.”

The second is *Irish Bank Resolution Corporation Limited v Quinn* [2012] NICH 1 to which I shall come later.

The submissions

19. I mean no disrespect to Mr Knight and Mr Comiskey if I summarise their submissions shortly at this stage. Mr Knight says that the court should regard the company's move of its centre of main interest to Malta as illusory. The company simply has its registered office there; nothing else happens there. If the court, as it must, inquires into the reality of the situation, the evidence shows that the UK is where it does and has carried out the administration of its interests on the most regular basis. Thus the registered office presumption is rebutted and the company may, indeed should, be wound up here. Mr Comiskey says that the registered office presumption applies. In a case such as this, where the company is small and carries on its business from nowhere in particular that can be established with any level of certainty (he used the phrase it traded “in the ether”) the presumption had to apply; indeed it operated in a case such as this by default.
20. I shall deal with the submissions as necessary in greater detail in my conclusions below.

Conclusions

21. Because this company traded virtually rather than physically, much of the case law is of little assistance: it deals largely with companies of substance that have a headquarters, offices, a tangible physical presence or assets or staff who are located and work somewhere or other. This company has nothing of that kind, so whilst the case law may help as to the principles to be applied, it does not help with what is, in the end, a predominantly factual inquiry. I shall, however, touch on it in what follows.
22. This is a case about forum shopping. The petitioner seeks a winding up order here because it is easier, quicker and less costly to do here than it would be in Malta. That is understandable but is not a factor I can take into account. The company has plainly moved its registered office to Malta for precisely that reason: it wishes to avoid or put off being wound up, even though it cannot pay the petitioner's undisputed judgment debt or, it seems, debts due to other creditors. I draw that conclusion from the timing of the move of the company's registered office (see paragraph 7 above) as Mr Knight invites me to. The company's explanation that the reason for the move to a country with which it had no prior connection was to save overheads makes no sense without amplification; there appears to have been no attempt to notify any third party of the move: no evidence is given of the company's having done so; on the contrary, as Mr Knight points out, the company continued to use a BVI address after the move (see the redacted letter of 4 February 2016 at page 177 of the bundle). As we know from *Shierson v Vlieland-Boddy*, a debtor is entitled to move his centre of main interests and to do so for self-serving reasons. The question is whether the move is real or illusory.
23. As the Court of Appeal said in *Shierson v Vlieland-Boddy*, the court must scrutinise an apparently suspicious shift of a debtor's centre of main interests to establish which is the case. That it is obliged to do so is plain from recitals 27, 30 and 32 of the EU Regulation.
24. This is a case where it is difficult to undertake a comprehensive assessment of the factors going to the location of the company's centre of main interests because the evidence on both sides is unsatisfactory. Although long, the content is sparse. Much of it has been given by solicitors rather than by anyone with direct knowledge of important facts. Some of it is second hand hearsay. In many cases sources of knowledge are not properly identified or identified at all. Some of what is said is speculation and not fact, although that is not to say that all the speculation is entirely without value: it is legitimate to mention matters and invite inferences to be drawn.
25. The evidence is also unsatisfactory because of what it omits to say. This is especially true of that given on behalf of the company. I agree with Mr Comiskey that it is for the petitioner to make out its case, but as Sherlock Holmes noted, sometimes it is the dog that does not bark that gives the clue: silence can sometimes be a powerful indicator of what is most likely to be true. In this case I do draw adverse inferences from the company's failure to provide even the most basic information about what it does where.
26. Fortunately, there is in evidence some documentary material which provides assistance. Because of the general deficiencies I have described above, I attach greater weight to what can be gleaned from it than to much of the other, vaguer evidence. The

upshot of all this is, however, that this court finds itself having to make bricks with little straw.

27. That said, for the reasons I have given above I do not think the court can avoid the obligation imposed on it by the Regulation to “examine of its own motion whether the centre of the debtor's main interests...is actually located within its jurisdiction,” words echoed by Birss J in the *Northsea* case. Query whether, this being a case “where the circumstances of the matter give rise to doubts about the court’s jurisdiction, the court should [have] require[d] the debtor to submit additional evidence to support its assertions” as to its centre of main interests being in Malta. That question is perhaps best left open for the time being. (The “law applicable to the insolvency proceedings [does] give the debtor’s creditors the opportunity to present their views on the question of jurisdiction,” but they have not appeared to assist.) There is force in Mr Comiskey’s contention that the evidential deficit is the petitioner’s problem, not his client’s: it is for the petitioner to rebut the registered office presumption and not for his client to make out a different case; the petitioner, he points out, could have sought disclosure and cross-examination of those who have given witness evidence and those mentioned in such evidence; but it has not done so. To the extent that he blames the petitioner and its advisers for those inadequacies I adopt what he says, noting, however, at the same time that the company has chosen to be unforthcoming: so, whilst Mr Crittenden said in his first witness statement as long ago as 2017 that the company was “proactively gathering evidence” about its centre of main interests it has not made good on that promise. That strengthens the justification for drawing inferences adverse to the company’s claims.
28. I reject Mr Comiskey’s suggestion that where ascertaining the company’s centre of main interests is difficult, as it is in this case, the court can avoid the inquiry it is mandated to undertake by using the registered office presumption to make a default finding. There is a difference between applying a presumption and making a finding by default. It may be that in reality, in many situations, the registered office in fact operates as a default basis on which jurisdiction is established, for example where the petitioner asserts a jurisdictional position and the company does nothing to challenge it and no other creditor raises a doubt about it; but that is not the position here and is not what Mr Comiskey contends for. In my judgment, when faced with competing claims, the court must inquire into the basis on which its jurisdiction is being invoked (or contested) and reach a principled decision on the evidence as opposed to using the registered office presumption as a fall back to avoid having to do so. The EU Regulation is not framed as Mr Comiskey would have it. It could have been if the legislators had intended the registered office presumption to work in the way he suggests.
29. Much of this company’s business indeed seems to have been conducted in the ether as Mr Comiskey demonstrated. He took me to a significant body of emails dating back to 2011-2012 which appears to bear out that by and large that is how day to day business of the company was conducted. He rightly points out that nothing in the emails reveals anything about the location from which or to which they were sent. That, however, does not assist the inquiry the court is bound to make.
30. At various times the company has had officers who have given addresses in this country, Estonia and South Africa. That too is indicative of a company that is, as it were, a citizen of nowhere. Even if it were relevant to the location of the company’s

centre of main interests, there is nothing to say where board meetings were held or where business decisions were made. Again, then, this information does not assist.

31. The charterparty that has given rise to the petition debt concerned a transaction that had no connection with the UK. As Mr Comiskey points out, it provided for the purchase of oil from somewhere in the Caspian region which was to be shipped to Turkmenistan and taken by truck from there for sale in Afghanistan. There is nothing in the way the contract was performed, or not, to establish a link with the UK.
32. Even though there is force in Mr Comiskey's "trading in the ether" description of how the company operated it did in fact connect with planet earth. There are several places from which it administered its interests of one kind or another such that they could be said to be, or have been, centres of its interests: the BVI, Malta, Estonia, Switzerland and the UK.
33. I can eliminate the BVI. Neither party claims it as the company's centre of main interests, and plainly the company's shift to Malta was intended to sever its connexion with that country (although the judgment there is proof that it was not wholly successful in that aim).
34. I can also eliminate Estonia. Again, neither party contends that it is or was the company's centre of main interests, and in any event the fact that two current directors have residential addresses there is not sufficient to make it so.
35. Locating the company's centre of main interests in Malta rests on its registered office being there and no more than that. There is unchallenged evidence from the petitioner that there is no operational office and no one conducting the business of the company there. The registered office is a "letter box" and no more. It follows that if the company "conducts the administration of its interests on a regular basis elsewhere" such that that "is ascertainable by third parties," that "elsewhere" can only be either the UK or Switzerland.
36. A number of matters canvassed in the evidence and/or submissions are, in my view, irrelevant to where the company carried out the administration of its interests. Languages used are one of these. I reject the petitioner's reliance on the use of English for the company's business as having any bearing on the place from which the company's interests were or are administered. The fact that English is widely used in international trade, and especially in trading of the kind the company was involved in, tells us nothing about where that language is used. There may be circumstances in which the use of a particular language is indicative of where a company carries on business, but this is not such a case. In any event, English was not the only language used: the emails I have mentioned are in Russian. The nationality of the company's directors is similarly irrelevant. I recognise that there may be cases where it may be an indicator; again, however, this is not such a case.
37. Mr Knight says that when the charterparty was signed in December 2014, Mr Doyle, the then director of the company, used an address in England. He invites an inference that on the balance of probabilities that must mean that the company's affairs were conducted in England at the time; there is no evidence to the contrary; and there is no evidence of any subsequent change. I am not persuaded. There is a dispute in the evidence about Mr Doyle's address, although, like so much in this case, it is carried

on by assertion rather than by reference to anything of probative value. What emerged during the hearing was that Mr Doyle seems to have had an address in Sark as well as one in England, as Mr Comiskey points out, so where he lived at the material times is unclear and remains so. I cannot resolve the issue. I simply say that an address given by a director cannot be a matter to which any serious weight can be given. If it were, I would arguably have to hold that Estonia had taken the place of England. I also note that Mr Knight relies in his skeleton argument on *Re Videology Ltd* [2019] BCC 195 to support a submission that the location of directors is not decisive and the location of board meetings is unlikely to be ascertainable by third parties which would, if anything, run against his proposition about Mr Doyle.

38. The petitioner relies on a reference in the evidence to the company's having an in house legal team in June 2017. Mr Knight invites the inference that it is located in the UK. I have no idea where it might be or have been: it could be made up of a team of lawyers operating in the way this petition was heard, as Mr Comiskey pointed out. Again I decline to draw the inference Mr Knight invites.
39. A more objective and reliable indicator of the place from which the company has from time to time administered its interests (a word that may be widely construed) is what can be gleaned from the few documents in evidence. There is evidence about a number of contracts to which the company was a party, all of them in existence, as I understand it, at the date of presentation of the petition or at around that date.
40. I shall take the charterparty first. It was governed by English law and subject to arbitration in London, even if in the end it appears to have led to proceedings in the BVI. (Mr Crittenden mentions that there was both arbitration in London and litigation in the BVI; Mr Parish explains that that was because the breach of the charterparty gave rise to disputes that went beyond the charterparty, so there was a jurisdictional dispute). Mr Crittenden says that he is informed by Mr Daniil Magerov, who is described as counsel to the company, that all the company's contracts were signed by the company in Switzerland at the office of the legal representative of the parties with which the company was contracting, but he does not say whether Mr Magerov was present or indicate the basis on which Mr Magerov claims to know that, so I discount that evidence. I do not know where anything was actually signed. What I can see is that the charterparty is headed "London" under which appears the word "place". That would seem to imply that it was signed there. Even if it was not, it indicates that the parties intended execution to take place in London or to deem London to be the place of execution. That is an important indicator that the company was administering some of its interests there or intending to.
41. The company was a party to two contracts with Integral Petroleum SA. Those were governed by English law and subject to LCIA arbitration, but the place of arbitration was Geneva.
42. Mr Crittenden exhibits to his first witness statement an agreement dated 22 September 2016 between and among the company, the petitioner, Integral Petroleum SA and Murat Seitnepesov, its managing director, dealing with "various proceedings in different jurisdictions". Clause 9 provides for any dispute to be resolved by LCIA arbitration in London and for English law to govern it. Mr Serebjanski's evidence discloses that in January of this year Integral began arbitration in London and in May registered a judgment in the BVI.

43. Mentioned in the petition is a contract with Trafigura Beheer, the date of which is not given, which was, it is said, subject to English law and dispute resolution in the High Court in England. That seems to be accepted by the company. The document itself is not in evidence.
44. There were also two contracts between the company and Dartex Trade Limited of the Marshall Islands made on 15 April 2012. Those too were governed by English law and provided for LCIA arbitration but in Geneva.
45. I appreciate that *Interedil* warns against reliance on the existence of contracts for the financial exploitation of company assets in a member state other than that in which the registered office is situated as sufficient to rebut the registered office presumption, but (a) as I have pointed out, in this case the court has been given little to go on in making its comprehensive assessment of all the relevant factors; (b) the court does not say in terms that no regard may be had to contractual terms; (c) I do not say that alone they are sufficient, merely a factor; and (d) faced with the petitioner's reliance on them, the company has failed to produce the evidence it said it would; so in my view they cannot be disregarded. Mr Comiskey warns that if the use of English and of clauses providing for contracts to be governed by English law "were taken as hallmarks of COMI it would be both absurd and potentially damaging to London's position as a centre for international dispute resolution" (paragraph 34 of his skeleton argument). I would agree if that was all the court had to go on, but even in this case it is not; and most companies, I suggest, would be able to give evidence of other countervailing matters, something which yet again I note this company has failed to do.
46. Unsurprisingly, in the light of the terms in its contracts, the company appears to have used Swiss lawyers, although it ceased to instruct them at some stage, and two firms of English solicitors, Ince & Co LLP and Swinnerton Moore LLP.
47. It is apparent from the witness statements of Mr Crittenden and Mr Parish that there have been negotiations between the parties. They are reflected in the orders adjourning the petition. Those too seem to have involved lawyers in both England and Switzerland (see paragraphs 6 and 7 of Mr Parish's second witness statement).
48. The reason for a contractual choice of law or place of jurisdiction for the determination of contractual disputes is to my mind irrelevant. I say that because Mr Comiskey submits that the company had no freedom to choose. Mr Crittenden gives evidence that the company did not choose English law or London as a legal venue: they were imposed by the other contracting parties or resulted from the use of standard forms of contract for certain kinds of business. The latter may well be the case; the former proposition is mere assertion: Mr Crittenden does not state a basis or source of knowledge for the contended compulsion. Be that as it may, I do not think that is relevant: it is the fact of the governing law and where disputes are to be resolved that is indicative of where the interests attendant on the contractual rights and obligations were to be administered, not the motives or pressures leading to their use. (A mining company could not complain that it had to maintain staff and premises near the mine so it had no choice about where it administered its interests.)
49. The choice of law and legal venue clauses have given rise to litigation in this country: Mr Parish for the petitioner gives examples in paragraphs 23 and 24 of his first

witness statement. It seems to me that litigation necessarily involves a company's interests, and that involvement in legal proceedings and instructing and paying solicitors to conduct them (or incurring a liability to pay them to do so) goes to administering the company's interests. I find support for that view in the judgment of Deeny J in *Irish Bank Resolution Corporation Limited v Quinn* [2012] NICH 1. The case involved a painful inquiry as to whether the debtor's centre of main interests was in Northern Ireland or the Republic of Ireland. The place where litigation was being conducted and the use of advisers were factors to which the court had regard. The judge said,

“[51] I find that Mr Quinn's main interests in recent months were the litigation [in] which he and his family are embroiled and the salvaging of what he can from the situation in which he finds himself. I find the centre of Mr Quinn's main interests is in the Republic of Ireland. I find that prior to 10 November 2011 he was not conducting the administration of his interests on a regular basis in Northern Ireland. I find that the probability is that the administration of his interests was shared between his home, Belturbet and Dublin where he continues to have professional advisors.”

50. I should mention a recent document that is in evidence and which points to Malta. It is a power of attorney given by Mr Seitnepesov to lawyers to enable them to bring proceedings against the company there based on a judgment. I attach little weight to it as it is the product of what I regard as an opportunistic move from the BVI to Malta.
51. Other objective evidence of where the company has administered its interests is what is known about its banking arrangements. At the time of presentation of the petition it had two non-UK bank accounts, one with ING Belgium, another with BNP Paribas (Suisse) SA. Both accounts were held at branches in Geneva. Those were frozen in October 2019. Since presentation of the petition, on 5 December 2018, and before the Swiss accounts were frozen, the company opened three accounts with an English “online money institution” called Revolut which operates like a bank in that it enables customers to deposit money from which payments can be made. The Revolut facility has been used to make payments in Malta, the UK and Estonia, the latter supposedly to a service company which the petitioner has been unable to locate. The existence of the Revolut accounts only came to light late in the day (in, I think, May of this year). The company's banking arrangements point to the administration of interests in both the UK and Switzerland, the latter for longer than the former and closer in time to the date of presentation of the petition.
52. The company is, by reason of the BVI judgment, indebted to an English creditor. It has other debts too, but I know little about them save that my understanding is that the creditors, Integral and Mr Seitnepesov, are not English and appear to be pursuing them in Malta. It seems to me that having a debt to a creditor is another matter that goes to the place in which a company's interests are or may be administered. I give some weight to the fact that the debt to the petitioner is a judgment debt owed to an English entity.
53. There is, I acknowledge, a problem about the chronology of some of the events and matters set out above. As we have seen, the focus of attention must be on the position

at or around the date of presentation of the petition, and some events (such as the setting up of the Revolut facility) postdate that period by some years. I believe, however, in the light of Chadwick LJ's *dictum* in *Shierson v Vlieland-Boddy*, that the past must to some extent be viewed through the prism of subsequent events since those can, as I think they do in this case, throw light on what the position at the relevant time was most likely to have been. Thus, although the Revolut facility was only set up in 2018, some time after presentation of the petition, one must ask why the company chose to set it up in the UK and not in Malta where the registered office had been located for about two years. An obvious answer would be that it chose England because that was the place where it regarded itself as administering its interests as it had been for some time.

54. I conclude on the basis of the documentary material, the location of the company's banking facilities from time to time, the location of its legal advisers, the location of at least one judgment creditor to which a debt was to be paid and the place where the company was involved in litigation that at the relevant time the company was administering its interests in both the UK and Switzerland so that both were centres of the company's interests. I conclude, by a narrow margin and with misgivings, that on balance the greater use of English law for contracts, the greater use of London as a seat of arbitration, the actual recourse to or forced involvement in legal proceedings here and the consequential use of English lawyers makes the UK, on the balance of probabilities, the main centre of those interests. The company's affairs seem to have been conducted in this country more than in Switzerland, certainly as far as contractual and litigation interests were concerned, although it is, I accept, hard to be precise.
55. As to ascertainability, I agree with Mr Knight that what is required by the Regulation is just that, not actual ascertainment at the relevant date. I make the obvious observation that the petitioning creditor, a third party, has in fact ascertained the company's centre of main interests and done so in the face of a cloud of obscurity. I also note, as Lewison J did, that ascertainability by third parties of the centre of main interests is not central to the concept of the centre of main interests but seems to flow from the fact of where the interests lie; and that in *Irish Bank Resolution Corporation Limited v Quinn Deeny J* said,

“[A] debtor does not appear to be obliged to advertise his centre of main interest but nor may he hide it. It should be reasonably or sufficiently ascertainable or ascertainable by a reasonably diligent creditor” (paragraph 28).

Whilst the fact of the company's registered office being in Malta was and remains, as Mr Comiskey rightly says, ascertainable from public records, the fact that its centre of main interests was and remains in the UK was and still is similarly ascertainable, albeit less readily, by one reasonably diligent creditor and could be by others.

56. For the foregoing reasons, adopting the formula that appears in paragraph 34 of the judgment in the *Eurofood* case, I am satisfied, albeit by a small margin, that there is sufficient material to enable the court to conclude that an actual situation exists, and existed at the material time, to justify locating the company's centre of main interests in a place different from that of its registered office such that the registered office

presumption is rebutted; and that accordingly this court has jurisdiction to wind the company up. I shall therefore make the usual compulsory order.