[2017 Gib LR 206]

ADVALOREM VALUE ASSET FUND LIMITED v. KING

SUPREME COURT (Jack, J.): July 31st, 2017

Bankruptcy and Insolvency—grounds for making bankruptcy order—centre of main interests—debtor's centre of main interests is Gibraltar if carries on business through Gibraltar companies, even if lives in Spain (Regulation (EU) No. 2015/848 on insolvency proceedings (recast), art. 3(1))

The applicant applied for a bankruptcy order against the respondent.

Judgment had been given against the respondent, who lived in Spain, for over £6m. with interest and costs. The applicant had served a statutory demand on the respondent in Spain, to which there had been no response. The applicant was subsequently granted permission to serve an application for a bankruptcy order.

Section 320 of the Insolvency Act 2011 provided, *inter alia*, that—

"(1) the Court shall not make a bankruptcy order against a debtor under this Part unless it is satisfied—

. . .

(b) that at any time in the period of 3 years prior to the date that the application was filed, the debtor—

(i) had carried on business in Gibraltar, either personally or by means of an agent or manager . . ."

Article 3 of Regulation (EU) No. 2015/848 on insolvency proceedings (recast) provided:

"1. 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 an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary . . .

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary . . ."

The applicant submitted that the respondent's place of business and therefore centre of main interests was Gibraltar. The respondent appeared to have assets in Gibraltar and had, within three years, carried on business in Gibraltar either personally or through an agent. The respondent had had a significant interest in connection with various Gibraltar companies, although he had attempted to conceal his business interests in the jurisdiction, and still owned at least two companies. Reference was made to various media articles which reported the respondent's centre of business dealings to be Gibraltar.

Held, granting the application:

The application for a bankruptcy order would be granted. The court was satisfied that the applicant had adequately proved the requirements in s.320 of the Insolvency Act 2011 for the making of such an order. In addition, the court was satisfied that Gibraltar was the respondent's centre of main interests, which was the critical test under European law. For the purposes of art. 3(1) of the Regulation (EU) No. 2015/848 on insolvency proceedings (recast), the court was satisfied that the respondent carried on his business through companies in Gibraltar. That was sufficient, in the absence of evidence to the contrary, to make Gibraltar the respondent's centre of main interests in accordance with art. 3(1). Had the proper test been a notional weighing up of Gibraltar as against Spain to determine the centre of main interests, even though the respondent lived in Spain his business appeared to be exclusively in Gibraltar and Gibraltar would have been the centre of main interests (paras. 8–9; paras. 32–37).

Cases cited:

(1) *Advalorem Value Asset Fund Ltd.* v. *Advalorem Asset Management Ltd.*, 2015 Gib LR 380, referred to.

(2) *Compson* v. *Financial Servs. Commr.*, 2015 Gib LR 435; on appeal, *sub nom. Weal* v. *Financial Servs. Commr.*, 2016 Gib LR 131, referred to.

(3) *Shierson* v. *Vlieland-Boddy*, [2005] EWCA Civ 974; [2005] 1 W.L.R. 3966; [2005] BCC 949; [2006] 2 BCLC 9; [2006] I.L.Pr. 12; [2005] BPIR 1170, applied.

(4) *Wardour Trading Ltd*., *In re*, 2017 Gib LR 142, referred to.

Legislation construed:
Insolvency Act 2011, s.320: The relevant terms of this section are set out at para. 8.

Council Regulation (EU) No. 2015/848 on insolvency proceedings (recast), art. 2: The relevant terms of this article are set out at para. 10.
art. 3: The relevant terms of this article are set out at para. 12.
art. 4: The relevant terms of this article are set out at para. 13.
art. 5: The relevant terms of this article are set out at para. 14.

D. Lewis and *A. Cardona* for the applicant;
The respondent did not appear and was not represented.

1 **JACK, J.:** Gregory Hugh Colin King is a fraudster. He is alleged to have defrauded investors of over US$600m. in a fraud concerned with a hedge fund called Heather Capital Ltd. ("Heather Capital"). The liquidator of Heather Capital, Mr. Duffy, is a supporting creditor. By a letter of today, he says that Heather Capital has a claim for the purported misappropriation of about £90m. of funds from between October 2005 and February 2017 by a certain Gibraltar-based special purpose vehicle. In addition, he has a claim for about £20m. taken from Heather Capital in October 2005 via Mathon Ltd. to Mr. King and his associates. The liquidator reserves the right to claim other amounts relating to other matters should it be necessary or advantageous to do so.

2 The current proceedings concern a more modest fraud by Mr. King for a mere £6m. committed on the applicant ("Advalorem"). In my judgment of January 12th, 2017 on an *ex parte* application made by Mr. Hyde, the liquidator of Advalorem, I gave him permission to serve a statutory demand on Mr. King in Spain. The background to that application for permission to serve a statutory demand on Mr. King in Spain is a fraud carried out by Mr. King involving the investment of pension moneys into grossly overpriced Scottish real estate. The details can be seen in a number of judgments of mine: *Compson* v. *Financial Servs. Commr.* (2) (appeal by Mr. Weal alone, *sub nom*. *Weal* v. *Financial Servs. Commr*., dismissed) and *Advalorem Value Asset Fund Ltd.* v. *Redford* (1) (Supreme Ct., Claim No. 2015–A–132, September 4th, September 18th, September 23rd and September 24th, 2015, all unreported; appeal against the last two judgments dismissed: 2015 Gib LR 380).

3 Mr. King was one of the defendants in the *Redford* action. He did not appear and on April 7th, 2016 I gave judgment by default against him for £6,129,988 plus interest and costs. I also made Mr. King the subject of a freezing order (what used to be known as a *Mareva* injunction). He did not comply with the disclosure obligations in that order and *prima facie* is in

contempt of court in failing to comply with the order. The proposed liquidator has not brought any proceedings for contempt against Mr. King. That may be because he thought there was no purpose in doing so but, as I said in the case of *In re Wardour Trading Ltd.* (4), it may be possible to obtain a European arrest warrant in respect of a committal for contempt. That matter does not arise today.

4 As a result of my judgment of January 12th, 2017, Mr. Hyde had a statutory demand served on Mr. King in Spain. The statutory demand was not responded to and Mr. King has made no payments in respect of it. As a result, on June 2nd, 2017, I granted Mr. Hyde permission to serve an application for a bankruptcy order out of the jurisdiction on Mr. King's residence or at least the place where he was residing in La Zagaleta in Benahavis near Marbella.

5 The bankruptcy application was issued on June 5th, 2017 and was served in the following manner, according to the affidavit of Jenny Allan. Ms. Allan is a trainee solicitor with Philips Barristers & Solicitors who is acting on behalf of Mr. Hyde. She explains that she translated the bankruptcy application into Spanish and caused those documents, plus covering letters, plus the order for substituted service which I made on him, to be served in the manner she explained. Her affidavit says:

> "I sent the above listed documents together via one single burofax using the premium plus service which warrants a 'certificación de contenido y acuse de recibo' ('certification of contents sent and proof of receipt') to the address in La Zagaleta."

She did that on June 12th, 2017 at 12.05 p.m. She continued:

> "On the 13th June 2017 I checked the delivery status of the burofax on the Correos website tracking service it was marked 'en proceso de entrega' ('delivery in process'). On the 14th June 2017 I called the Correos office in Benahavis and in San Pedro de Alcántara to chase the status and the whereabouts of the burofax. I was informed that it was being delivered that morning. The same day Andrew Cardona told me that he had received a 'certificado de entrega' from Correos via email which indicated that the burofax 'a resultado pasado a lista . . .'"

She exhibits that "certificado de entrega" dated June 14th, 2017.

6 On June 15th, 2017, I called the Correos office to enquire what "pasado a lista" meant. I was informed the Correos service had attempted delivery twice to no avail. Upon the second failed attempt, the delivery man had left a note at Mr. King's address notifying him that he had 30 days to collect the burofax from the designated depot. The notice would have stated the address from which Mr. King was to collect the burofax. I

was also informed that Andrew Cardona would receive a second "certificado de entrega" when Mr. King collected the burofax or, if uncollected, at the expiry of the 30-day collection period. On July 17th, 2017, Andrew Cardona told me that he had received an email from Correos which attached the "certificado de imposibilidad de entrega" ("certificate of impossibility of delivery"). This document stated that the burofax had been returned because it had not been collected from the Correos office and she exhibits that certificate.

7 I am satisfied on this basis of the evidence that that is good service of the application to make Mr. King bankrupt. It is quite clear that Mr. King was attempting to evade service, and according to Spanish law that is good service.

8 I turn then to the law on bankruptcy. The Gibraltar legislation is now to be found in the Insolvency Act 2011. This provides, in s.320:

> "(1) The Court shall not make a bankruptcy order against a debtor under this Part unless it is satisfied—
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> (a) that on the date that the application was filed, the debtor—
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> (i) was ordinarily resident in Gibraltar;
>
> (ii) was personally present in Gibraltar;
>
> (iii) had a place of residence or a place of business in Gibraltar;
>
> (b) that at any time in the period of 3 years prior to the date that the application was filed, the debtor—
>
> (i) had carried on business in Gibraltar, either personally or by means of an agent or manager;
>
> (ii) had been a member of a partnership carrying on business in Gibraltar by means of a partner or partners or of an agent or manager;
>
> (c) that the debtor has or appears to have assets in Gibraltar; or
>
> (d) that there is a reasonable prospect that the making of a bankruptcy order will benefit the creditors of the debtor.
>
> (2) For the purposes of subsection (1)(b), a debtor or a partnership is deemed to be carrying on business in Gibraltar if liabilities incurred in the course of a business formerly carried on in Gibraltar remain unpaid."

9 For reasons which I shall explain, Mr. Hyde adequately proved those requirements. However, that is not sufficient to establish that Gibraltar is automatically the debtor's centre of main interests ("COMI"), which is the

critical test under European law. In my earlier judgment of January 12th, 2017, I cited the European law which was in force at that time, that is to say the European Insolvency Regulation (Council Regulation (EC) No. 1346/2000). That Regulation has been replaced by the Recast Insolvency Regulation (Regulation (EU) No. 2015/848). For relevant purposes, this came into force on June 26th, 2017 (see art. 92 of the Recast Regulation), and thus after the date on which the application to make Mr. King bankrupt was issued by the court. However I am satisfied that the definition of "judgment opening insolvency proceedings" and the "time of the opening of the proceedings" as defined in art. 2 of the Recast Regulation means that I need to apply the Recast Regulation rather than the original Regulation.

10 Article 2 contains definitions:

> "(7) 'judgment opening insolvency proceedings' includes:
>
> (i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings; and
>
> (ii) the decision of a court to appoint an insolvency practitioner;
>
> (8) 'the time of the opening of proceedings' means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not . . ."

11 Thus, if I grant a bankruptcy order today, today will be the day of the opening of the proceedings. For completeness, I should say that there is in fact no relevant change for the purposes of this application between the original Insolvency Regulation and the Recast Regulation, but I shall refer to the Recast Regulation throughout. The key articles are arts. 3–5.

12 Article 3 provides:

> "1. 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.
>
> In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed

to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.

2. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.

4. The territorial insolvency proceedings referred to in paragraph 2 may only be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 where

(a) insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

(b) the opening of territorial insolvency proceedings is requested by:

(i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or

(ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings."

13 Article 4 provides:

> "1. A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).
>
> 2. Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2)."

14 Article 5 reads:

> "1. The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.
>
> 2. The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides."

15 I turn then to the facts. The evidence relied on to give the court jurisdiction to make these proceedings main insolvency proceedings is two affidavits of Mr. Hyde. The first of these is dated December 13th, 2016. In this, Mr. Hyde explains that he is a licensed insolvency practitioner and a member of the firm CBR Global LLP, that he has been appointed special administrator of the applicant company, Advalorem, and has the power to bring proceedings in the name of the company.

16 He deals with the facts and shows that Mr. King appears to have assets in Gibraltar and has, within the period of three years prior to the date of his affidavit, carried on business in Gibraltar, either personally or by means of an agent. He then explains that Mr. King is the beneficial owner of a company called Rathdrum Ltd. ("Rathdrum") which was previously known as King & Co. Ltd., King & Co. Bankers Ltd. and Union Private Bank Ltd., and he gives details of litigation which was commenced to determine whether it was still owned by Mr. King or whether the beneficial ownership had passed to Heather Capital. Those proceedings have never been determined. He points out that the shares in Rathdrum are themselves a valuable asset worth in excess of £1m. and he explains that that is as a result of the sale of a property which used to be

called Shell House (now Abbotsford House) at 1A Line Wall Road, Gibraltar.

17 He also says that in his capacity as a joint liquidator of Thistle Holdings Ltd. he was informed by Triay Stagnetto Neish that there were moneys which were still being held by the firm which were being held on account for Mr. King and were the subject of the freezing order which I made against him.

18 Mr. Hyde concludes that Mr. King has cash assets in Gibraltar. He then goes on to deal with the question of carrying on business in Gibraltar and he shows that there are a large number of companies which are associated with Gibraltar. There are some 18 which are set out in a helpful spreadsheet which he exhibits to his affidavit. He also sets out what might be described as a family tree, which shows how Mr. King is the ultimate beneficial owner of various Gibraltar companies which are held through a head company, Steadfast Trustees Ltd.

19 I do not need to set out the details of all the companies. A large number of them are in fact dissolved as a result of a failure to file annual returns, but it is of course well known that it is easy in Gibraltar to restore companies which have been struck off simply by payment of the outstanding company registration fees and by making the annual returns which are supposed to be provided.

20 Because I expressed doubts in my judgment of January 12th, 2017 as to the adequacy of those facts to show that Mr. King was in truth somebody whose COMI was in Gibraltar, in his second witness statement Mr. Hyde expands on his reasons for saying that Mr. King has relevant interests here in Gibraltar. He updates the court on the property owned by Rathdrum and says it was sold for £1.4m. He says money is still being held by Triay Stagnetto Neish for the benefit of Mr. King.

21 Then he deals with carrying on business in Gibraltar and gives an updated list of companies. He comments—correctly in my judgment—that it is self-evident that Mr. King has and has had significant interest in connection with many companies in Gibraltar. Rathdrum, he says, is one of those companies. He then deals the background of Rathdrum attempting to obtain a banking trading licence from the Financial Services Commission here in Gibraltar and explains that the share capital which was substantially paid for by Mr. King, which amounted to in excess of £26m., shows that the shares in Rathdrum were ultimately held on trust for Mr. King absolutely. There had been a small balance of moneys coming from a company called Sargon Capital Ltd. but that was a company owned and controlled by Mr. King, so Mr. Hyde makes out his assertion that Rathdrum is ultimately held on trust for Mr. King absolutely.

22 Mr. Hyde then deals with a number of loans which were made by Rathdrum to companies associated with Mr. King or his associates and then deals with the various other companies which have carried out various investments in land. He identifies some other companies, all of which hold land in Scotland. The Gibraltar companies are Bromline Investment Ltd., Burgengate Ltd., Drewbury Investments Ltd., Morsden Holdings Ltd., Murndale Ltd., Screenmore Ltd., Staplon Ltd. and Transville Investments Ltd. He comments:

> "Therefore despite having been dissolved for just over 12 months ago these companies have a dormant interest in the said pieces of land. Mr. King therefore still retains a financial and beneficial interest in these companies based in Gibraltar notwithstanding their dissolution."

23 In addition to the Advalorem fraud in 2012/13, it appears that Mr. King attempted to use Advalorem in another illegitimate scheme involving, once again, the use of companies incorporated in Gibraltar, and land in Scotland. The land in this respect was owned by other companies incorporated in Gibraltar. He then mentions Bromline, Murndale and Drewbury and says they are or were all beneficially owned by Mr. King, and says again that this is evidence that Mr. King used Gibraltar as his economic base for business interest and ownership of land and property in which he may retain a dormant interest. He then deals with Mr. King as a director in Gibraltar and says:

> "In addition to Mr. King's financial interest in companies it is evident that he was listed as a director of Gibraltar Assets Management Ltd., a company incorporated in Gibraltar which is a member of the London stock exchange. While Mr. King's current involvement/ interest in the companies is unknown, he and his sister were previously listed as a directors [*sic*] as appears from the power point slides available in the internet and he exhibits those."

24 He then goes on to deal with the information from third party sources and says: "It is important for the purpose of establishing the base of an individual's COMI that one considers the information in respect of that individual that is easily ascertainable by a third party." He then deals with an independent review of journalistic articles from the internet with regard to Mr. King. It starts back in 2008, but starting in December 2014, *The Times* of London reported that Mr. King had set up Heather Capital in the Isle of Man but that it was administered from Gibraltar. *The Daily Record*, a Scottish Newspaper, reported online in November 2015 that one Scott Wilson, a lawyer, was embroiled in the collapse of Heather Capital and that Scott Wilson had failed to advise relevant parties that the cash, which was subject to a fraud, had not been sent to the Gibraltar firms which were set up and controlled by Mr. King.

25 Then last year, *The Wall Street Journal* reported in April that "Mr. King was a lawyer and Glasgow car dealer before becoming a hedge fund manager in Gibraltar." In August 2016, *Scottish Financial News* reported that the collapse of Heather Capital was associated with Mr. King. The scheme involved a transfer of funds to companies incorporated in Gibraltar which were controlled directly or indirectly by him. Mr. Hyde then cites an opinion of Lord Doherty sitting in the Outer House of the Court of Session last year, in a case brought by Heather Capital's liquidator, Mr. Duffy. The learned judge held that Mr. King used Heather Capital in order to orchestrate a number of frauds. In para. 4 of his opinion, he said Mr. King used the same mechanisms to conduct the fraud in each case, which was by incorporating companies in Gibraltar which he owned and/or controlled.

26 Mr. Hyde then deals with funds circulating in Gibraltar and says:

> "[A]s discussed above Thistle (still beneficially owned by Mr. King) sold its interest in the [Scottish] land to Advalorem in December 2012. Following receipt of the proceeds of sale Thistle immediately lent the money to Mr. King pursuant to the terms of a loan agreement dated the 19th December 2012 (but agreed on the 21st February 2013)."

He exhibits a copy of the loan agreement. He points out that the address of Mr. King in the loan agreement was an address in Switzerland but the governing law of the loan agreement was Gibraltarian law. The payment of the money appears to be have been dealt with as an inter-client account transfer in the client account of Triay Stagnetto Neish, who acted for both Thistle and Mr. King. He then exhibits emails showing Mr. King directing certain moneys to himself, to a Mr. Douglas Park and to another company called AIMS Project Ltd. He comments that Mr. Park appears to be a Scottish business associate of Mr. King and that £1.7m. was paid from the Thistle money to Mr. Park's NatWest account in Gibraltar on Mr. King's instructions.

27 He then deals with other moneys and explains that AIMS Projects Ltd. was dissolved in 2014 but that it had been owned by a company called Alikki Holdings Ltd. (again a Gibraltarian company), which is a live company. Alikki Holdings Ltd. is owned, according to the offshore leaks database more commonly known as the Panama Papers, by Basileus Holding Offshore Sarl AU, which was a shareholder of Abbey Wealth Solutions Ltd., incorporated in the British Virgin Islands. Castelem Fiduciary Nominees Ltd. (which is a Gibraltarian company) is a shareholder in Abbey Wealth Solutions Ltd. Given the extent of moneys transferred to AIMS Project Ltd. and the connections between Mr. King, the individuals and companies as set out above, he concludes: "I am of the view that one

cannot rule out that Mr. King may have a current but concealed interest in Alikki Holdings Ltd."

28 He then deals with a newspaper article in *The Sun* where it appears that Pope Benedict XVI had given Mr. King an honour in a ceremony in Gibraltar in 2008, and then concludes with an article in the *Sunday Herald* on March 5th of this year, where the newspaper reported that Mr. King has "popped up" in Gibraltar again. The article then discusses the Advalorem fraud and deals with the background of the Heather Capital fraud which the newspaper says was administered by Mr. King in Gibraltar.

29 Mr. Hyde concludes:

> "It seems clear to me that despite the great length that Mr. King has gone in order to try and conceal the true nature of his business interests in the jurisdiction, third parties have been reported on Mr. King's affairs for over the last 9 years all consider him to centre his business dealings in Gibraltar even in respect of companies under his control that are incorporated outside the jurisdiction of Gibraltar. This in my opinion supports my belief that Mr. King's COMI is in Gibraltar."

30 He then comments on Mr. King's residence in Spain, and says:

> "Whilst it is reported that Mr. King may predominantly reside in Spain Mr. King's business interests are understood to be principally based in Gibraltar as demonstrated by the above article. Furthermore it is not uncommon for individuals to reside predominantly in Spain but to conduct their business in Gibraltar as an article from the Spectrum ISA Group explains [which he exhibits] thousands of people cross the border to work in Gibraltar from Spain on a daily basis."

He then comments on the Swiss address given in the Thistle loan agreement and on the fact that for a limited period between May and July 2007 Mr. King may have lived at 4 Dextrous House, Ordnance Wharf, Gibraltar.

31 So he concludes:

> "I believe it is highly likely that Mr. King still mainly administers his economic interests in the jurisdiction of Gibraltar and indeed it is highly likely that he conducts the majority of his business there. It is evident that Mr. King has and had a plethora of business interests in Gibraltar; we know that he still owns at least two companies in Gibraltar, that he . . . owned and controlled and administered many others including companies incorporated through foreign jurisdictions. It is also abundantly clear that Mr. King has sought to conceal

> those interests by appointing corporate agents as nominee shareholders and directors. It is my sincere belief that Mr. King remains active in Gibraltar but he does so under the radar so to speak.
>
> I believe that Mr. King now takes additional precautions to ensure that he is even further removed from scrutiny so much so that it is practically impossible to link assets and business interests to him. Given the magnitude of Mr. King's business dealings and interest in Gibraltar his skill in avoiding responsibility for his past actions and the temerity he had to orchestrate the Advalorem fraud after the collapse of Heather Capital, I am of the firm view that he did not simply realise and relocate his interest in Gibraltar or otherwise simply down tools so to speak (notwithstanding that it would have been impracticable for him to do so after the grant of the freezing order) but rather he added layer upon layer of nominees and puppet directors to conceal his interest.
>
> It should not be overlooked that Mr. King has been involved in large scale and multimillion pound frauds for years through the use of companies and interests in Gibraltar and I find it impossible to believe that his vast web of interests can simply vanish or otherwise made dormant."

32 Insofar as Mr. Hyde has been expressing his beliefs, it seems to me I need to disregard that. The question whether he believes something or not is neither here nor there. However, the evidence which he has adduced, which is admissible, is in my judgment sufficient to support the inferences which he invites me to draw.

33 The critical question for me is whether this is a case which falls under the third or the fourth sub-paragraph of art. 3(1) of the Recast European Insolvency Regulation. It will be recalled that the third sub-paragraph says:

> "In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary."

The fourth sub-paragraph says:

> "In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary."

So it can be seen that if the applicant for the bankruptcy order shows that the respondent exercises an independent business or professional activity in Gibraltar, Gibraltar will be the centre of main interest. If it is not, then

the fourth sub-paragraph applies and the centre of main interest will be Spain.

34 I am satisfied, as I have said, on the basis of Mr. Hyde's evidence that the respondent does carry on his business through companies in Gibraltar. These companies appear to be mere cyphers for him. I note that this often happens when fraudsters use companies for their own nefarious purposes. That is sufficient to decide that the court has jurisdiction.

35 However, I should go on to say that if it were a notional weighing up of Gibraltar as against Spain to decide where the centre of main interest was, I would need to examine the case of *Shierson* v. *Vlieland-Boddy* (3). Reading from the headnote to the report in *The Weekly Law Reports* ([2005] 1 W.L.R. at 3966):

> "The debtor's centre of main interests was to be determined at the time that the court was required to decide whether to open insolvency proceedings in the light of the facts as they were at the relevant time for determination which included historical facts which had led to the position as it was at that time; that in making its determination the court had to have regard to the need for the centre of main interests to be ascertainable by third parties, in particular, creditors and potential creditors; that it was important, therefore, to have regard not only to what the debtor was doing but also to what he was perceived to be doing by an objective observer, and to have regard to the need for an element of permanence; that the place where the debtor lived and had his home was likely to be relevant to a determination of where he conducted the administration of his interests; that there was no principle of immutability and a debtor had to be free to choose where he carried on those activities which fell within the concept of administration of his interests; that it was a necessary incident of the debtor's freedom to choose where he carried on those activities, that he might choose to do so for a self-serving purpose, for example, in order to alter the insolvency rules which would apply to him in respect of existing debts; that in those circumstances, the court would need to scrutinise the facts which were said to give rise to a change in the centre of main interests and to be satisfied that the change in the place where the activities which fell within the concept of 'administration of his interests' were carried on which was said to have occurred was based on substance and not an illusion and that it had the necessary element of permanence; that the judge had been entitled to reach the conclusion that the debtor's centre of main interests had moved to Spain; that, therefore, the jurisdiction to open main insolvency proceedings had not been established under article 3(1) of the Regulation; but that, in the circumstances, the debtor had an establishment for the purposes of the territorial insolvency jurisdiction specified in article

3(2); and that, accordingly, the bankruptcy petition would be restored . . ."

36 Applying that, in my judgment, although he is resident in La Zagaleta in Benahavis, he shows no sign of actually carrying out his business there. On the contrary, his business, so far as the evidence shows, is exclusively in Gibraltar. In those circumstances, even if I had to weigh up the competing claims of Gibraltar and Spain to be the main insolvency proceedings, I would still conclude that it was Gibraltar.

37 Accordingly, I grant the application for the making of Mr. King bankrupt.

Application granted.