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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION (BANKRUPTCY)

BETWEEN:

DAVID McILVEEN

Applicant

and

DESMOND TURLEY & DENISE ERVINE
T/A ULSTER PROPERTY SALES

Respondents

MASTER KELLY

INTRODUCTION

[1] Mr McIlveen ("the applicant") applies to set aside a statutory demand dated 21st February 2013 claiming a debt due by him in the liquidated sum of £27,750.62. The sum claimed arises from a personal loan agreement entered into by the applicant with Mr Turley and Mrs Ervine ("the respondents") on or about 26th August 2011, whereby the applicant agreed to repay the respondents the sum of £30,000 plus agreed interest by way of 72 monthly instalments of £500.00. The applicant made 16 payments on foot of the agreement before ceasing such payments apparently without notice to the respondents. This caused the respondents to serve the statutory demand on the applicant.

[2] The Set Aside application was filed by the applicant on 21st March 2013. There then followed an exchange of affidavits. The respondents filed a total of three

affidavits. The first of these was a replying affidavit filed by Mrs Denise Ervine. Mrs Ervine is the widow of the late Mr Gault Ervine who was Mr Turley's partner in Ulster Property Sales ("UPS"). The second affidavit was filed by Mr Gareth Dallas who is the business partner of the applicant. The third affidavit was filed by Mr Peter Feeley, the Financial Controller and Group Operations Manager for UPS from 2005-2013.The final affidavit was the applicant's rejoinder to the respondents' collective affidavits. The matter was listed for hearing on 9th January 2013. At the hearing the applicant was represented by Mr Lavery and the respondents by Mr Atchison. I am grateful to counsel for their helpful submissions.

BACKGROUND

[3] The applicant and Mr Dallas are partners in GDM Properties. In or about 2007 the GDM Properties partnership ("GDM") obtained a franchise from UPS Head Office ("UPSHO") for a branch of UPS in Ballymena and began trading in partnership at that branch. For the payment of an annual franchise fee of £7,500 to UPSHO, the UPS Ballymena franchise has the use of the UPS name, branding, promotional material and so forth. The evidence shows that there are several such UPS franchises operating in and around Belfast.

[4] In addition to the use of the UPS brand, it seems that UPSHO also provides its franchisees with extensive accountancy and management services through its financial controller and his staff. These services are the subject of a separate management fee comprised in what is known as the Central Overhead Charge. Fees for services comprised in the Central Overhead Charge are invoiced to franchisees monthly, calculated in proportion to the amount of work generated by the individual franchisee. I will return to this particular issue later as it is an area of contention in the case. However, it is not disputed that in the case of UPS Ballymena this inter-company debt runs at a level of around £1,000-£2,000 per month.

[5] In 2007, shortly after the GDM partnership began trading UPS Ballymena, the Northern Ireland property market deteriorated markedly. As a result, the GDM partnership suffered financial difficulties, particularly in light of its recent set up costs, overheads and running costs. In Mr Dallas' affidavit he says that UPSHO was supportive of the partnership in these circumstances and that it accommodated the partnership to the extent that it covered some of the partnership's debts, and "rolled up" payments due to it by the partnership. By 2010, GDM appears to have accumulated debt to UPSHO of £70,000 - £75,000. From 2010 to 18th January 2013 this was not a matter of dispute.

[6] At some stage in 2010, whilst trading at UPS Ballymena, the applicant decided to stand for selection as a candidate in the 2011 Northern Ireland Assembly elections. In late 2010, the applicant sent an email to Mr Feeley (the Financial Controller in UPSHO) to advise him of his plans. This led to an email exchange between the parties. These emails were put in evidence to the court in the course of this

application. This email communication is significant; not only because it was initiated by the applicant, but also because it informs the background to the circumstances of the subject loan agreement and the statutory demand. Regular reference to the email exchange will therefore be made throughout this judgment. For present purposes, the email exchange opens on 26th November 2010 where, in a lengthy email to Mr Feeley, the applicant wrote:

> "On Monday 15th November I was successfully selected to run as a candidate for next year's elections to the Northern Ireland Assembly. There are of course no guarantees of success in this matter, however I am fighting a relatively safe seat so the odds are pretty good of getting elected. Gareth and me are now in the midst of negotiating the best way forward as I have nothing but the best of intentions of GDM Properties and UPS Ballymena at heart. I am fully aware of our joint and individual responsibilities in this partnership relating to creditors, and whither Gareth's and my partnership continues or dissolves I want to ensure that a workable solution is in place for my temporary or permanent exit.
>
> It would be my preference for a strategy to be put in place post election, however I feel it would be Gareth's wish for a clear road map to be in place that caters for every eventuality. With this in mind I have proposed that I will lodge £15,000 into the GDM Properties account. £3000.00 on 26th November 2010 and a further £12,000 on or before 31st January 2011. I will then take a leave of absence between February and May 2011 to facilitate campaigning. This money can be borrowed from a family member with the onus on me to pay it back at a time of affordability. If unsuccessful in the election I will return to UPS Ballymena with a payment of £25,000 to UPS Head Office in June and pick up where I left off, and if successful I will enter into a severance agreement from the 1st June 2011 with a payment of £1000 per month to GDM Properties with the said amount to UPS Head Office still in place. **This combined total would calculate to almost 43% of the overdraft facility that we have in place and over 30% of the amount attributable to me for head office. If this mechanism was to be**

> **put in place I would cease from being a partner from UPS and become a debtor, however I am happy for a legal agreement to be in place to pay this back**. "
> (my emphasis)

[7] Mr Feeley responded to this email thus:

> "This is obviously an intricate situation that will require the agreement of all parties involved. I feel the first stage of this is for both yourself and Gareth to come to an agreement in principle and then bring it to UPS HO for the Franchisor to read over, after the agreement of the Franchisor then this can be made legal by drawing up a dissolution agreement of sorts.
>
> However I do have one question at this early stage. Your quoted figures for paying back any debts are 43% bank and 30% HO made up of £12K, 25K and then an installment (sic) plan of a further £15K (total £52K). Surely the partnership agreement is 50/50? Therefore why would your intensions (sic) not be to pay back all 50% of your portion of the outstanding debt (total £70K)?"

[8] The applicant then replied to Mr Feely by email of 29th November 2010 confirming that the GMD partnership shares were indeed 50/50, but candidly admitted that the offer made by him in the initial email was the best he could do given his personal financial circumstances. He continued:

> "Although Gareth and I are individually liable to our creditors in the eyes of the law we are jointly liable, therefore the grim reality is that if our creditors decided to close in on us today I would have no choice but to declare myself insolvent. Admittedly this would not do much for my political future, however UPS Ballymena would be no better off and Gareth would be shackled with 100% of the debt. "

[9] On 3rd December 2010 the applicant sent a follow-up email to Mr Feeley asking if it would be possible to arrange a meeting to discuss his proposal. Mr Feeley in response suggested a meeting the following week subject to diaries and so on. The applicant responded that he would be more or less free "day or night".

[10] What is already clear from these emails is that the applicant was looking for what he himself described as an exit strategy from the Ballymena branch of UPS in order to pursue a political career. It is also clear that to do so involved the applicant addressing the GDM partnership debt to UPSHO and that the applicant needed the accommodation of UPSHO to achieve that. Lastly, it is clear that the applicant was familiar with the composition of his debt. Thus what followed next in the email exchange between 3rd December 2010 and 20th July 2011 need not be set out in detail as it simply shows the parties attempting to agree mutual terms. However, it is apparent from the emails that the applicant did not dispute that the sum of £70,000 was due from the UPS Ballymena to UPSHO.

[11] Subsequent emails show that tension began to surface between the parties after Christmas 2010 when it appears that the original lump sums proposed by the applicant on 26th November 2010 were no longer available. Consequently, the applicant now proposed to discharge the debt by way of modest monthly repayments which would take around 6 or more years to repay his share of the debt. According to the emails the applicant was clear that his offer to repay the debt by way of monthly instalments was based on his limited financial resources. He acknowledged that he had other debts and claimed that if his proposal was not acceptable then his only alternative was bankruptcy. He was understandably concerned that this would cost him his political career.

[12] In or about 12th May 2011 the applicant was elected to the Northern Ireland Assembly as an MLA for North Antrim. He left UPS Ballymena, but the GDM partnership to date has not been dissolved.

[13] Eventually the parties reached agreement over the £70,000 debt. The respondents agreed to facilitate the applicant by extending a loan facility to him. The loan facility was made the subject of a short and simple agreement which was executed by the parties on 26th August 2011. The terms of the agreement are clear. At "5." of the agreement it states:

> " This loan agreement relates to a personal loan between the **Lender** & the **Borrower**. This is to clear down 50% of the Inter-Co debt owed to UPS Head Office from UPS Ballymena, however this loan agreement will at all times be personal between the **Lender** and the **Borrower**."

The agreement thereafter proceeds to set forth the terms of repayment. After credit is given for a lump sum payment of £5,000, the agreement then sets out a schedule of re-payments for the balance of £30,000 together with interest. The total amount payable on foot of the loan is stated to be £35,755.62, to be discharged by way of 72 monthly repayments of £500.00 with payments commencing September 2011.

[14] Although it is noted that from September 2011 to January 2013 the applicant did make a total 16 payments on foot of the loan, the email exchange suggests that there were late and failed payments.

[15] By email of 19th October 2012 the applicant acknowledged that there had been a problem with some of his repayments. He also acknowledged that some £27,000 remained due and owing by him on foot of the loan agreement. In this email the applicant offered the respondents a £20,000 lump sum payment in full and final settlement of the £27,000 debt with the funds apparently coming from a third party. However this was not acceptable to the respondents. They took the view that they could not be expected to simply write off £7,000. Moreover, it could have disadvantaged Mr Dallas who was after all jointly and severally liable for the whole debt.

[16] Mr Feeley responded to the applicant's offer by email of 25th October 2012. He suggested a variation of the agreement making use of the lump sum together with reduced monthly payments. The applicant however dismissed this proposal out of hand. He told the respondents that they had two options: either accept the £20,000 lump sum in full and final settlement of the debt or revert to the original agreement terms. He again informed Mr Feeley that if neither of these options was acceptable to the respondents, then his (the applicant's) only solution was bankruptcy.

[17] In an email of 25th October 2012 the applicant appeared eager that the respondents accept the lump sum he had proposed rather than the recommencement of the payments on foot of the loan agreement. In his email he wrote:

> "As previously stated either option works for me, I thought the suggestion of guaranteed safe money might be a more attractive option rather than the volatility (already proven) of a long term monthly arrangement, however if this is not acceptable I am quite satisfied to re-initiate the status quo."

Pausing there, there is still no evidence of the applicant disputing the debt almost two years on from the applicant's first email to Mr Feeley.

[18] As the respondents were not prepared to accept the applicant's proposal of the lump sum in full and final settlement of the debt, they opted for the latter proposal – the resumption of payments on foot of the loan agreement in order to recoup payment in full.

[19] It would seem thereafter that the applicant regularised his payments but failed to meet the December 2012 payment. When Mr Feeley approached the applicant regarding this, the applicant was apologetic attributing it to his being away over Christmas. Mr Feeley accepted this. The applicant then failed to make the January

2013 payment. When Mr Feeley approached the applicant about this failed payment, the applicant informed Mr Feeley by email of 18th January 2013 that he would be making no further payments on foot of a loan agreement. He claimed this was due to his having had sight of a report from Goldblatt McGuigan dated November 2012 prepared for UPSHO. The report is entitled **"REVIEW OF ULSTER PROPERTY SALES CENTRAL OVERHEADS**"and contains an analysis of the Central Overhead Charge for the years 2010, 2011 & 2012. In his email to Mr Feeley the applicant stated:

> "Moving into the future I believe will require some degree of caution from both sides. I am by now very au fait with the figures relating to the running of Hollywood Road, which had long been asked for. I currently have both my solicitors and a forensic accountant investigating them and any future payments to UPS by me will only be made upon seeking their advice.
>
> In the meantime I wish you well in your future ventures. I am conscious that we have not always seen eye to eye on all matters, however, as we have often been reminded by you of your skills and experience I am sure there will be a host of job offers coming your way."

[20]In this email the applicant does not express any specific dispute. Perhaps in light of this, the second respondent approached the applicant. He responded to her by email of 8th February 2013 in which he stated:

> " I would refer you to my email sent to Peter Feeley on January 18th 2013 stating my concerns about the unclear financial background to which the 'arrangement' between you, Desmond and myself emulates.
>
> I am deeply concerned that having asked for over five years to see the accounts relating to UPS Head Office that they clearly show costs that I was unaware that we as partners had ever signed up to pay for, in particular the 'Central Overhead' cost to which the vast majority of our alleged debt relates to. In light of this my accountant has asked my solicitor to obtain from you a copy of the original franchise agreement referred to in the Goldblatt McGuigan report in order to clear this matter up.

> I will be suspending any further payments until my solicitor has had time to study the franchise agreement…"

[21] As with the previous email the applicant does not express any particular dispute. Nor does he express any apparent interest in discussing the matter with the respondents.

[22] Pausing there, I observe that there is no evidence of the applicant ever having raised the issues now being raised in these last two emails. For example, there is no evidence of the applicant having asked for accounts for over five years or at all. Nor is there any evidence that between 2007 and 2013 the applicant ever disputed the monthly Central Overhead Charge. That is a great many months. Rather, the content of these emails is suddenly and entirely incongruent with the content of applicant's earlier emails to the respondents.

[23] In a final email to the second respondent later on 8th February 2013 the applicant in reply states:

> "This matter can be easily cleared up by the production of the franchise agreement which is the only basis that this debt could have been accrued. If the central overhead costs were shown as my liability as a partner in Ulster Property Sales in an open and honest way, then it would clearly be my responsibility to see any arrangements are honoured.
>
> It is the production of these long requested figured (sic) from UPS Head Office that have called the running of the company into question therefore whatever arrangements we came to in August, as directly linked to said figures must now be looked at again.
>
> My fear is without prejudice that the running costs of Head Office were hidden from us and as the Goldblatt McGuigan report shows distributed to the branches in an inequitable way which disadvantaged me….
>
> If I owe you and Desmond legitimately accrued money then I am not opposed to honouring this. But for the first time we can finally see how this debt was accrued to each branch and if these fees were

> clearly stated in the franchise agreement then I will not be found wanting in this regard.
>
> The problem that I have is that the advice I am receiving both from my accountant and solicitor is that we do not have the necessary information in order to make a judgment on that."

[24] Following on from that, it would seem that the applicant's clear indication that he had stopped payments on foot of the loan agreement for no discernible reason caused the respondents to serve a statutory demand on him. The applicant now disputes the loan agreement debt and applies to set aside the statutory demand. It is not a matter of dispute that the amount claimed on the statutory demand is the amount payable on foot of the loan agreement less payments made by the applicant.

Setting aside a statutory demand: the relevant legal principles

[25] Article 242 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") provides that a creditor may serve a statutory demand on an individual where the debt is for a liquidated sum payable immediately and the debtor appears unable to pay it. Rule 6.005 of the Insolvency Rules (Northern Ireland) 1991 ("the Rules") provides the authority for the setting aside of such a demand where any of the following four grounds apply:-

> "The Court may grant the application if –
>
> (a) the debtor appears to have a counterclaim, set off or cross demand which equals or exceeds the amount of the debt or debts specified in the statutory demand; or
>
> (b) the debt is disputed on grounds which appear to the Court to be substantial; or
>
> (c) it appears that the creditor holds some security in respect of the debt claimed by the demand, and either Rule 6.001(6) is not complied with in respect of it, or the Court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
>
> (d) the Court is satisfied, on other grounds that the demand ought to be set aside".

[26] The most common of the four grounds relied upon in applications to set aside statutory demands is Rule 6.005(4)(b), namely that the debt is disputed on grounds which appear to the Court to be substantial. There are two main authorities which essentially address the question of what constitutes "substantial" within the context of Rule 6.005(4). The first of these is the case of **Moore v Commissioners of Inland Revenue [2002] NI 26** and the second is **Allen –v-Burke Construction Ltd [2010] NICh9, [2011] NIJB 62.** In the **Moore** case, Girvan J set out the applicable test against the background of an individual's Article 6 rights. At page 8-9 of his judgment the learned judge states:

> "To deprive an alleged debtor of an opportunity to litigate his dispute a fair statutory demand procedure requires that that the creditor spells out clearly and accurately what his debt is, establishes that the debt is due and gives the debtor a full opportunity to show cause why in the interests of fairness and practice he should have the opportunity to defend the claim by litigation.
>
> In summary judgment applications the plaintiff must show that the defendant has no arguable case. In an application to set aside regularly obtained judgments the test appears to be whether the defendant in the interests of justice should be permitted to defend the action. In either set of proceedings it is clear that if a defendant has in reality no defence to the plaintiff's claim allowing the defendant to defend would be unjust to the plaintiff. Refusing leave to defend would not be unjust to the defendant since it would merely delay the enforcement of the plaintiff's indisputable right and send to trial an indefensible case.
>
> Although at first sight the wording of Rule 6.005 and some decided cases may suggest that a debtor served with a statutory demand bears a heavier burden than is borne by a defendant in summary judgment applications or applications to set aside judgment and that an onus of proof is thrown on him, in reality the test applicable should be no different. This is particularly so in the light of Article 6 and in the light of the severe consequences flowing from a decision not to set aside a statutory demand".

[27] In the more recent case of **Allen –v-Burke Construction Ltd [2010] NICh9, [2011] NIJB 62** Deeny J stated at [7]:

> "The court is not holding a full trial of the matter; it must only decide if the grounds appear to be substantial. The grounds of dispute must be genuine. The grounds of dispute must not consist of some ingenious pretext invented to deprive a creditor of his just entitlement. It must not be a mere quibble."

[28] However, just as a creditor must spell out clearly and accurately in his statutory demand what the debt is and how it has become due as per **Moore**, the debtor must do the same in his application to set aside the statutory demand. In other words, the debtor must spell out clearly and accurately what he contends is the basis for his dispute/defence, as opposed to postulating a dispute based on conjecture, supposition or general grievance.

[29] In determining the application, the question the court must consider is whether the applicant's ground for dispute is (i) clearly set out and (ii), one which is capable of being litigated. Thereafter the court will look at whether on the evidence the applicant demonstrates an arguable case or potentially viable defence.

[30] Rule 6.005(4)(d) is the second most common ground relied on in applications to set aside a statutory demand. This ground provides that the Court may, if satisfied, set the statutory demand aside on "other grounds". While "other grounds" may sound somewhat general, it was held by the Court of Appeal in **Re: A Debtor (Lancaster No 1 of 1987) [1989] 1WLR 271** that the "other grounds" must also be substantial.

[31]Applying those principles, the question for the court to determine in this case is whether on the evidence the applicant has a defence to the respondent's claim. In order for the applicant to succeed he must first, identify the triable issue he relies upon and secondly, demonstrate that he has an arguable case or a potentially viable defence. Conversely, the respondent must demonstrate that the applicant has no arguable case or potentially viable defence, or that the applicant's grounds for dispute amounts to nothing more than an ingenious pretext or mere quibble.

The Parties' arguments

[32] Against the background now set forth the applicant advanced a number of disparate grounds for disputing the debt. Whilst I have considered each of these, I do not intend to address all of them. This is because I consider some of those grounds to be quibbles. I am not, for example, persuaded by the applicant's claim that as the loan agreement did not contain a default clause the respondents are not entitled to pursue the applicant for any balance due and owing in the event of his default. I do not see how that argument assists the applicant. Whether the agreement contained such a clause or not, the loan agreement is based on a debt

which the applicant openly acknowledged to be due and owing by him, and which he unconditionally agreed to repay.

I am also not persuaded by the applicant's somewhat curious references to a limited company (unidentified) and directors' loans. The inference appears to be that any debt due by the applicant is due to a limited company rather than the respondents personally. However, what we are dealing with here is a loan agreement which clearly states that it is a loan facility extended to the applicant by the respondents personally. Further, the agreement is clear as to the purpose of the loan. If there is a limited company relevant to the case – and there is no evidence before me that there is - I take the view that it is for the respondents to reconcile any pertinent issues that arise with the relevant Board of Directors. I do not see how any of that could affect the applicant as a third party to any company.

[33] Following on from that, the principal grounds for the applicant's dispute appear to be as follows:

1. The applicant denies that he agreed to be liable for the Central Overhead costs when he entered into the UPS Ballymena franchise agreement. (Paragraph 9 of the applicant's grounding affidavit.). Alternatively, the applicant argues that if he was so liable, that any services provided by UPS which make up the central overhead costs were included in the annual franchise fee paid. (Paragraph 3 of the applicant's grounding affidavit.);

2. Further and in the alternative, the applicant contends that he was pressurised into signing the loan agreement under the threat of bankruptcy which would cost the applicant his political career. (Paragraphs 6-8 of the applicant's grounding affidavit.)

[34] Mr Lavery argued that these grounds of dispute demonstrate that there is a triable issue between the parties which could only be determined by a full trial of the issues, including discovery and appropriate cross-examination of witnesses. Mr Lavery also suggested that the applicant has a potential counterclaim against the respondents. But he did not expand upon this and I therefore don't intend to dwell on that particular issue.

[35] Mr Atchison argued that the applicant's case when properly distilled lacked substance or merit. He contended that the email communication evidenced by the respondents, and unchallenged by the applicant, established three important facts. The first of these was that the subject debt is for a fixed sum agreed by the applicant and made the subject of a loan agreement between the parties. The second was that there was no evidence of the applicant disputing the Central Overhead Charge from 2007 until the applicant received the Goldblatt McGuigan report in 2013. The third was that the email exchange clearly demonstrated that the purpose of the loan agreement was to facilitate the applicant's exit from GDM and UPS Ballymena so that he could pursue a political career.

CONSIDERATION

[36] An important point must, I think, be addressed at this stage. There is no evidence of the applicant disputing either the debt or the loan agreement on either of his two grounds for dispute (or at all) before January 2013. Yet the applicant's case for disputing the debt after January 2013 is based on a report from Goldblatt McGuigan - which report he has fully adopted. But it seems to me that the report, without disrespect to either Goldblatt McGuigan or the applicant, is simply an accounting exercise. In essence the report comprises, inter alia:

- An explanation of the Central Overhead Charge.
- An explanation of the calculation of the Central Overhead Charge.
- A calculation of the Central Overhead Charge.
- An apportionment of the Central Overhead Charge based on the relevant calculation.
- A description of the costs and services which comprise the Central Overhead Charge. These appear to relate to significant financial, accountancy and management services provided by UPS and its financial controller to individual franchisees;
- A financial breakdown of the costs and services comprising the Central Overhead Charge for 2010, 2011 & 2012;
- A breakdown section by section and franchise by franchise on a percentage basis of how the different elements of the charge were attributable to and re-charged to the individual franchisees in 2010, 2011 & 2012 by way of monthly charges;
- Confirmation that the Central Overhead charge is **not** included in the annual franchise fee (section 1.4). (my emphasis)

[37] In his evidence, the applicant generally refers to the Central Overhead Charge as the "running costs" of Head Office. Without setting the Charge into its proper context, the applicant's description could be misinterpreted. According to the report, the Central Overhead Charge relates to the costs of the administration and accountancy services provided centrally by UPSHO in the form of its financial controller and his staff to individual franchisees. These services are set out in the report and they are substantial. Without expressly detailing them here, they include services such as Bank reconciliations, management accounts, VAT returns and

inspections, credit control, monthly payroll processing and HMRC compliance, to name but a few. In short, the services provided centrally by UPSHO to individual franchisees comprise the type of services that require most businesses to employ their own suitably qualified staff.

[38] While the applicant relies on the Goldblatt McGuigan report in support of this application, the report itself accepts that UPS franchisees are liable to pay a Central Overhead Charge to UPSHO. The report also specifically states that the UPS franchise agreements specify that the Charge is not included in the annual franchise fee. Further, the affidavits of both Mr Dallas (the applicant's partner) and Mr Feeley say the same thing. Therefore, none of the evidence, including the applicant's own evidence, supports his first ground for disputing the statutory demand debt. Following on from that, the next question to arise is this: how could the Goldblatt McGuigan report be relevant to the applicant's second ground for dispute - namely that he was pressurised into signing the loan agreement under the threat of bankruptcy? I do not see how it is at all relevant in that regard.

[39] In any case the content of the parties' emails does not appear to support the applicant's second ground for dispute. Rather, the applicant's own emails demonstrate that it was the applicant who initiated the process of agreeing suitable repayment terms with the respondents; that it was the applicant who suggested that he would be "happy for a legal agreement to be in place to pay this back", and that it was the applicant who regularly raised the issue of possible bankruptcy in his emails to the respondents. There is no evidence of the respondents threatening the applicant with bankruptcy, save for the service of the statutory demand on him. It seems to me, therefore, that any perceived pressure experienced by the applicant was caused by his own personal decision to stand for selection as an MLA in forthcoming elections. However the applicant's decision to do this and leave UPS Ballymena did not affect the respondents. It only materially affected Mr Dallas.

[40] I also cannot overlook the fact that the applicant was at the relevant time a professional man engaged in business activity conducted almost entirely by contract. With his professional background, one would have expected the applicant - perhaps more than most - to understand the serious nature of contracts, whether they take the form of loan agreements or franchise agreements. Bearing that in mind, one would not, I think, have expected someone in the applicant's position to agree to repay a debt he disputed. Nor would one expect him to agree to a loan facility to repay a debt he disputed. Similarly, I think it unlikely that the respondents would have extended a loan facility to the applicant if they believed the debt to be disputed. For these reasons, I am unable to accept that there is any substance to the applicant's second ground for dispute. This leads me to conclude that the Goldblatt McGuigan report is not relevant to either of the applicant's grounds for dispute.

[41] Only one question remains. If neither the loan agreement nor the loan agreement debt were disputed before the Goldblatt McGuigan report, what is the dispute giving rise to a triable issue the applicant contends originates from the

report? Mr Lavery submitted that the applicant's case for this is to be found in paragraph 9 of his grounding affidavit wherein he states:

> "The report showed for the first time that all franchisees were being charged for the full cost of the running of head office and I believe without doubt that this was what the central overhead cost and charges related to. This report confirmed my suspicions about the debt. It will be seen from the report that Goldblatt McGuigan say that **it is unclear how the charges paid by each branch were determined.** It was in those circumstances that I stopped paying the loan until I was provided with actual details of what monies I owed if any and that was when the statutory demand was issued. At no stage did I sign up for the running costs as outlined in the Goldblatt McGuigan report." (My emphasis)

[42] However, this does not really accord with the applicant's email of 8th February, wherein he implied that his disquiet over the Central Overhead Charge was that it was not apportioned among franchisees equitably, and that the manner in which it was apportioned "disadvantaged" him. In support of his contention in that paragraph 9 of his affidavit the applicant relied on section 1.1 of the Goldblatt McGuigan report. Although to be precise, the applicant relied only on part of one sentence in section 1.1. I have highlighted this. No other section of the report was referred to or opened to the court. However, I think the relevant paragraphs of section 1.1 address the issues in both paragraph 9 of the applicant's affidavit and the email of 8th February. Section 1.1:

> "1. Central Overheads

1.1 *History of Central Overhead Charges*

> The original purpose of the central overhead function was to provide a central administration and accountancy service to UPS Franchisees to allow Partners to focus on the main part of their business, with all costs to be attributed to Franchisees on a reasonable basis.
>
> **It is unclear how the charges paid by each branch were originally determined** although it appears they were calculated by Gault Ervine in proportion to the amount of work generated for Head Office by the respective franchisee. Any changes to the charges in recent years are applied to Franchisees in proportion to their monthly payments. Accordingly,

> the proportion of total central overhead costs
> allocated to a Franchisee does not change."
>
> (My emphasis)

[43] Thus it seems that this application, and the applicant's decision to cease payments on foot of the loan agreement, was mostly predicated on the words "It is unclear how the charges paid by each branch were originally determined". However, those words only comprise one half of the relevant sentence, and the applicant has omitted the word "originally" in his affidavit. The other half of the sentence contains Goldblatt McGuigan's professional opinion as to how the charges were calculated and apportioned. It seems to me that in adopting the Goldblatt McGuigan report in his evidence it must be assumed that the applicant accepts the professional opinions expressed in the report. That such an opinion would not be informed from an expert analysis of financial records of UPSHO including inter alia the monthly invoices to franchisees together with the franchise agreements seems unlikely. As appears from section 1.1 the Charge is not apportioned equally among franchisees. But it does not follow from that that the Charge is apportioned inequitably, or that the applicant was disadvantaged by the apportionment. For present purposes, there is no evidence of that being the case.

CONCLUSION

[44] In summary, the subject debt in this case arises from a fixed sum loan agreement. The terms of the said agreement were personally negotiated by the applicant over a considerable number of months and he willingly entered into that agreement. It is clear from the evidence that the purpose of the agreement was to facilitate the applicant in leaving UPS to embark upon a political career. It is also clear from the evidence that the repayment terms of the agreement were unconditional. The applicant then began carrying out the terms of the agreement before taking the decision to cease payments under the agreement, apparently because of the Goldblatt McGuigan report.

[45] Based on the evidence presently before me, I am led to conclude that the applicant's grounds for disputing the statutory demand debt are not supported by the Goldblatt McGuigan report. Moreover, the applicant has not identified any triable issue arising from the report. In his own words, by email of 8th February 2013, the applicant says: "The problem that I have is that the advice I am receiving both from my accountant and solicitor is that we do not have the necessary information in order to make a judgment on that." One year on, that position does not appear to have changed. There is therefore no evidence of a triable issue or viable defence to the debt.

[46] For the reasons given I conclude that the applicant has not demonstrated that the debt which is the subject of his statutory demand is disputed on grounds which are substantial. Therefore the applicant's application to set aside the statutory demand under the provisions of Rule 6.005 must be refused.