

# Insolvency—bankruptcy—residence requirement to present petition (MTC v HRH Prince Hussam Al Saud)

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**Restructuring & Insolvency analysis:** A creditor can present a bankruptcy petition if, among other things, the debtor has had a place of residence in the jurisdiction in the three years prior to presentation (section 265(2)(b)(i) of the Insolvency Act 1986 (IA 1986)). The debtor, who resided in Saudi Arabia, applied to set aside service of the petition on the ground that IA 1986, s 265(2)(b)(i) was not satisfied. The debtor's mother had acquired a property and later funded the purchase of further properties in London for the use of the debtor's family. The debtor, who asserted he had no legal or beneficial interest in the properties and required permission to stay there, did not stay at any of them in the relevant period. Applying the decisions of Mrs Justice Bacon in *Lakatamia Shipping Co Ltd v Su* [2021] Bus LR 1285 and Mr Justice Roth in an earlier petition involving the same parties (*Al Saud v Mobile Telecommunications Company KSCP* [2022] EWHC 744 (Ch)), Insolvency and Companies Court (ICC) Judge Barber concluded that nonetheless the creditor had a good arguable case that IA 1986, s 265(2)(b)(i) was satisfied. Written by Stephen Moverley Smith KC, XXIV Old Buildings.

*Re Al Saud* [2023] EWHC 1144 (Ch)

## What are the practical implications of this case?

The ability of a creditor to present a bankruptcy petition against someone residing out of the jurisdiction is curtailed by the gateway provisions of IA 1986, s 265. One such gateway is where the debtor has had a place of residence in the three years preceding presentation of the petition. *Al Saud* establishes that even if the debtor does not have any legal or beneficial interest in the residence and even if he had not resided at it at all in the relevant period, it may be sufficient if the debtor simply had the potential ability to stay. The decision of ICC Judge Barber takes account of two recent decisions in the area: Bacon J in *Lakatamia Shipping Co Ltd v Su* [2021] Bus LR 1285 (where a debtor was seeking to make himself bankrupt) and Roth J in an earlier petition between the same parties (*Al Saud v Mobile Telecommunications Company KSCP* [2022] EWHC 744 (Ch)). It confirms the fact that no single feature is conclusive: the court will take account of all relevant factors; thus, an expectation to be able to use a property may potentially assume as much importance as a legal entitlement to do so.

## What was the background?

The debtor is a member of the Saudi royal family. Arbitration awards for over US\$800m were made in favour of MTC against him, which he sought to challenge in Saudi Arabia in breach of an English anti-suit injunction. He was sentenced in absentia to 12 months imprisonment for contempt of court in 2018 and had not since visited the UK. The debtor's mother had much earlier purchased a property in Kensington for the use of her family and had subsequently provided funds to purchase two other properties in the same location. The debtor, her only son, asserted that he had no legal or beneficial interest in any of the properties. MTC presented a bankruptcy petition in relation to the costs awarded in the contempt proceedings, alleging that the debtor had had a place of residence in England in the three years preceding presentation of the petition. The debtor unsuccessfully sought to set aside service of the petition, alleging that the residence requirement was not satisfied because he did not have control of any of the properties (see the decision of Roth J in *Al Saud v Mobile Telecommunications Company KSCP* [2022] EWHC 744 (Ch)). He subsequently paid the petition debt but MTC then petitioned again in relation to the much larger debt created by the arbitration awards, again

relying on the debtor having a place of residence. The debtor did not dispute the petition debt but sought to set aside service, alleging that he could only stay with permission, that that could be withheld, and that he had not in fact stayed in any of the properties in the relevant three-year period.

### What did the court decide?

The ability of a creditor to present a bankruptcy petition against a debtor resident abroad, relying on the ground that he has had a place of residence in England and Wales in the preceding three years (IA 1986, s 265(2)(i)(b)) does not depend on the debtor having any legal or beneficial interest in a property or on any particular right being established. The court will consider all the circumstances, including any expectation of residence and, if permission is required, the nature of that permission. While a lack of actual occupation points against a property being a place of residence, it is only a factor. Following the decision of Mr Justice Roth (*Al Saud v Mobile Telecommunications Company KSCP* [2022] EWHC 744 (Ch)), there is no requirement that the debtor has de facto control of the property. Equally, while it is relevant to ask whether the property was a settled or usual place of abode or home for the debtor (see *Lakatamia Shipping Co Ltd v Su* [2021] Bus LR 1285), that is only one of many factors to be taken into account. MTC only had to show a good arguable case that the debtor had had a place of residence in the relevant period. On the facts it satisfied that requirement. The debtor's application to set aside service was accordingly dismissed.

### Case details

- Court: Insolvency and Companies List (Chancery Division), Business and Property Courts of England and Wales, High Court of Justice
- Judge: ICC Judge Barber
- Date of judgment: 18 May 2023

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