Neutral Citation Number: [2026] EWHC 2372 (Ch)
Case No: CH-2025-000188

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
CHANCERY APPEALS (ChD)

On Appeal from Insolvency & Companies List (ChD)
ICC Judge Greenwood

In the matter of San Leon ELI Limited
and in the matter of the Insolvency Act 1986

The Rolls Building
Fetter Lane, London
EC4A 1NL

Date of hearing: 29 April 2026
Judgment given orally: 6 May 2026

Before:

THE HONOURABLE MR JUSTICE MEADE

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Between:

SAN LEON ELI LIMITED	**Appellant/Debtor**
- and –	
OCEAN PEARL MARITIME SA	**Respondent/ Petitioner**

- -
- -

CLIVE WOLMAN (instructed by SBP Law) for the Appellant/Debtor
MATTHEW MORRISON KC & JOHN ELDRIDGE (instructed by Addleshaw Goddard LLP) for the Respondent/Petitioner

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APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

MR JUSTICE MEADE :

1. This is an appeal (with permission given by me on the papers) against a decision of ICC Judge Greenwood of 2 July 2025 on the final hearing of a winding up petition against the appellant, to whom I will refer as "San Leon" by the respondent, "Ocean Pearl".

2. The ICC Judge concluded that there was no real or genuine dispute about the debt asserted by Ocean Pearl in its petition of 4 April 2024 and the underlying statutory demand of 22 February 2024.

3. At the hearing before me on 29 April 2026 Mr Clive Wolman appeared for the appellant and Mr Matthew Morrison, King's Counsel and John Eldridge for the respondent.

4. The background down to paragraph 16 in the ICC Judge's judgment can be taken as read, although there was a dispute before me as to the analytical appropriateness or utility of the comparison between the 2022 STA and the 2023 STA at paragraphs 12 and 13.

5. The appeal is on five interrelated grounds but it is clear, and it was clear throughout the hearing before me, that the critical ground is ground 1, which is essentially whether the ICC Judge was right about his interpretation of the 2023 STA.

6. Leaving aside paragraph 17, which concerns the solvency or otherwise of San Leon and is not a matter I have to decide, the ICC Judge's analysis starts at paragraph 18 of his judgment. Some emails between the parties the subject of ground 2 before me are at paragraph 19 and San Leon's case is summarised at paragraphs 20-23.

7. The legal principles on the standards applicable to assessing petitions in these contexts, which were not in dispute and which I bear in mind, are set out at paragraphs 24-25. The substance of the reasoning of the decision of the judge is at paragraphs 26 and following.

8. Paragraphs 28 and 29 of the judgment are as follows:

> "28. Second, given the context in which it was agreed, the suggestion that San Leon's payment obligation under the 2023 STA was conditional on first securing GTB's consent to the transfer of ownership, was somewhat bold, attempting as it did to revive the point which had been centrally in issue in the compromised litigation in respect of the 2022 STA".
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> 29. As I have explained, the (or certainly a) main purpose of the 2023 STA, agreed in terms which comprised a revision and amendment of the 2022 STA, was to settle the litigation at that time continuing between the parties. In that litigation, a principal part of San Leon's defence was that the 2022 STA and its obligation to pay Ocean Pearl under that agreement, was

> conditional on securing GTB's consent by a certain date, 31 December 2022. The 2023 STA is to be construed in the context of the agreement which it replaced (see *Portsmouth City Football Club v Sellar Properties* [2002] EWCA Civ 760 at 47, per Chadwick LJ). By choosing specifically to remove from their agreement those terms and provisions at clauses 2, 4 and 5 of the 2022 STA, that imposed confidentiality(sic). It was objectively plain that the parties intended to create various unconditional obligations".

9. *Portsmouth* concerned an amendment to an agreement. I was also shown *HIH Casualty v New Hampshire* [2001] 2 All ER (Comm) 39, the decision of Rix LJ, at paragraph 39. Neither of those decisions is on all fours with the present case but both confirm that a prior agreement between the parties may form part of the factual matrix for a later agreement. Here, it is accepted by Mr Wolman that the STA 2022 was part of the factual matrix for the STA 2023.

10. The judgment continues as follows at paragraphs 30-34:

> "30. In my judgment, the 2023 STA, by its express terms, amongst other things:
>
> > 30.1. required payment by San Leon to Ocean Pearl of US $12 million on 10 October 2023 (clause 3);
> >
> > 30.2. required Ocean Pearl, on receipt of payment, to deliver the share certificate to San Leon (clause 5) as had also been agreed and required previously, under the 2022 STA (by clause 2);
> >
> > 30.3. required the parties to work together to procure GTB's consent to the transfer – whether before or after the payment and the delivery of the certificate.
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> 31. Neither payment by San Leon nor delivery of the certificate by Ocean Pearl was (or was stated to be) conditional on securing GTB's consent to the transfer, and the provision by which the 2022 STA was to terminate in the event of GTB's refusal to give such consent, was deliberately removed from the contract.
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> 32. The parties knew that the shares were pledged to GTB, and they knew (and had recorded as much in the 2022 STA) that the share certificate was expressly annotated in favour of GTB; they also knew (again, as previously recorded in the 2022 STA, but in any event, because they were both parties to the pledge agreements) that no transfer of ownership could take place without the consent of GTB, and that its consent would very likely depend on San Leon's agreement to repledge the acquired shares on the same terms; San Leon cannot have expected or intended (whether under the 2023 STA or its predecessor) to

> acquire the shares free of encumbrance, and it did not bargain for that outcome.
>
> 33. Although, in contrast to the position under the 2022 STA, San Leon therefore took the risk of GTB refusing to consent to the eventual transfer, there was no obvious reason to think that it would refuse to consent (or indeed, that if they had any relevant means of doing so, the other members of ELIM would refuse) in circumstances where its security rights would be unaffected, and in which the 2023 STA was a condition of the refinancing agreement with TRAM – an agreement which would have been to the obvious economic benefit of ELIM, and thus GTB; moreover, by virtue of the 2023 STA, San Leon would have acquired more shares for less money than under the 2022 STA; to the extent of any risk, it was commercially rational.
>
> 34. Mr Wolman suggested that the pledge agreements precluded delivery of the share certificate to San Leon, because it had already been constructively delivered by Ocean Pearl to GTB, by virtue of the acknowledgment annotated on its face (or that in any event, GTB had a contractual right to delivery). In my judgment, that was immaterial – the agreement was (as it had been previously) to deliver the annotated certificate, which continues to be held by Addleshaw Goddard for Ocean Pearl and which can therefore be delivered. Essentially, the contract provided for Ocean Pearl to give or agree to give and transfer to San Leon everything in respect of the shares that it held and owned."

11. Essentially, my conclusion is that the ICC Judge was right for the reasons he gave. The ordinary wording of the STA 2023 supports his conclusion and its purpose, concisely summarised at paragraph 29, completely aligns with it. The ICC Judge's conclusion does mean that in a sense, San Leon was taking the risk that GTB might not consent. However, this would have been a minor risk since all agreed that the parties expected that it would, provided that the shares were repledged to it by San Leon as was expected.

12. Relatedly, it was argued for San Leon that it was at risk of paying the reduced price of $12 million and getting nothing in return. However, as Mr Morrison submitted and I accept, that is not so. On any view, San Leon was acquiring all Ocean Pearl's rights as between it and Ocean Pearl, which would be confirmed by Ocean Pearl's delivery to San Leon of the physical share certificate. In due course, given appropriate funding, San Leon could redeem the pledge and own the shares outright.

13. Mr Wolman advanced a complex argument about whether Ocean Pearl was in a position fully to deliver the shares, given the pledge. However, the limitations, such as they were, were known to both sides and were the same under the STA 2023 as under the STA 2022.

Ground 2

14. Ground 2 focuses on paragraph 35 of the ICC Judge's judgment, which is as follows:

> "35. Finally, the suggestion that San Leon's obligation to pay was conditional on GTB's consent, certainly appeared to be in stark contrast with the understanding of the parties, reflected in the email correspondence set out above at paragraph 19. Although I have interpreted the contract without reference to the parties' subjective beliefs and although I acknowledge that there has been no oral evidence given about those emails, they suggest that the argument raised by San Leon was not genuine but was opportunistic".

15. In my view, it is entirely clear that the ICC Judge here was making clear that he was not factoring in the emails pre and post making the agreement, into construction. The word "Finally" just means that he was checking off points that he had to consider around the formation of the STA 2023 and not that he was still analysing its meaning, which he had already decided in the previous paragraphs. It is true that in the sentence beginning: "Although", it was not the best choice of words to refer to: "subjective beliefs" rather than the pre and post contractual communications. However, the judge was explicit that he did not factor the emails into his reasoning on interpretation of the agreement, and that is what matters.

16. The last clause of paragraph 35 suggests a possible alternative use of the emails, by which I mean alternative to interpreting the agreement, and not in the end part of the decisive chain of reasoning anyway.

Ground 3

17. This was referred to in Mr Wolman's skeleton as: "Letting a bailee re-attorn without the existing attornee's consent". This is deployed as a lever on contractual interpretation as explained in paragraph 56 of Mr Wolman's skeleton, which is as follows:

> "That is wrong. SL and OPM knew that such a delivery without GTB's consent would be a breach of the PSA, thereby engaging the principle that where a contractual term is capable of two meanings, one lawful, one unlawful, the former is to be preferred (see Lewison: Interpretation of Contracts, chapter 7, section 11).
>
> On that basis, STA 1 —" which I interpolate to say is STA 2022, "— clause 2 has to be construed as providing only for ***physical*** delivery of the certificate from bailee to bailee with each attorning to GTB as bailor, as an interim step pending GTB's anticipated consent. But unless and until GTB gave its consent, no bailee, including Addleshaw Goddard, OPM's solicitor in October 2023, could re-attorn to SL".

18. The answer here is what I have already touched on in relation to ground 1. The parties were aware of the pledge situation. The relevant clause of the STA 2023 only required delivery of the share certificate. That was a sensible commercial arrangement for reasons I have already dealt with. Mr Wolman positively argued that all the STA 2022 required was physical delivery of the certificate. However, as Mr Morrison pointed out, that is fatal to this argument since it just leads to the conclusion that such could be, and was, the extent of Ocean Pearl's obligation under the STA 2023.

Ground 4 - Error in the Petition

19. The statutory demand and the petition both contained assertions that Ocean Pearl was ready, willing and able to transfer the shares. Mr Wolman argued that this was incorrect: Ocean Pearl could physically deliver the certificate, but because of the pledge could not deliver the shares. Both sides were aware of that, though. In context, the assertion in the statutory demand and the petition just meant that Ocean Pearl was ready, willing and able to do that which it said it had to.

20. In any case, had the point been taken below then I am sure, given the conclusion on ground 1 and generally, that Ocean Pearl would at worst have had to clarify its position. The point is in substance inconsequential, even if the assertion was inaccurate, which in any event I have concluded it was not.

21. Ground 5 relates to a frustration argument and a related argument about common mistake. The ICC Judge said the following at paragraphs 39 and 41. 39:

> "39. First, both arguments suffered from a fundamental lack of evidential support (even by reference to Mr Price's statement, which added nothing in these respects): in particular, there was no evidence that the parties had, when making the contract, in fact both laboured under a misapprehension about GTB's attitude or approach or anything else, or even that having both believed in the likelihood of GTB's consent, they had in fact been mistaken and are wrong to have done so. Neither was there any evidence that GTB had subsequently refused to give consent, although it appears not yet in fact to have done so".
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> …
>
> "41. In any event, San Leon, having refused to make payment of the price (and having in substance accepted that it could not realistically do so because of the failure to secure the TRAM refinancing or any alternative), was in no position to complain that steps ought to have been taken by Ocean Pearl to secure GTB's consent to the transfer, an obligation that was in any event imposed on both parties working "*together … diligently and expeditiously*"; there was no evidence that San Leon had sought to do so or that Ocean Pearl had refused; there was no evidence that GTB would refuse its consent if asked (although Mr

> Wolman himself sought to speculate in his submissions that it was generally disgruntled about ELIM's financial condition)".

22. Thus, the ICC Judge found that the points failed for lack of evidence and Mr Wolman more or less accepted that. I find that it was a correct and entirely justifiable decision by the ICC Judge.

Conclusion

23. My conclusion is that the appeal is to be dismissed.

This Judgment has been approved by the Judge