

From: Claire Errington <claireerrington@3harecourt.com>

Sent: 07 September 2022 15:08

To: Vashti Prescott <VPrescott@kiddrapinet.co.uk>

Subject: RE: [RPT/Kes/VAN142/1] - Urgent -Our Client: Helske Limited [TH-THL.FID119940010]

Hello Vashti,

Apologies for my delay, we were only heard at about 2.30pm. It was a long list today!

By way of update, the Judge has ordered an adjournment. Counsel for the debtor submitted that the petition should be dismissed due to the basis of the application, jurisdiction and COMI (as mentioned in their earlier letter), or alternatively adjourned. I made various submissions as to the petitioning creditor having complied with all necessary steps, and that this late opposition was not acceptable. As to the jurisdiction and COMI issues, I highlighted paragraph V of Mr Zarolak's witness statement along with mentioning the presumption that a corporate debtor's COMI is the location of its registered office (Article 3, Insolvency Regulation 2000 and Recast Insolvency Regulation and Article 16(3), Model Law) and that this petition was duly served at the debtor's registered office at 40 Gracechurch Street, London on 21st July 2022. There is a high bar for the rebuttal of this presumption and the company has failed to provide any, let alone, sufficient evidence which would be required to establish that COMI is elsewhere.

Further, I sought indemnity costs for this application given their late response and lack of compliance with the rules.

The judge noted that the presumption is that COMI is based on the registered office. The fact that service at office may have caused some delay is not the petitioner's fault. He would not dismiss the claim but gave directions for further evidence to be provided to clarify the issues. The order is to include:

- 21 days for evidence to be provided in answer by debtor (28th September)
- 21 days for evidence to then be provided by petitioner (19th October)
- Parties to file listing certificates by 4pm on 21st October with a non-attendance PTR on first open date after the 26th October, with liberty to apply for costs in the petition. He noted that if it is disposed of by consent it can be brought back into list at a sooner date, but he said it would be helpful if parties could commit in a formal way to what their cases are.

As I say, I requested indemnity costs for the hearing today, to which his response was - if there is an issue as to how quickly company got its skates on, that can be ventilated at a further hearing and so he will provide for costs of today to be reserved.

I am going to draft the minute of order and send it to the other counsel. Once it has been agreed I will send it on to you.

Kind regards,
Claire

CLAIRE ERRINGTON
Pupil Barrister

3 HARE COURT

Temple | London | EC4Y 7BJ
T: +44 (0) 20 7415 7800
W: www.3harecourt.com



Subscribe to our News and Events