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## Hughes and another v Howell

[2021] EWCA Civ 1431, [2021] All ER (D) 135 (Jul)

The Court of Appeal, Civil Division, dismissed the appellant debtor's appeal from a bankruptcy order on the ground that the appellant had not made an offer to provide security over the debt that was sufficient to show that the respondent creditors' refusal of that offer had been unreasonable because a creditor was not unreasonable in refusing to wait for an indeterminate time for an indeterminate amount before the security over the debt could be realised.

### Catchwords

*Bankruptcy – Appeal – Appeal from Bankruptcy Order*

### Background

The appellant was a judgment debtor to the respondents. He failed to pay the debt and the respondents accordingly petitioned for the appellant's bankruptcy. The appellant contended that the petition should be dismissed under s 271(3) of the Insolvency Act 1986 ([IA 1986](#)) on the basis that he was in a position to make a payment reducing the outstanding balance within a short period of time and, once that offer of payment had been accepted, the balance of the debt would be adequately secured. The nature of the security was said to be the appellant's beneficial interest in a house of his late aunt.

However, whilst the executors had confirmed that the appellant did have an interest in his aunt's residuary estate, the house had not sold for the estimated sale price and there had been delays. The judge held that it was very likely that the realisation of the estate would have taken several months before the value of any shortfall could be calculated, and that the appellant's offer to pay the shortfall had not provided any clear assurance to the respondents that the petition debt would have been paid within a reasonable period and that, accordingly, it had not been unreasonable for a hypothetical creditor to have refused the offer. The judge accordingly made the bankruptcy order. The appellant appealed. He submitted that where part of the debt was secured it had not mattered whether the security could be realised within a reasonable time because the creditor was protected by the security.

Appeal dismissed.

### Issues and decisions

Whether the judge had erred in making the bankruptcy order.

In order to be an offer for the purposes of [IA 1986 s 271](#), an offer had to be a concrete offer capable of acceptance. It had to be a present offer, not the possibility of a future offer. An offer simply to top up the shortfall was not enough. Nor was it up to the creditors to negotiate with the debtor before the debtor made an offer. A reasonable creditor was entitled to know where the money was to come from, what other liabilities the debtor had that needed to be satisfied

and when the money was forthcoming. The appellant's submission that if a debt was secured it had not mattered how long the creditor had to wait before being able to realise the security was rejected. Security was only of value if it enabled a debt to be paid within a reasonable time.

A creditor was not unreasonable in refusing to wait for an indeterminate time for an indeterminate amount before the security could be realised. In the instant case, it was difficult to see how the security could have been realised at all. In practice, the respondents would simply have had to wait until the executors had sold the house and then either received an interim distribution, the amount for which was entirely uncertain, or wait until the estate had been administered (see [24], [25] of the judgment).

Accordingly, the appeal was dismissed (see [26] of the judgment).

Revenue and Customs Comrs v Garwood [\[2012\] BPIR 575](#) applied

IRC v Debtor [1995] BCC 971 applied

Ross v Revenue and Customs Comrs [\[2010\] EWHC 13 \(Ch\)](#), [\[2010\] 2 All ER 126](#), [\[2010\] All ER \(D\) 49 \(Jan\)](#) applied

### **Judgment date**

6 July 2021

### **Judge**

Sir Geoffrey Vos MR, Lewison and Coulson LJ

### **Representation**

Robert Brown (instructed by Anthony Gold Solicitors) appeared on behalf of the respondent.  
The appellant appeared in person.

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