THE HIGH COURT
BANKRUPTCY

[2021] IEHC 596

[Petition No. 3612 P]

IN THE MATTER OF A PETITION OF BANKRUPTCY

BETWEEN

MICHAEL GLADNEY

PETITIONER

AND

BRENDAN WALSH

DEBTOR

JUDGMENT of Humphreys J. delivered on Thursday the 30th day of September, 2021

1. This petition of bankruptcy by the Collector General involves a slightly more complex than usual procedural background over the past 16 years, involving six sets of underlying proceedings, five judgments and two bankruptcy-related applications (a summons and petition), which I will set out as follows.

2005 - first proceedings

2. The first relevant proceedings were Circuit Court proceedings in the Eastern Circuit, County of Kildare: *Harrahill v. Walsh* [Record No. 276/2005].

2005 - first judgment

3. The first relevant judgment was granted on 20th July, 2005 in default of appearance in the first set of proceedings. An instalment order was granted in those proceedings on foot of that judgment in October 2005. The relevant amount of the judgment was €13,501.52.

2012 - second proceedings

4. The second set of proceedings was issued in Louth Circuit Court [Record No. 254/2012] and those proceedings are currently in abeyance. No judgment was obtained.

2013 - third proceedings

5. A third set of proceedings was issued in the High Court: *Gladney v. Walsh* [2013 No. 382 R].

2014 - second judgment

6. Judgment was obtained in the third proceedings on 10th July, 2014 in the amount of €53,162.18 inclusive of interest.

2014 - fourth proceedings

7. A fourth action , the second set of revenue proceedings in the High Court, was issued in 2014: *Gladney v. Walsh* [2014 No. 328 R].

2015 - third judgment

8. Judgment in the fourth proceedings was obtained on 25th February, 2015 in the amount of €195,973.67 inclusive of interest. However, the Revenue now accept that the

€13,501.52 referable to the 2005 proceedings should not have been included in the 2015 judgment.

2016 - fifth proceedings

9. Circuit Court proceedings in the Eastern Circuit entitled *Gladney v. Walsh* [Record No. 37/2016] were then instituted.

2016 - fourth judgment

10. On 12th May, 2016, judgment for €54,227.39 was obtained in the fifth proceedings.

2016 - sixth proceedings

11. There were then District Court proceedings in the District Court area of Dundalk, District No. 6 [Record No. 396/2016].

2016 - fifth judgment

12. On 9th September, 2016, a judgment in the sixth proceedings was obtained against the debtor in the amount of €16,001.41. Subsequent to this there were further proceedings following the bankruptcy summons, but they do not seem to be legally relevant.

2016 - bankruptcy summons

13. A bankruptcy summons was issued dated 19th December, 2016 and served on 14th January, 2017. An affidavit of service of the summons was filed on 20th April, 2017.

Petition

14. The petition in bankruptcy was filed on 26th April, 2017. It alleges a grand total of indebtedness in the sum of €249,135.85, the act of bankruptcy being failure to pay on foot of the bankruptcy summons. The first return date was 8th May, 2017. In total the petition was adjourned on 29 separate occasions and was finally heard on 26th July, 2021.

Application for leave to bring a motion to set aside previous judgments

15. At the outset of the hearing of the petition, the debtor sought liberty to bring a motion to set aside previous judgments, in particular the 2015 judgment. The reason why that is not the correct procedure is basically that it is brought in the incorrect forum. It is not appropriate that the response to a bankruptcy petition is to bring an application in the Bankruptcy List to address any underlying judgment. That application should be brought in the relevant list, which presumably, in the case of a judgment obtained in the Central Office, is an application to the Master to extend time for appeal. Given that the application is not made in the correct way, I do not need to deal with the lapse of time since the 2014 and 2015 judgments or the last-minute nature of the application other than to say that enforcement of a legal obligation is not in itself a legally valid stimulus to revisit the underlying liability and indeed to attempt to treat it as such is generally an abuse of process. An unchallenged or unsuccessfully challenged decision, judgment or order creates a new legal situation and matters then move on to the next stage. Whether we are talking about an administrative process or legal proceedings, the fact that any given stage depends on a previous one is not a legally or logically valid reason for contending that the activation of a subsequent stage renders any and all previous stages legally unstable and up for renegotiation. It doesn't.

16. I turn now to the substantive defences to the petition that have been raised by the debtor given that the creditor's papers are *prima facie* in order.

Failure to give notice under s. 8(1)(c) of the 1988 Act

17. The debtor complains that he did not get notice of the intention to apply for a bankruptcy summons under s. 8(1)(c) of the Bankruptcy Act 1988. Order 76, r. 9 RSC provides that notices for which no special mode is prescribed may be sent by prepaid ordinary post to the last known address of the person to be served. That was done here in that the notice was sent to the debtor's residential address. The fact that the notice was not sent to his preferred work address does not mean that the notice was not validly served. Cases regarding the criminal context, fixed penalty notices or other specific statutory contexts (see *Minister for Agriculture v. Norgro Ltd.* [1980] I.R. 155, *O'Byrne v. D.P.P*. [2019] IEHC 715, [2019] 10 JIC 3002 (Unreported, High Court, Ní Raifeartaigh J., 30th October, 2019)) are not particularly helpful or determinative in the context here.

Alleged existence of a form of execution

18. Complaint is made that the application for the summons was based on an affidavit of 22nd November, 2016 which included a statement that "no form of execution has issued in respect of the said debt and remains to be proceeded on" and that this was incorrect. The debtor has a point to the limited extent that insofar as the application for the summons was based on the 2015 judgment, that incorrectly included sums that had been covered by the 2005 judgment and in respect of which there had been an instalment order and thus a degree of recovery or execution. However, this is an irrelevant error because even discounting the sum of €13,501.52, considerably larger sums were due to the Collector General on foot of the fourth and fifth judgments in 2016: see *Murphy v. Bank of Ireland* [2014] IESC 37, [2014] 1 I.R. 642.

Alleged incorrect particulars of the judgments

19. The previous argument is then reformulated as a complaint that incorrect particulars were given, but again the total sum alleged to be due was in fact due and thus there is no legitimate defence under this heading as follows from the Supreme Court decision in *Murphy v. Bank of Ireland.*

Allegation that sums claimed were included in the 2012 proceedings

20. Insofar as it is claimed that the sums due or some of them were included in the 2012 proceedings which were never progressed, that is accepted, but the fact that the proceedings were never proceeded with, and, as put in submissions, "have essentially disappeared into the ether, as many proceedings do, without being formally discontinued", is not legally relevant because judgment was subsequently obtained in separate proceedings for such sums.

Alleged overstatement by the inclusion of the 2005 judgment

21. The previous point about the 2005 judgment is also reformulated as an overstatement argument, but again on the basis of *Murphy v. Bank of Ireland* it seems to me there is no impermissible overstatement given the existence of two subsequent judgments that together are greater than the amount of the alleged overstatement.

Alleged good defence to the 2014 proceedings

22. It is alleged that there was a good defence to the 2014 proceedings, and that the debtor never received the motion for liberty to enter final judgment. It is argued that when he was made aware of the judgment, he filed a motion to set it aside which in turn was struck out in his absence. The problem with that submission is that we are now six-and-a-half years on from the judgment and the debtor has done nothing effective to contest it. The enforcement of that judgment by way of a bankruptcy petition is not a valid basis to now decide that there is some fundamental problem with the underlying judgment.

Allegation that the creditor is relying on judgments not particularised in the bankruptcy summons

23. It is true that the creditor is now relying on judgments that are not particularised in the bankruptcy summons, but an entitlement to do that must follow from *Murphy v. Bank of Ireland* and the authorities relied on in that decision, such as *In Re H.B.* [1904] 1 KB 94. Such a position also emerges from Costello J.'s decision in *Gladney v. P.O'M.* [2015] IEHC 718, [2015] 11 JIC 2001 (Unreported, High Court, 20th November, 2015).

Alleged agreement regarding non-enforcement

24. It is alleged that judgment in the fifth set of proceedings (Circuit Court proceedings *Gladney v. Walsh* [Record No. 37/2016]), was only obtained on the basis of an agreement that it would not be enforced or published if the debtor filed returns and paid tax by periodic payments. The most fundamental problem with that argument is that the debtor had not filed any returns at the material time and thus would not have had a defence even assuming the existence of such an agreement and even assuming the enforceability of an agreement to pay tax that the debtor was bound to pay in any event pursuant to statute.

Alleged reliance on the agreement to the detriment of the debtor

25. The debtor avers that he failed to engage with a personal insolvency practitioner on foot of the alleged agreement. It seems to me that argument falls away based on the way in which I view the previous point, but even if I am wrong about that, the Collector General is an excludable debtor under the Personal Insolvency Act 2012 as amended and so will be subject to an insolvency arrangement only if he decides to opt in. In the absence of such a decision, personal insolvency is not a realistic alternative procedure.

Section 14 of the 1988 Act

26. The debtor also argues that there is an alternative to bankruptcy which should be considered under s. 14 of the 1988 Act. Obviously I have considered that section and whether there are any alternatives to bankruptcy, but I am satisfied that there are not any real alternatives here, particularly having regard to the foregoing. Indeed, personal insolvency is rarely going to be a real alternative in a tax debt context without Revenue agreement given the status of the Collector General as an excludable debtor.

Conclusion

27. There is no analogy to be drawn between a petition in bankruptcy and an application for summary judgment to which *Harrisrange Ltd. v. Duncan* [2002] IEHC 14, [2003] 4 I.R. 1 applies. The law in relation to summary judgment has indeed been applied by analogy to dismissal of a bankruptcy summons by Dunne J. in *Minister for Communications, Energy and Natural Resources v. Wood* [2017] IESC 16, [2017] 3 JIC 0901 (Unreported,

Supreme Court, Dunne J. (Denham C.J. and Charleton J. concurring), 9th March, 2017), but it has no application to the defence of a petition.

28. The difference is that a summons should be set aside if an arguable defence is put forward, whereas in petition context the court actually tries the issues; so the debtor has to establish the *correctness* of her defence, not just its *arguability.* There is no later "trial" to which the petition is to be adjourned. If the court decides that the petition requires oral evidence, so be it; but that is in the context of the hearing of the petition itself, not some separate process. The hearing of a petition *is* the substantive hearing and a debtor has to do more than simply raise a credible potential defence, she has to actually make out that defence. The court, on hearing the petition, will determine any factual or legal issues required.

29. In this case I do not think that there is any factual defence established or even a factual issue on which an adjournment would be appropriate for further investigation or consideration. Insofar as legal issues have been raised, for the reasons explained, such issues should be determined against the debtor.

30. It follows that the petition should be granted.

Order

31. Accordingly, I will adjudicate the debtor bankrupt.