THE HIGH COURT
BANKRUPTCY

[2021] IEHC 293

[Bankruptcy No. 6132]

IN THE MATTER OF MICHAEL MCDAID

AND

[Bankruptcy No. 6133]

IN THE MATTER OF CHARLES MCDAID

JUDGMENT of Humphreys J. delivered on Wednesday the 5th day of May, 2021

1. These two bankruptcy petitions, arising from a debt established in High Court proceedings issued 17 years ago, were dealt with together and raise similar issues. In each case, the bankruptcy summons issued on 15th July, 2019 and was served on 1st and 2nd August, 2019. The act of bankruptcy was failure to pay on foot of the bankruptcy summons. The creditor in each case is Mr David McLaughlin of Illinois, USA. The bankruptcy amount is €605,222 arising on foot of a High Court Judgment of 10th December, 2005 [Record No. 2004 No. 5848P] in the amount of €453,000 and a Certificate of Taxation dated 17th June, 2019 [Record No. 2004 No. 5848P] in the amount of €152,222.

2. The affidavit of service of the summons was filed on 15th November, 2019. The petition was also filed on 15th November, 2019 and served on 6th December, 2019 and 9th December, 2019. An amended petition (in relation to Mr Charles McDaid) was served on 23rd December, 2020. The affidavit of service of the petition in each case was filed on 11th December, 2019 and (in the case of Mr Charles McDaid) on 12th January, 2021.

3. It may be worth noting that while there may have been some infelicities in the paperwork regarding service, the debtors did appear, thereby curing any such problem.

4. A brief procedural history of the petitions is as follows:

   (i). On 16th December, 2019 the petitions were adjourned to 27th January, 2020 on the application of counsel for the petitioning creditor.

   (ii). On 27th January, 2020 the petitions were adjourned to 17th February, 2020 on the application of counsel so that a supplemental affidavit could be filed.

   (iii). On 17th February, 2020 Mr Michael McDaid and counsel for the petitioner attended. The debtor said he would refuse to deal with counsel for the petitioner. Counsel for the petitioner said the letter advising the debtor about the usual direction had been sent only the previous week. He suggested that the court might want to reiterate the direction. Pilkington J. explained the direction and the requirements of s. 14(2) of the Bankruptcy Act 1988 to the debtor and offered to adjourn the petition so that the debtor could consult a personal insolvency practitioner. The debtor said he didn't want an adjournment. Counsel then proceeded to open the papers, but having done so, applied to adjourn the petition so that he could deal with various queries. Pilkington J. asked the debtor what adjournment date would suit him. The debtor said he was not agreeing to anything. Pilkington J. adjourned the petition to

27th April, 2020. In relation to Mr Charles McDaid, the petition was adjourned to the same date in tandem with the petition against Mr Michael McDaid.

(iv). On 27th April, 2020, court sittings were cancelled because of the Covid-19 pandemic. All cases listed for 27th April, 2020 were adjourned generally with liberty to re-enter pursuant to a direction of the President of the High Court. The petitions were subsequently re-entered for 6th July, 2020.

(v). On 6th July, 2020, the petitions were adjourned to 16th November, 2020 on the application of counsel who said an affidavit had been drafted and sent to the petitioner in the United States for swearing.

(vi). On 16th November, 2020, due to Covid-19 level 5 restrictions, the matter was adjourned to 21st December, 2020.

(vii). On 21st December, 2020, having granted liberty to amend the petition in relation to Mr Charles McDaid by inserting details of the judgment mortgages held by the petitioner, I adjourned the petitions to 25th January, 2021 for mention to fix a date and gave the debtors until 1 pm on 21st January, 2021 to put in a replying affidavit.

(viii). On 25th January, 2021, in compliance with the direction of the President of the High Court dated 5th January, 2021 only matters capable of being heard remotely were dealt with on 25th January, 2021, and this matter was adjourned to 15th March, 2021. Full remote hearings had not at that point been operationalised in the bankruptcy list.

(ix). On 15th March, 2021, the debtors and counsel for the petitioner attended remotely. Counsel for the petitioner gave a history of the matter and pointed out that the debtors had not filed a replying affidavit. I noted that a number of queries had been raised by the Examiner's Office. Counsel said these had been dealt with by means of an amended petition pursuant to an order of the court made on 21st December, 2020. However, a copy of the amended petition was not before the court. Counsel said he would arrange for a book containing the amended petition to be lodged. The matter was put back to 12th April, 2021.

(x). On 12th April, 2021, I heard the matter, refused a recusal application and adjudicated each of the debtors bankrupt; and I now take the opportunity to set out reasons. The form of the order of adjudication is standard and it is not necessary to expressly recite in such an order that the court refused a recusal application, but lest the debtors feel that this has not been adequately recorded, I now do so by means of the present judgment.

5. As well as the pleadings, affidavits and exhibits, I received a written submission relied on by the debtors and a further attachment to be read with that document. Suffice to say

for present purposes that it doesn't furnish any basis either for recusal or for not making the order of adjudication.

6. Insofar as I could understand the recusal point, it seemed to be mainly derivative on a misconceived objection to a ruling involving the President in some previous adverse outing in the Court of Appeal. That isn't a basis for recusal by anybody, let alone by me. There was also some complaint about the ruling of 21st December, 2020, but all that happened at that point was that liberty to make a fairly technical amendment was allowed. Presumably if that was an incorrect decision it can be corrected elsewhere, but merely because a ruling is adverse to a party doesn't furnish a ground for recusal.

7. As regards the merits of the petition, from the papers provided I am satisfied that the necessary statutory criteria are met and that the debtors haven't put up any legally cognisable ground to hold otherwise.

8. Section 11(1) of the Bankruptcy Act 1988 states that a creditor shall be entitled to present a petition for adjudication against a debtor if:

   (a). the debt is greater than €20,000;

   (b). the debt is a liquidated sum;

   (c). the act of bankruptcy has occurred within three months before the presentation of the petition [the act of bankruptcy normally relied upon being either:

      (i). a return of *nulla bona* on a decree, an execution order or *fieri facias*; or
      (ii). failure to pay on foot of a bankruptcy summons within the requisite fourteen days]; and

   (d). the debtor is domiciled within, or has the necessary residential or work connection with, the State.

9. I am satisfied on the evidence that these conditions are met here.

10. The applicable procedure is that the petition, the affidavit of debt and a notice of motion must be served on the debtor at least seven days before the matter is heard in court. Service is effected by showing the debtor a sealed original of the petition and leaving a plain copy with her, along with plain copies of the affidavit of debt and the notice of motion. As noted above, the debtors appeared, so service isn't a problem.

11. Section 14(1) and (2) of the 1988 Act state : "(1) Subject to subsection (2), where the petition is presented by a creditor, the Court shall, if satisfied that the requirements of section 11(1) have been complied with, by order adjudicate the debtor bankrupt. (2) Before making an order under subsection (1), the Court shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor's inability to meet his engagements could, having regard to those matters and the contents of any statement of affairs of the debtor filed with the Court, be more appropriately dealt with by means of: (a) a Debt Settlement Arrangement, or (b) a

Personal Insolvency Arrangement, and where the Court forms such an opinion the Court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Court in adjourning the hearing."

12. Subsection (4) states: "(4) For the purposes of subsection (2), the Court may order the bankrupt to attend and make full disclosure of his assets and liabilities to the Court by way of a statement of affairs filed with the Court."

13. Having had regard to the matters set out in section 14, and on considering the evidence and submissions, there wasn't any adequate basis to think that the matter could be dealt with more appropriately in the manner set out in sub-s. (2), and nor did I see any necessity to exercise the powers in sub-s. (4) against the respondents, so I made the order specified in sub-s. (1) which was the appropriate, and indeed required, order in all of the circumstances having regard to the terms of that subsection.

Order

14. For those reasons, the order made on 12th April 2021 in each case was:

    (i). to refuse the recusal application; and

    (ii). to adjudicate each debtor bankrupt.