



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

IN THE MATTER OF A PETITION OF BANKRUPTCY ISSUED BY MICHAEL GLADNEY v. JOHN TOBIN

On appeal from: [2020] IECA 49

The Supreme Court today held that an overstatement of the amount due must result in the dismissal of the bankruptcy summons pursuant to the Bankruptcy Act 1988 where the debtor demonstrates that this is a real and substantial issue, even where the undisputed portion in the Bankruptcy Summons is above the legislative threshold.

Composition of Court

O'Donnell C.J., MacMenamin, Dunne, Charleton, Hogan JJ.

Judgments

Dunne J. (with whom O'Donnell C.J., MacMenamin, Charleton, and Hogan JJ. agreeing)

Background to the Appeal

In April 2016, a bankruptcy summons was issued and served on Mr. Tobin, a solicitor, based on seven judgments obtained by the Revenue Commissioner amounting to approximately €405,808.66. The liability in question arose out of the non-payment of Stamp Duty by Mr. Tobin's client for the purchase of certain lands.

Mr. Tobin did not challenge the bankruptcy summons until November 2016, significantly outside the 14-day time limit prescribed in statute. Mr. Tobin sought an extension of time to challenge the bankruptcy summons on the basis that the summons overstated the amount due by €71,030. Mr. Tobin alleged that this overstatement arose as he had made a partial payment towards the liability in question, combined with an alleged agreement he reached with the Revenue and the Department of Agriculture, Food and Marine to attach certain forestry grants due to the client to discharge the Stamp Duty liability. Mr. Tobin never disputed that a substantial amount of the debt to the sum of approximately €330,000 remained unpaid by him to Revenue.

In the Court of Appeal, Collins J. (with whom Donnelly & Haughton JJ. agreed) found that there was no credible evidence to suggest that any overpayment had been made by Mr. Tobin. Notwithstanding that finding, the Court of Appeal expressed some misgivings about the approach taken in the case law which indicated that a bankruptcy summons was to be dismissed where the amount set out – by whatever margin – was overstated, even where the undisputed portion of the debt exceeded the statutory minimum required for a summons.

The issues to be addressed in the appeal were threefold. Firstly, does any overstatement of a claim of debt in a bankruptcy summons cause the dismissal of the petition or does it suffice that at least the statutory threshold is met no matter how overstated a bankruptcy summons is in amount? Secondly, what threshold of credibility must be passed by a debtor whereby he or she may dispute as an overstatement a sum claimed in bankruptcy? Thirdly, whether the failure to assert a defence in time fatal to raising an argument that the summons overstates the debt due.

Judgment

The Supreme Court dismissed the appeal.

Reasons for the Judgment

In dealing with the first issue, Dunne J. concluded that the authorities in this area, some of which date as far back as 1877, show support for strict compliance with the Bankruptcy Code having regard to the penal nature of an adjudication. Turning to the provisions of the Bankruptcy Act 1988, Dunne

J. noted that an act of bankruptcy occurs where a debtor fails to make a payment in full of the sum particularised in the bankruptcy summons having been served with a petition in the prescribed way. Dunne J. held that the Bankruptcy Act 1988 is clear that an act of bankruptcy cannot be committed by a failure to pay a sum demanded in excess of the sum actually due and to interpret the legislation in any other way would disregard the express wording of the provisions therein. Nonetheless, Dunne J. accepted that the Bankruptcy Code had undergone significant reform which reduced the severity of an adjudication of bankruptcy and suggested that its operation may not be suitable for the modern commercial world, but that any reform could only be brought about by the legislature. Dunne J. echoed the disquiet of the Court of Appeal regarding the inconsistency between the provisions of the Bankruptcy Act 1988 and Order 76 of the Rules of the Superior Courts. **[67-74]**

Regarding the second issue, Dunne J. held that a “real and substantial issue” must be reached by a debtor to dismiss a bankruptcy summons under section 8(6)(b) of the Bankruptcy Act 1988. Dunne J. noted that it had been clearly supported by previous authorities and considered that there was no reason to reconsider this threshold. **[83]**

On the third issue, Dunne J. accepted that the principles set out in *Éire Continental Ltd v. Clonmel Foods Ltd* [1955] I.R. 170 applied by analogy when seeking an extension of time to challenge a bankruptcy summons outside of the prescribed 14-day limit under the Bankruptcy Act 1988. **[89]**

Note

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case history

02 November 2021
[\[2021\] IESC DET 67](#)
[\[2020\] IECA 49](#)

(*Ex tempore*, 13 November 2017)

Oral submissions made before the Court
Supreme Court Determination granting leave
Judgment of the Court of Appeal (**judgment which was the subject of the appeal to the Supreme Court**)
Judgment of the High Court