AN CHÚIRT UACHTARACH
THE SUPREME COURT

S:AP:IE:2022:000098

[2023] IESC 32

O'Donnell C.J.
Dunne J.
O'Malley J.
Hogan J.
Donnelly J.

IN THE MATTER OF PART 3, CHAPTER 4 OF THE PERSONAL INSOLVENCY ACTS, 2012 TO 2015

AND IN THE MATTER OF JOHN O'DRISCOLL OF KILCEA, OVENS, COUNTY CORK ("THE DEBTOR")

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 96 AND 112 OF THE PERSONAL INSOLVENCY ACT 2012 TO 2021

Between/

MICHAEL O'FLYNN

Appellant

and

JOHN O'DRISCOLL AND ALAN MCGEE

Respondents

and

THE INSOLVENCY SERVICE OF IRELAND

Notice Party

Judgment of Ms. Justice Elizabeth Dunne delivered on the 30th day of November 2023

Introduction

1. This case considers whether a creditor who has failed to prove their debt pursuant to the provisions of the Personal Insolvency Act 2012 ("the 2012 Act") has *locus standi* to object to the coming into effect of a Personal Insolvency Arrangement ("PIA").

Background

2. In 2007, Mr. O'Driscoll ("the debtor") alongside Mr. O'Flynn ("the appellant") and a third party, set up Ezeon Entertainment Limited ("Ezeon"), each owning one-third shares in the company. Ezeon was set up for the purpose of purchasing and operating a public house in County Cork. The company purchased and renovated *The Silly Goose* pub in Cork City, financed by borrowings from Anglo Irish Bank Corporation.

3. In 2009 when Anglo Irish Bank was nationalised, the borrowings were transferred to Carbon Finance Limited. The appellant agreed to personally refinance the loan on 30th October, 2014. The debtor and third party personally guaranteed the appellant's loan and signed an agreement to this effect. The public house traded successfully until March 2020, when the Covid-19 pandemic and the restrictions imposed resulted in the pub's closure. This was the primary cause of the debtor's financial problems, and as a result, the debtor retained the services of Alan McGee, a Personal Insolvency Practitioner ("PIP").

4. A Prescribed Financial Statement ("PFS") was completed by the debtor on 8th November, 2021. The PFS was served on the appellant on 12th November, 2021. In the same correspondence, the PIP informed the appellant that a protective certificate had been issued in respect of the debtor and called on him to *"file a proof of debt within 14 days in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act 1988"* and informed him that *"subject to subsection (3), paragraphs 1 to 22 of the First Schedule of* [the 1988] *Act shall apply with all necessary modifications and proofs of such debt."* The PIP informed the appellant that if he should fail to prove his debt, he would not be entitled to vote at the creditors' meeting or to any share or distribution made under the 2012 Act.

5. Thereafter, the appellant, through his solicitor, engaged in correspondence with the PIP. In a letter dated 23rd November, 2021, the appellant made eleven complaints about the debtor including, *inter alia*, that the debtor was not insolvent, that the debtor had sufficient assets to meet the debts owed, that the debtor had failed to disclose some of his assets in his PFS, and that a debt owed by Ezeon to the debtor had not been addressed in the PFS. An extension of time to lodge a proof of debt was requested by the appellant. On 24th November, 2021, the PIP responded indicating that he would write to Ezeon and include the debt in the PFS. The request for an extension was denied by the PIP, and he again called on the appellant to prove his debt in the following terms:

> *"Please furnish a Proof of Debt within the prescribed timeline. Please note that a Personal Guarantee which has not been called at the date of the granting of the Protective Certificate will be treated as a contingent liability of €1."*

6. On 26th November, 2021, the appellant responded to the PIP restating his belief that the debtor was abusing the insolvency process and that the information in the PFS

was not a *"complete and accurate statement of the debtor's assets, liabilities, income and expenditure"*. On 29th November, 2021, the PIP responded and once again denied that this was an abuse of process and refused an extension of time for the filing of a proof of debt.

7. On 14th December, 2021, a second PFS was completed by the debtor. On the same day, the PIP wrote to the appellant with Notice of the Creditors' Meeting due to take place on 5th January, 2022, and enclosed the proposed PIA along with other documents required by s. 107 of the 2012 Act. On 15th December, 2021, the appellant once again set out his views in relation to the process and requested that the creditors' meeting be cancelled in light of his ongoing concerns. On 16th December, 2021, the PIP responded denying these allegations and informed the appellant that the creditors' meeting was scheduled for 5th January 2022. On 17th December, 2021, the final piece of correspondence prior to the creditors' meeting was sent by the appellant to the PIP, where he stated that he would *"not be dignifying this process with either an attendance at said meeting or a vote in respect of same."* At this stage, the appellant had still failed to prove his debt.

8. On 20th December, 2021, the appellant issued a notice of motion and sought two principal reliefs: leave to execute against the debtor pursuant to s. 96(3) of the 2012 Act and an order refusing the coming into effect of the PIA pursuant to s. 115(2)(b) of the 2012 Act.

9. The creditors' meeting was held on 5th January, 2022 and the PIA was approved by creditors who had previously proved their debt. Following the creditors' meeting, the PIP wrote to the creditors, including the appellant, informing them that the PIA had been approved at the creditors' meeting and that if an objection was forthcoming, a notice of objection in accordance with s. 112(3) of the 2012 Act could be lodged within

14 days. The appellant lodged a notice of objection within the prescribed time limit, which came on for hearing alongside the appellant's motion of 20th December, 2021.

Statutory Framework

10. Chapter 4 of the 2012 Act governs PIAs. For the purposes of these proceedings, it would seem that only the provisions of ss. 98, 112, and 120 of the 2012 Act are relevant. Section 98 relates to the steps that must be taken by a PIP after a PC has been issued:

> *"98.— (1) Where a protective certificate has been issued, the personal insolvency practitioner shall as soon as practicable thereafter—*
>
> > *(a) give written notice to the creditors concerned that the personal insolvency practitioner has been appointed by the debtor for the purpose of making a proposal for a Personal Insolvency Settlement Arrangement and, subject to section 101(2), invite those creditors to make submissions to the personal insolvency practitioner regarding the debts concerned and the manner in which the debts might be dealt with as part of a Personal Insolvency Arrangement, and such notice shall be accompanied by the debtor's completed Prescribed Financial Statement,*
> >
> > *(b) consider any submissions made by creditors regarding the debts and the manner in which the debts might be dealt with as part of a Personal Insolvency Arrangement, including—*

(i) any submission made by a creditor with respect to previous or existing offers of arrangements made by the creditor to or with the debtor, and

(ii) any submission made by a secured creditor in accordance with section 102,

and

(c) make a proposal for a Personal Insolvency Arrangement in respect of the debts concerned.

(2)(a) A personal insolvency practitioner may in any case request a creditor to file a proof of debt and the debt shall be proved in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act 1988 and subject to subsection (3) paragraphs 1 to 22 of the First Schedule of that Act shall apply with all necessary modifications to the proof of such debts.

(b) Subject to paragraph (c), a creditor who does not comply with a request under paragraph (a) is not entitled to—

(i) vote at a creditors' meeting, or

(ii) share in any distribution that may be made under the Personal Insolvency Arrangement concerned.

(c) Where a creditor to whom paragraph (b) applies files a proof of debt in the manner specified in paragraph (a), paragraph (b) shall cease to apply, but without prejudice to anything done while that paragraph applied."

11. Section 112 of the 2012 Act governs the notification requirements on a PIP following the approval of a PIA at a creditors' meeting:

> *"112.— (1) Where a Personal Insolvency Arrangement is approved at a creditors' meeting in accordance with section 110 or, as the case may be, deemed under section 108 to have been approved, the personal insolvency practitioner shall as soon as practicable after the meeting has concluded notify the Insolvency Service and each creditor concerned of that approval or, as the case may be, deemed approval, which notification shall be accompanied by—*
>
> > (*a) (i) subject to subparagraph (ii), a certificate with the result of the vote taken at the creditors' meeting, identifying the proportions of the respective categories of votes cast by those voting at the creditors' meeting and stating that the requisite proportions of creditors referred to in section 110(1) has approved the proposal for a Personal Insolvency Arrangement, or*
> >
> > *(ii) where the proposal is deemed under section 108(8)(a) (as amended by section 15(b) of the Personal Insolvency (Amendment) Act 2015) to have been approved, a certificate to that effect,*
> >
> > *(b) a copy of the approved Personal Insolvency Arrangement, and*
> >
> > *(c) a statement by the personal insolvency practitioner to the effect that he or she is of the opinion that—*

(i) the debtor satisfies the eligibility criteria for the proposal of a Personal Insolvency Arrangement specified in section 91,

(ii) the approved Personal Insolvency Arrangement complies with the mandatory requirements referred to in section 99(2), and

(iii) the approved Personal Insolvency Arrangement does not contain any terms that would release the debtor from an excluded debt or an excludable debt (other than a permitted debt) or otherwise affect such a debt.

....

(2) The personal insolvency practitioner shall, in addition to the documents referred to in subsection (1) or, as the case may be, subsection (1A) (inserted by section 18(b) of the Personal Insolvency (Amendment) Act 2015), also send a notice to each creditor indicating that he or she may make objection to the coming into effect of the Personal Insolvency Arrangement by lodging a notice of objection with the appropriate court, within 14 days of the date of the sending of that notice.

(3) A creditor may lodge a notice of objection with the appropriate court within 14 days of the date of the sending by the personal insolvency practitioner of the notice referred to in subsection (2) and shall at the same time send a copy of the notice of objection to—

(a) the Insolvency Service, and

(b) the personal insolvency practitioner.

12. Section 120 of the 2012 Act governs the grounds of challenge available to a creditor to the coming into effect of an arrangement. Section 120 provides that *"the grounds on which a Personal Insolvency Arrangement may be challenged by a creditor under section 114 are, without prejudice to section 122, limited to the following matters",* and goes on to set out eight separate grounds of potential challenge:

> *"(a) that the debtor has by his or her conduct within the 2 years prior to the issue of the protective certificate under section 95 arranged his or her financial affairs primarily with a view to being or becoming eligible to apply for a Debt Settlement Arrangement or a Personal Insolvency Arrangement;*
>
> *(b) the procedural requirements specified in this Act were not complied with;*
>
> *(c) a material inaccuracy or omission exists in the debtor's statement of affairs (based on the Prescribed Financial Statement) which causes a material detriment to the creditor;*
>
> *(d) the debtor, when the Personal Insolvency Arrangement was proposed, did not satisfy the eligibility criteria specified in section 91;*
>
> *(e) the Personal Insolvency Arrangement unfairly prejudices the interests of a creditor;*
>
> *(f) the debtor has committed an offence under this Act, which causes a material detriment to the creditor;*

(g) the debtor had entered into a transaction with a person at an undervalue within the preceding 3 years that has materially contributed to the debtor's inability to pay his or her debts (other than any debts due to the person with whom the debtor entered the transaction at an undervalue);

(h) the debtor had given a preference to a person within the preceding 3 years that had the effect of substantially reducing the amount available to the debtor for the payment of his or her debts (other than a debt due to the person who received the preference)."

Circuit Court Hearing

13. The appellant's motion came on for hearing on 16th March, 2022 in front of His Honour Judge Meghan. Judge Meghan dismissed the motion and the objection. He held that the appellant had no *locus standi* to pursue an objection to the PIA as he had not proved his debt in accordance with the procedure set out in the 2012 Act. Accordingly, the substantive objections made by the appellant were not considered in the Circuit Court, and the PIA was approved.

High Court

14. The matter was appealed to the High Court and came before Owens J. on 25th July, 2022. The appellant argued that he was a creditor who had standing to make an objection under s. 120 of the 2012 Act. He relied on the principles enunciated in *Re Varma* [2017] 3 I.R. 659. *Re Varma* considered whether the Circuit Court had jurisdiction to extend the time to file a notice of objection under s. 115A(3) where approval of a PIA is sought under s. 115A of the 2012 Act. Baker J. held that it was open to the court to grant an extension of time to an objecting creditor in a s. 115A application. The appellant placed particular emphasis on para. 23 of Baker J.'s

judgment where she found favour in the submission that an extension of time was necessary as the approval of a PIA under s. 115A may adversely affect the constitutionally protected property rights of a creditor. The appellant argued that this case engaged the same constitutional rights as those in *Re Varma*. Therefore, it was argued that s. 120 required a constitutionally permissible construction to grant the appellant standing to make an objection. The appellant also argued that the only restrictions on the participation of a creditor who failed to prove their debt were contained in s. 98(2)(b) of the 2012 Act: failure to prove a debt results in the creditor forfeiting (a) the right to vote at the creditors' meeting and (b) a share in any distribution that may be made under the PIA concerned. It was submitted that if it was the intention of the Oireachtas to curtail the right of a creditor who has not proven their debt from the making of an objection under s. 112, this would have been provided for in the Act in like manner as the other restrictions.

15. Dismissing the appeal, Owens J. was satisfied that the appellant did not have *locus standi* to make an objection to the PIA as he had failed to prove his debt. He held that a person loses their designation as a creditor under the 2012 Act if they fail to prove their debt when requested to do so. That person is not entitled to be served with any documentation under s. 112 of the 2012 Act and loses the right to participate in the process thereafter. Owens J. was satisfied that the statutory scheme provided sufficient protection of the appellant's constitutional rights, and that the appellant had placed himself outside of the scheme by his own inaction. Further, Owens J. relied on s. 112 of the 2012 Act and held that "*creditor*" in that section was preceded by the word "*concerned*", indicating that it refers only to those creditors who are affected by the PIA, i.e. those who have proved their debt and voted in the creditors' meeting. Like the

Circuit Court, the substantive objections raised by the creditor were not considered by Owens J.

Application for Leave to Appeal

16. The appellant was granted leave to appeal to this Court on 7th February, 2023 ([2023] IESCDET 15). The Court considered that the case raised important questions on the interpretation of the 2012 Act. In the course of case management, the parties filed a Joint Document, which identified one issue to be decided by this Court:

> *"Does a creditor who fails to prove their debt when called upon to do so under s.98(2)(a) retain the right to object to a Personal Insolvency Arrangement pursuant to ss. 112 and 120?"*

Submissions

17. All of the parties agree on the principles of statutory interpretation applicable in this case and the cases which should be considered by this Court. It is submitted that the cases of *Law Society of Ireland v Motor Insurers' Bureau of Ireland* [2017] IESC 31, *People (DPP) v Brown* [2018] 2 I.R. 1, and *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43 set out the approach to be taken by this Court when construing the 2012 Act.

18. The appellant's overarching submission is that the High Court gave an overly broad interpretation to s. 98(2)(b) of the 2012 Act by refusing the creditor *locus standi*. It is submitted that s. 98(2)(b) limits the rights of a creditor who fails to prove its debt in two distinct ways, and the decision of the High Court has the effect of limiting the creditor in a third way that is not envisioned by the 2012 Act. The appellant argues that the wording of s. 98(2)(b) is clear and unambiguous and should be given its natural and ordinary meaning in the context in which it appears. It is submitted that the intention of

the Oireachtas is decipherable from the legislation and that the courts cannot read into the Act a further exclusion of a creditor where the legislator has decided not to do so.

19. The appellant argues that s. 120 needs to be read alongside s. 112 of the 2012 Act. He submits that s. 112 provides that all creditors are entitled to notification of the right to object. However, the decision of the High Court results in a position where a creditor who has not proved his debt cannot object, even though that same creditor is entitled to be informed of his right to object. It is submitted that this is an absurd result that could not have been intended by the Oireachtas. The appellant also relies on *Re Varma* as he did in the High Court, and argues that his constitutional rights are engaged by the exercise of the insolvency process and that in interpreting s. 120, the Court must give the provision a construction that protects the creditor's property rights.

20. The appellant relies on the cases of *Re Dunne (A Debtor)* [2017] IEHC 59 and *Re Hyde (A Debtor)* [2020] IEHC 123 in support of his argument that the right to object is one that is enjoyed by all creditors, insofar as neither of the judgments makes reference to any creditor having an entitlement to object under s. 120. However, neither of these cases directly considers the issue that is currently before this Court.

21. The debtor points out that the 2012 Act was signed into law following the economic crash in 2008, which provided mechanisms for debtors to resolve their financial problems without resorting to bankruptcy. The appellant submits that the mechanisms provided for insolvent debtors by the 2012 Act operate on the principles of consent and cooperation between creditors and debtors in order to secure the repayment of debt to creditors in a rational and orderly manner.

22. The debtor argues that the question to be considered in this case is analogous to that which arose in the cases of *Re C.H.* [1873] 7 I.L.T.R 70 and *Re Bagster* (1883) 24 Ch D 477. In *Re C.H.*, a creditor, who had failed to prove his debt, sought to object to

the confirmation of an arranging debtor's proposal on the grounds of fraud. The creditor relied on the fact that the debtor had listed the creditor in the schedule of the proposal. Harrison J. held that the creditor was not entitled to challenge the proposal unless proof of his debt had previously been filed. Similar facts arose in *Re Bagster* where Brett M.R. held that on an application to register a "liquidation by arrangement" resolution a creditor who had not previously proved his debt, although listed in the debtor's statement of affairs, had no *locus standi* to do so. The appellant places weight on the fact that in *Re Bagster*, the liquidation by arrangement was governed by s. 125 of the Bankruptcy Act 1869, which placed similar restrictions on creditors who had failed to prove their debt participating in the creditors' meeting and receiving a share of the dividends. The Court of Appeal's decision was made notwithstanding that the Act did not expressly restrict the *locus standi* of a creditor who had failed to prove his debt.

23. The debtor adopts the principles of statutory interpretation identified by the appellant and the cases relied on therein. In addition, the debtor relies on the principle of *noscitur a sociis.* However, the debtor disagrees with the application of those principles. It is submitted that when the words of s. 120 are read in the context of the 2012 Act, it is clear that the creditor stands outside of the arrangement until they prove their debt, and is not, in fact, a creditor for the purposes of the Act at all. The debtor also argues that s. 112 read as a whole indicates that only "concerned creditors" are entitled to notice of their right to object to the approval of a PIA. It is submitted that "concerned" suggests that the creditor has proved their debt and is entitled to a distribution under the PIA and that a creditor who has not proved their debt is not "concerned" with the PIA at all. It is submitted that this interpretation is consistent with a "common sense" principle of statutory interpretation, and one that is in line with the objectives of the 2012 Act.

24. The Insolvency Service of Ireland is a notice party and did not intend to advocate for a construction of the 2012 Act which is favourable to either party but wished to be of assistance to the Court. The Insolvency Service agrees with the parties as to the authorities to be considered by this court when interpreting the 2012 Act. The Insolvency Service outlines the role of the Personal Insolvency Practitioner as an independent facilitator of the insolvency process and to this end, relies extensively on the comments of Baker J. in *Re Meeley (A Debtor)* [2019] 1 I.R. 235 and the role of the PIP to *"engage in a professional capacity with both creditor and debtor and seek, if possible, to achieve a solution which is satisfactory to both."* Against this backdrop, the Insolvency Service submits that allowing a creditor to disengage with a PIP and the insolvency process, and then subsequently challenge it at its conclusion, would undermine the purpose of the 2012 Act and the role of the PIP.

The Debt

25. As mentioned previously, a PFS was completed by the debtor as required. That gave details of the assets and liabilities of the debtor. The amount said to be due to the appellant was €1, but this was described as a contingent liability in respect of the relevant debt. It is the common practice that a contingent liability is designated as a sum of €1 in the PFS. The basis of the contingent liability was explained in the following terms:

> *"A personal guarantee given in respect of liabilities of Ezeon Entertainment Limited for €2,214,137 which guarantee is now held by Michael O'Flynn. At the date of the application this personal guarantee has not yet been called in."*

26. The fact that the personal guarantee had not yet been called in explains why it was a contingent liability.

27. The appellant explained the background in some detail in his affidavit grounding his application to have the Circuit Court refuse the approval of the Personal Insolvency Arrangement (PIA), and seeking leave to execute against the debtor. Suffice it to say that, following a refinancing of the loans of Ezeon Entertainment Limited, a guarantee was entered into by the debtor in favour of the appellant, whereby he agreed to guarantee monies advanced by the appellant to Ezeon Entertainment Limited. The effect of a PIA would have been to preclude the appellant from calling in the guarantee and would have had the effect of preventing the appellant from recovering the sums allegedly due on foot of the guarantee other than in the course of whatever sum might be payable on foot of the PIA. Leaving aside for a moment the dispute as to whether or not the debtor is actually insolvent, and the other issues raised by the appellant as to the information provided by the debtor in the PFS, what is beyond dispute is that the appellant is, by far and away, the largest creditor of the debtor in circumstances where it is acknowledged that the liabilities of Ezeon to the appellant, which were guaranteed by the debtor, exceed the sum of €2 million. Of the remaining liabilities, the largest debt said to be due is a sum of €207,810 due to the Bank of Ireland on foot of a mortgage in respect of a residential buy to let house. The next largest debt is due to the Revenue Commissioners in the sum of €68,182 approximately. As can be seen, these liabilities are a comparatively small fraction of the sum potentially due to the appellant herein.

28. It is relevant to note that the long title of the 2012 Act sets out certain objectives including the following:

> "*(a) The need to ameliorate the difficulties experienced by debtors in discharging their indebtedness due to insolvency and thereby lessen the adverse consequences for economic activity in the State,*

(b) The need to enable creditors to recover debts due to them by insolvent debtors to the extent that the means of those debtors reasonably permits, in an orderly and rational manner …"

29. The further objective reflected by the long title of the 2012 Act was to enable insolvent debtors to resolve their indebtedness without recourse to bankruptcy.

30. At the heart of this legislation is a desire to allow insolvent debtors to continue to participate in economic activity in the State, as is stated in the long title of the Act. This is achieved by, *inter alia*, enabling creditors to recover debts due to them as far as possible, and to allow debtors, having come to an arrangement with their creditors, to move on freed from the burden of their indebtedness. It is somewhat ironic, bearing in mind the clear objectives of the 2012 Act, which recognises the need to enable creditors to recover debts, that in these proceedings, as a result of the approach that has been taken towards the appellant and, to some extent, the approach taken by the appellant, the person who is the largest creditor of the debtor now finds himself excluded from the process and, as things stand, faces the prospect that he will not recover any portion of the substantial indebtedness due to him.

The Position of a Creditor

31. I now want to turn to the process involved in these proceedings and to the position of a creditor at various stages in the process of approving a PIA.

32. The first point to make is that the 2012 Act defines a creditor as follows:

"creditor", in relation to a debt, means a natural or legal person to whom a debtor owes that debt or to whom the debtor otherwise has a liability in respect of that debt"

33. There is no disagreement between the parties that the appellant is a "creditor" as that word is defined in s. 2 of the 2012 Act.

34. It is necessary to have regard to some of the statutory provisions of relevance in this appeal, and to the meaning of the word "creditor" within those sections, bearing in mind the definition set out above. The statutory provisions of particular relevance are ss. 98, 112 and 120, all of which are set out above. Section 98 of the 2012 Act sets out the steps to be taken by a PIP once a protective certificate has been issued. The process for obtaining a protective certificate requires the application to be made by the PIP to the Insolvency Service and once satisfied that the application is in order, the application is referred to court where the appropriate court then decides whether the application meets the statutory requirements and the eligibility requirements, and if so satisfied, issues the protective certificate (see s. 95). Thereafter, the PIP has certain functions. As mentioned previously, he must write to creditors and advise them of his appointment, that there will be a proposal for a PIA, and invites submissions from the creditors as to how the debts might be dealt with in the PIA. The PFS accompanies this notice (s. 98(1)(a)).

35. I previously referred to the fact that submissions were made on behalf of the appellant on receipt of the notice referred to above. In the course of the letter of the 12th November, 2021 from the PIP following the grant of the protective certificate, having indicated that a protective certificate had been granted and that it was proposed that the debtor would enter into a PIA, submissions were invited from the creditors, and the PIP also requested a proof of debt in the same manner as a debt would be proved under the provisions of the Bankruptcy Act 1988.

36. I have described in outline the correspondence between the PIP and the solicitors for the appellant herein but it would be helpful to consider it in some more

detail. In their first response by letter of the 23rd November, 2021, the solicitors for the appellant set out a list of matters which it was said disentitled the debtor to engage in the insolvency process. Indeed, it was stated in the course of that letter as follows:

> *"Our clients strongly dispute the bona fide nature of this particular process in circumstances where it is quite clear, even from the figures as furnished in the documentation furnished to this firm, that the sale of the property at … would facilitate the discharge of all outstanding current liabilities as listed in the correspondence furnished."*

37. The solicitors for the appellant also sought an extension of the time for furnishing proof of debt for a period of 14 days beyond the date upon which a response was received to that letter.

38. A response was sent by the PIP on the 24th November, 2021. The PIP in that letter took issue with a number of the matters raised on behalf of the appellant. In particular, the PIP requested that a proof of debt be furnished within the timeline prescribed. In other words, there was no extension granted for the delivery of proof of debt. Amongst other things, the letter explained the basis upon which the appellant's contingent liability was treated in the course of the PFS. Finally, the PIP expressed the view that the debtor met the test for insolvency and did not accept the concerns expressed by the appellant in respect of the *bona fide* nature of this process.

39. A response was furnished on behalf of the appellant by letter of the 26th November, 2021, again asserting that the application by the debtor in this instance for a PIA was an abuse of the process contemplated by the 2012 Act. The letter went into further detail as to the concerns previously raised on behalf of the appellant. It was indicated that it was the intention of the appellant at that stage to raise the concerns of

the appellant with the court when the application for the PIA was being made. The letter concluded by saying that they required the PIP to refrain from any further action in relation to the matter pending their client's application, and the hearing of the substantive action in relation to the matter. The PIP responded by letter dated the 29th November, 2021, again disputing the matters raised on behalf of the appellant stating, *inter alia*, that he had noted that a proof of debt had not been furnished within the prescribed timeline. It was further stated:

> *"I do not believe that an extension of time is necessary to return a proof of debt where the manner in which the proof of debt is required was furnished and I have not requested any affidavit to prove debt at this stage. It is denied that this is further evidence of the fact that this is an attempt to "railroad" the process through."*

40. Thereafter the PIP in a letter of the 14th December, 2021 advised that it was proposed to hold a creditors' meeting on the 5th January, 2022. Enclosed with that letter were a number of documents, including the PIA proposal with a report from the PIP, and a copy of the debtor's PFS. A further letter was sent then by the solicitors for the appellant reiterating the view that the application for the protective certificate in this case was an abuse of process and setting out a number of matters in relation to that. Equally, they contended that the debtor was not insolvent. Complaint was made as to a lack of transparency on the part of the debtor. It was also indicated that, if the creditors' meeting was not cancelled, injunctive proceedings to prevent same from proceeding would be brought on behalf of the appellant. By response of the 16th December, 2021, the PIP disputed once again the matters raised on behalf of the appellant. He refused to postpone the holding of the creditors' meeting. The appellant's solicitors replied by

letter of the 17th December, 2021 reiterating their position and clarifying a number of points raised by the PIP. The letter concluded by saying:

> *"Our client will not be dignifying this process with either an attendance at said meeting, or a vote in respect of same."*

41. As can be seen, the respective positions of the PIP and the appellant became more entrenched as the correspondence ensued. It is difficult to understand why the PIP would not have agreed to an extension of time for the proof of debt as sought by the appellant. In circumstances where the appellant had real issues about the correctness of the PFS submitted by the debtor, and where a revised PFS was furnished, (presumably as a result of the issues raised by the appellant), with the letter notifying creditors of the proposed creditors' meeting, the position of the PIP seems even more difficult to understand. Unfortunately, the parties appear to have become entrenched in their respective positions as evidenced by a comment made by the PIP in his affidavit of the 9th March, 2022, where he spoke of the "*singularly hostile and combative posture in relation to the entire insolvency process which they wrongly described as being an abuse of process and lacking in bona fides*." He went on to refer to the appellant's "*intransigence*". I referred previously to the objectives set out in the long title of the 2012 Act, and bearing those objectives in mind, I simply do not understand why, all things considered, the PIP was not prepared to extend the time within which the appellant could submit a proof of debt. I appreciate the fact that a protective certificate has a limited life span, and that it is important to have all matters dealt with in a timely fashion, but given the circumstances of this case, it is difficult to see that any prejudice could have been caused to the conduct of the process by the PIP by a reasonable extension of time. Whether the issues raised by the appellant ultimately proved to be

well founded or not, it seems to me that the approach of the PIP was not reflective of the objectives of the 2012 Act. As he himself said in his affidavit, his obligations include fairly balancing the competing rights of creditors and debtors. Having said that, this case does not turn on this question. (It should be noted that the appellant subsequently issued a motion seeking an extension of time in which to prove his debt. That motion stands adjourned pending the outcome of this appeal.)

The Absence of Proof of Debt

42. The critical issue in this case centres on whether a creditor who has not furnished a proof of debt has *locus standi* to object to the approval of a PIA. The sequence of events leading to the approval of a PIA in the Circuit Court or the High Court (as the case may be) starts with the holding of the creditors' meeting. Assuming that the proposal for the PIA is approved at the creditors' meeting, the PIP must notify the Insolvency Service of that fact and "*each creditor concerned*" of the approval. The phrase "*each creditor concerned*" is to be found in ss. 112(1)(a) and 112(1A) (section 112(1A) deals with a situation where there is only one creditor). It may be useful to set out again the provisions in s. 112(2) which provide as follows:

> *"(2) The personal insolvency practitioner shall, in addition to the documents referred to in subsection (1) or as the case may be subsection (1A) inserted by s.18(b) of the Personal Insolvency (Amendment) Act, 2014 also send a notice to each creditor indicating that he or she may make objection to the coming into effect of the Personal Insolvency Arrangement by lodging a notice of objection with the appropriate court, within 14 days of the date of the sending of that notice.*

(3) A creditor may lodge a notice of objection with the appropriate court within 14 days of the date of the sending by the personal insolvency practitioner of the notice referred to in subsection (2) and shall at the same time send a copy of the notice of objection to -

(a) the Insolvency Service, and

(b) the personal insolvency practitioner."

43. Section 114 deals with the determination of an objection lodged under s. 112 and specifies that the grounds of an objection which may be made are those set out in s. 120 of the 2012 Act. It would also be helpful to refer very briefly to the provisions of s. 116 of the 2012 Act which sets out the effect of a PIA. It is provided in s. 116(2) as follows:

"While a Personal Insolvency Arrangement is in effect, the following shall be parties to it and, subject to this Act, shall be bound by its terms -

(a) the debtor, and

(b) in respect of every specified debt, the creditor concerned."

44. The appellant in these proceedings has at all times been identified as a specified creditor, having a specified debt.

45. As explained previously, a notice of objection was duly issued and served by the appellant, and the application was objected to by the PIP on the basis that the appellant had no *locus standi* to pursue an objection to the PIA, given that he had not proved his debt as provided for by the 2012 Act. In those circumstances, his objection was rejected by the Circuit Court and the application to approve the PIA was granted.

46. The outcome was the same on appeal to the High Court.

47. It is not necessary for the purpose of dealing with this appeal to consider whether the grounds of objection raised by the appellant would have resulted in the refusal of approval of the PIA.

***Locus Standi* and Proof of Debt**

48. At the heart of the arguments in this case is the interpretation of s. 98(2)(b) of the 2012 Act. I have set out the terms of s. 98(1) and (2) above. As can be seen, the PIP may request a creditor to file a proof of debt. Presumably, the PIP has a discretion as to whether or not to request a proof of debt, given the terms in which s. 98 is phrased. If a proof of debt is requested, it has to be done in the same manner as a debt is proved in accordance with the provisions of the Bankruptcy Act 1988 (see s. 98(2)(a)).

49. Section 98(2)(b) is, as counsel for the appellant has argued, unambiguous in its terms. It sets out the consequences for a creditor who does not comply with a request to furnish a proof of debt. Such creditor is not entitled to *"vote at a creditors' meeting, or share in any distribution ...*". Counsel for the appellant accepts that this is so but goes on to make the point that there is nothing in the section to lead to the conclusion that a creditor who does not furnish a proof of debt cannot object to the approval of a PIA pursuant to s. 112. Under the terms of the First Schedule of the Bankruptcy Act 1988 a court has power to extend the time within which to furnish a proof of debt, but the fact that that can be done does not alter the underlying arguments between the parties on the interpretation of s. 98. Counsel for the appellant maintains that he is a creditor, albeit one who cannot vote at a creditors' meeting or share in a distribution but nevertheless, he continues to be a creditor. Any difficulty for a creditor can be ameliorated by acceding to a late application allowing the creditor to prove his debt.

50. It is interesting to note, in passing, that counsel on behalf of the Insolvency Service in the written submissions observed as follows:

> *"Section 98 of the 2012 Act does not expressly preclude a creditor who has not proven their debt from subsequently lodging an objection before the court. Nor is it expressly stated in the 2012 Act which defines a creditor only as someone who has proven their debt. Prima facie, there is nothing in the 2012 Act which expressly precludes a court from hearing the appellant's objection application and determining it on its merits on a literal interpretation."*

51. However, counsel on behalf of the Insolvency Service nonetheless relied on the fact that:

> *"The suggestion that a creditor who had not proved had locus standi was rejected by judges of the High Court and the Circuit Court."*

52. In those circumstances it was submitted that in the 2012 Act as a whole there was considerable merit in requiring a creditor to prove their debt (if requested) if they wanted to have a subsequent role in the process.

53. In essence, the submissions on the part of the PIP can be summed up as follows. The appellant was a creditor, he was entitled to prove his debt. He did not prove his debt, and as such he was not entitled to a share in the distribution under the PIA. He was not entitled to vote at the creditors' meeting and as he did not prove his debt, he fell outside the definition of "*creditor*" within the meaning of the 2012 Act.

54. One further point should be made about the provisions of s. 98 of the 2012 Act at this stage. As has been explained, the PIP can call on a creditor to prove his debt. Section 98(2)(b) sets out the consequences for a creditor who does not do so – he cannot

vote at the creditors' meeting and he cannot share in the distribution. However, I think the wording of s. 98(2)(c) is also of interest. For ease of reference it should be set out again:

> *"Where a creditor to whom paragraph (b) applies files a proof of debt in the manner specified in paragraph (a), paragraph (b) shall cease to apply, but without prejudice to anything done while that paragraph applied."*

55. What is clear from that provision is that a creditor may, subsequently, furnish a proof of debt if granted an extension of time within which to do so, and thereafter take part in the process. Obviously, as the subsection provides, the role of the creditor at that stage is without prejudice to any steps that may have been taken up to that point in time, but it is clearly envisaged that the creditor may have a role subsequent to the approval of a PIA, and even potentially after a distribution has been made. One might raise the question as to what possible benefit there could be for a creditor in seeking to extend the time within which to prove a debt, if in fact a PIA has been approved and a distribution has taken place, but that is not an issue that needs to be clarified now. However, there may be cases where it is alleged that a debtor had not disclosed some assets that should have been available for distribution, to give one possible example.

56. I now propose to consider the provisions of s. 112, and whether that can throw any light on the question of *locus standi* of a creditor who has not proved his debt. Section 112 sets out the procedure to be followed once a PIA has been approved at a creditors' meeting. First of all, the PIP is obliged to notify the Insolvency Service and "*each creditor concerned*" as to the approval of the PIA. I will be looking at the meaning of the phrase "*each creditor concerned*" later with a view to considering whether that has any bearing on the question of *locus standi.* Thereafter, in addition to

advising the Insolvency Service and the creditors of the outcome of the creditors' meeting, the PIP has to furnish a number of documents prescribed in s. 112 to the Insolvency Service and to the creditors. In addition, the PIP must send a notice to "*each creditor*" indicating that he or she may make objection to the coming into effect of the PIA by lodging a notice of objection with the appropriate court within a time specified in the section. Thereafter, s. 112(3) provides that "*a creditor*" may lodge a notice of objection with the appropriate court within 14 days of the sending by the PIP of the notice referred to in subsection (2) and must also serve a copy of the notice of objection to the Insolvency Service, and the PIP. In this case, it appears that the appellant was so notified.

57. It is interesting to note that the references to creditors in s. 112 refers to, in the first instance, "*each creditor concerned*" (s. 112(1)), then to "*each creditor*" (s. 112(2)), and, finally, to "*a creditor*", (s. 112(3)).

58. There was some discussion in the course of the hearing as to the meaning of the phrase "*each creditor concerned*", as that phrase is used in s. 112(1), and where it is also used in s. 112(1A). It is again referred to in s. 116(2), which specifically provides that "*in respect of every specified debt, the creditor concerned*" is stated to be a party to a PIA while it is in effect, and more particularly *"shall be bound by its terms*". Section 116(12) goes on to provide that a "*specified debt*" means a debt that is specified in the PIA as being subject to that arrangement. Counsel on behalf of the appellant expressed the view that the phrase "*creditor concerned*" meant every creditor who was affected by the PIA.

59. For his part, counsel on behalf of the Insolvency Service submitted that the phrase "*creditor concerned*" did not include a creditor in respect of an excluded debt, and such creditors were not creditors concerned because their debts were not impaired

as a result of the Act. In practical terms, counsel on behalf of the Insolvency Service, as reflected in their written submissions, made the point that there was a choice in terms of interpretation on the basis that someone is either a creditor who is concerned because his debt is impaired, or that the Act could be interpreted as meaning that a creditor concerned is someone who participated in the process and the meeting, but having said that, the latter interpretation was one preferred by the Insolvency Service. So far as it went, counsel made the point that it would be preferrable for a creditor who wanted to be involved and make an objection to prove their debt. Nevertheless, as had been indicated in the written submissions, counsel accepted that this did not cover the situation that arose in this case and that s. 98 simply excluded the right of a creditor who did not prove their debt from voting at a creditors' meeting or sharing in any distribution.

60. Counsel on behalf of the PIP argued that there were limits on the meaning of the word 'creditor' in the Act. He made the point that a creditor who had not put in a notice of objection could not be a creditor within the meaning of s. 120. He referred to s. 120, which states that the grounds on which a PIA may be challenged by a creditor under s. 114 are limited to eight specific matters which are set out therein. The reference to a creditor under s. 114 brought counsel for the PIP back to the provisions of s. 114, in which it is said at subs. (2) as follows:

> *"The hearing of an objection lodged under section 112 (3) shall be heard with all due expedition."*

61. While conceding that the term "creditor" is not qualified in either s. 120 or indeed s. 114, he argued that it had to be considered in the light of s. 112(3), and it provides that:

"A creditor may lodge a notice of objection with the appropriate court within 14 days of the date of the sending by the personal insolvency practitioner of the notice referred to in subsection (2) ..."

62. Emphasis is laid on the fact that it is only a creditor to whom notice has been sent by the PIP who is in a position to comply with the requirements of s. 112(3), given that the date of lodgement of a notice of objection is fixed from the time when that creditor has been served a notice pursuant to s. 112(2) by the PIP. Section 112(2), as has been seen previously, requires the PIP to send a notice to "*each creditor*" indicating that he or she may make objection to the coming into effect of the PIA. Counsel on behalf of the PIP then referred to s. 112(1) where reference is made to the approval of a PIA at a creditors' meeting, which obliges the PIP, as soon as practicable after the meeting has concluded, to notify the insolvency service of the approval of the PIA and "*each creditor concerned*". It is argued, therefore, on behalf of the PIP that those who receive the notice are the creditors concerned because of the provisions of s. 112(2) which provides for the creditors concerned of something additional, namely, notice that they are entitled to object. In essence, the point made is that the creditor referred to in s. 112 is a creditor who, having been asked to prove their debt, is thereby allowed to participate in meetings, to cast a vote, and share in the dividend. It is in that context that counsel on behalf of the PIP argued that the "*creditor concerned*" could only be a reference to a creditor who had proved his or her debt.

63. To my mind, it is difficult to see how the use of the phrase "*creditor concerned*", as described above, has the effect contended for by counsel on behalf of the PIP. The phrase "*creditor concerned*" seems to me to encompass those who are affected by the process of a PIA. The use of the word "*concerned*" does not appear to me to alter the

status of the creditor in any given situation. It is worth noting that some terms are used in relation to creditors in the course of the 2012 Act which have a direct effect on the status of those creditors. Thus, for example, the Act specifically refers to a category of creditors who are described as "*secured creditors*". In addition, certain debts are excluded from a PIA, and presumably, therefore, those who are due an excluded debt can be described as excluded creditors. There is no category of creditors described as non-proving creditors that is required to be treated differently by virtue of any of the provisions of the Act, save for those contained in s. 98(2)(b) which provides, as has been seen, that a creditor who does not prove their debt is not entitled to vote at a creditors' meeting or share in any distribution that may be made under the PIA. That is an express restriction on creditors with specified debts who are restricted in their ability to participate in the process. It should be noted that there is no apparent restriction on such creditor attending at a creditors' meeting while clearly their rights at such meeting are restricted.

64. Counsel on behalf of the PIP carefully took the Court through the provisions of s. 120, back to s. 112 of the Act as outlined above. But the fact that somebody has chosen not to prove their debt does not mean that they are not bound by the effect of a PIA, and that is made clear by the provisions of s. 116(2) of the Act. As previously noted, while the PIA is in effect, those who are bound by the terms of the PIA are (a) the debtor, and (b) "*in respect of every specified debt, the creditor concerned*". Thus, there is no dispute whatsoever that, once a PIA comes into effect, a specified creditor with a specified debt is a creditor concerned and is bound by the terms of the PIA. That means that the creditor concerned is subject to the provisions of s. 116(3) of the Act, and is, for example, not entitled to initiate any legal proceedings against the debtor, not able to continue any legal proceedings already initiated, not able to take any steps to

recover a debt, or secure a debt, or enforce a judgment or order of a court against the debtor, *inter alia.* Therefore, it is apparent that the effect of the PIA is to prevent the creditor concerned from recovering his or her debt. It could hardly be said in those circumstances that the creditor has, to use the language of the PIP, "dropped out" of the process. The creditor is within the process, like it or not, is bound by the process, and cannot recover the debt due to them by the debtor. The PIA is in effect.

65. It was argued on the part of the PIP, that there was no obligation to serve a creditor who has chosen not to prove a debt with the information provided in s. 112. I disagree with that argument. It may seem to a PIP that it is not necessary to do so in circumstances where a creditor who has not proved their debt, given that they were not entitled to have voted at the creditors' meeting, but it must be recalled that, even though the PIA is approved at a creditors' meeting, the matter still has to go before the court, and a PIA does not come into effect until such time as approved by the court. It is in the context of approval by a court that any objection is to be considered. Therefore, as a matter of fairness, it must be the case that in order to be in a position to make an objection, a creditor, even one who has not proved their debt, requires to be notified of the matters provided for in s. 112. How else could such creditor be enabled to bring an objection before the court if that was appropriate? For my part, I find it hard to understand how it could be said that a creditor in the position of the appellant in this case loses all rights to object to the PIA simply by virtue of the fact that they chose not to prove their debt. The appellant in this case, and any creditor in a similar position, is nevertheless bound by the PIA once it comes into effect. It is hard to conceive of any similar situation in which a party bound by a decision of a court, such as the one in this case, would not have a right to be heard before a final decision was made.

66. Counsel on behalf of the PIP, having ruled out completely the possibility of a creditor who had not proved their debt being entitled to make an objection under the terms of the Act, nevertheless said that such a creditor could come into Court on a s. 115 application and be heard. As it was put, such a creditor could "piggyback" on another creditor's objection.

67. In this regard, reference was made to the decision in the case of *Re Meeley (A Debtor)* [2019] 1 I.R. 235. The issue in that case was centred on the provisions of s. 115A of the 2012 Act and dealt with a situation in which a proposal for a PIA was not approved in the creditors' meeting. Section 115A provides for the possibility of a review being made by the court of the PIA, notwithstanding that the proposal for the PIA was not approved. In that context, s. 115A(1) provides as follows:

> *"Where -*
>
> *(a) a proposal for a Personal Insolvency Arrangement is not approved in accordance with this Chapter, and*
>
> *(b) the debts that would be covered by the proposed Personal Insolvency Arrangement include a relevant debt,*
>
> *the personal insolvency practitioner may, where he or she considers that there are reasonable grounds for the making of such an application and if the debtor so instructs him or her in writing, make an application on behalf of the debtor to the appropriate court for an order under subsection (9)."*

68. At issue in the course of that case was the question as to whether the application to the court was properly constituted. In that case, the motion seeking a review was signed by the PIP and it was said that the application was being made "*on behalf of the*

debtor". In the meantime, the debtor, her husband, and another debtor, filed a motion in identical terms. Two objections were filed by banks objecting to the coming into effect of the PIA, including a procedural ground that the applications were not properly constituted. At the heart of the case was the construction of the words "*on behalf of*", as used in s. 115A. While that case was focused on the question as to whether a non-legally qualified personal insolvency practitioner would be the sole person entitled to argue the merits and legal principles arising in an application under s. 115A of the 2012 Act, the Court ultimately held that a PIP was neither an agent nor client of the debtor or creditor, but was an intermediary interposed between those parties, and did not take on the role of acting for one party to the hearing. Some comments made by Baker J. in the High Court in that decision are of assistance. At para. 115, she observed as follows:

> *"115. Further, I do not consider that the Oireachtas envisaged that a non-legally qualified intermediary would be the sole person entitled to argue the merits and legal principles arising in an application under s. 115A(9) of the Act. Such a conclusion fails to have regard to the role of the PIP in the process leading up to the formulation of a PIA. The PIP has not been, in that process, the agent of either the debtor or the creditor, and neither is his client. He or she is an intermediary interposed to bring financial knowledge and analysis to the process of orderly debt resolution.*
>
> *116. The PIP has the statutory function of assembling the proofs for the purposes of s. 115A and of certifying certain essential matters, including the reasonableness of the application. But the court is not confined in the exercise of its statutory discretionary function to the evidence or views of the PIP. The*

PIP does not on account of lodging the application cease to be an intermediary, or take on the role of acting for one party to the hearing.

...

118. A court must have sufficient assistance in its assessment of the law and facts to arrive at a correct decision. What falls to be addressed in the hearing of an application under s. 115A is the fairness, sustainability and proportionality of the proposed PIA, and I use these words as shorthand for the various statutory indices by which the Act characterises the discretionary role of the court. In the performance of that role a court must have available to it the arguments concerning the legal principles and the merits of the proposed PIA to a sufficient degree to fully and fairly engage its role.

119. It could not be regarded as in accordance with basic fairness that argument could be heard only from or on behalf of the objecting creditors, when the debtor has a vital interest in the outcome and as the contractual relationships capable of being impeded are those of the creditor and debtor.

120. The principles of equality of arms and basic principles of fairness support a conclusion that a debtor who has a vital interest in the outcome should be entitled to be heard. This is in line with the requirement long recognised by the courts that a statute be interpreted and applied in a manner that is consistent with the constitutional requirement of fairness of process, East Donegal Co-Operative Society Livestock Mark Limited v. Attorney General [1970] I.R. 317, and the European Convention on Human Rights Act 2003."

69. Baker J. continued, at para. 126:

"Further, and apart entirely from the argument derived from the role the PIP engages in the process leading up to the formulation of a PIA, I consider that as a debtor has an interest to protect and as the Oireachtas has not expressly identified that the debtor may not be heard on the application, counsel for the ISI is correct and the voice of the debtor is not intended to be silenced. That voice may be heard only if the application is properly before the court."

70. Counsel for the PIP therefore accepted that, if there was a hearing under s. 115, a creditor could "piggyback" on that application even if they had not themselves proved their debt notwithstanding that they are not entitled to lodge a Notice of Objection. In essence, counsel for the PIP argued that *Re Meeley* made it clear that an individual who did not have an entitlement to bring an application before the Court was nonetheless entitled to attend at a hearing under s. 115 and to voice an objection. Thus, even if the creditor was precluded from lodging a Notice of Objection, that would not preclude them from being heard at the hearing under s. 115 to approve the PIA. The logic of this position is somewhat difficult to understand.

71. I appreciate the fact that the decision in *Re Meeley* concerned the right of a debtor to be heard on an application pursuant to s. 115A, as distinct from dealing with a question as to whether or not a creditor who has not proved their debt is entitled to lodge a notice of objection. The question is different. However, some of the comments made by Baker J. in that case have a resonance with the facts of this case. First of all, the point should be made that there is no express exclusion contained in the Act in relation to the role of a creditor who has not proved their debt, save for the two specific matters referred to in s. 98(2)(b), namely, the right to vote at a creditors' meeting and to share in the distribution. There is no provision to be found in the 2012 Act stating

that a creditor who has not proved their debt is not entitled to lodge an objection under s.112. Secondly, the observations of Baker J. in relation to the position of a debtor in s.115A to the principles of equality of arms and basic principles of fairness seem to me to apply equally to a creditor. To paraphrase the language used by Baker J. in the judgment referred to, I think that in this case, the appellant, a creditor of the debtor, has an interest to protect, and as the Oireachtas has not expressly identified that such creditor may not lodge an objection, it is not clear to me that the Oireachtas intended that the voice of the creditor is to be silenced. It is difficult to understand how, on the one hand, it is said that a particular creditor is not entitled to lodge a notice of objection under the terms of the Act by virtue of the fact that they did not prove their debt, while at the same time, it is accepted that the creditor could come into the court hearing the application under s. 115 to be heard on that application and voice their objection at that hearing to the making of the PIA.

72. Given the presumption against unclear changes in the law, had the Oireachtas wished to exclude a creditor from proving their debt, one would have expected that this would have been done in express terms by means of a specific prohibition in the 2012 Act and not simply in some indirect or oblique fashion: see, e.g., *Minister for Industry and Commerce v. Hales* [1967] IR 50 at 76, per Henchy J. In any event, it is worth recalling at this stage that counsel on behalf of the Insolvency Service accepted that, on a literal interpretation of the provisions of the Act, a creditor who had not proved their debt was not excluded from the process whereby they were precluded from lodging an objecting to a PIA. As can be seen, I can see no reason for disagreeing with that approach, and in the absence of express language to the contrary in the Act, I am satisfied that a creditor in the position of the appellant here is entitled to lodge an objection, and thus has *locus standi* to make such an objection and is entitled to be heard

in that regard. It is not the case that such creditor could only "piggyback" on an objection by another creditor in order to be heard. It is hard to see how such a creditor could be said to have dropped out of the process in circumstances where the creditor was bound by the effect of the PIA. In my view, the appellant had the requisite *locus standi* to lodge an objection and to be heard on foot of that objection.

73. For the sake of completeness, I should refer to one other matter very briefly. An issue was raised in these proceedings as to an extension of time within which to prove a debt. It is clear from the terms of the legislation that a creditor who does not file a proof of debt within the time provided for doing so by the PIP can seek an extension of time. As has been pointed out previously, the method of proving debt is as set out in the First Schedule to the Bankruptcy Act 1988, and that provides, at para. 2(b), that a creditor has an entitlement to prove his debt at a sitting of the court. Obviously, there are some differences between the bankruptcy regime, the role of the PIP, and the role of the Official Assignee under that legislation, but where a creditor in a bankruptcy setting is entitled to prove his debt before the court, notwithstanding that the debt has not been proved within the time fixed by the Official Assignee, there is no reason why, in circumstances where a creditor has not proved a debt in accordance with the time fixed by the PIP, an application cannot be made to court in those circumstances to allow the creditor to prove their debt. Put simply, a court can allow a creditor to prove his debt notwithstanding that the creditor failed to do so within the time limited in that regard by the PIP. Many of the difficulties in this case would have been avoided had that course been followed.

74. Finally, I should say that while the Court was referred to some older authorities from, *inter alia*, the Court of Appeal in England and Wales in the nineteenth century as to the right of a creditor in bankruptcy to be heard when that creditor had not proved

their debt, those decisions related to a different process with different rules and regulations and were not of assistance in interpreting the statute at issue in these proceedings.

Conclusion

75. I am satisfied, therefore, that on a consideration of the interpretation of the provisions of the 2012 Act, there is nothing therein which precludes a creditor who has not proved his debt as requested to do so by the PIP from doing so at a later stage. In any event, I am also satisfied that there is nothing in the express terms of the provisions of the Act which precludes a creditor who has not filed proof of debt to lodge a notice of objection. The 2012 Act expressly states what should happen to a creditor who does not prove his debt. That is specifically provided for in s. 98(2)(b). As has been seen, those provisions do not expressly exclude a creditor from lodging a notice of objection. The approach taken in this case that a creditor who does prove his debt drops out of the process does not, in my view, stand up to scrutiny. On the contrary, whether a creditor proves his debt or not, the creditor is fully bound by the process and the effects thereof once a PIA has been approved. In those circumstances, it seems to me that the appellant herein had *locus standi* to lodge a notice of objection, and on an application to allow him to prove his debt, consideration should have been given to that application. I would allow the appeal of the appellant herein. It would seem, therefore, that it would be appropriate for this matter to be remitted for a further consideration of the issues as to the entitlement of the appellant herein to prove his debt, and, secondly, to lodge a notice of objection to the PIA.