

Neutral Citation: [2019] NICH 3

Ref: McB10938

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 03/04/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

THE DEPARTMENT OF FINANCE

Petitioning Creditor/Respondent

and

DAVID BARR

Debtor/Appellant

McBRIDE J

Application

[1] The appellant David Barr lodged an appeal on 5 March 2019 against the Order of Master Kelly dated 11 June 2018 when she ordered that he be adjudicated bankrupt.

[2] The Department of Finance (“the Department”) was represented by Ms Jones of counsel. Mr Barr, the appellant, appeared as a litigant in person.

[3] I heard the appeal on 3 April 2019 and I delivered an extempore judgment advising that if any party wished to appeal I reserved the right to provide a written judgment in which I may elaborate upon my reasons for dismissing the appeal. Mr Barr indicated at the end of my judgment that he wished to appeal. I advised him that I did not consider he needed leave to appeal but in the event that he required such leave I granted him leave to appeal. I now set out in full my reasons for dismissing his appeal.

[4] I am grateful to Ms Jones for her helpful written and oral submissions which were of much assistance to the court.

Chronology

[5] The Department obtained decrees against Mr Barr for unpaid rates on 5 February 2016, 26 August 2016, 1 September 2017 and 6 September 2017 in respect of property situate and known as 10 Chippendale Gardens, Belfast.

[6] Mr Barr did not appeal any of these decrees.

[7] The Department served a Statutory Demand on Mr Barr on 10 January 2018 demanding payment of the amount due on foot of the decrees plus costs totalling £10,625.14.

[8] Mr Barr failed to comply with the Statutory Demand and made no application to have the Statutory Demand set aside.

[9] The Department issued a Bankruptcy Petition based on his failure to meet the Statutory Demand. The Bankruptcy Petition was filed on 27 March 2018 and served by first class post on 4 May 2018, following an Order of the Court dated 30 April 2018 permitting substituted service.

[10] The petition was fixed for hearing on 11 June 2018 and on that date the appellant failed to attend court and the Master granted the Bankruptcy Order.

[11] On 5 September 2018 Mr Barr lodged a Notice of Appeal against the Master's decision. This was listed for hearing on 2 October 2018. No party appeared at the hearing and the court adjourned it until 23 October 2018. At the hearing on 23 October 2018 the Crown Solicitor's Office informed the court that it had not received the Notice of Appeal and for this reason had not attended on 2 October 2018. The appellant did not attend court on 23 October 2018. The matter was further adjourned to 13 November 2018 to give the appellant an opportunity to attend court to prosecute his appeal. On 13 November 2018 the appellant again failed to attend court and the court dismissed his appeal, subject to a stay of 7 days.

[12] On 18 January 2019 the case was relisted before the court at the appellant's request. The appellant informed the court that he now wished to apply to set aside the High Court Order dated 13 November 2018.

[13] On 8 February 2019 the court directed the appellant to make a set aside application within a period of 7 days and to file a supporting affidavit within 14 days. The appellant failed to abide by these court directions.

[14] At subsequent review the appellant advised the court he had failed to comply with its orders as he was awaiting a decision by Courts Service to waive court fees for the application. As a result the court agreed to adjourn the matter until the fees issue was resolved.

[15] The appellant filed his set aside application ultimately on 5 March 2019 and on 13 March 2019 the court set aside its order dated 13 November 2018. The court relisted the appellant's appeal against the Bankruptcy Order for a full hearing on 3 April 2019.

The Appellant's Submissions

[16] Mr Barr lodged a number of documents in the court office and also made a number of oral submissions to the court.

[17] I have read all the documents lodged by Mr Barr. It appears from these documents that he has adopted the approach taken by so-called "sovereign men". I consider that the documents lodged are completely nonsensical and although written in legal language, consist of "gobbledygook". They do not set out any proper legal or factual grounds of appeal against the Master's Order.

[18] In addition to the documents lodged, Mr Barr submitted in his oral submissions that the court should grant his appeal for the following reasons:-

- (a) The Department issued proceedings for his failure to pay rates in the County Court without paying the appropriate court fee and accordingly the decrees were null and void. Mr Barr informed the court that he had spoken to a Ms April Dalzell who worked in Laganside Court and she had informed him approximately one year ago that the court fees had not been paid. Notwithstanding his knowledge of this matter the appellant failed to file any affidavit evidence to this effect.
- (b) Mr Barr submitted that the court lacked jurisdiction because he did not consent to the Department issuing proceedings; and
- (c) He submitted the Department had no contract with him.

The Respondent's Submissions

[19] Ms Jones on behalf of the respondent submitted that the Master had not erred in fact or law. In accordance with *Fulton v AIB (Unreported)* Mr Barr could not re-litigate the issue whether the debt was due and owing as this matter was now *res judicata*. In accordance with Article 245 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") the debt had not been paid, secured or compounded for and accordingly the Bankruptcy Order was properly made. She further submitted that in the absence of any exceptional grounds or a change in circumstances the court had no power to vary, rescind or review the Master's Order under Article 371 and accordingly the appeal should be dismissed.

Consideration

[20] The power of the High Court to make a Bankruptcy Order is governed by Article 245 of the 1989 Order. It provides as follows:

“1. The High Court shall not make a Bankruptcy Order on a creditor’s petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either –

- (a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or
- (b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due. ...

3. The High Court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied –

- (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,
- (b) that the acceptance of that offer would have required the dismissal of the petition, and
- (c) that the offer has been unreasonably refused; and

in determining for the purposes of this paragraph whether the debtor is able to pay all his debts, the court shall take into account his contingent in respect of liabilities.

4. In determining for the purposes of this article what constitutes a reasonable prospect a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.”

[21] In *Fulton v AIB Group (UK) plc (Unreported)* the court dealt with the question whether a debtor, at the petition stage, could dispute his liability to pay the debt. The court held as follows at paragraphs 29 and 30:

“[29] ... it is now well established that the Bankruptcy scheme set out in the 1989 Order, provides that questions as to the existence of the debt at the date of the presentation of the petition, and any cross-claim, are intended to be dealt with on an application to set aside the statutory demand – that is to say, before the petition is presented. It is therefore incumbent on the debtor, at the statutory demand stage, to raise any defences or cross claims he may have. It is therefore, I find, contrary to the intention of Parliament, having put this Bankruptcy scheme in place in the 1989 Order, for the Court to consider disputes as to the existence of the debt and any cross claim at the Bankruptcy petition stage, save in exceptional circumstances. ...

[30] Consequently, failure to apply to set aside a statutory demand or an unsuccessful attempt to do so, conclusively determines the liability of the debtor to pay the debt demanded by the creditor.”

[22] In accordance with *Re Fulton (unreported)* I am satisfied that, as Mr Barr did not apply to set aside the Statutory Demand, his liability to pay the debt is *res judicata*. Accordingly it is not open to Mr Barr at this stage, namely the petition stage, to seek to re-open the argument that he is not liable for the debt, in the absence of some exceptional reason. As his written and oral submissions all essentially relate to arguments about his liability to pay the debt, I find they do not form a proper basis to appeal the Master’s Order. If, however I am wrong in finding he cannot raise issues about his liability for the debt at this stage, I am nonetheless satisfied that his submissions that he is not liable to pay the debt, are without merit. In particular there is no evidence before the court that the Department failed to pay the court fee when issuing proceedings in the County Court. Secondly it is not necessary for Mr Barr to consent to the Department issuing proceedings to give this court jurisdiction and thirdly I am satisfied that it is not necessary for the Department to prove that it was in contract with Mr Barr.

[23] I am further satisfied that Mr Barr has not set out any reason why the court should exceptionally, at this stage of proceedings, reconsider his liability to pay the debt due and owing to the Department.

[24] I find that the Master was entitled to find that the statutory proofs as set out in Article 245 were met as Mr Barr has not paid secured or compounded for the debt.

[25] In addition I find that there is no basis for exercising my powers under Article 371. Mr Barr has not provided any evidence to this court outlining any change of circumstances since the making of the original order by the Master.

Conclusion

[26] I therefore dismiss the appellant's appeal and condemn him in costs.