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2014/43262

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION (BANKRUPTCY)

BETWEEN:

MICHAEL HAWTHORNE

Applicant:

and

1. THE NORTH WEST FUND FOR BUSINESS LOANS LLP ACTING BY NEW LOANS LIMITED

2. THE OFFICIAL RECEIVER FOR NORTHERN IRELAND

Respondents:

MASTER KELLY

Introduction

[1] In this matter Mr Michael Hawthorne, also known as Dr Michael Hawthorne ("the applicant"), seeks two limbs of relief. The first is that the bankruptcy order made against him by this court on 6th January 2016 is annulled under article 256(1)(a) of the Insolvency (Northern Ireland) Order 1989 ("the Order") which provides that:

> "—(1) The High Court may annul a bankruptcy order if it at any time appears to the Court—
>
> (a) that, on any grounds existing at the time the order was made, the order ought not to have been made,"

The second is that the final order preventing his discharge from bankruptcy is also annulled. That order, made initially on an interim basis on 13th December 2016, was made final on 24th February 2017. Those orders were obtained by the applicant's bankruptcy trustee because of the applicant's non co-operation with him. The applicant took no part in that application. Although the remedy of annulment in the Order applies only to bankruptcy orders, nothing turns on that because in the event the bankruptcy order is annulled under article 256(1)(a) the effect of that would be to render those orders null and void as a matter of course. However, if the bankruptcy order was not so annulled, those orders could not be considered independently under any other statutory provision because they were obtained by the trustee in bankruptcy who is not a party to this application.

[2] The basis for the applicant's case for relief under article 256(1)(a) is his claim that there was procedural irregularity in or about the making of the bankruptcy order. Specifically, he argues that he did not satisfy the conditions of article 239 of the Order as at the date on which the bankruptcy petition was presented against him. Article 239 provides that:

> "-(1) A bankruptcy petition shall not be presented to the High Court …… unless the debtor-
>
> (a) Is domiciled in Northern Ireland,
>
> (b) Is personally present in Northern Ireland on the day on which the petition is presented, or
>
> (c) At ***any*** time in the 3 years immediately preceding that day –
>
> (i) Has been ordinarily resident, ***or has had a place of residence***, in Northern Ireland, or
>
> (ii) Has carried on business in Northern Ireland.
>
> (2) the reference in paragraph (1) (c) to an individual carrying on business ***includes*** –
>
> (a) the carrying on of business by a firm or partnership of which the individual member, and
>
> (b) the carrying on of business by an agent or manager for the individual or for such a firm or partnership."{Italics and emphasis mine}

The applicant claims that he did not satisfy any of these conditions.

[3] The applicant's case is that on the date on of presentation of the bankruptcy petition against him, he was habitually resident at an address in Scotland, and not at 20 Larksborough Avenue, Newtownards which is the address stated on the bankruptcy petition. The applicant says that this was his sister's address, and that he only used it for correspondence regarding his various companies. He says that the

reason he did this was because although he had been living exclusively in Scotland for many years he had moved homes several times there and did not want important correspondence going astray. Consequently, he says that the order ought not to have been made due to lack of jurisdiction.

[4] He further argues that the respondent was equally not entitled to invoke the Court's international jurisdiction per Council Regulation (EC) No. 1346/2000 of 29 May 2000 ("the Regulation") for similar reasons. He argues that as at the date of presentation of the bankruptcy petition his Centre of Main Interests (COMI) was not located in Northern Ireland but in Scotland.

[5] This application was heard on 5th and 6th March 2019. While the applicant represented himself in this application, he was represented in the original bankruptcy proceedings by two different firms of solicitors. Each of those firms has recognised expertise in this particular area of law. Those proceedings were before the court for almost two years from 30th May 2014 to 6th January 2016. The respondent has at all times been represented by Mr McCausland.

[6] On 25th January 2019 the court joined the Official Receiver to the application. The applicant was directed to attend upon the Official Receiver in order to complete a Preliminary Examination Questionnaire ("PEQ") and Narrative Statement as he had failed to do so following his bankruptcy. These are important documents as they are completed under Article 10 of the Perjury (Northern Ireland) Order 1979. The applicant duly complied, and the Official Receiver filed a report for the Court exhibiting the completed PEQ and Narrative Statement. I have also taken the information contained in those documents into consideration along with all other documentation submitted for the purposes of this judgment even if I do not make express reference to each of them herein.

[7] The background history of the bankruptcy proceedings is significant to this application. A brief outline of those proceedings is sufficient to put that significance into context.

[8] On 20th March 2014 the applicant was personally served with the respondent's statutory demand at a place of residence situate at 20 Larksborough Avenue, Newtownards. The demand debt related to a personal guarantee apparently entered into by the applicant guaranteeing a £250,000 loan advanced by the respondent to Mitovie Ltd, a company of which the applicant was a director. According to its Company Voluntary Arrangement ("CVA") papers, Mitovie Ltd was established for the "development of medicines in rare disease areas" for the pharmaceutical market.

[9] The amount claimed on the statutory demand was £220,823.23. On 21st March 2014 the applicant says that he contacted the respondent's solicitors to indicate that the statutory demand debt was disputed. He says that he sought an undertaking from the solicitor that no further action be taken in the circumstances but no such undertaking was given. He says that he then instructed solicitors to bring an

application to have the demand set aside. No such application was filed (which the applicant alleged was the fault of his solicitors) and on 24th April 2014 the respondent presented a bankruptcy petition against the applicant.

[10] On 27th May 2014 the applicant's new solicitors, Cleaver, Fulton & Rankin, filed a late application to set aside the statutory demand ("the set aside application"). Time was extended for doing so. The set aside application disputed the validity of the subject personal guarantee and therefore the debt, as well as the respondent's right to invoke the jurisdiction of the High Court in Northern Ireland because of the jurisdiction clause in the said guarantee. The applicant argued that this clause limited the respondent's right to pursue him through the courts in England and Wales, although the clause itself provided that the guarantor may be sued in any country in which he is located. For present purposes, it is significant that affidavits sworn and filed by the applicant in the matter referred to him as "I ……..of 20 Larksborough Avenue."

[11] Both the set aside application and the bankruptcy petition were before the court concurrently. Affidavits were exchanged in the set aside matter and the application was case-managed towards hearing over the course of a year. In or about September 2015, 20 Larksborough Avenue was sold. On 23rd October 2015 the applicant settled his dispute with the respondent by way of a full and final written agreement. The agreement provided inter alia (i) that the applicant would discharge the petition debt no later than 23 November 2015, and (ii) that the law and courts of Northern Ireland would have exclusive jurisdiction in respect of any disputes arising out of the settlement agreement. The applicant was by now represented by A & L Goodbody, Solicitors as the first set of solicitors' had formally come off record in the matter. The applicant subsequently defaulted on the agreement, and it was this default which caused the bankruptcy order to be made. But the order was not made without every reasonable opportunity being afforded to him to remedy that default. Neither the bankruptcy order nor the order dismissing the set aside application was appealed.

The applicant's case

[12] The applicant now claims that when the bankruptcy petition was presented against him he was living at 8 Buccleuch Chase, St Boswells, Roxburghshire. At paragraph 10 of his grounding affidavit he states:

> "I do not believe that this matter belongs in any insolvency court, given the disputed nature of the debt. That notwithstanding, any insolvency proceedings ought to have been brought in Scotland, not Northern Ireland. I therefore ask the court to annul the Order of 6 January 2016 and the subsequent Order of 24 February 2017, without condition."

And while he does not now dispute either the petition debt or the respondent's right to bankrupt him, at paragraph 11 of his grounding affidavit he states:

> "That this matter has been opened and processed in the wrong jurisdiction is the fault of the Respondent in the first instance and their legal representatives. Bar their respective negligence, this error was entirely avoidable."

The respondent's case

[13] The respondent argues that in all its dealings with the applicant he held himself out as residing at 20 Larksborough Avenue, Newtownards. In addition, the respondent further argues that evidence obtained by and from the applicant's trustee in bankruptcy discloses that the applicant's original solicitors expressly sought instructions in the course of the bankruptcy proceedings as to whether he wished to raise a jurisdictional point. The applicant's email response on 1st October 2014 gave the following instructions to his solicitors:

> Question: "does our client wish to take the jurisdiction and/or COMI point?"
>
> Answer: "If I am to declare information pertaining to my finances, then I do not wish to have my address made public. So no."

That email forms part of the respondent's evidence and it was not controverted by the applicant. He does not deny that he gave these instructions to his solicitors. Nor does he deny that he deliberately and intentionally concealed the whereabouts of his true residence from the respondent. Nevertheless, he maintains that the respondent and its lawyers were negligent for not knowing the information which he withheld from them. He goes on to claim that between them they breached their duty of candour to the court by failing to ascertain and disclose his true whereabouts in the course of the bankruptcy proceedings. In support of that contention, he argues that when served with the statutory demand he informed the respondent's process server that he lived in Scotland. This is not a matter of dispute. However, the applicant contends that the respondent should have ascertained his address in Scotland and proceeded to pursue him in that legal jurisdiction. He claims that if the respondent had, for example, searched the electoral register in Scotland, they would have found him listed there. This is quite a remarkable argument for the applicant to make and it is also clearly inconsistent with both the email and history of the case.

The application

[14] What is clear from paragraph 10 of the applicant's grounding affidavit is that he is now attempting to go behind his terms of settlement and raise the jurisdictional

point he expressly decided against raising when the proceedings were live. I am satisfied that he cannot do so by invoking article 256(1)(a). I am further satisfied that the question posed by the applicant's solicitors in the email of 1st October 2014 must be interpreted within the context of a possible jurisdictional challenge to the bankruptcy petition. The question does not otherwise make sense because both article 239 and the question of COMI are only engaged by the presentation of a bankruptcy petition. Clearly, the applicant's instructions were to raise no jurisdictional point. I conclude from this that the applicant gave those instructions to his solicitors because he considered that not raising a jurisdictional point was in his best interests. In the circumstances, he cannot now argue that there was procedural irregularity under article 239 in terms of jurisdiction because even if, in principle, there was such an irregularity, he took advantage of it in the belief that it suited his interests to do so. Moreover, by not raising an objection challenging the bankruptcy petition on the grounds of jurisdiction, it follows that he willingly submitted to the court's jurisdiction and he cannot now say otherwise.

[15] I am further satisfied that the applicant cannot invoke article 256(1)(a) as a means to go behind the settlement agreement or at all. The court in Moore v Commissioners of Inland Revenue [2002] NI 26) held that the final outcome of a set aside application is determinative of the matter and that the same grounds cannot be raised again in subsequent proceedings. In this case, a final order was made dismissing the set aside application by virtue of the agreement entered into by the parties. That agreement settled the question of jurisdiction. Accordingly, I conclude that to invoke article 256(1)(a) as he now does the applicant is in truth attempting re-write the history of the case. That is not only an abuse of process but also outside the scope and purpose of article 256(1)(a). The purpose of article 256(1)(a) is to provide a remedy for an individual who has suffered substantial injustice as a result of a bankruptcy order which was wrongly made. In addition, article 256(1)(a) (and indeed article 239) must be read in conjunction with Rule 7.50 of the Insolvency Rules (Northern Ireland) 1991 which states:

> "No insolvency proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court."

It follows then that relief will normally only be granted under article 256(1)(a) in circumstances where, for example, there was serious procedural irregularity in or about the making of the order which prejudiced and/or prevented the bankrupt from defending the proceedings. That is clearly not the case here. In any event, as previously stated, the applicant raised no objection when he had the opportunity to do so from which it may be readily inferred that he did not believe that any perceived irregularity caused him injustice.

[16] In this case the applicant cannot argue that he suffered any injustice as a result of the bankruptcy order being made. Nor does he do so. His case at its height is simply that the respondent should have known that he was resident in Scotland - despite his never disclosing it - and proceeded to bankrupt him there. Not only is that a hopeless argument for him to make, but it is also entirely inconsistent with his clearly expressed wish not to have his address in Scotland made public. The inconsistency lies in the fact that details of bankruptcy orders made in Scotland are also released into the public domain. It is, however, an example of the applicant changing his story to suit himself and his own objectives.

[17] The applicant equally cannot argue that the bankruptcy order was wrongly made. He does not deny that he instructed his solicitors to raise no jurisdictional point. He does not deny that he deliberately and intentionally concealed the whereabouts of his true residence from the respondent. He does not deny that he settled the set aside application on 23rd October 2015 by way of full and final written terms whereby he agreed to pay the subject debt and that the Northern Irish courts would have jurisdiction over the matter. And he does not deny that it was his own default in and about the terms of the agreement which caused the bankruptcy order to be made. For these reasons alone the application ought to be dismissed.

[18] Furthermore, it doesn't follow that there is, or ever was, merit to the applicant's jurisdictional argument. The entitlement to present a bankruptcy petition under article 239 is not necessarily determined by the question of habitual residence. Indeed article 239 does not recognise any such concept. Moreover, the terms "place of residence" and "business" are not expressly defined under the Order.

[19] As to the applicant's COMI argument, that is misconceived. The Regulation made by the Council of the European Union and binding on all Member States (except Denmark) but including the United Kingdom, relates to the mutual recognition and cross-border effect of insolvency proceedings opened in those Member States. As Scotland and Northern Ireland belong to the same Member State of the United Kingdom, then unless the applicant can demonstrate that his COMI lies in another Member State (and he makes no such case) then his argument regarding COMI is otiose. In the circumstances I do not intend to dwell on that issue further save as to say there is clear authority which states that an individual may not hide or conceal his COMI (**IBRC –v- Sean Quinn [2012] NICh 1)**. It is clear that if the applicant's COMI was in truth his home address in Scotland (notwithstanding that COMI is also not necessarily determined by the question of habitual residence), then that is precisely what he did.

[20] That really ought to be the end of the matter, and indeed it would have been the end of the matter had it not been for the applicant's claim at paragraph 11 of his affidavit that the respondent and its lawyers were negligent in their conduct of the bankruptcy proceedings before the court. This was a serious assertion to make. Throughout the case the respondent was clear that it intended to challenge that claim by cross-examining the applicant because it was adamant that in all its dealings with him he held himself out to be a Northern Ireland resident. In the

circumstances, the respondent argued that it was entitled to present a bankruptcy petition against him under article 239 on that basis. The respondent was also clear that credibility issues surrounding representations made by the applicant to the respondent would form a significant part of that cross-examination. Because of this, at every review of the application the court urged the applicant to seek legal advice. But on every occasion, the applicant indicated that he was content to proceed. A final opportunity was given to him to consider his position before taking the stand for cross-examination. The applicant took that opportunity, thanked the court for affording him the time to reflect, but remained intent on proceeding with the hearing. He acknowledged that he knew and understood that allegations of dishonesty would be put to him, and that he knew and understood that there could be consequences for him if those allegations were found to be substantiated.

Did the applicant hold himself out to the respondent as having a place of residence in Northern Ireland?

[21] The applicant was cross-examined on a number of documents either expressly referring to 20 Larksborough Avenue, Newtownards as his place of residence or inferring that it was. These included the original loan application at the centre of the bankruptcy proceedings, filings at Companies House regarding the applicant's directorships in English companies, the applicant's Northern Ireland driving licence, legal paperwork relating to the insolvency of Mitovie Ltd, and the applicant's curriculum vitae.

[22] The applicant was asked why he did not in his legal and financial dealings disclose his address in Scotland. His answer was to the effect that he preferred to keep his personal affairs separate from his business affairs and that he didn't want to have correspondence relating to insolvency coming to the door of his home or through the local village post office in St Boswells. In my view that was neither an adequate nor a credible answer to such pertinent questions.

[23] Counsel drew the applicant's attention to documents relating to his various directorships. According to filings with Companies House, the address provided by him for legal purposes was 20 Larksborough Avenue. The court heard the applicant variously describe this address as a correspondence address, a service address and even as a "post-box". This was another inadequate response. There is a legal duty on companies and their directors to maintain accurate records in Companies House. Records kept there are for legal purposes and they are open for public inspection. Understandably, some individuals may wish to withhold details of their private residence for reasons which are entirely justified, but they are nonetheless obliged to provide alternative details of where they may be located for legal purposes. Anyone conducting a search in Companies House in order to locate the applicant for legal purposes would be led to a place of residence at 20 Larksborough Avenue address as well as the conclusion that that is where he lived, carried on business, or could be located. That in my view is enough to meet the criteria of article 239.

[24] The more important issue raised by the Companies House documents is that they consistently record the applicant's date of birth as 10/12/1973. It is not a matter of dispute that this is not the applicant's true date of birth. However, he was not able to provide any satisfactory explanation as to how or why this falsehood appeared on company records. Instead, he half-heartedly attempted to place the blame for this on a member of staff within his company before embarking on an unlikely and elaborate tale of how he personally conducted an investigation into how the false date of birth had been provided to Companies House impliedly by that particular member of staff. I pause there to observe that there were only a total of 4 people involved in the said company. That included the applicant, his fellow director and the aforementioned member of staff. When pressed on the issue by Mr McCausland the applicant conceded that there were only one of two people who were responsible for filings at Companies House and that he was one of the two people. But the aforementioned member of staff was not. When pressed further on the issue, the applicant was unable to explain how or why anyone other than himself could or would have provided the information.

[25] Documents held in Companies House also record the applicant's country of residence as "UK/Canada" (the latter being applicant's birthplace) in filings relating to companies incorporated from 2008 to 2013. This period of time clearly falls within the 15 year period during which the applicant claimed to have resided exclusively in Scotland. The filings also contradict annual returns filed which consistently refer to the applicant's usual country of residence as Northern Ireland. Again the applicant could provide no satisfactory explanation as to these contradictions in his evidence or who other than himself could have provided it to Companies house. This leads me to conclude that in all likelihood it was the applicant who was responsible for the false and misleading filings at Companies House.

[26] The applicant was also cross-examined on the original loan application at the centre of the bankruptcy proceedings. This was completed in or about 17th August 2012 and therefore within the three years immediately preceding the date on which the bankruptcy petition was presented. It is noteworthy that the loan application was completed by hand and that it contained personal information concerning the applicant. This information was required by the respondent in discharge of its Know Your Client ("KYC") anti–money laundering duties. I observe from the applicant's affidavit that he is very knowledgeable about such matters.

[27] Where on the form details of the applicant's place of residence was requested, the answer given was 20 Larksborough Avenue, Newtownards. Where confirmation of whether the applicant was owner or tenant of that property, the answer given was owner. Where confirmation of as to period of residency at the address was requested, the answer was 8 years and 6 months. These answers clearly contradict the applicant's evidence about 20 Larksborough Avenue which is that it was merely a correspondence address. In any case I reject entirely the idea that the respondent would have advanced a loan to the applicant's company on any such basis. The residency declarations made on the loan application also clearly contradict the applicant's evidence that he has resided exclusively in Scotland since 2005. In fact

the loan application tells a very different story because not only does it state that the applicant was resident in 20 Larksborough Avenue but it states that he was the *owner* of 20 Larksborough Avenue. Furthermore, I observe that the loan application was accompanied by a copy of the applicant's curriculum vitae. That also recorded his address as being 20 Larksborough Avenue, Newtownards.

[28] The applicant was shown the original loan application and asked if the handwriting used to complete the form was his. The applicant studied the document and acknowledged that the handwriting looked like his own handwriting. When asked again if the handwriting was his, the applicant repeated that the handwriting looked like his own. He then paused before adding that he "couldn't say for sure". I'm afraid that I did not find those words to be convincing. The clear impression I gained from the applicant's demeanour and tone of voice when it came to this part of his evidence was that he recognised his own handwriting but added the words "couldn't say for sure" to avoid admitting under oath that he had provided false and misleading information to the respondent when trying to obtain a substantial loan for his company.

[29] The applicant was then asked who, other than himself, could have completed the loan application or how or why they would have been able to provide third party information on 20 Larksborough Avenue if the property in truth belonged to his sister. The applicant was unable to provide any answer to that question.

[30] Counsel then addressed the question of the applicant's date of birth. On the application form that is also given as 10/12/1973. As previously stated that is not the applicant's true date of birth. Again he was unable to explain who other than himself provided the false date of birth.

[31] The applicant was also asked why he maintained a current Northern Ireland driving licence given his claim to have lived exclusively in Scotland for 15 years. This was a pertinent question for two reasons. First, the original driving licence bears the residential address of 20 Larksborough Avenue and the applicant's true date of birth. Second, a copy purporting to be a certified true copy of the original was produced by the applicant to the respondent in support of the loan application yet the copy contained the same false date of birth as the filings at Companies House.

[32] It was not in my view at all likely that the Driver and Vehicle Agency ("DVA") in Northern Ireland, a government agency, would issue such an important legal document to an individual permanently resident in Scotland. It equally seemed to me to be highly improbable that it would issue such an important legal document to a "service", "correspondence" or "post-box address". Because of that I considered that the information contained in the renewal application form submitted to the DVA was relevant to both parties' arguments and ought to be produced to the court. I further considered that it would be easier and more expedient for the Official Receiver to obtain it on foot of the bankruptcy order, rather than delay matters by asking the applicant to produce it, or potentially cause him to incur expense in having to do so. I will return to that particular issue in due course.

[33] I have compared the handwriting in the loan application with other handwritten documents prepared by the applicant in the case. Those documents include the director's questionnaire completed by him in relation to the insolvency of Mitovie Ltd, the PEQ he completed on 7th February 2019 under Article 10 of the Perjury (Northern Ireland) Order 1979, and the handwritten covering letter which accompanied the applicant's closing written submissions for his case. The handwriting on those documents looks to me to be the same handwriting as that on the loan application. This together with the applicant's inability to explain who other than himself could have completed the loan application, or provided the information on the application, leads me to conclude that the handwriting on the loan application was that of the applicant. Accordingly, I conclude that the applicant held himself out to the respondent as being resident at 20 Larksborough Avenue, Newtownards and that his date of birth was 10/12/1973.

[34] Following on from that, there is nothing to be gained from the applicant's argument that he informed the respondent's process server that he lived in Scotland when served with the statutory demand because that is all he did. There is no evidence that he informed the process server (i), that he had *never* resided at 20 Larksborough Avenue; (ii), that he had not resided there at any time in the previous three years or (iii), that he did not *own* the property (as claimed on his loan application) at that or any other time. Nor did he inform the process server of his address in Scotland.

[35] I also reject the applicant's claim that he did not disclose his address in Scotland because he did not want correspondence regarding bankruptcy coming to his door because, among other things, it directly contradicted his evidence that he never believed the bankruptcy would come to pass as he believed the debt would be paid. If that was the truth of the matter, the only correspondence "coming to his door" as he put it would have been correspondence from his own solicitors. In any event, his email of 1st October 2014 is clear that he wanted his address in Scotland to be suppressed.

[36] The criteria set forth in Article 239 apply to bankruptcy petitions presented either by a debtor or a creditor. But in either case, the party presenting the petition is the petitioner. In this case that is the respondent. Therefore the criteria must be interpreted from the respondent's knowledge and perspective as at 24th April 2014. It is clear that from the respondent's perspective the applicant had, within the 3 years immediately preceding that date, a place of residence in Northern Ireland. Having concluded that the applicant held himself out to the respondent as having a place of residence in Northern Ireland within three years immediately preceding the 24th April 2014, I am satisfied that the respondent was entitled to present a bankruptcy petition against him under article 239 (1) and further, under article 239 (2), because of the applicant's evidence (which I accept) that following service of the statutory demand he instructed solicitors to apply to set it aside. The word "business" in article 239(2) has no definition within the Order, so I conclude from that that it

encompasses a wide range of economic activities including the conduct of legal business.

Conclusion

[37] This was at all times an audacious and disingenuous application for the applicant to make. I am satisfied that it was nothing more than a misguided tactical attempt on his part to try and extricate himself from an indefinite bankruptcy on what he hoped would be a technicality. He attempted to achieve this by re-writing the history of the case and shifting blame away from himself and his own conduct by foisting it on to the respondent who he at best misled and at worst deliberately deceived in order to obtain funding for his company.

[38] The applicant was well aware from the respondent's case that his credibility would be a serious issue in the case and that that issue would be fully tested on cross-examination. I am satisfied that the respondent was correct to do so. What has emerged from the evidence in the case is that the applicant is an individual who has provided false and misleading information in a variety of legal documents and did so without compunction. He appears to have little regard for the truth and changes his story to suit his own particular narrative. One minute he does not wish to have his address in Scotland made known so he submits to the jurisdiction of the court, the next he says his address should have been made known and that it was the respondent's fault that it wasn't. One minute the bankruptcy debt is disputed the next minute it is not. One minute he is resident in the UK/Canada the next it is exclusively in Scotland. One minute he is resident in the UK/Canada the next his usual country of residence is Northern Ireland. One minute he is the owner and resident of 20 Larksborough Avenue, Newtownards, the next minute that property is just his sister's address and a post-box.

[39] The application must be refused because it has no merit. The applicant reached agreement with the respondent in full and final settlement of the bankruptcy proceedings wherein he admitted the debt and accepted the jurisdiction of the Northern Ireland Courts. He then defaulted on the agreement and it was this default that caused the bankruptcy order to be made. It follows then that he cannot argue that the bankruptcy order ought not to have been made. Whether the applicant was habitually resident in Scotland at the time the bankruptcy petition was presented against him is of no consequence for the reasons already given. I am however content to amend the bankruptcy petition and order to include the applicant's address at 8 Buccleuch Chase, St Boswells, Roxburghshire where he appears to have been living at time. I note that he has since moved from that address.

[40] The applicant's jurisdictional argument does not get off the ground. The evidence clearly shows that not only did he hold himself out to the respondent as having a place of residence in Northern Ireland but that in business matters it was his practice to do so. His claim that he used the address of 20 Larksborough Avenue merely as a correspondence address and to keep his business and private affairs

separate is not supported by the evidence, nor is it something that he is entitled to do in legal or financial matters. The clear impression I gain from the evidence is that the applicant had constructed an alternative identity which he promoted as being his true identity when personal data was legally required in business dealings. That individual was born on 10/12/1973 and resided at 20 Larksborough Avenue, Newtownards. I also conclude that the applicant maintained a Northern Ireland driving licence in order to bolster this construct, and for use as proof of identity and residence as and when required for legal, regulatory and due diligence purposes.

[41] I am strengthened in reaching that conclusion by the evidence obtained by the Official Receiver regarding the applicant's most recent application to the DVA. That application was received by the DVA on 4th May 2011 (i.e. in the three years immediately prior to the presentation of the petition per article 239). As anticipated, the driving licence was issued to the applicant on the basis of his declarations as to residence at 20 Larksborough Avenue, Newtownards. In answer to the question "Has your name and/or address changed since your last licence", the applicant answered yes to that question and provided another Northern Ireland address. In reply to the question "Have you lived in another country in the last 12 months?" the applicant replied no to that question. This directly contradicts the applicant's evidence to this court that he had lived exclusively in Scotland for 15 years per his oral evidence and from 2005 per his affidavit evidence and further undermines the credibility of his evidence. I am satisfied that this serious contradiction in the applicant's evidence serves only to strengthen the respondent's case against him and cast doubt on the truthfulness of his evidence in general.

[42] I am also persuaded that the applicant disseminated what he asserted to be certified true copies of the original of his driving licence and Canadian passport when in fact the photocopies contained the false date of birth. The originals of both contain the true date of birth. It is not clear whether there was a counterfeit passport and driving licence in existence or whether photocopies of the originals previously certified as true copies of the original were subsequently altered to show the false date of birth and then re-copied, but either way the applicant was unable to explain the existence of these documents or why they were produced to the respondent and indeed the solicitors on record for him in the bankruptcy proceedings.

[43] It is difficult to understand why the applicant chose to bring an application with no obvious merit. For whatever reason, he decided to make an extraordinary attack on the respondent from which he had obtained substantial funding for his company using false and misleading information. On reflection, he may feel that his decision to do so was ill-advised. As to his claim that the respondent and its lawyers were negligent that was an inappropriate allegation to make and I am satisfied for the reasons set out above and elsewhere in this judgment that there was no substance to it.

[44] I will now hear any costs applications.