

Judicial Communications Office

Tuesday 10 January 2012

HIGH COURT ANNULS SEAN QUINN BANKRUPTCY ORDER

Summary of Judgment

The Hon. Mr Justice Deeny, sitting today in the High Court in Belfast, annulled the Bankruptcy Order obtained by Sean Quinn on 11 November 2011 as the centre of his main interests was not in Northern Ireland at the time.

On 10 November 2011, Mr Quinn filed a bankruptcy petition in the High Court in Belfast stating that the centre of his main business interests was in Northern Ireland and he was therefore entitled to bring the petition in this jurisdiction. He also claimed that he was domiciled for tax purposes in Northern Ireland and his tax affairs were conducted within the UK. A Bankruptcy Order was made the following day.

On 17 November 2011 the Irish Bank Resolution Corporation Limited (“the Bank”), formerly trading as Anglo-Irish Bank, filed an application to annul the Order on the basis that the High Court in Belfast did not have the jurisdiction to make it.

The period for discharge from a bankruptcy order in Northern Ireland is twelve months. This contrasts with a period of twelve years in the Republic of Ireland, although this has recently been reduced to five years if preferred creditors are paid. The Bank claimed their application to annul the Order was not an attempt to oppress Mr Quinn by subjecting him to the longer period that would apply in the Republic. It said the reason for seeking the annulment was that additional costs would be incurred if there were separate proceedings in this jurisdiction rather than in Dublin where extensive proceedings already exist involving Mr Quinn. Mr Justice Deeny said that, while not a matter for this decision, the court could not overlook the differences in the periods for discharge from bankruptcy between Northern Ireland and the Republic of Ireland.

Mr Justice Deeny said that, in accordance with the relevant EU legislation and case law on insolvency proceedings, the court had to determine two questions:

- Where was Mr Quinn’s “centre of main interest” i.e. the location where he conducted the administration of his interests on a regular basis immediately before the presentation of the petition for bankruptcy?
- Was that centre of administration ascertainable by third parties, in particular his creditors?

Mr Justice Deeny dealt firstly with the issue of Mr Quinn’s centre of main interest. Mr Quinn told the court that he had been operating from premises in Derrylin Enterprise Park since May 2011 and “worked from there most days”. The judge examined the evidence attached to the bankruptcy petition. He said the lease for these premises was “a somewhat

Judicial Communications Office

curious document” in several respects including that it had not been witnessed. He added that the rent of £50 per month was close to a peppercorn rent. Mr Quinn presented the court with an invoice dated 7 July 2011 from a printer for letterheads and business cards but there was no evidence that the invoice was for letterheads for the Derrylin Enterprise Park. The papers lodged by Mr Quinn on 10 November did not give this address as his centre of main interests and the details were not given to his solicitor or accountant. Mr Quinn claimed it was common knowledge in the locality that this was where he had his office but Mr Justice Deeny said he found it “incredible” that if he had established a centre of main interest in Derrylin Enterprise Park there would be no correspondence presented to court carrying that address. Mr Justice Deeny concluded that the lease had been prepared at a much later date to try and bolster the case and rejected the claim that Mr Quinn administered his main interests from Derrylin Enterprise Park on a regular basis in the period prior to 10 November 2011.

Mr Justice Deeny then went on to consider whether Mr Quinn’s centre of main interest prior to the presentation of the petition for bankruptcy was in Northern Ireland or the Republic of Ireland. The court heard that Mr Quinn was a UK taxpayer but that, by agreement, 20% of his tax is paid in the Republic. His habitual residence has been in the Republic of Ireland for 32 years. He holds an Irish passport and does not have a UK passport. Evidence was given that Mr Quinn had been seeking to set up a new business in Belturbet, Co Cavan. His dealings with the Anglo Irish Bank had been with the headquarters in Dublin. Mr Justice Deeny found that Mr Quinn’s main interests in recent months were the litigation in which he and his family were embroiled and the salvaging of what he can from his former business interests. The judge concluded that prior to 10 November the probability was that Mr Quinn was conducting the administration of his interests in the Republic of Ireland between his home in Ballyconnell, the premises in Belturbet and Dublin.

Mr Justice Deeny commented that given this decision, it was not strictly necessary for him to deal with the issue of whether Mr Quinn’s centre of main interest was ascertainable by third parties. He said he would address the matter, however, in case his decision was appealed. In compliance with the legislation and case law, a debtor is not obliged to advertise his centre of main interest but it should be reasonably ascertainable by a diligent creditor. Mr Justice Deeny said that Mr Quinn had not publicised the office in Derrylin Enterprise Park by putting the address on the internet or in a trade directory or phone book. He said Mr Quinn chose not to inform the Bank or the Revenue of the address and was not able to produce a single letter addressed to him at the premises. He concluded that even if Mr Quinn had an office in Derrylin Enterprise Park, it was not sufficiently or reasonably ascertainable by third parties.

Mr Justice Deeny annulled the Bankruptcy Order of the 11 November on the ground that the court did not have jurisdiction as the centre of Mr Quinn’s main interests was not in Northern Ireland at the time of bringing the Petition.

Mr Justice Deeny said it was crucial for the proper administration of justice that a party seeking an order of the court, enforceable against other parties, should make full disclosure of all relevant matters. He commented that Mr Quinn had failed to disclose the fact that he held an Irish passport and no UK passport, that he was a voter in the Republic of Ireland and that, despite being a UK taxpayer, 20% of his taxes were paid to the authorities in the Republic. Mr Justice Deeny stated that, taken together, these matters were material and ought to have been disclosed. He said he did not think he could safely conclude that this

Judicial Communications Office

was a deliberate attempt to deceive on the part of Mr Quinn, but found that it was a sufficient ground for him to exercise his discretion to rescind the Bankruptcy Order had he not already decided to annul it.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Judicial Communications Officer
Lord Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
Fax: 028 9023 6838
E-mail: Alison.Houston@courtsni.gov.uk