Neutral Citation: [2013] IEHC 539

THE HIGH COURT

BANKRUPTCY

No 2424

BETWEEN

GERARD HARRAHILL

PETITIONER/RESPONDENT

AND

SIMON W. KENNEDY

RESPONDENT/APPLICANT

JUDGMENT of Ms. Justice Dunne delivered the 14th day of June 2013

The respondent/applicant herein (hereinafter referred to as "the applicant") was adjudicated bankrupt on the 18th June, 2012, (Herbert J.) on the petition of the petitioner/respondent (hereinafter referred to as "the Revenue"). An application to show cause was filed on the 4th July, 2012, on behalf of the applicant pursuant to the provisions of s. 16 of the Bankruptcy Act 1988 (hereinafter referred to as "the Act"). Strictly speaking, the application was out of time in that s. 16(1) of the Act provides that the bankrupt may, within three days of such extended time not exceeding fourteen days as the court thinks fit from the service of the copy of the order of adjudication on him, show cause to the court against the validity of the adjudication. The application in this case was made more than three days after service of the order of adjudication on him, but was within the fourteen day period specified in s. 16(1) of the Act and in the circumstances I was satisfied that it was appropriate to extend the time within which to show cause.

Background
The Revenue in seeking the adjudication of the applicant herein relied on a series of judgments of the High Court and the Circuit Court amounting in total to €884,389.91. That figure is set out in more detail in the affidavit of debt sworn by Gerard Harrahill on the 22nd March, 2012. There are some nine judgments in total, two of which were obtained in the Circuit Court and the rest were obtained against the applicant in the High Court. The first of the judgments in time was obtained on the 16th July, 2002 and is described as follows:-

> "The Circuit Court, Record No. 2002/247 between Gerard Harrahill, plaintiff and Simon W. Kennedy, defendant.
>
> Judgment amount €17,157.94
>
> Paid/credit on account €5,921.19
>
> Balance as at 7th June, 2011, €11,236.75
>
> Courts Act interest at 8% per annum €5,396.10
>
> Costs €495.00
>
> Total €17,127.85"

Subsequently judgments were obtained on the 19th August, 2002, the 28th March, 2003, the 18th June, 2003, the 9th September, 2004, the 31st January, 2005, the 5th April, 2005, the 3rct May, 2007 and the 9th June, 2011. The last of the judgments was in the amount of €109,498.41. No interest was sought in relation to that judgment.

The Issues
The affidavit of the applicant sworn herein on the 14th September, 2012 grounding the application to show cause raised a number of points. The first of those related to the lack of information as to the method used by the Revenue in calculating interest on the amounts due. There was also an issue raised as to the application of credit against liabilities for tax alleged to be due and the date upon which interest was applied. A question was raised as to whether or not there was a charging of interest on interest, and in that context reference was made to s. 22(1) and 2A of the Courts Act 1981. Finally, an issue was raised as to a settlement arrangement between the parties. That arrangement involved the payment of €4,000 per month, but as stated by the applicant in his affidavit, the arrangement "collapsed following an embezzlement of €150,000 from my firm of which all of the authorities including the Revenue were informed". He explained that the embezzlement was discovered in 2010.

A replying affidavit was sworn by Michael Gladney on behalf of the Revenue on the 31st January, 2013 and in the course of that affidavit he also dealt with two other affidavits sworn previously by the applicant herein on the 14th June, 2012 and the 2nd July, 2012, prior to his adjudication as a bankrupt.

The first point made by Mr. Gladney in his affidavit was a response to the argument raised in the written legal submissions of the applicant of the 7th December, 2012. In those submissions, reference was made to the 2008 agreement between the parties in respect of the payment of the applicant's tax arrears. It was suggested in those submissions that an issue arose for trial "in relation to the existence and enforceability of a settlement" between the parties. Mr. Gladney in his affidavit pointed out that the last payment plan entered into between the parties in 2008 was not complied with, a fact admitted by the applicant in his affidavit of the 14th September, 2012 when he observed that the agreement of2008 "collapsed following an embezzlement of €150,000 from my firm" as previously noted.

There is no dispute whatsoever that an arrangement was entered into in 2008 but the arrangement came to an end in 2010 in the

manner described by the applicant herein. The fact that there was an arrangement between the parties which subsequently collapsed does not give rise to any issue or basis for setting aside the adjudication of the applicant as a bankrupt. I cannot see any basis at all for suggesting that any issue of any kind arises as to the existence or enforceability of the 2008 arrangement between the parties.

The Calculation of Interest
The applicant has raised a question as to the application by the Revenue of funds paid by him in respect of the various sums due on foot of the judgments together with the manner in which interest has been calculated on those sums. This issue was first raised in the affidavit sworn by the applicant on the 2nd July, immediately prior to his adjudication. Subsequently the matter was dealt with again by the applicant in his affidavit of the 14th September, 2012. The applicant set out his complaints in this regard by saying that he has been hampered in his examination of the affidavit of debt and the particulars of demand by a lack of information. At para. 4 of the affidavit of the 14th September, 2012, he described his difficulties in this way:-

> "I say that the determination and results of this exercise have been hampered by a dearth of information regarding the following matters:
>
> The methodology applied by the [Revenue] in:
>
> 1. Calculating the periodic rate for Revenue tax and interest thereon.
>
> 2. The application of credit against liabilities for tax alleged due in the proceedings and the date upon which interest was applied.
>
> 3. Whether the balance from 2 above, took account of the law in not charging interest on the then balance of only tax as alleged to be due, in court, on the applicant's behalf or, as appears to the be the case, variously and inexplicably, calculated the new period based on the cumulative balance of the judgment between tax and interest which is specifically prohibited by the Courts Act of 1981, in particular s. 22(1) and (2)(a) thereof.
>
> 4. Failed to furnish the exact date on which the credit was received and further failed to furnish the date on which the credit was applied, making it impossible for an estimate properly calculated."

The essence of the applicant's complaint is the difficulty in checking the accuracy of the amounts claimed to be due in respect of the various judgments. It is apparent that there is a complaint as to the basis on which interest was calculated up to the date of judgment and secondly, the basis on which interest ("Courts Interest") at 8% per annum was calculated.

As can also be seen part of the complaint of the applicant relates to the issue of charging of interest on interest. In that context he raised particular issue in relation to the proceedings in which judgment was obtained against him by the applicant in the proceedings bearing Record No. 433R/2000 and 253R/2003. Based on a letter of the 12th September, 2012, from accountants on his behalf, Messrs McGrath and Company, he highlights the fact that in respect of the two judgments, his accountants stated as follows:-

> "1. Court interest applied to Record No. 2000/433R(d) amounted to €148,286.77 on a judgment amount of €363,056.64 which was made up of €129,813.77 in taxes and €233,242.87 in Revenue interest.
>
> 2. Court interest applied to Record No. 2003/252R(c) amounted to €8,229.88 on a judgment amount of €143,424.81 which was made up of €122,100.30 in taxes and €21,324.51 in Revenue interest.
>
> Considering that the time difference between the two judgment dates is fifteen months, it is very difficult to see why the court interest on Record No. 2000/433 or (d) is eighteen times higher than Record No. 2003/253R(c). As the tax amounts are also quite similar the only conclusion that one come to (*sic*), is that court interest must have been charged on the full judgment amount. This however, does not explain why there is still such a variation in the court interest as the larger of the two judgments is only 2.5 times higher than the other."

The point made by Mr. Gladney in his replying affidavit of the 31st January, 2013 on behalf of the Revenue, was that it was inappropriate for the applicant to go behind the judgments lawfully obtained against him. It was pointed out that none of the judgments were the subject of an appeal. He went on to explain that pre judgment interest had been calculated pursuant to the provisions of s. 1080 of the Taxes Consolidation At 1997, as amended, s. 114 of the VAT Consolidation Act 2010, as amended and/or s. 21 of the Value Added Tax Act 192, as amended, as appropriate. He further confirmed that there was no application to any of the sums involved of prejudgment interest pursuant to the provisions of s. 22 of the Courts Act 1981, as amended. No issue has been taken with this averment

Nevertheless, Mr. McGrath had complained that he was unable to determine when the taxes were actually paid so that he could accurately work out the balances on particular dates and correctly calculate interest from the correct dates. I have to say that there is some merit in the complaints of Mr. McGrath on this issue. I would also make the observation that the applicant made efforts over the period of time since judgments were first obtained against him to make payments in respect of those judgments.

Mr. Gladney went on to deal with the question of post judgment interest and stated that such interest was calculated pursuant to the provisions of s. 26 of the Debtors Ireland Act 1840, as amended. He stated that interest had been applied to the judgments for a period not exceeding six years. He confirmed that the sum claimed solely related to arrears of tax and statutory interest thereon. He added that post judgment interest had not been calculated on a reducing balance basis, but has been calculated at the rate of 8% per annum on the balance due as at the 7th June, 2011, from the date of judgment for a period of not more than six years, thereby affording the applicant the benefit of an interest credit. In that way, he explained the discrepancy identified by McGrath and Company. It is fair to say that the decision to charge interest on the balance due as at the 7th day of June 2011 was in ease of the applicant.

Relevant Statutory Provisions.
In order to consider the arguments put before the court on behalf of the applicant herein, it is necessary to set out some relevant statutory provisions. An application to show cause arises from the provisions of s. 16 of the Act. Section 16(2) provides:-

> "On an application to show cause under subs. (1) the Court shall, if within such time the bankrupt shows to its satisfaction that any of the requirements of s. 11(1) have not been complied with, annul the adjudication and may, in any other case, dismiss the application or adjourn it on such conditions as the Court thinks fit, having regard to the interests

of the bankrupt, his creditors and any persons who might advance further credit to him."

Section 11(1) of the Act provides:-

"A creditor shall be entitled to present a petition for adjudication against a debtor if-

(a) The debt owing by the debtor to the petitioning creditor (or, if two or more creditors join in presenting the petition, the aggregate amount of debts owing to them) amounts to £1,500 or more

(b) The debt is a liquidated sum,

(c) The act of bankruptcy on which the petition is founded has occurred within three months before the presentation of the petition, and

(d) The debtor (whether a citizen or not) is domiciled in the State or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in the State or has carried on business in the State personally or by means of an agent or manager, or is or within the said period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager."

Section 8(5) and (6) are also of some interest and provides as follows:-

"(5) A debtor served with a bankruptcy summons may apply to the Court in the prescribed manner and within the prescribed time to dismiss the summons.

(6) The Court -

(a) may dismiss the summons with or without costs, and

(b) shall dismiss the summons if satisfied that an issue would arise for trial."

Discussion
The applicant in the course of submissions referred to the provisions of s. 16(2) and s. 8(6)(b) of the Act and contended that those provisions were analogous and consequently, the decisions in cases such as *In St. Kevin 's Company against a Debtor* (ex tempore, Supreme Court, 2ih January, 1995), and the *Minister for Communications v. M.W.* [2010] 3 I.R 1, which dealt with the interpretation of s. 8(6)(b) were equally relevant to an application under section 16(2). On that basis, it was contended that once an issue was raised which requires to be litigated separately outside the bankruptcy process, the court was obliged to dismiss the petition or more accurately, annul the adjudication.

Counsel on behalf of the Revenue made the point that this was an application pursuant to s. 16(2) and thus the onus was on the applicant to show that the requirements of s. 11(1) of the Act were not complied with and that the applicant failed to meet the threshold required in order to require the court to annul the adjudication.

It was not suggested at any stage by the applicant that the criteria set out in s. 11(1) have not been met, namely there is a debt owing in excess of £1,500, the debt is a liquidated sum, the act of bankruptcy occurred within three months before the presentation of the petition and that the debtor, inter alia, is domiciled in the State or has ordinarily resided in the State within a year before the date of presentation of the petition.

The wording of s. 16(2) of the Act is somewhat different to that employed in s. 8(6)(b) of the Act. If the criteria ins. 11(1) have not been met, for example, if the amount of the debt is less than £1,500, the court shall annul the adjudication. In any other case, the court may dismiss the application or adjourn it on such conditions as the court thinks fit. This is in contrast to the position in s. 8(6)(b) of the Act which provides that the court "shall dismiss" the summons if satisfied that an issue would arise for trial.

That being so, are the decisions in the cases of *In St. Kevin's Company against a Debtor* and *Minister for Communications v. M.W.* of assistance to the court in considering an application under section 16(2)? To put it another way, is it the case that the court is required to annul adjudication if satisfied that an issue would arise for trial in relation to a point raised by a debtor? The application under s. 16 enables a bankrupt to "show cause against the validity of the adjudication". Showing cause is, in my view, something other than raising an issue that has to be litigated elsewhere. In *Bankruptcy Law and Practice* (2nd Ed.), Sanfey and Holohan expressed the view at para. 2.102 that "the court has to be satisfied that it is just and equitable to annul the adjudication". That seems to me to be a helpful approach to adopt in cases where the application to show cause against the validity of the adjudication arises in circumstances other than a failure to comply with the criteria set out in section 11(1). Decisions such as that in the *Minister for Communications v. M.W.* arose in the context of seeking to have a bankruptcy summons dismissed: the approach of the court on such an application as explained by McGovern J. in that case at para. 24, was that if an issue arises, which is a real and substantial one and which is at least arguable and has some prospect of success then, having regard to the decision of the Supreme Court in *St. Kevin's Company against a Debtor*, the bankruptcy summons must be dismissed. The test under s. 16(2) is, as I have said, slightly different and I am satisfied that apart from a failure to comply with the criteria set out ins. 11(1) the court can annul the adjudication if satisfied that it is just and equitable having regard to the interests of the bankrupt, his creditors and any persons who might advance further credit to him. Raising an issue that could be tried elsewhere does not seem to me to be the correct basis upon which to consider an application under section 16(2).

It may well be that in considering such an issue, a court would come to the conclusion that it would be just and equitable to annul the adjudication, but there is a difference between the wording employed in each section and for that reason it seems to me that the guidance afforded by the decisions referred to above, whilst of assistance, does not determine the issue before the court. I propose therefore, to consider the arguments of the applicant on the basis of determining whether the applicant has succeeded in satisfying the court that it is just and equitable to annul the adjudication.

Issues in Relation to Interest
I would reiterate that there is merit in the applicant's complaint that it is difficult to work out the calculation of interest on the sums involved in the affidavit of debt in the absence of a clear statement as to the start and end date for the calculation of interest and the actual balance/balances on which interest was charged. Nevertheless, in the absence of evidence to the contrary, I accept the averments in the affidavit of Mr. Gladney that post judgment interest has been charged on the judgments in accordance with the

provisions of s. 26 of the Debtors Ireland Act 1840, as amended, for a period of six years.

Section 26 of the 1840 Act provides as follows:-

> "... that every judgment debt due upon any judgment not confessed or recovered for any penal sum for securing principal and interest shall carry interest at the rate of £4 per centum per annum from the time of entering of the judgment or from the time of the commencement of this Act in cases of judgments then entered up and not carrying interest, until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment."

Section 1080(3) of the Taxes Consolidation Act 1997, in dealing with interest on overdue tax provides as follows:-

> "Subject to subsection (4)-
>
> (i) every enactment relating to the recovery of any tax charged by an assessment,
>
> (ii) every rule of court so relating,
>
> (iii) section 81 of the Bankruptcy Act, 1988 , and
>
> (iv) sections 98 and 285 of the Companies Act, 1963, shall apply to the recovery of any amount of interest payable on that tax as if that amount of interest were a part of that tax."

As noted by counsel on behalf of the applicant, the Revenue claims to be entitled to interest pursuant to s. 1080(3) of the Taxes Consolidation Act 1997, up to the date of judgment. As can be seen from the provisions of s. 1080(3) such interest is to be treated as tax for the recovery of the amount due.

Counsel on behalf of the applicant pointed out that the Revenue claimed to be entitled to interest pursuant to s. 26 of the judgment Debtors Ireland Act 1840 and contended that having regard to the terms of that Act, the Revenue was not entitled to interest on the judgment debt as the judgments obtained by the Revenue are "penal" or include a penal sum, that is, interest pursuant to s. 1080(3) of the Taxes Consolidation Act 1997.

The response of the Revenue is to say that Mr. Gladney in his affidavit has averred expressly that "the petitioner's claim does not include any penalty or penalties". The Taxes Consolidation Act 1997 contains a number of provisions for the imposition of and recovery of penalties from taxpayers. (See Part 47 of the 1997 Act, as amended). The averment of Mr. Gladney to the effect that no penalty is included in the sums for which judgment was obtained was not contradicted by the applicant. The entitlement of the Revenue to charge interest on tax overdue could not, in my view, constitute a penalty. Further, the 1997 Act clearly provides for the imposition of penalties in certain circumstances, thus making a clear distinction between interest and penalty. The applicant was not subject to any such penalty. Therefore, I am satisfied that there is no evidence to support the argument that the judgment debts herein include any penal sum. Accordingly, there is no basis for arguing that the Revenue is not entitled to look for post judgment interest on the judgment debts.

Further, I should note that the provisions of s. 47(2) of the Courts (Supplemental Provisions) Act 1961, apply the provisions of s. 26 of the Debtors (Ireland) Act 1840 to a judgment debt due to or from a State authority.

One of the other arguments raised on behalf of the applicant was a complaint to the effect that the Revenue in this case was seeking "interest upon interest" and in that context reference was made to the provisions of s. 22(2) of the Courts Act 1981. Section 22(1) of that Act provides for the payment of interest on an award at the rate provided in s. 26 of the 1840 Act on the whole or any part of a sum in respect of the period between the date when the cause of action accrued and the date of judgment. This is not a case in which interest pursuant to the provisions of s. 22 of the Courts Act 1981, has been awarded and in those circumstances I do not propose to make any further comment on the topic of s. 22(2) of the Courts Act 1981. The only observation I would make is that given that the Revenue are entitled to look for interest pre judgment on the basis of the provisions of the statutory entitlement contained in the Taxes Consolidation Act 1997, the Revenue would not be entitled to look for interest pursuant to the provisions of s. 22(1) of the 1981 Act. That would be seeking interest on interest. However, the position in relation to interest pursuant to s. 26 of the 1840 Act is not the same. By virtue of that provision, a judgment creditor is entitled to look for interest on the judgment debt even if the judgment includes interest. The position of a party who had obtained an award of "Courts Act" interest pursuant to s. 22(1) of the 1981 is the same. They are entitled to interest pursuant to s. 26 on a judgment debt including Courts Act interest. Section 22(1) of the Courts Act, allows for the award of interest in circumstances where the party seeking interest on that provision is not otherwise entitled to look for interest up to the date of judgment.

I suspect that the reason why this matter was raised on behalf of the applicant is because of some degree of confusion in the terminology used by the petitioner when referring in the particulars of demand to "Courts interest". However, I am satisfied that this is not a case in which the provisions of s. 22(2) of the Courts Act 1981 have any bearing.

Miscalculation of Post Judgment Interest
The next issue relating to interest is the allegation that the Revenue miscalculated the amounts claimed in respect of post judgment interest. It was submitted on behalf of the applicant that the Revenue could only claim interest for a period of six years, but that it had in fact claimed interest for a period of six years and one day.

There was discussion as to the applicability of s. 3(2)(a) of the Statute of Limitations 1957 which provides:-

> "This Act shall not apply to -
>
> (a) any proceedings for the recovery of any sum due in respect of a tax or duty which is for the time being under the care and management of the Revenue Commissioners, or interest thereon, ..."

It was contended on behalf of the applicant that the reference to interest in s. 3(2)(a) is a reference to interest chargeable under s. 1080(3) of the Taxes Consolidation Act 1997. It was submitted that it was not a reference to interest chargeable under any other Act on the judgment itself. In other words it was not a reference to interest pursuant to the provisions of s. 26 of the Courts Act 1840. Reference was also made on behalf of the applicant to the provisions of s. 11(6)(b) of the Statute of Limitations which provides:-

> "No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due."

By contrast, it was contended on behalf of the Revenue that the Statute of Limitations did not apply by virtue of s. 3(2)(a) of 1957 Act and accordingly it was not confined to seeking interest for a period of six years. Having made that point, counsel on behalf of the Revenue indicated that the Revenue was only seeking interest for the six year period. Given that the position of the Revenue is that it is seeking interest for a six year period only, it is not necessary for me to consider the question as to whether or not the reference to interest ins. 3(2)(a) of the Statute of Limitations 1957 is confined to prejudgment interest or includes post judgment interest. However, there is still the argument as to the calculation of interest which, as is accepted by the Revenue, includes a 366th day in one year to allow for a leap year within the six year period.

In order to explain the position of the Revenue, it might be useful to set out the details given in the written submissions of the Revenue as to the calculation of interest; it was stated therein in respect of the judgment obtained on the 16th July, 2002, that interest of €5,596.10 as claimed in the petition was calculated at 8% per annum from the date of judgment for a period of six years - "allowing for a leap year falling within the said six years period, thereby introducing a 366th day."

Assuming for the sake of argument that a six year limitation period is applicable to the Revenue, I cannot see any breach of the Statute of Limitations by the inclusion of a 366th day for one of the six years to account for the occurrence of a leap year. In any six year period, obviously, there will be a leap year. Thus, in calculating interest for a six year period, I can see nothing intrinsically wrong in allowing for the fact that one of the years concerned is a leap year. It is not adding on an extra day which would not have occurred within the six year period. If one was considering whether or not an action was statute barred after a six year period, one would not, in calculating the period of six years do so on the basis of disregarding the leap year and the extra day that occurs within the six year period by virtue of the leap year. In other words, one would not calculate the period of six years by carrying out an exercise of calculating the six year period on the basis that six years = 365 days multiplied by 6.

This may be a somewhat trite observation but it is the position. Thus, I am satisfied that no issue arises in relation to the sum claimed for interest by reason of an "extra" day.

I reiterate the point that the Revenue made it difficult to calculate interest charged on the judgment debts by not including the start or end dates from which interest was calculated and indeed by not making clear in the particulars of demand that the interest was calculated solely on the balance due as of the 7th June, 2011, from the date of judgment as has now been pointed out by the Revenue.

In all the circumstances, I am satisfied that nothing arises in relation to the manner in which interest was calculated on the judgment debts and equally that nothing arises as to the entitlement of the Revenue to seek post judgment interest pursuant to the provisions of s. 26 of the Debtors Ireland Act 1840 which would justify the annulment of the adjudication. Insofar as the Revenue has sought interest for a period of six years on the judgment debt, there is no impediment to the inclusion of a day to take account of the fact that a leap year occurs within any six year period.

Abuse of Process
The final issue raised on behalf of the applicant was an argument that these proceedings amount to an abuse of process. This issue was not dealt with initially in the oral submissions on the applicant's behalf, but it was canvassed in his written submissions. The Revenue in its oral and written submissions, considered the well known decision in *McGinn v. Beagan* [1962] I.R. 364. In reply to those submissions, counsel on behalf of the applicant submitted that it was pointless to bankrupt the applicant who would not be able to work as a solicitor as a consequence of the adjudication of bankruptcy. Therefore, put at its simplest, it was submitted that it was an abuse of process to have the applicant adjudicated when that would prevent him from earning money with which to repay the Revenue.

As is clear from the decision in *McGinn v. Beagan*, the issue of a bankruptcy summons cannot be used for an ulterior and collateral purpose. However, on the facts of this case, there is no evidence of a collateral or ulterior purpose such as that which existed in that case. I accept that the applicant's financial position has been worsened by his personal difficulties and the alleged embezzlement of funds from his practice. The adjudication in bankruptcy hampers his ability to earn a living given that the consequence of adjudication for a solicitor is that his practicing certificate is automatically suspended (s. 50 of the Solicitors Act 1954, as amended). Nevertheless, there is no evidence before me to suggest that the Revenue in bringing these proceedings had an ulterior or collateral purpose of any improper kind. The consequential effect of the adjudication is not evidence of an abuse of process. There is no evidence before the court to suggest that the adjudication of bankruptcy should be annulled on the basis of any alleged abuse of process.

Conclusion
It is the case that the Revenue has obtained a series of judgments against the applicant over a long period of time as set out in the particulars of demand. It is fair to say that the applicant has over the course of time made some efforts to discharge his liabilities. For example a bank draft for €220,000 was provided to the Revenue in August 2006. The applicant in the course of his various affidavits has described other difficulties which have afflicted him over the years. At various times, the applicant had entered into arrangements with the Revenue with a view to discharging his liabilities, over the same period of time. Unfortunately, it appears that the applicant has suffered from a combination of personal and other difficulties, including the alleged embezzlement of funds from his office. There was considerable forbearance on the part of the Revenue over the course of a number of years, during which some payments were made by the applicant on foot of arrangements entered into between the applicant and the Revenue. Ultimately, the most recent arrangement of 2008 collapsed in 2010 and the Revenue was then entitled to have the applicant adjudicated as a bankrupt. In all the circumstances there is no basis upon which it would be just and equitable to annul the adjudication.