THE HIGH COURT

[H:IS:HC:2017:000050]

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

IN THE MATTER OF MICHAEL HICKEY OF KILMACOMMA HILL, CLONMEL, TIPPERARY ("THE DEBTOR")

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 115A(9) OF THE PERSONAL INSOLVENCY ACT, 2012 TO 2015.

(No. 3)

JUDGMENT of Ms. Justice Baker delivered on the 31st day of May, 2018

1. Michael Hickey ("the Debtor") made a proposal for a Personal Insolvency Arrangement ("PIA") which was rejected at a meeting of creditors held on 25 January 2018. Thereafter, on 2 February 2018, a motion issued for an order pursuant to s. 115A(9) of the Personal Insolvency Act 2012 as amended ("the Act"). This judgment concerns one objection raised by KBC Bank Ireland Plc ("the Objecting Creditor"), a procedural objection that the Debtor does not satisfy the eligibility criteria specified in s. 91 of the Act.

2. The objection relates to whether the Debtor was entitled to seek and obtain on 20 November 2017 a third protective certificate. It is argued that the third protective certificate issued wrongly because it issued in the currency of an extant period of protection. In the circumstances, the Objecting Creditor argues that the Debtor does not satisfy the eligibility criteria specified in s. 91 of the Act and that the application must fail.

3. The ground of objection calls for consideration of whether the issuing of a motion for relief pursuant to s. 115A(9) of the Act has the effect of continuing in force the protection afforded by a protective certificate, even in circumstances where the application under s. 115A(9) was made outside the currency of a certificate. The point has not been the subject of any judicial determination.

Background

4. This is the third judgment given in respect of Mr. Hickey, who has evoked the provisions of the Act on two previous occasions.

5. Following the issue to Mr. Hickey of a first protective certificate on 17 December 2015, on 17 February 2016, a meeting of his creditors held pursuant s. 70 of the Act rejected a proposed Debt Settlement Arrangement ("DSA").

6. Mr Hickey obtained a second protective certificate on 4 July 2016, and on 9 September 2016 a meeting of his creditors was held to consider a proposed PIA, which was also rejected.

7. Mr. Hickey then issued a notice of motion for an order pursuant s. 115A(9) of the Act (an "application under s. 115A") on 23 September 2016.

8. Judgment in In *Re Hickey (No. 1)* [2017] IEHC 20 was delivered on 18 January 2017 by which, at para. 33, his application under s. 115A was held to be out of time:

> "[T]he debtor was out of time for the lodging of an application by way of appeal under s. 115A (9) of the Act of 2012. There was no argument advanced that I have a power to enlarge the time for the making of appeal […]. The statutory time limit is strict. I consider therefore that the application must fail."

9. On 6 February 2017, an order pursuant to s. 91(3) of the Act (a "s. 91(3) order") issued to Mr. Hickey allowing him to make a proposal for a PIA notwithstanding that he had made a proposal in the previous twelve months. On 22 May 2017, KBC obtained judgment acceding to its application, In *Re Hickey (No. 2)* [2017] IEHC 324, and an order pursuant to the inherent jurisdiction of the court setting aside the s. 91(3) order was made on 29 May 2017.

10. On 3 November 2017 Mr. Hickey made an application pursuant to s. 93 of the Act for the issue of a third protective certificate, which issued on 20 November 2017.

The legal issues arising

11. It is with regard to events following the application under s. 115A made on 23 September 2016 that the present judgment is given. It is argued that it was not until the application under s. 115A was determined and judgment was delivered on 18 January 2017, that it could properly be said that Mr. Hickey did not have the benefit of a protective certificate. In the circumstances, it is argued that he was not competent to make application for a protective certificate as he had enjoyed the benefit of the protective certificate in the twelve months immediately prior to the date of the application, 3 November 2017.

12. Section 95(2) provides as follows:

> "Where the appropriate court receives the application for a protective certificate and accompanying documentation […], it shall consider the application and documentation and, subject to subsection (3)—
>
> (a) if satisfied that the eligibility criteria specified in section 91 have been satisfied and the other relevant requirements relating to an application for the issue of a protective certificate have been met, shall issue a protective certificate".

13. Section 91(1)(i) provides as follows:

> "Subject to the provisions of this section and this Chapter, a debtor shall not be eligible to make a proposal for a Personal Insolvency Arrangement unless he or she satisfies the following criteria:
>
> (a) – (h) […];
> (i) that the debtor has not –

(i) been the subject of a protective certificate issued under section 95 less than 12 months prior to the date of the application for a protective certificate".

14. The question for determination on the facts, therefore, is whether the Debtor has "been the subject of a protective certificate" less than twelve months prior to the date of the application for the third protective certificate. The matter will fall to be determined in the light of a consideration of whether the protection afforded by a protective certificate continues when a debtor evokes the provisions of s. 115A.

The legislative scheme

15. Certain statutory provisions govern the timeframe within which steps must be taken for the purposes of the Act. A meeting of creditors to consider a proposed PIA must take place within the 70-day period of protection afforded by an order under s. 95(2)(a), or the 40-day extension under s. 95(6).

16. An application for an extension of the period of protection must be made before a meeting of creditors is held, as the provisions of s. 95(6) in their clear term provide as follows:

> "Where a protective certificate has been issued pursuant to subsection (2)(a), the appropriate court may, on application to that court by the personal insolvency practitioner, extend the period of the protective certificate by an additional period not exceeding 40 days where—
>
> (a) the debtor and the personal insolvency practitioner satisfy the court that they have acted in good faith and with reasonable expedition, and
>
> (b) the court is satisfied that it is likely that a proposal for a Personal Insolvency Arrangement which is likely—
>
> (i) to be accepted by the creditors, and
>
> (ii) to be successfully completed by the debtor,
>
> will be made if the extension is granted."

17. The statutory meeting of creditors must take place with the currency of a protective certificate, or extended currency as the case may be.

18. An application under s. 115A is to be made within 14 days of the meeting of creditors, as provided in s. 115A(2):

> "An application under [s. 115A] shall be made not later than 14 days after the creditors' meeting referred to in subsection (16)(a)".

19. Section 115A(5) makes express provision for the continuation of the protection afforded by a protective certificate if the application under s. 115A is made during the currency of the protective certificate:

> "Where an application is made under this section before the expiry of the period of the protective certificate, such protective certificate shall continue in force until —
>
> (a) the Personal Insolvency Arrangement comes into effect under subsection (13), or
>
> (b) one of the following occurs —
>
> (i) the time for bringing an appeal against a refusal of the appropriate court to make an order under subsection (9) has expired without any such appeal having been brought,
>
> (ii) such appeal has been withdrawn, or
>
> (iii) the appeal has been determined." (emphasis added)

20. That the protection afforded by a protective certificate would continue in force pending the determination by the relevant court or on appeal of the application under s. 115A appears to be logical, and the plain words of the subsection are in no way lacking in clarity.

21. But it is not necessary that an application under s.115A be made in the currency of the protective certificate, and the time limits set out in s. 115A(2) can be satisfied outside the currency of the protective certificate. Whether a debtor, in those circumstances, is entitled to protection from enforcement action by his or her creditors in the same way as he or she would be, had the application under s.115A been made in the currency of the protective certificate, is the central question for determination in this judgment.

22. The matter is of practical consequence in the present case, as Mr. Hickey's application under s. 115A lodged on 23 September 2016 was not finally determined until 18 January 2017, and it is argued accordingly that Mr. Hickey did have the benefit of the protective certificate up to and including that date, and therefore was not competent, as a matter of law, to seek a further protective certificate until twelve months after that date, i.e. until after 18 January 2018. Mr. Hickey made no application for an order that he be permitted to make an application for a protective certificate, notwithstanding that less then twelve months had expired.

Express statutory provisions: the arguments

23. The single question for determination in this judgment is whether, on an interpretation of the Act, a debtor continues to be entitled to protection from his or her creditors pending the determination of an application under s. 115A. Perhaps somewhat ironically, it is the creditor which argues that that protection must, as a matter of logic and practical necessity, continue while an application under s. 115A remains undecided, and that any other conclusion would fail to respect the integrity of the protection afforded to an insolvent debtor under the scheme of the Act.

24. The Objecting Creditor makes an argument that an interpretation of s. 115A(5) which leads to a conclusion that a protective certificate does not continue in force pending the determination of an application under s. 115A would lead to an absurd result, and that on a true interpretation of the subsection, the commencement of an application under s. 115A must mean that a debtor is

deemed, as a matter of law, to continue to have the benefit of the protective certificate pending a final determination of that application. The objection arises from the fact that the application under s. 115A lodged on 23 September 2016 continued to afford protection to the debtor until judgment was delivered on 18 January 2017 and the application under s. 115A was dismissed.

25. The debtor argues for the contrary view by reference to the express language of s. 115A(5) of the Act, by which provision is made for the continuation of protection pending the determination of an application under s. 115A, but limited to circumstances where the application is made in the currency of the protective certificate.

26. Counsel for the debtor argues that the statutory provision is clear, and that protection from enforcement action by creditors is afforded under the express language of the statute only if the application under s. 115A is made within the currency of a protective certificate.

The arguments from statutory interpretation

27. Counsel for the Objecting Creditor argues that the intent of the Oireachtas may not have been sufficiently clearly expressed in the restrictive provisions of s. 115A(5), and that the continuation of protection to a debtor pending determination of an application under s. 115A is both logical and necessary. It is argued that the literal interpretation must, therefore, give way to an interpretation which does not result in the absurd consequence that a creditor may take enforcement action against a debtor whose application under s. 115A remains undetermined.

28. Counsel for the Objecting Creditor makes the argument that a plain or literal reading of s. 115A(5) will mean in practice that in many, if not most, cases where an application for relief under the section is made, a debtor will not have the benefit of the continuation of protection pending the determination of the application, and that this is an absurd result which does not accord with the intention of the scheme of the Act generally.

29. It is argued, therefore, that on a literal reading of s. 115A(5) the practical result leads to an absurdity of such a degree that a court in the exercise of the interpretative provisions of s. 5 of the Interpretation Act 2005 ("the Interpretation Act") must interpret the protection afforded by the subsection as applying in all cases where an application under s. 115A remains undetermined, even when the application is brought outside the period of protection.

30. The Debtor argues that there is no ambiguity in s. 115A(5) and that, on a literal reading of the subsection, the protection does not continue in force unless the application is made in the currency of an extant protective certificate. Counsel argues that, while this result might seem anomalous, it is nonetheless consistent with any plain reading of the Act and that as the Act made provision for time limits in several sections, including ss. 95, 96, 97, 98, 106, 111A and 113, the drafters of s. 115A(5) must be assumed to have intended that consequence.

31. Counsel for the Debtor argues the Act is not unclear, and relies on the undoubtedly correct proposition that a court should be slow to depart from the plain language of a statute, and must be guided by the principles of the separation of law-making and interpretative functions.

32. If the correct approach is the question of how the test is to be construed, counsel argues that absurdity does not come to be engaged at all if the intention of the Oireachtas is clear from the plain language of the section, and that a court is not permitted to interpret a statutory provision merely on account of a view that the result is undesirable, as to do so would amount to a modification of a clear legislative intent.

33. Reliance is placed on para. 2.16 of the leading Irish textbook Dodd, *Statutory Interpretation in Ireland* (Tottel, 2008):

> "[T]he legislature's intention is to be derived first and foremost from the words chosen by the legislature itself to express its intention."

34. Therefore, counsel for the Debtor argues that, if the meaning of the statute is clear from a literal or plain reading, a court ought not to look elsewhere to discern the meaning of the statute. It is argued that the primary judicial function ought to be the attempt to discern the meaning of a statute from what it says.

35. Reliance is placed also on the judgment in *Howard v. The Commissioners of Public Works* [1994] 1 IR 101, where the Supreme Court did give effect to the plain and ordinary meanings of a statute notwithstanding a view, that the Court took, that the plain meaning might not reflect the likely intention of the lawmaker at the time. However, that judgment predates both the Interpretation Act and the judgment of the Supreme Court in *Irish Life and Permanent plc v. Dunne,* and also can be distinguished on the basis that the Court held that the result of a literal interpretation was not necessarily absurd, albeit it might not reflect the intention of the Oireachtas.

36. In essence, counsel for the Debtor argues that, in order for the court to come to a conclusion that an interpretation leads to an absurdity, there must first be an ambiguity in the legislative provision, and relies on the statement at para. 7.21 of Dodd's textbook that "[w]hile an absurd result is presumed to be an unintended one, it does not follow that a result that is unintended (based on a subjective view of the Oireachtas' intention) is an absurd result."

37. The argument requires consideration of the provisions of s. 5 of the Interpretation Act and the judgment of the Supreme Court in *Irish Life and Permanent plc v. Dunne* [2015] IESC 46, [2016] 1 IR 92, and whether the language of a statute must be ambiguous before a court may engage the question of whether the consequence of a particular interpretation leads to an absurdity.

The Interpretation Act 2005: discussion on the interpretative function

38. Section 5(1) of the Interpretation Act provides as follows:

> "In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)—
>
> (a) that is obscure or ambiguous, or
>
> (b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of—
>
> (i) in the case of an Act to which paragraph (a) of the definition of "Act" in section 2 (1) relates, the Oireachtas, or

(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,

the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole."

39. Section 5 of the Interpretation Act does not in its terms limit the question of a possible absurdity of legislative provisions to those which are obscure or ambiguous. Subsection (1)(a) provides for two circumstances in which the court, in construing a provision, is entitled to ask whether the result is either absurd or would fail to reflect the plain intention of the Act. The present case engages sub-s. (1)(b), which may be engaged even in circumstances where a literal interpretation does not lead to ambiguity, and provides that a court may, in the construction of a statute, take a view that the result would be absurd or fail to reflect the plain intention of the Act, even when a literal reading is possible without ambiguity.

40. The section, therefore, is quite far reaching and is not confined to the circumstances under which the common law "golden" or "mischief" rules might have applied, and sub-s. (1)(b) gives a court in a suitable case the jurisdiction to consider whether an unambiguous and perfectly clear reading of a plain and not obscure statutory provision may still lead to an absurdity.

41. This is the conclusion to which the Supreme Court came in *Irish Life and Permanent plc v. Dunne*. The question for the Court was whether s. 38 of the Courts of Justice Act 1936 was to be interpreted as conferring jurisdiction on a High Court Judge to state a case to the Supreme Court in an appeal from the Circuit Court, where no oral evidence was heard in the Circuit Court, notwithstanding that a literally interpretation of s. 38(3) of that Act suggested otherwise. The court came to that view in the light of the provisions of s. 5(1)(b) of the Interpretation Act: it did have a jurisdiction notwithstanding that a literal interpretation was possible.

42. The test that the court identified for the exercise was twofold:

(a) Whether an interpretation in accordance with the literal or plain meaning of the words did lead to a conclusion that there was no "possible or conceivable basis on which the Oireachtas might have chosen to legislate in the manner which a literal construction of the relevant provisions was required", at para. 39.

(b) If such an absurd result flows from a literal interpretation, the court may engage the approach envisaged by s. 5(1)(b) only if it is possible to tell from the Act as a whole "what the true legislative intention actually is", at para. 41.

43. The Supreme Court considered that there was no reason in logic or otherwise why the Oireachtas might have intended that a case could be stated in one type of circuit appeal, where oral evidence was heard, but not in another, where oral evidence was not heard, and that it was possible for the court to discern the legislative intent or policy. The Supreme Court took the view that a literal construction led to the conclusion that an error in drafting had occurred, and that the exclusion for no obvious or conceivable reason was not intended by the Oireachtas.

44. I consider that the approach for which counsel for the Debtor contends is not borne out by the express provisions of s. 5(1)(b) of the Interpretation Act, or by the clarification of the principles of interpretation found in the recent and authoritative decision of the Supreme Court in *Irish Life and Permanent plc v. Dunne*. The Supreme Court has opted for a particular approach to the question of interpretation by which a literal interpretation will give way to a different approach if the literal interpretation leads to an absurdity, and provided it is possible to discern the true intention of the Oireachtas from the Act as a whole.

45. Therefore, in the light of the judgment of the Supreme Court in *Irish Life and Permanent plc v. Dunne*, if an absurd result emerges from a literal interpretation, the court is entitled to look to an interpretation which does not lead to such absurdity and, in doing so, it must give effect to an intention that can be discerned from the Act.

Is there an absurd result?

46. While a protective certificate remains in force, a creditor may not take any one of a myriad of identified steps to enforce a specified debt, including taking action on foot of a security or presenting or proceeding with a bankruptcy summons. Section 96 of the Act provides as follows:

"(1) […] a creditor to whom notice of the issue of a protective certificate has been given shall not, whilst the protective certificate remains in force, in relation to a specified debt:

(a) initiate any legal proceedings;

(b) take any step to prosecute legal proceedings already initiated;

(c) take any step to secure or recover payment;

(d) execute or enforce a judgment or order of a court or tribunal against the debtor;

(e) take any step to enforce security held by the creditor in connection with the specified debt;

(f) take any step to recover goods in the possession or custody of the debtor, whether or not title to the goods is vested in the creditor;

(g) contact the debtor regarding payment of the specified debt, otherwise than at the request of the debtor;

(h) in relation to an agreement with the debtor, including a security agreement, by reason only that the debtor is insolvent or that the protective certificate has been issued—

(i) terminate or amend that agreement, or

(ii) claim an accelerated payment under that agreement.

(2) Whilst a protective certificate remains in force, no bankruptcy petition relating to the debtor—

(a) may be presented by a creditor to whom subsection (1) applies in respect of a specified debt,

(b) in a case where the petition has been presented by such a creditor in respect of a specified debt, may be proceeded with.

(3) Without prejudice to subsections (1) and (2), whilst a protective certificate remains in force, no other proceedings and no execution or other legal process in respect of a specified debt may be commenced or continued by a creditor to whom subsection (1) applies against the debtor or his or her property, except with the leave of the court and subject to any order the court may make to stay such proceedings, enforcement or execution for such period as the court deems appropriate pending the outcome of attempts to reach a Personal Insolvency Arrangement, but this subsection shall not operate to prohibit the commencement or continuation of any criminal proceedings against the debtor.

(4) - (7) […]."

47. If a creditor could take enforcement action against a person before a validly made application under s. 115A was determined by the relevant court or on appeal, the protection afforded by s. 96 would be set at nought. A debtor will lose the protective umbrella and a plainly absurd set of circumstances could evolve, namely that before the court gave a determination under s. 115A, the debtor might had been declared bankrupt, enforcement action might have been commenced or concluded, judgment obtained, or a possession order in respect of the principal private residence made. Any of those scenarios would have the effect that any order of the court under s. 115A could be pointless or, at the very least, the court considering the application under s. 115A could make an order by then incapable of performance. Thus, not only would the general scheme of the Act, which seeks to achieve an orderly resolution of debt and offer an umbrella of protection during which such may be achieved, be defeated, but more especially the jurisdiction that the court has to provide a degree of protection to the principal private residence of a debtor under s. 115A could be lost.

Is there a rational basis for the distinction?
48. Counsel for the Objecting Creditor argues that there is no possible basis why the Oireachtas might have discriminated between one cohort of applicants under s. 115A, those who, because of the timing of the meeting of creditors, were in a position to lodge an application under s. 115A within 70 days, the currency of a protective certificate, or 110 days, if an extension had been granted, and those who, for reasons which might arise because of the complexity of the case, or indeed, the approach that the creditor or creditors might have taken in the earlier stages of the process, would find that it was not possible for the application to be made within the currency of the protective certificate.

49. I agree that no possible or rational basis can be said to exist for such discrimination, which must be seen to be both invidious and to serve no useful purpose. Furthermore, it would leave a debtor in a situation where the failure of a creditor to act with expedition or to respond to correspondence from a PIP, or who is otherwise slow to engage, could, whether inadvertently or otherwise, place the debtor in a position where a creditors' meeting happened so close to the end of the currency of the protective certificate that it was not possible for the PIP to formulate an application under s. 115A within the currency of such protection.

50. In that regard, a number of matters must be noted. First, it is not the case that an application under s. 115A is formulaic or routine, and the application engages the court in a consideration of a number of statutory discretionary factors. It would be fair to say that many applications under s. 115A are contested. Furthermore, an application under s. 115A requires that the PIP would assemble a large number of documents and, in addition, prepare a certificate that he or she considers that there are reasonable grounds to believe that the granting of the order would have the effect of protecting the continued ownership or occupation by the debtor of his or her principle private residence.

51. Thus, the Oireachtas, on the one hand, allows 14 days after the creditors' meeting for the lodging of an application under s. 115A, but on the other hand, it leaves open the possibility that a PIP would not have time after the rejection of a proposed PIA at a meeting of creditors to lodge the papers within the 70 day protective period (or extended period, where appropriate).

52. Second, the Oireachtas envisaged circumstances where application could be made for an extension of a protective certificate under s. 95(6), but that such application for extension is required to be made before a meeting of creditors. Once the creditors have rejected a proposed PIA, no application for an extension of time may be made for the purposes of an application under s. 115A. The provisions of s. 95(7) permit in limited and extraordinary circumstances, such as the PIP's death, a further addition or additional extension of the protective certificate.

53. Third, it is difficult to envisage circumstances that might give rise to a successful application in the relevant court for an injunction to restrain enforcement, the appointment of a receiver, or a stay on the remedies restrained by s. 96(1) of the Act. An application for such injunctive relief would be reliant on the indulgence of the court hearing the application as the circumstances would not readily be amenable to any argument that protection could be derived from any statutory or other principles, and it would be difficult to ground the application in a cause of action known to the common law or general equitable principles.

54. Whilst section 14(2) of the Bankruptcy Act 1988 as amended requires a court hearing a creditor's petition to consider whether the inability of a debtor to meet his or her indebtedness could be more appropriately dealt with under the personal insolvency legislation, that provision does not contain any imperative to stay the hearing of a petition, pending the conclusion of an application under s. 115A.

55. The plain reading of s.115A(5), for these reasons, does lead to an absurd result.

56. I turn now to consider the second limb of the test as explained by the Supreme Court in *Irish Life and Permanent plc v. Dunne* and whether the legislative intent may be discerned form the Act as a whole.

The purpose of the Act
57. The intention of the Oireachtas in enacting the Act has been considered by me in a number of judgments, including In *Re Nugent* [2016] IEHC 127 and In *Re P. Bankruptcy* [2016] IEHC 117. In summary, the general purpose of the legislation which is recited in the preamble to the Act is to enable an insolvent debtor to return to solvency, and thereby to avoid bankruptcy and to "facilitate the active participation of such persons in the economic activity of the State". In its long title, the Act recites a desire on the part of the Oireachtas to introduce an "orderly and rational" means for the resolution of indebtedness in the interests of both debtor and creditor, and in the interests of the common good.

58. In In *Re Nugent*, at para. 59, the purpose of the personal insolvency legislation was described as the avoidance of bankruptcy as follows:

> "[T]he purpose of the personal insolvency legislation is to avoid a debtor being made bankrupt, and that the personal insolvency regime offers a more benevolent means by which he or she can deal with indebtedness. This is envisaged by the Oireachtas as being in the common good."

59. The purpose of the enactment in 2015 of the provisions in s. 115A was to enable the relevant court to review the result of a meeting of creditors and to approve the coming into operation of a PIA, notwithstanding that it had been rejected by the creditors, if the court was satisfied that the proposal was reasonably capable of being performed by the debtor and would enable the debtor to continue to own or occupy his or her principal private residence.

60. This legislative purpose was considered by me in a number of judgments. In In *Re J. D.* [2017] IEHC 119, at para. 72, I held as follows:

> "The purpose of the personal insolvency legislation is to enable the resolution of personal debt, and the common good sought to be achieved in s. 115A is the protection of the right to continue to enjoy residence in a person's home."

61. The legislative purpose of the Act as a whole and of the relevant provisions contained in s. 115A may be ascertained, and to achieve that purposes logically requires that enforcement action by a creditor must be stayed pending the determination of the application under s. 115A, irrespective of whether that application was made within the currency of a protective certificate or after it had expired. Any other interpretation would fail to support the legislative intent.

62. I consider that the Oireachtas did intend the benefit of a statutory protection from creditors to enure to the benefit of a debtor pending the determination of an application under s. 115A. Further, the time limit for the lodging of such application (being 14 days from the creditors' meeting) does not leave the continued protection at large, but in my view, and provided an application is lodged within the statutory 14 days period, the Oireachtas did intend, in the light of its intention in the Act stated in broad and positive terms in the recitals and preamble, that a debtor would continue to have the benefit of a protective certificate until the conclusion of the s. 115A process.

63. That has the effect in the present case that the protective certificate which issued to Mr. Hickey on 4 July 2016 continued in force until the motion under s. 115A issued on 23 September 2016 was determined by the dismissal of that application following my judgment delivered on 18 January 2017. The Debtor, therefore, did have a protective certificate which continued in force until 18 January 2017.

64. Accordingly, the Debtor was not competent to make an application for a third protective certificate on 3 November 2017, and the certificate granted on 20 November 2017 was not made in accordance with the statutory requirements. He did not satisfy the eligibility criteria specified in s. 91 of the Act. Compliance with s. 91 is a mandatory precondition to the court exercising its jurisdiction under s. 115A(9), and this is expressly provided in s. 115A(8). He was therefore not competent to make application for review under s. 115A.

65. Accordingly, I consider that the preliminary objection made by the Objecting Creditor is correct and that the application under s. 115A is not properly before the court.

66. The irony that of this result is noted. The consequence of this decision is protective of debtors in general in the currency of an application under s.115A, but it has led to the rather unfortunate consequence, in the present case, that the debtor's application must fail.

Further consideration: the letter of 27 April 2018

67. This matter was listed for hearing of the preliminary objection by the Objecting Creditor on 30 April 2018. In their letter of 27 April 2018, Messrs. Holohan Law Solicitors described the position adopted by the Objecting Creditor as "unstateable, incorrect in law" and said that it was clear that the law was in their favour, and called upon KBC to withdraw the application and to pay measured costs in respect of the application.

68. This is precisely the form of letter intended to have a chilling effect to which I drew attention in my judgment in In *Re Meeley* [2018] IEHC 38, where the concern I expressed was that correspondence from creditors which threatened an application for costs against a PIP in a "routine or ordinary case which is lost" was not a practice which I considered could be condoned by a court.

69. I make a similar comment with regard to the overly enthusiastic letter from Messrs. Holohan Law. The approach adopted is not one consistent with the scheme of the legislation, which envisages a rational approach to the question of insolvency, and which in itself seems to me imports an obligation to adopt a rational approach on both the creditor and debtor in regard to any matter before the court.