

## THE HIGH COURT

H:IS:HC:2015:000028

## IN THE MATTER OF SECTION 115, PART 3, CHAPTER 4 OF THE PERSONAL INSOLVENCY ACT 2012 (AS AMENDED)

## AND IN THE MATTER OF THOMAS O'CONNOR OF GOREY, COUNTY WEXFORD, A DEBTOR

**Ex tempore JUDGMENT of Ms. Justice Baker delivered on the 18th day of April, 2016. (Transcribed from DAR recording)**

1. This is the first time an application comes before me pursuant to the provisions of s.115 (a) (9) of the Personal Insolvency Act 2012 which was inserted by the Act of 2015. This particular statutory provision was clearly designed as a means by which the Oireachtas showed its intent to enable a suitable applicant to seek to preserve his or her entitlement to remain in occupation of a family home.
2. It is therefore a peculiar statutory regime, which protects certain right of the debtor seeking the protection of the personal insolvency legislation, if it can be shown that the circumstances justify the protection of the family home. It places in those circumstances the family home creditor in a different category to that in which other creditors have been placed by the legislation.
3. I am satisfied in this case that the debtor, Thomas O'Connor of Gorey, County Wexford does have a mortgage on his family home, which is a relevant debt for the purposes of the Act of 2012 and in particular the provisions inserted by the new Act of 2015.
4. I am satisfied in particular that he has a mortgage on his principal private residence, what we sometimes call a family home, and that that is within the definition of the Act a sustainable mortgage.
5. I am satisfied in the circumstances that that debt is a relevant debt for the purposes of the application and that accordingly it is what I might call a triggering debt: once a debtor can show that he or she has a debt of that class, then the fact that a Personal Insolvency Arrangement was not accepted by creditors at a meeting does not of itself mean that the Personal Insolvency Arrangement will fail.
6. The Personal Insolvency Arrangement was put to a meeting of creditors on the 10th February, 2016 and although a number of the creditors supported the application and the family home mortgage creditor accepted it entirely, there being only one, the result of the meeting was that some of the creditors, one creditor really, refused to consent to the Personal Insolvency Arrangement. That creditor is Pepper, Pepper Finance Limited, which is an investment fund. While Pepper voted against the Personal Insolvency Arrangement, it has not attended at this hearing to oppose the application sought by Mr. O'Connor, nor did it object to the coming into force of the Personal Insolvency Arrangement when this application was issued.
7. I am satisfied in the first place that service on all the relevant creditors has been shown. I am also satisfied that this is an unusual application also in the context of the personal insolvency legislation, in that it is an application which is triggered by the debtor himself.
8. I am satisfied that Mr. O'Connor did instruct his personal insolvency practitioner, Ms. Kerry O'Neill to bring this application, which is brought pursuant to the legislation, and he did so by a letter of the 12th February, 2016. I am satisfied that the requisite notice was served on creditors by Ms. O'Neill on the 26th February, 2016, notifying them that they were entitled to object to the application sought to be brought before me, and I am satisfied also that they were served with all of the necessary paperwork.
9. Therefore, I am satisfied that in the circumstances, the application is properly before me.
10. The Act requires me to be satisfied with regard to a number of matters, in particular whether the circumstances are such that there is a reasonable prospect that the debtor will resolve his or her indebtedness without recourse to bankruptcy. That is a general requirement for the purposes of the protection of the legislation and I am satisfied that those proofs are met.
11. I am also satisfied that the particular proof required for this application, namely, that the proposed arrangement will enable the debtor not to cease to occupy his family home or his principal private residence has been met. This is what one would call a sustainable mortgage and it is, as I am satisfied from the affidavit evidence that the accommodation, the principal private residence of Mr. O'Connor, where he resides with his wife and three children, is suitable for his needs and appropriate in all of the circumstances.
12. I am also satisfied that he has satisfied me with regard to one of the other proofs of the Act, namely, that he has been seeking in the last two years to pay the mortgage debt and I am satisfied from his bank statement that that is so and that he has been meeting the mortgage payment.
13. I am also satisfied that the Personal Insolvency Arrangement is fair to all the creditors, but more importantly for the purposes of this application, because the Oireachtas inserts a requirement that the court assess the proportionality of the proposed arrangement, I am satisfied that the arrangement which allows for the protection of the family home is not disproportionate, and I am also satisfied that the other tests of the Act are met, the primary one being for these purposes that the return for creditors will be better than the return that they could hope to achieve were there to be a bankruptcy.
14. The Act of 2015 is a unique piece of legislation in that it enabled the court to limit the extent of the veto which a creditor might have in respect of a family home or a principal private residence mortgage debt, and it allowed for separate treatment of that class of debt and there was clearly an intention by the Oireachtas to offer a particular and unique protection for that property. That protection is indeed found in other areas of the law, but it is the first time that it has been found within the context of insolvency.
15. I am satisfied that the proofs are met and I am satisfied that Mr. Farry has presented the application fairly to all of the creditors, which I think is his obligation as an officer of the court, that his paperwork has been presented in a very clear and fulsome way and I am satisfied to make the order sought in the Notice of Motion pursuant to s.115(a) of the Personal Insolvency Act, approving the

Personal Insolvency Arrangement, notwithstanding that the result of the creditors meeting was not one which approved that arrangement.

16. This ruling was given ex tempore, and the application was not opposed. The reasoning herein contained should be understood in that context.