THE HIGH COURT

BANKRUPTCY

[No. 833 P]

IN THE MATTER OF A PETITION FOR ADJUDICATION OF BANKRUPTCY BY FCR MEDIA LIMITED (FORMERLY TRUVO IRELAND LIMITED)

APPLICANT

AND

ANGELA FARRELL PRACTICING UNDER THE STYLE AND TITLE OF FARRELL SOLICITORS

DEFENDANT

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 13th day of May 2014

1. This matter comes before the court as an adjourned petition for bankruptcy and also pursuant to notices of motion issued by the debtor seeking various forms of relief in the bankruptcy proceedings.

Background

2. On 21st September, 2010, Truvo Ireland Ltd. obtained a judgment against Ms. Angela Farrell (the debtor) in the sum of €39,057.39 in High Court proceedings [2009 No. 5405 S]. The debtor made one payment of €1,650 in part discharge of the said judgment debt leaving a balance due and owing of €37,407.39.

3. Some considerable time later, the debtor sought to set aside the High Court judgment and on 4th November, 2013, Cooke J., having heard the application, refused to set aside the judgment.

4. Truvo Ireland Ltd. became FCR Media Ltd. by virtue of a change of name which has been registered in the Companies Registration Office and is the petitioner in these bankruptcy proceedings. On 18th February, 2013, a bankruptcy summons issued, and as the debtor did not, within the prescribed period after service of the summons, pay the sum referred to therein, a petition was brought to have her adjudicated a bankrupt.

5. On 9th December, 2013, the petition was heard in the debtor's absence. She had appeared in court during the currency of the Bankruptcy List, but absented herself and the matter was put back to second calling and then to the end of the List. The application for adjudication was moved by the petitioner and, being satisfied that the requirements of s. 11 of the Bankruptcy Act 1988, had been complied with, I adjudicated the debtor a bankrupt.

6. Unknown to me at the time, the provisions of Part 4 of the Personal Insolvency Act 2012, had come into force on 3rd December, 2013. Within Part 4 is s. 147 of the 2012 Act, which amended s. 14 of the 1988 Act. The effect of the amendment is that before the court can make an adjudication, it

> *". . .shall consider the nature and value of the assets available to the debtor, the extent of his liabilities, and whether the debtor's inability to meet his engagements could, having regard to those matters and the contents of any statement of affairs of the debtor filed within the Court, be more appropriately dealt with by means of:*
>
> > *(a) a Debt Settlement Arrangement, or*
> >
> > *(b) a Personal Insolvency Arrangement,*
>
> *and where the Court forms such an opinion the Court may adjourn the hearing of the petition to allow the debtor an opportunity to enter into such of those arrangements as is specified by the Court in adjourning the hearing."*

The court may order the bankrupt to attend and make a full disclosure of his assets and liabilities by way of a statement of affairs filed with the court.

7. At a subsequent hearing, the debtor drew my attention to the fact that s. 14 of the 1988 Act had been amended in a way which now requires me to consider, before making any adjudication, whether she comes within the ambit of one of the other arrangements set out in s. 14(2). Accordingly, I set aside my order of adjudication and adjourned the hearing of the petition to enable the debtor to show to the court whether she comes within the scope of one of the other arrangements specified above. I directed that she file an affidavit with a statement of affairs and exhibit a letter from a registered Personal Insolvency Practitioner, stating whether or not she would come within the scope of one of the other arrangements. I declined to annul the bankruptcy because I was otherwise satisfied, when making the order of 9th December, 2013, that the requirements of the Act had been met. Instead, I felt that the appropriate course was to adjourn the petition so it could be reheard in the light of the amendments to s. 14 of the Act.

8. The matter was adjourned from time to time and the hearing of the petition and the other issues raised by the debtor by way of notice of motion took place on 11th April, 2014.

9. Although the debtor had been requested to furnish a statement of affairs and a letter from a registered Personal Insolvency Practitioner, she failed to do so. In an affidavit sworn by her on 24th March, 2014, she stated that:

> *"All papers referable to such matters were seized and taken into the possession of the Law Society on foot of a High Court order made on 16th December 2013."*

She did not, in any way, engage with the issue other than by way of that averment. There is nothing before the court to indicate whether she made any attempts to contact either the Law Society or a registered Personal Insolvency Practitioner ("PIP") whether by way of correspondence or otherwise.

10. In a notice of motion dated 24th March, 2014, the debtor seeks various reliefs. The first relief sought is an order that the matter of *FCR Media Ltd. v. Angela Farrell* [2012 No. 5521] is *res judicata* and cannot be re-litigated by the petitioner, having been adjudicated on its merits by McGovern J. on 9th December, 2013. The question of re-litigation does not arise. When I discovered that the amendment to s. 14 of the 1988 Act had come into force on 3rd December, 2013, I set aside the adjudication made on 9th December, 2013, to enable the debtor to show to the court whether her situation could more appropriately be dealt with by means of one of the other arrangements provided for in s. 14(2). I adjourned the hearing of the petition to enable these steps to be taken as it is now a requirement for the court to consider such matters before making an adjudication. There was no question of any matter being re-litigated.

11. The debtor also seeks a declaration that the failure to have regard to s. 14 of the 1988 Bankruptcy Act (as amended) constituted an infringement of her rights and "*. . . an abandonment of fair practice and procedure*". I do not accept that the debtor is entitled to any relief on that ground. It was in ease of the debtor that I set aside the adjudication so as to enable her to show to the court whether she came within the scope of one of the arrangements set out in s. 14(2). The question of an infringement of her rights or want of fair procedures does not therefore arise.

12. The debtor also seeks a declaration that the jurisdiction of the High Court has been exhausted and there is no judicial discretion to re-examine evidence or permit a partial re-hearing of facts which should have been taken into account at the hearing of the matter. I refuse to make such a declaration. On 9th December, 2013, the debtor was present in court at various times during the currency of the Bankruptcy List. The petition was called at first calling, at second calling and then at the end of the Bankruptcy List. The debtor was not in court on any of those occasions when she could have drawn the court's attention to the fact that Part 4 of the 2012 Act had been commenced on 3rd December, 2013. In any event, the jurisdiction of the court has not been exhausted because the adjudication was set aside and the hearing of the petition was adjourned to allow all matters provided for in the amended legislation to be taken into account.

13. The debtor seeks "*a declaration that s. 84(C) of the Personal Insolvency Regulations 2012 makes an inseparable connection between the setting aside of the order of Bankruptcy on 9th December 2013, and its annulment. Failure to annul is punishment devoid of law*". It may well be that she intended to refer to s. 85(C) which deals with annulment of adjudication in bankruptcy (a) where the debtor has shown cause pursuant to s. 16 or (b) in any other case, where, in the opinion of the court, the debtor ought not to have been adjudicated bankrupt. Apart from the requirement under s. 14(2) of the Act that the court shall consider the matters set out therein, I was otherwise satisfied, on 9th December, 2013, that the requirements of the Act had been met so as to permit an adjudication to be made. It seems to follow, from the amendments to s. 14, that the debtor should be given an opportunity to show to the court whether she comes within the scope of one of the schemes of arrangement provided for in the legislation. It was in those circumstances that I declined to annul the order of bankruptcy but set it aside and adjourned the hearing of the petition to a future date so as to deal with the matter in terms of the amended legislation. The question of an annulment of the adjudication does not therefore arise. Insofar as the debtor, in the notice of motion, seeks an order that I erred in a matter of law, this is a matter for appeal if she chooses to do so. She also seeks an order that the proceedings have terminated. For the reasons I have set out above, she is not entitled to such an order.

14. The debtor also sought an order directing the release of the Digital Audio Recording ("DAR") of 9th December, 2013, before me and the recording of the hearing of 13th January, 2014, before Herbert J. I declined to make such an order as it did not seem to be required in the interests of justice and the debtor was, in any event, present in court on 13th January, 2014, before Herbert J. So far as the hearing of the 9th December is concerned, I set aside the adjudication and adjourned the hearing of the petition so there is no necessity, in the interests of justice, that the debtor be given access to the DAR.

15. I refuse the debtor the reliefs sought in the notice of motion. That leaves the question of the determination of the petition for adjudication.

16. The debtor complains, *inter alia*, that the application for the bankruptcy summons was made on foot of what she characterised as "*a fraudulent affidavit*" sworn by Mr. Michael Howard on 8th February, 2013, in support of the application for a bankruptcy summons. In para. 5 of his affidavit, he said "*no form of execution has issued in respect of the said debt and remains to be proceeded upon*". It is not in dispute that the petitioner had obtained an order of *Fieri Facias*, having obtained judgment in the High Court proceedings. The debtor relied on the provisions of O. 42, r. 8 of the Rules of the Superior Courts and argued that this amounted to the issuing of execution. Mr. Tom Casey, in an affidavit sworn on 11th April, 2014, stated that the petitioner never took any steps on foot of the *Fi Fa* to execute. It was never sent to the Sheriff and no steps were taken to execute against the debtor's property or otherwise. I am satisfied that in those circumstances, there was nothing misleading, let alone fraudulent, about the averment at para. 5 of the affidavit of 8th February, 2013, in support of the application for a bankruptcy summons.

17. The debtor also made extensive submissions, claiming that by reason of clause 2.1(m) of a charge registered in the Companies Registration Office on 12th June, 2007, that the petitioner was not entitled to pursue debts due and owing to it or to bring bankruptcy proceedings in its own name. I am satisfied that the rights referred to in clause 2.1(m) only accrued to J.P. Morgan (Europe) Ltd. upon crystallisation of the floating charge and that the floating charges over the company's book debts have never crystallised. Furthermore, the records of the CRO show that the charge registered on 12th June, 2007, in favour of J.P. Morgan (Europe) Ltd. was satisfied in full as and from 10th May, 2011, and prior to the commencement of these bankruptcy proceedings. The petitioner was, therefore, entitled to obtain a bankruptcy summons and petition the court for the adjudication of the debtor.

18. On the issue of the adjudication itself, I am satisfied that the sum claimed is due and owing to the petitioner, and that following upon the issue of the bankruptcy summons, the sum due has not been paid by the debtor. The requirements of s. 11(1) of the 1988 Act have been met. For all the extensive arguments put forward by the debtor in relation to the bankruptcy petition, she has singularly failed to deal with the fact that there is money due and owing by her to the petitioner (formerly Truvo Ireland Ltd.). She has raised the issue of a "*fraudulent invoice*" repeatedly in the course of the hearings in the bankruptcy proceedings. That is a matter going to validity of the claim for judgment arising out of the debt and that matter is now *res judicata*.

19. The debtor has failed to produce any satisfactory evidence to show that she comes within the scope of s. 14(2) of the 1988 Act (as amended), and has failed to deal with this issue in any meaningful way. In those circumstances, the court cannot form the view that her inability to meet her liabilities could be more appropriately dealt with under either a debt settlement arrangement or a personal insolvency arrangement.

20. Accordingly, the petitioner is entitled to an order of adjudication of bankruptcy against the debtor.