THE HIGH COURT ON CIRCUIT

[2016 230 CA]

[C:IS:SEWD:2015:001629]

SOUTHEASTERN CIRCUIT

COUNTY OF WATERFORD

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

AND IN THE MATTER OF SABRINA DOUGLAS OF 6 PLEASANT DRIVE WATERFORD CITY IN THE COUNTY OF WATERFORD ("THE DEBTOR")

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

JUDGMENT of Ms. Justice Baker delivered on the 29th day of November, 2017

1. Mitchell O'Brien, the personal insolvency practitioner ("PIP") made a proposal for a personal insolvency arrangement ("PIA") under the Personal Insolvency Acts 2012-2015 ("the Act") pursuant to his function in that regard which was rejected at a statutory meeting of creditors held on the 1st April, 2016.

2. On the 19th October, 2016, on application for a review pursuant to s. 115 A (9) of the Acts, Ms. Justice Enright, judge of the Circuit Court refused to approve the PIA and upheld the objections of Allied Irish Banks PLC ("AIB") and EBS DAC ("EBS").

3. This judgment is given in the appeal from that decision of the Circuit Court and raises two important issues under the Acts, namely the identifying features of a class of creditors for the purposes of a review under s. 115A, and the treatment of a "non core" asset, a residential dwelling owned by the debtor subject to a mortgage in which her parents reside.

Factual background

4. The debtor is a married woman with three young dependent children and lives apart from her husband. She derives her income from a small business in County Waterford employing nine persons, some full-time and others part-time. Her principal private residence in Waterford city is subject to possession proceedings initiated by EBS which stand adjourned pending the determination of the insolvency process. Before the insolvency process was initiated the debtor had dealt with some of her creditors and reached agreement to reschedule the secured debt on the commercial premises from which she runs her business.

5. The assets of the debtor comprise three real properties, her principal private residence held by her subject to a mortgage in favour of EBS, a commercial unit in Waterford held by her subject to a mortgage to Lisduggan Credit Union ("Lisduggan"), and a premises at Dunmore Road, Waterford held by her subject to a mortgage in favour of KBC Bank Ireland plc ("KCB") which is occupied by her parents and who make no direct rental or other payments in respect of their occupation.

6. The principal private residence is valued at €215,000 and the balance outstanding on the secured debt is €329,629.

7. The premises at Dunmore Road Waterford, occupied by the parents of the debtor, has a value of €142,000 and the secured debt outstanding is €244,120.

8. The commercial unit at Waterford has a value of €80,000 and is held subject to the security interest of Lisduggan Credit Union, the current balance outstanding in respect of which is €62,152.

9. The debtor in addition has unsecured loans of approximately €50,000, of which more than €33,000 is owed to AIB.

10. The total current value of the assets of the debtor is €357,000 (including the value of her motor vehicle) and her liabilities are €687,611.

The proposed PIA

11. The PIA proposes, *inter alia*, the following in regard to the treatment of the secured debts:-

> (1) That the debtor retain her principal residence, that the interest rate be reduced to 0.5% for the six year period of the PIA, interest revert to a standard variable rate at the expiration of the PIA, and the term of the loan be extended;
>
> (2) That the debtor retain the premises in which her parents live, that the term of the secured loan be extended and the interest rate remain the same;
>
> (3) That the debtor retain the commercial unit, and that the arrangements already agreed with Lisduggan would continue.

12. A number of issues were canvassed in the course of arguments, and six affidavits in all were filed by the parties.

13. The first objection made by the creditors is that the jurisdictional requirements for the making of an application for review under s. 115A have not been met, and that a class of creditors did not vote in favour of the proposal. I propose first considering this issue because it may be determinative of the application.

The threshold test

14. Section 115A provides for application for review by the relevant court following the rejection of a proposed PIA by a meeting of creditors, and the court has power to approve the coming into operation of a PIA notwithstanding its rejection of the meeting of creditors. Before the statutory power may be invoked at least one class of creditor must have accepted the proposed arrangement by a majority of over 50% of the value of the debts owed to that class: Section 115A(9)(g)

15. Section 115A(9)(g) sets out the threshold requirement that:-

> "other than where the proposal is one to which section 111A applies, at least one class of creditors has accepted the

proposed Arrangement, by a majority of over 50 per cent of the value of the debts owed to the class."

16. An argument is made that no class of creditor voted in favour of the proposed PIA.

How is a classes of creditors to be determined?
17. The application pursuant to s. 115A is to be accompanied by a statement of the PIP setting out the grounds of the application which shall include pursuant to 115A(2)(a)(ii) the followings:-

> "(ii) other than where the proposed Personal Insolvency Arrangement is one to which section 111A applies, a statement identifying, by reference to the information referred to in paragraph (d)(i)(II) contained in the certificate furnished under paragraph (d), the creditor or creditors who, having voted in favour of the proposal, should, in the opinion of the personal insolvency practitioner, be considered by the court to be a class of creditors for the purpose of this section, and giving the reasons for this opinion,"

18. Section 111A deals with circumstances where no creditor supports the proposal and is not relevant to the present case.

19. The ascertainment of the classes of creditors is one made by the court and not by the PIP, although the PIP proposes the distinct classes. Section 115A(2) requires the statement of grounds lodged to initiate the process should identify the classes of creditors proposed by the PIP and the reason for the classification.

20. The question arising for consideration in the present case is whether the class of creditors identified by the PIP in his statement grounding the application may properly be regarded as a class. The PIP identified KCB and Lisduggan collectively as a class of creditors which voted in favour. AIB and EBS voted against the proposal.

21. The PIP furnished a certificate showing the proportions of the respective categories of votes cast by those voting at the meeting of creditors, and identifying the creditors who voted in favour of and against the proposal, and the nature and value of the debt owed to each.

22. All creditors attended the meeting of creditors, 46% of the total creditors in value voted in favour, 54% against; 49% of the secured debt voted in favour and 54% against; the unsecured creditors all voted in favour.

23. The Pip proposes for the purpose of the application under s.115A two classes of secured creditors: KBC and Lisdduggan a class voting in favour; and AIB and EBS voting against.

24. The objecting creditors argue that the distinction made in the certificate of the PIP between two types of secured creditors is "manufactured" or artificial and not in accordance with the subsection. In particular it is argued that the interest or claims of the three secured creditors are not sufficiently different in relation to the debtor to justify identifying two classes of secured creditors. The objecting creditors argue that there is one class of secured creditors, and it voted against the proposal.

25. The PIP argues that the creation of a class comprising the credit union and KBC the owner of security over real property which is not the principal private residence of a debtor is justified. The argument is based on two propositions, one relating to the statutory nature of a credit union, and the other relating to the distinct interest of a creditor holding security over the principal private residence of a debtor.

The ascertainment of the classes
26. Section 115A(17) makes provision for how the court is to determine the membership of a class of creditors.

27. The governing section is 115A(17)(a)(ii) by which the court is to have regard whether the creditors "have, in relation to the debtor, interests or claims of a similar nature"

28. For the purpose of the ascertainment of the nature of the interests of the creditors guidance is provided in s. 115A(17)(b) and the general proposition is that the court shall have regard to the circumstances of the case including, the matters expressly identified as follows:-

> "(b) In deciding under paragraph (a) whether to consider a creditor or creditors to be a class of creditor, the court shall have regard to the circumstances of the case, including, having regard to the statement of the grounds of the application referred to in subsection (2)(a) and the certificate referred to in subsection (2)(d)(i) —
>
> (i) the overall number and composition of the creditors who voted at the creditors' meeting, and
>
> (ii) the proportion of the debtor's debts due to the creditors participating and voting at the creditors' meeting that is represented by the creditor or creditors concerned."

Is the Credit Union a separate class?
29. The first proposition is that Lisduggan may be treated as a separate class because of its legal standing as a mutual lender, and because it is not a credit institution. The governance and ownership of a credit union is regulated by the provisions of the Credit Union Act 1997. Pursuant to s. 17(2) of that Act, membership is limited to those persons who have a "common bond" as set out in the Rules of the credit union. A credit union is a society registered under the Act and is not within the class of "credit institution" as therein defined.

30. The debtor argues that in the circumstances where membership of the credit union is confined, and where the rules governing membership are determined under the 1997 Act, that it is appropriate to characterise a credit union as a "mutual lender class" for the proposes of the threshold requirements under the Act. It is argued that because of the legal status of the credit union, and because members operate under a "common bond", usually arising by virtue of their residence in a defined local area, that the interests of a credit union may be different from those of a bank or credit institution which trades as a limited liability company, or a regulated bank.

31. Counsel for the objecting creditors argues that Lisduggan is a creditor holding security and that the functioning of the Act would not be furthered if there was an undesirable and unwieldy proliferation of classes of creditors. It is argued that the material defining characteristic is that the debt is secured.

Decision on question of characterisation of the credit union

32. Guidance on the ascertainment of the material classes may be obtained from the judgment of Laffoy J. in *Re Millstream Recycling Limited* [2009] IEHC 571. Laffoy J. was considering the exercise of the court of its discretion under s. 201(2) of the Companies Act 1963 to sanction a scheme of arrangement, and whether separate meetings of creditors were required. She quoted with approval the test identified in the judgment of Bowen L.J. in *Sovereign Life Assurance Company v. Dodd* [1892] 2 QB 573 on the construction of the word "class" in the equivalent English statute as follows:-

> "The word 'class' is vague, and to find out what is meant by it we must look at the scope of the section, which is a section enabling the Court to order a meeting of a class of creditors to be called. It seems plain that we must give such a meaning to the term 'class' as will prevent the section being so worked as to result in confiscation and injustice, and that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest."

33. That dicta was later followed by Chadwick L.J. in Re *Hawk Insurance Company Ltd.* [2002] B.C.C. 300.

34. Laffoy J. held that the class was to be ascertained by the following question:-

> "are the rights of those who are affected by the scheme proposed such that the scheme can be seen as a single arrangement; or ought to be regarded, on a true analysis, as a number of linked arrangements?"

35. As she said it is necessary to ensure:-

> "not only that those whose rights really are so dissimilar that they cannot consult together with a view to a common interest should be treated as parties to distinct arrangements and have their own separate meetings",

but also to ensure that those

> "whose rights are sufficiently similar to the rights of others that they can properly consult together should be required to do."

36. Laffoy J. approached the matter in this two-fold way and concluded as follows:-

> "While there are inevitably distinctions in the detail of the claims of the contamination creditors (such as their precise value, procedural progress and so forth), in their basic form, these claims are characterised by an overriding similarity: the claims themselves are of a similar nature; they fall to be determined on similar bases; they arise from the same incident; and, in all cases, the creditors have suffered considerable hardship."

37. I consider that a credit union or other mutual lender may not be characterised as a separate class of creditors merely on account of the rules governing membership of the society, as these rules are relevant to the nature or legal status of the entity, and do not regulate the nature of the loan contract. The Act requires that the members of a class of creditors have a claim or interest of a similar nature. The test is relational and assesses the nature of the claims or interests of a creditor against the debtor in a debt for the purpose of the insolvency process.

38. A loan may be made by a credit union only to a member but that fact does not identify the nature of the loan or the nature of the interest that the creditor might seek to protect in the insolvency process. The mutuality arising from membership of a credit union is one relevant to the members of the credit union, but not of itself one that determines how one is to treat a loan from such an entity in the context of a PIA. I consider therefore that merely on account of the fact that the credit union has a legal status as a mutual lender, or is an entity regulated by a statutory scheme different from that regulating a different creditor, does not of itself mean that a loan from a credit union is to be treated for the purposes of s. 115A as a separate class of loan.

39. How the interests or claims of a creditor are to be assessed for the purposes of ascertaining the class of creditors to which it belongs will depend on such matters as whether the loan is secured or unsecured, or whether the loan is secured on the principal private residence of the debtor or on other property. I consider therefore that the argument that the credit union is to be characterised as a separate and single class of creditors is wrong in the present case, as the credit union is a secured debtor holding security over a commercial property and it may more properly be characterised as the class of secured creditors who do not hold security over the principal private residence of the debtor.

40. Therefore I do not consider that the PIP is correct to argue that the mutual lender is a separate class of lenders in the present case, but I do consider he is correct in his grouping together of the KBC and Lisduggan loans together as one class for the following reason.

The creditors holding security over the principal private residence

41. Section 115A(2)(a)(ii) provides that the ascertainment of the classes is to be made "for the purposes" of the section. Therefore the classes are not always those identified in a proposed PIA, as the rights of a creditor holding security over a principal private residence may be different from those of other creditors holding security. The provision by which the PIP proposes the classes of creditors for the purpose of s.115A was introduced in the Act of 2015 for the purpose of the making of an application under 115A.

42. Section 115A provides a special protection for the principal private residence of a debtor and enables a court to approve the coming into effect of a PIA notwithstanding its rejection at a meeting of creditors if certain conditions are met. The primary condition is that the proposed PIA will enable a debtor to continue to occupy or own his or her principal private residence: s. 115A(9)(b)

43. The Act also envisages special protection for the principal private residence in that s. 104 provides that a PIA should insofar as may be reasonably practicable not require that a debtor cease to own or occupy his or her home. But the interest of a creditor holding security over a principal private residence has a particular focus when a court is exercising its jurisdiction under s. 115A, as that section is formulated to enable a court to approve a PIA if the principal private residence can be retained.

44. The nature of the protection was considered in *Re Sarah Hill* xxx and *Re JD* 2017 IEHC 119.

45. I consider therefore that a creditor holding security over a principal private residence is capable of being considered as a separate class of secured creditors for the purpose of s.115A because its interest is at the centre of the considerations of the court under the section.

46. For these reasons, I consider that in the present case there can be ascertained two separate classes of secured creditors, one class comprising the creditor holding security over the principal private residence EBS, and the other comprising the two creditors holding security over the non principal private residence and the commercial unit.

47. There is a separate class of unsecured creditors.

48. One class, the class of secured creditors holding security over assets not comprising the principal residence of the debtor, voted in favour and the threshold test is established.

Unfair prejudice?

49. The objecting creditors argue that the proposed PIA is unfairly prejudicial. This argument is made on a number of grounds but primarily because it is argued that the means of the debtor are not reasonably brought to bear in the proposed PIA as is mandated by s. 115A(9)(b)(ii). This arises primarily because of the proposal that the debtor would retain the residential premises in which her parents live. It is argued that this imposes an unnecessary and unjustifiable burden on the debtor, and that the affordability of the arrangement is negatively impacted by the ongoing payment by the debtor of the mortgage on the premises in which she does not herself reside as it is an unnecessary burden on her outgoings.

50. AIB and EBS argue that no justifying reason is given why the parents of the debtor could not contribute towards the payment of the mortgage on the premises where thy live, either by paying the mortgage directly or by paying rent.

51. The PIP counters the argument by pointing to the fact that the debtor's parents, who are retired, take care of her dependent children during the working week thereby relieving her of childcare expense, an allowable expense within the Reasonable Living Expenses as identified by the Insolvency Service of Ireland. The PIA does not make any provision for childcare costs and the evidence is that monthly outgoings have been reduced by €1,200 as a consequence. The PIP argues that the retention of the premises in which the parents of the debtor reside is not placing a burden on her but is generalising what is described as "income benefit" in that it frees up income which would otherwise be expended on childcare costs.

52. The debtor says that she works on average 80 hours per week in her business and that this is facilitated by the fact that her mother takes care of her children without charge while she is at work.

53. However certain facts in the proposal are less than clear. The proposed PIA shows that the debtor's mother receives €300 per week in respect of her part time work in the company. It seems that the father of the debtor also works in the company but he does not receive remuneration. Why the debtor's father does not receive a salary, and how the debtor's mother can look after the children and work part time in the business is not explained.

54. Some information is available as to how the premises in which the debtor's parents live came to be vested in the debtor. It seems that this premises was the home of her parents until in or about 1995 and the debtor is her affidavit says that it was "given" to her "for the purposes of securitising a mortgage" to finance the then business operated by her through a different company.

55. At paragraph 17 of her affidavit sworn on 1st July, 2016 the debtor says the following

> "The property was transferred to me to allow me build my business and support my family on the basis that I would allow my parents to reside therein without any rent. The strict understanding of the transfer was that my parents would not, essentially, have to pay for the same property twice, be it in the form of a mortgage, rent or otherwise. I say that same is entirely logical in circumstances where they had fully paid a mortgage and did not need to rent a property for the duration of their lives."

56. Later in her affidavit the debtor makes a statement which adds to the confusion, and after saying that it is "logical and realistic" that her parents do not pay a rent for the premises she goes on to say that that would "be paying a rent to live in their own unencumbered family home for which they paid a mortgage in full". This statement is not consistent with the legal title to the premises which is held in the debtor's sole name, and suggests that the arrangement between the debtor and her parents is more complex than that she has identified. I cannot determine the matter by relying on conjecture or hypothesis however, and again the matter comes down to the assessment of the income figures.

57. The folio has been exhibited and this does not show any right of residence or right of maintenance in favour of the parents of the debtor in the premises which is registered in the debtor's sole name. The deeds or other written agreements have not been exhibited, and the debtor's parents have not sworn an affidavit nor are they on notice of this application. Indeed whether notice could be given to them of the application, or whether they would have a right to be heard, is doubtful having regard to the scheme of the Act.

58. I have some difficulty in understanding the precise role that the mother of the debtor plays in her business, the reason why she and not her husband is paid for working in the business, how the taxation of the benefit in kind in lieu of childcare is dealt with, but I note these in passing only. They do however suggest to me that the debtor's finances are, as she herself fairly says, on somewhat of a knife edge, that the structures she is proposing to put in place are unusual, and that in those circumstances the degree of scrutiny engaged by the objecting creditors can readily be understood.

59. In considering whether a proposed PIA makes reasonably practicable provisions for the retention of a principal private residence of a debtor, regard is to be had to the matter set out in s. 104(2) including the costs likely to be incurred by the retention of that premises identified in s. 104(2)(a) as follows:-

> " …. rent, mortgage loan repayments, insurance payments, owners' management company service charges and contributions, taxes or other charges relating to ownership or occupation of the property imposed by or under statute, and necessary maintenance in respect of the principal private residence"

60. While these types of expenditure are the expression of the legislature of the likely costs of the retention of a real property asset in which a debtor resides, these types of outgoings identity the likely cost of the retention of other real property.

61. The likely true costs of retaining the premises in which the parents of the debtor reside are not accounted for in the proposed PIA. The true costs of the retention of the dwelling house in which the parents of the debtor reside are not identified and therefore to test the sustainability of the retention of that property creates some difficulty.

62. What is argued by the objecting creditors in a general way is that the retention of a real property from which no income is derived

is burdensome and creates a drain on income resources which is not justifiable in the circumstances. I consider that the objecting creditors are correct in this in the circumstances of the present case.

63. Therefore I consider that the means of the debtor have arguably not been brought to bear on the arrangement and that the test in s.115A(9)(b)(ii) as explained in *Re Dunne* 2017 IEHC 59 is not satisfied.

64. I turn now to consider other factors relevant to my decision.

The statutory protection for the principal private residence
65. A personal insolvency arrangement may not by virtue of s. 99(2)(d) require a debtor to sell any of his or her assets that are

> "reasonably necessary for the debtor's employment, business or vocation unless the debtor explicitly consents to such sale"

66. In that context the retention of the factory premises may be justified.

67. But the residential dwelling in which the parents of the debtor reside does not have the benefit of any statutory protection even if the premises is one occupied by persons to whom the debtor has a moral obligation or the type of legal unregistered legal obligation at which the debtor hints.

68. In those circumstances the fact that the retired parents of the debtor continue to reside in the premises held in their name until 1995 or thereabouts, cannot influence me in coming to a decision as to the reasonableness of the proposal or its sustainability, and the test that I must apply is one that will engage the balance between the income and outgoings of the debtor, and whether the income and financial mens of the debtor are sufficiently brought to bear on the arrangement.

69. I turn now to consider whether the proposed arrangement is sustainable in all of the circumstances.

Is the arrangement sustainable?
70. It is also argued that the proposed PIA is not reasonably sustainable.

71. The debtor contends that the current circumstances by which her father works without pay in her business, and her mother cares for her children without pay, contributes €2,166 monthly to her net disposable income, or more correctly reduces by that sum the net demands on income, and argues that this compares favourably with the €946, the current monthly payment on the KBC mortgage. That calculation does not take account of the €300 per week paid to the debtor's mother to work in her business.

72. As explained above, the lack of full information makes it impossible for me to come to a clear view other than in a general way whether as argued by the debtor the retention of the premises in which her parents live is cost neutral, or provides an income benefit to her. The figures and absence of clarity simply do not enable me to support her proposition.

73. Further, I am not persuaded that the company is capable of sustaining the arrangement. I turn now to examine the evidence regarding the business of the debtor.

The company
74. Prior to January, 2016 the debtor was the owner of and traded through a company Strongrose, now in liquidation. The business operated by that company was the making of blinds and Strongrose traded as Tara Blinds. That trade or business has now been transferred to another company Micore Ltd described in the PIA as a "new company". Strongrose became insolvent due to what the debtor describes as "historic liabilities" but she says the new company is "different and is profitable on an ongoing basis". The debtor denies that she has merely "replicated" the business of the liquidated company in the new entity and says that she has made changes to the business which has been "streamlined".

75. The PIA describes the new business of Micore Ltd as having the "migrated" from the company now in liquidation "in an effort to ring fence the business and core legacy debt", said to be mostly owed to revenue which the Tara Blinds business "would not have been in a position to address". I do not propose engaging with the question raised in affidavits and in submissions as to whether the new company is a "phoenix company" although I do not regard it as irrelevant that the old company ceased trading with significant liabilities and was insolvent.

76. However, I accept the argument of the objecting creditors that the circumstances of the setting up of the new company might make the support of trade creditors, Revenue and banking creditors "fragile" given the failure of the previous business and that the probable lack of support in those circumstances is a fact that should be taken into account in assessing the financial strength of the company.

77. The trading record of Micore from which the debtor derives her total income is available only for the period of seven months after the 31st July, 2016. The profit and loss account shows a profit for the seven month period ending in the 31st July, 2016 of a little over €20,000 and shows a director's salary of €4,660 paid to the debtor when she was a director. She has since resigned as director.

78. To meet the requirements of the proposed PIA the debtor will require an income of €49,000 per annum from the company and the figures extrapolated from seven months do not support such annual drawings or salary.

79. Another factor that must weigh in my consideration is that the debtor is quite clear that her current income from her business is dependant on the unpaid work of her parents. Her parents are both in their late sixties and while I accept that they may be willing and able to work at present, it is less clear that they will be able to work at the level required to support the business even for the six year term of the PIA

80. The debtor has also produced a business plan prepared in March, 2016 in which it is projected that the business will be profitable "within its first trading year". No updates on those figures were adduced in evidence. This judgment is given in an appeal of an order made in the Circuit Court and the evidence is that placed before that court, affidavit evidence sworn between June and September, 2016. No update in the figures was sought to be adduced although the appeal was not heard for a year after the judgment was given on the 14th October, 2016 by the Circuit Court. While in general an appeal from the Circuit Court is determined on the evidence before that court, provision does exist for the making of an application to adduce further evidence. Having regard to the level of doubt expressed in the replying affidavits as to the sustainability of the business, and having regard to what could on any interpretation be regarded as narrow margins, it would have been more helpful to my analysis had updated evidence been available

from the debtor as to the current state of her business.

81. I also consider it to be relevant although not determinative that Mitchell O'Brien the PIP in his affidavit of the 1st July, 2016 at para. 16 makes the following averment with regard to a submission made under s. 98 (1) regarding the retention of the non principal private residence:-

> "The submission that the KBC mortgage was to be paid by unemployed/pensioner parents was not something the debtor would consent to despite numerous discussions between the PIP and the debtor in this matter."

82. Mr. O'Brien is an experienced PIP, and was obliged by statute to put before the meeting of creditors an arrangement which he believed was sustainable. This averment perhaps reflects a view that an alternative proposal might have been more acceptable to creditors, albeit that the PIP is by virtue of his statutory role to be assumed to be taking the position that the proposed arrangement is sustainable and provides a better return for creditors.

Decision

83. I consider that the application must fail for a number of reasons relating to the financial circumstances of the debtor and the elements of the proposed PIA.

84. The financial basis on which it is made is not clear to me, and too many elements of uncertainty and conjecture exist for me to take a view that the arrangement is genuinely sustainable in the manner suggested.

85. I am also not satisfied that all of the means of the debtor have been brought into account in the formulation of the proposed PIA. That such bringing to account is an essential requirement of the legislation is clear from s.115A(9)(b)(ii)

86. I accept taken alone that the return from the sale of the principal private residence of the debtor should she become bankrupt and should the creditor remain out of bankruptcy and rely on its security, might be less than that which is to be achieved in the proposed PIA, but that fact alone is not determinative of the question of the sustainability of the proposal, whether all assets of the debtor are brought to bear, or more importantly whether the proposed PIA is unfairly prejudicial to a creditor or group of creditors.

87. I consider that it is unfairly prejudicial to the objecting creditors that the non core asset, the domestic premises in which the parents of the debtor resided should be retained as this is inevitably a burden on income. Because of the difficulties that I have explained with regard to the proposal, I do not consider it necessary to more fully analyse the question of unfair prejudice.

88. More importantly however I am not satisfied on the information I have that that the business of the debtor can sustain the proposed PIA as is required by s.115A(9)(b) and (c).

89. Therefore I propose dismissing the appeal.