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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **06/10/2025**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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Between:

HIS MAJESTY'S REVENUE AND CUSTOMS

Petitioner (Respondent)

-and-

JAMES RANKIN

Respondent (Appellant)

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Anthony Brennan (instructed by Seamus Delaney, Solicitors) for the Appellant
Jordan McClurkin (instructed by the Crown Solicitor's Office) for the Respondent

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SCOFFIELD J

Introduction

[1] This is an appeal against a bankruptcy order made by the Master (Bankruptcy) on 26 March 2025. The bankruptcy petition was presented on 22 January 2025. It was grounded upon a statutory demand of 28 October 2024 which was served on the appellant, Mr Rankin, on 6 November 2024, seeking payment of some £1,216,942.88.

[2] The statutory demand sought payment of liabilities incurred by Mr Rankin as a result of service of notices by His Majesty's Revenue and Customs (HMRC). These were liabilities to make payments in respect of penalties related to under-payment of VAT. The appellant avers that he instructed a firm of solicitors "to defend the Statutory Demand"; and that he also applied to the First-tier Tribunal (Tax Chamber) ("the Tax Tribunal") to challenge the decision of HMRC. In summary, his case is that his previous firm of solicitors inexplicably let him down and failed to challenge the statutory demand, as he had instructed; and that his appeal to the Tax Tribunal also failed as a result of their defective advice or service.

[3] Mr Brennan appeared for the appellant; and Mr McClurkin appeared for the respondent, HMRC. I am grateful to both counsel for their submissions.

[4] In the event, Mr Brennan did not pursue an order setting aside the bankruptcy order. Rather, his more modest request at this stage of the proceedings was for an order staying the bankruptcy order until such time as his client had had an opportunity to seek to pursue an appeal before the Tax Tribunal challenging the notices setting out his liability to HMRC.

Factual background

[5] The underlying VAT liability which was the subject of the statutory demand arises out of a series of transactions carried out by companies which had been set up by the appellant, in particular JDR Commercials Ltd (JDRC). This was a company which sourced vehicles in Great Britain for sale into the Republic of Ireland to a company in Dublin known as Capital Motors. The appellant's company reclaimed VAT which had been paid by Capital Motors to the vehicle seller. HMRC later determined that VAT was in fact payable on a number of relevant transactions. The decision to deny zero-rating on relevant transactions was made in February 2021. HMRC further decided that the appellant himself was personally liable to pay the relevant penalties in the circumstances, rather than the company.

[6] The statutory demand lists the penalties as arising in January 2022 and February 2023, with the debtor being personally liable as an officer of JDRC by virtue of notices issued at the same time as the penalty notices, namely on 18 January 2022 and 9 February 2023. Similar notices were issued in relation to the appellant's personal liability to pay penalties levied against another company in which he was involved, EK Express Freight Ltd, which arranged for transport of the vehicles to Capital Motors in Dublin. Those notices appear to have been issued on 10 December 2021 and 10 June 2022. The relevant notices in relation to the appellant's personal liability were issued under para 22(1) of Schedule 41 to the Finance Act 2008 ("the 2008 Act") and para 19(1) of Schedule 24 to the Finance Act 2007 ("the 2007 Act"). In short, HMRC considered that the penalty in each case was due to a deliberate act or failure, or deliberate inaccuracy, attributable to the appellant as an officer of the relevant company.

[7] The appellant contends both that the companies were entitled to reclaim VAT and, in any event, that he ought not to have been personally liable to repay the VAT or the penalties. He contends that he was advised by a representative of HMRC in the course of a VAT inspection that his business practice was "perfectly within the rules", although no further material particulars of this exchange have been provided in his evidence. He also says that JDRC satisfied itself of the bona fide nature of Capital Motors; that there were valid commercial reasons for use of the business model described above, with JDRC "interposed" between the seller and ultimate buyer of the vehicles; and that this was not a "carousel" arrangement engineered simply to facilitate the improper reclaiming of VAT. The appellant also contends

that the liabilities arose after JDRC had been transferred by him and after he had ceased to play any active role within the company. HMRC takes issue with these claims and their effect on its determination, first, that the penalties were appropriate and, second, that it was appropriate to require the appellant to discharge them.

[8] However, the appellant's case is further that the firm of solicitors which he instructed – which is not named in this ruling since the firm has not had an opportunity to make representations in respect of the appellant's complaints about it – did not "defend" the statutory demand. I take this to mean that there was no application to set aside the statutory demand.

[9] The evidence in relation to this contention is not entirely straightforward. Most of the summary below is gleaned from documents provided by HMRC in this appeal. The appellant addresses the matter in fairly sweeping terms in his grounding affidavit.

Failure to apply to set aside the statutory demand

[10] I am satisfied from the evidence provided by the appellant, consisting mostly of a detailed breakdown of legal costs payable to the solicitors, that he instructed them in relation to the service of the statutory demand upon him, although it appears that this was at a very late stage if his intention was that an application to set aside the statutory demand should be made. (The copy of the bill of costs provided by the appellant does not clearly show the date of each piece of work itemized by his previous solicitors.) The appellant avers that, at a later point, his solicitors denied ever seeing the statutory demand. There is some support for this in correspondence from a solicitor within the Crown Solicitor's Office (CSO) who appeared in person before the Master at the hearing of the bankruptcy petition on 6 March 2025. Her court report in relation to that hearing records the principal of the solicitors' firm who was appearing for Mr Rankin seeking an adjournment (for personal reasons related to the health of his client's father) but also commenting that "he wasn't fully aware of how the liability materialized – he has only acted for this client for past 6 months and he never brought stat demand to his attention."

[11] An email of 20 November 2024 which was provided to the court shows the solicitors seeking notes and records from the applicant's previous adviser who had been acting on Mr Rankin's behalf. (That adviser, a Mr Ben Clarke working under the banner 'Solutions NI', had been in contact with HMRC objecting to the statutory demand by email of 12 November 2024. The HMRC response of the following day indicated that HMRC would be proceeding with its legal action; but advised that an application could be made to the High Court to set aside the statutory demand, with details provided of the procedure for doing so.)

[12] The solicitors' email of Wednesday 20 November 2024 encloses a form of authority (of the same date), signed by the appellant, seeking earlier records from Solutions NI "together with any applications previous [sic] made to the Taxation

Tribunal or any that are pending." The email notes that the solicitors "must have an application to set aside the Statutory Demand with the Court at the latest by close of business, Friday of this week" (i.e. by close of business on 22 November 2024, that being the last working day before expiry of the 18 day time limit). Accordingly, the documentation sought was requested to be provided "overnight." It is unclear from the evidence before me whether the information was provided within the timescale requested or at all. The bill of costs also makes clear that counsel was instructed, provided an opinion and consulted on 26 November 2024. It is again unclear from what has been provided by the appellant whether counsel was instructed before or after the passing of the deadline for applying to set aside the statutory demand. The bill of costs suggests that the solicitors remained instructed until March 2025.

[13] The solicitors were therefore requesting papers from the applicant's other adviser – described elsewhere as his accountancy representative, who had been assisting him with proceedings before the Tax Tribunal – a very short time before the deadline for applying to set aside the statutory demand passed. In the event, it seems that no application to set aside the statutory demand was made, either within time or after the time limit had expired (with an application to extend time for service of the application). This is relied upon by the respondent to the appeal.

The hearings before the Master

[14] Since no payment was made on foot of the statutory demand, HMRC presented a petition for the appellant's bankruptcy on 22 January 2025. A bankruptcy hearing was initially listed before the Master on 5 March 2025. As noted above, the appellant's previous solicitor appeared for him at this hearing and sought an adjournment (see para [10] above), which was granted. The hearing was adjourned until 19 March.

[15] By the time of the hearing on 19 March 2025, it seems that the appellant had instructed his current legal team and the former solicitors (about whom he now complains) had come off record. Similar submissions as were made before me on the appeal appear to have been advanced before the Master, albeit in short form, including that the previous solicitors should have disputed the statutory demand and that there was an "ongoing matter" in the Tax Tribunal. The Master granted a further one-week adjournment to allow CSO to obtain instructions in relation to whether there was a pending appeal before the tribunal which was directly relevant to the statutory demand. She did not permit the appellant to file any other papers at that stage in support of an application to set aside the statutory demand (which was, of course, long out of time).

[16] At the further hearing on 26 March 2025 HMRC continued to seek a bankruptcy order because it had determined that there was no ongoing case before the Tax Tribunal (as detailed further below at paras [17]-[19]). On behalf of the debtor it was submitted that an application to reinstate the appeal had "got lost"; but that HMRC had been advised in December that an application to reinstate an appeal

was underway. The Master proceeded to grant a bankruptcy order in circumstances where, having been told that there was an ongoing appeal before the Tax Tribunal relating to the liabilities which formed the basis of the statutory demand, this turned out to be incorrect. According to the CSO note, she would not hear representations which were critical of the previous solicitors when they were not present to respond. The appellant's counsel advised the Master that the order was likely to be the subject of an appeal to the judge.

The proceedings before the Tax Tribunal

[17] The appellant also averred in his grounding affidavit in support of this appeal that his application to the Tax Tribunal was "withdrawn" and that this was "because of advice that I received in that the Statutory Demand would be defended and therefore it [the appeal] was not necessary." I find this difficult to understand for a number of reasons. First, it seems that the appeal before the tribunal was being dealt with at all material times by the appellant's accountancy representative, rather than the solicitors he instructed. It is not at all clear that they were coordinating between themselves. Second, as appears below, the appeal was not in fact "withdrawn." It was struck out, albeit that a later application to reinstate the appeal appears to have been withdrawn. Third, the appellant complains that no steps were taken to 'defend' the statutory demand. It is unclear why he would have withdrawn an appeal (against the notices which grounded the statutory demand) unless and until it was clear that an application to set aside the statutory demand had actually been made. In addition, for reasons set out in further detail below (see paras [29]-[38]), the correct approach would have been to pursue the appeal to the Tax Tribunal first, seeking an adjournment of the application to set aside the statutory demand pending the outcome of that appeal.

[18] The appellant's affidavit also states that "an appeal is being made to the Tax Tribunal." This too, it appears, is inaccurate insofar as it purports to be a statement of fact. HMRC was able to provide more detailed information about the history of the appeal proceedings, which I summarise as follows:

(i) An appeal was lodged by the appellant in 2023. However, this was struck out for non-compliance with an 'unless' order dated 26 June 2024. That order noted that the appellant having failed to comply with directions issued by the tribunal on 7 February 2024, unless he confirmed in writing to the tribunal that he intended to proceed with the appeal by 10 July 2024, the proceedings would be struck out without further reference to the parties. When this order was not complied with, the appellant's agent was written to on 2 August 2024 to advise him that the appeal was automatically struck out on 11 July 2024. This correspondence advised of the right to apply for reinstatement of the proceedings within 28 days.

(ii) No application for reinstatement was made within that time limit.

(iii) In December 2024 HMRC was advised that the appellant's accountancy representative had contacted the tribunal (by email on 15 October 2024) with a view to his appeal being reinstated. This email was incorrectly addressed to the HMRC lawyer's email address and therefore did not arrive with him. The appellant was later directed by the tribunal to provide a fully particularized application to the tribunal setting out the reasons why the appeal should be reinstated by 11 February 2025. (It is implicit within this that the tribunal did not consider the communication of 15 October 2024 to be adequate in this regard).

(iv) However, on 3 March 2025 HMRC was advised by the tribunal that the appellant had informed it that he had withdrawn his reinstatement application. The effect of this was therefore that the appeal remained struck out and the tribunal closed its file. The appellant's accountancy representative was similarly advised. This is the position of which the Master was informed at the hearing on 26 March. (In fact, internal HMRC correspondence which has been disclosed to the court suggests that Mr Rankin's agent emailed the tribunal on 25 February 2025 to say that it "seems appropriate to withdraw this appeal which has been compromised by HMRC litigation" and to comment that the appeal had been "rendered redundant by the issuing of bankruptcy proceedings").

(v) No further appeal has (yet) been made seeking an extension of time; nor any further application to reinstate lodged.

[19] Accordingly, at the time of the statutory demand being served and during the period within which the appellant could have applied to have it set aside, his appeal to the Tax Tribunal had been struck out (albeit his agent had taken a step in mid-October 2024 indicating an intention to apply to have the appeal reinstated). Further, by the time of the bankruptcy hearings before the Master, any attempt to reinstate his appeal to the Tax Tribunal had been abandoned, apparently because it was considered that the bankruptcy proceedings should simply take their course.

Effect of the failure to apply to set aside the statutory demand

[20] There was no application to set aside the statutory demand in this case. The effect of neglecting to pay the sum so demanded, or to secure or compound the debt, is that the creditor is deemed unable to pay their debts (see Campbell LJ in *Re City Hotel (Londonderry)* [2003] NICA 47, at paras [22]-[23]). The appellant does not rely on a range of other objections which might be raised against the making of a bankruptcy order. His case resolves to seeking to look behind the debt. Relatedly, he contends that he lost an effective opportunity to ask the Master to do so by reason of the failings of his previous solicitors.

[21] The court has power to dismiss or stay a bankruptcy petition "for any other reason" under Article 240(3) of the Insolvency (Northern Ireland) Order 1989. This

power may be used where there is an attack on the debt itself. It is perhaps most often or most readily used in the case of a judgment debt where the judgment obtained against the debtor was obtained in default of a defence. It is plainly not limited to such an instance. However, there must be something which taints the judgment so that either the public interest demands that the court's discretion be exercised or such that not to do so would work an injustice on the creditor (see Gowdy & Gowdy, *Individual Insolvency: The Law and Practice in Northern Ireland* (SLS, 2009), hereinafter "Gowdy & Gowdy", at para 4.66). Mr McClurkin relied upon this approach by way of analogy in the course of his submissions.

[22] In the present case, of course, the petitioner did not rely upon a judgment but simply a statutory demand which, in turn, relied upon its own assessments. However, HMRC now relies upon the fact that the appellant initially pursued an appeal to the Tax Tribunal which was struck out; and that there is presently no live appeal before the Tribunal. In such circumstances, it contends that the appellant cannot now seek to invite the court to go behind the debt; particularly where there was no application to set aside the statutory demand, nor even an effort made to seek to formally challenge the debt at the stage of the presentation of the bankruptcy petition.

[23] It is axiomatic that a creditor's petition must be in respect of a debt actually owed by the debtor. The authors of Gowdy & Gowdy consider the position of a debtor who seeks to challenge the debt at the petition stage, having failed to apply to set aside the statutory demand, at para 4.68 of their text, in the following terms:

> "Of course, most creditors' petitions will have been preceded by the service of a statutory demand, and if a debtor waits until the bankruptcy petition has been presented and served before challenging the debt, it begs the question as to why he did not take the appropriate steps to set aside the statutory demand. The anomalous position is reached whereby the debtor appears to be unable to pay a debt which he says is not due. Nevertheless, the jurisprudence leads to the conclusion that failure by the debtor to attempt to set aside a statutory demand is no bar to his challenging the debt at the petition stage. If, however, the debtor had applied to set aside the statutory demand, but was unsuccessful, he will not, in the absence of a relevant change in circumstances, be entitled to dispute the debt on the hearing of the petition."

[24] Thus, a debtor who, as here, has failed to apply to set aside a statutory demand will be in a somewhat better position than a debtor whose application to set aside the statutory demand was brought and failed. Gowdy & Gowdy suggests that, in the former case, the general practice in this jurisdiction is for the court to extend

time to allow the debtor to apply to set aside the statutory demand which, the authors opine, is logically "the correct course, as the failure to set aside the statutory demand or comply with it means that the debtor is insolvent within the meaning of the statutory definition." The predicament of the debtor in the latter case was established in *Moore v Inland Revenue Commissioners* [2002] NI 26.

[25] This area was addressed again in the judgment of McBride J in *Department of Finance v Foster* [2021] NICh 4. In that case, counsel for the creditor, relying on *Fulton v AIB* [2014] NICh 10, submitted that failure to apply to set aside a statutory demand conclusively determined the liability of the debtor to pay the debt demanded by the creditor, just as much as an unsuccessful application to set aside the statutory demand. McBride J, however, drew a distinction between these two situations at para [32] of her judgment:

> "The leading authorities of *Moore v Inland Revenue* [2002] NI 26 and *Turner v Royal Bank of Scotland* [2000] BPIR 683 make clear that the scheme set out by Parliament is such that any dispute as to the debt ought to be raised at the statutory demand stage. In the leading authorities of *Moore v Inland Revenue* [2002] NI 26 and *Turner v Royal Bank of Scotland* [2000] BPIR 683 and also in *Fulton* however the debtor had unsuccessfully applied to set aside the statutory demand. These authorities can therefore be distinguished from the present case as Mr Foster has never applied to set aside the statutory demand. Accordingly, there has been no hearing or adjudication in relation to the statutory demand. I consider such a challenge is not therefore *res judicata*. Indeed there can be good reasons why a debtor does not dispute a statutory demand and accordingly I consider that the court can and should at the petition stage consider any dispute raised as to the debt when there has been no application to set aside the statutory demand."

[26] McBride J considered that there was further support for this view to be found in *Barnes v Whitehead* [2004] BPIR 693, at para [10]. In that decision of the English High Court it was held that where the debtor had not availed himself of the opportunity to challenge the demand by applying to set it aside, he exposed himself to the issue of a bankruptcy petition but was neither bound by issue estoppel nor guilty of abuse of the process of the court when raising arguments which had not been previously determined as between him and the creditor. The bankruptcy court had to be satisfied that the debt was due; and an application to set aside the statutory demand was not the *only* procedure by which the debt could be disputed (notwithstanding that it was "plainly the correct procedure" to follow). In the *Foster* case, McBride J went on to consider the debtor's submissions disputing the debt, notwithstanding that she found service of the statutory demand on him to have been

effected and the fact that he did not seek to have it set aside. In the event, the judge held that those submissions were without merit and that the rates were owed to the Department. That conclusion was perhaps unsurprising given that the statutory demand was based upon court decrees against the debtor which had already been secured in the Department's favour.

[27] The underlying theme of the case-law in this area is that, absent some exceptional factor (usually a material change in circumstance since the first determination), a debtor cannot have more than one bite of the cherry by simply re-running the same argument which has been authoritatively rejected in a prior determination between the parties. However, since there was no determination on the merits in relation to the debt at the statutory demand stage, the respondent cannot prevail in this appeal simply by virtue of the fact of Mr Rankin having failed to apply to set aside the statutory demand.

[28] I should also say something about the supplementary submissions made by Mr McClurkin to the effect that (i) a failure on the part of professional advisers cannot, as a matter of law, give rise to an ability to defend the presentation of a bankruptcy petition (or provide grounds for the setting aside of a bankruptcy order); and (ii) in any event, if the appellant's previous representatives failed him, he is at liberty to pursue them for any damage or loss he has suffered as a result. I did not find either of those submissions persuasive. As to the first, there may be cases where a genuine failure on the part of a debtor's legal representatives to present his or her case can and should be remedied at a later stage of the process. Each case must be examined on its own merits, balancing the need for finality in litigation against the debtor's right to a fair hearing. As to the second submission, there appeared to me to be force in the appellant's submission that in such a circumstance, if the bankruptcy order stood, a bankrupt's ability to pursue his or her former representatives would be an inadequate remedy. In the first instance, they would have been made bankrupt which, on their case, would or may have been avoided if his case had been properly presented by their previous solicitors. Additionally, once made bankrupt, any right of action he or she may have against their former representatives would be vested in the trustee in bankruptcy and not for the bankrupt themself to exercise.

Effect of the struck-out appeal to the Tax Tribunal

[29] Does the appellant's failure to pursue to conclusion his appeal before the Tax Tribunal put HMRC in any better position, or put the appellant in any worse a position, than his failure to apply to set aside the statutory demand? In my view, it does.

[30] The matter is not strictly one of res judicata because, although the appellant initiated an appeal to the Tax Tribunal, it has not been pursued to a conclusion. I need not decide whether a dismissal of an appeal to the tribunal on the merits would preclude the debtor, on the same or similar grounds as were relied upon in the

appeal, seeking to oppose the making of a bankruptcy order on presentation of a petition by HMRC. Prima facie, it would seem highly likely that the debtor would be precluded from seeking to relitigate those issues; but that does not arise in the present case because there was no adjudication by the tribunal on the merits. Rather, Mr Rankin's appeal was struck out for non-compliance with procedural directions. The general rule (expressed, for instance, albeit in a different context, in Valentine, *Civil Proceedings: The Supreme Court* (SLS, 1997), at para 13.106) is that even a High Court judgment dismissing a claim for procedural default, a discontinuance or a 'strike out' before trial each cause no estoppel because there has been no determination on the merits.

[31] However, there is a more fundamental difficulty for the appellant because of the nature of the debt owed to HMRC. It arises under a statutory scheme which renders it payable as a matter of law and immediately enforceable after the statutory time provided for payment has passed. For instance, the provisions of Schedule 24 to the 2007 Act and Schedule 41 to the 2008 Act make clear that penalties assessed by HMRC under those schedules are enforceable as if they were an assessment to tax (see paras 13(2)(b) and 19(5) and paras 16(3)(b) and 22(5) of the schedules respectively). An appeal to the tribunal shall be treated in the same way as an appeal against an assessment of tax. Each schedule makes provision that the individual is not required to pay the penalty before an appeal against the assessment of the penalty is determined (see para 16(2)(a) and para 18(2)(a) respectively). In the absence of an extant appeal, however, the individual (in this case the appellant) is required as a matter of law to pay the assessment within the 30 days of being given notice of it. These provisions are consistent with the approach in the parent Act, the Value Added Tax Act 1994 (see, for instance, sections 73(9) and 76(9)).

[32] Where, therefore, a significant liability is determined against an individual by HMRC, in circumstances, where as a matter of law that amount then becomes payable, but statute provides a right of appeal to the Tax Tribunal, the assessment should plainly be appealed to the tribunal if and insofar as the individual wishes to dispute it. The Tax Tribunal is the specialist tribunal established by Parliament for that purpose, presided over by tribunal judiciary with expertise and experience in the area, and with a right of appeal, with leave, to the Upper Tribunal (Tax and Chancery Chamber), the jurisdiction of which is similar in a number of respects to that of the High Court. In my view, there would need to be something truly exceptional and highly persuasive before a bankruptcy court would go behind a tax liability which has legal force under the applicable statutory regime in circumstances where a right of appeal to the Tax Tribunal was available to the taxpayer but not pursued. In his oral submissions Mr Brennan candidly accepted that the tribunal is the appropriate authority to deal with a challenge to a tax assessment and that this was not a matter for this court. It seems to me that the approach outlined above is essentially how the matter was addressed by the Master. On learning – contrary to what she had previously been told – that there was no extant appeal to the tribunal, she considered the case for a bankruptcy order being made to be clear-cut.

[33] Moreover, in addition to the above approach making sense as a matter of first principles, it is also supported by authority in England and Wales. For instance, in *HM Commissioners of Customs & Excise v D&D Marketing (UK) Ltd* [2002] EWHC 660 (Ch), [2003] NPIR 539, relying on the earlier Court of Appeal decision in *Cozens v Commissioners of Customs & Excise* [2000] BPIR 252, Evans-Lombe J held that the sum set out in a VAT assessment remained due until that assessment was successfully appealed to the relevant tribunal. The assessment remained recoverable as a debt due to the Crown under the relevant statutory provisions unless and until successfully appealed. That was another case involving assessment of VAT in relation to international trading arrangements. In that case, an appeal had been lodged and was *extant* at the time when the High Court considered the making of a winding-up order. Evans-Lombe J therefore considered the prospects of the appeal in reaching his own decision.

[34] A similar approach was taken in the more recent case of *Viera v Revenue and Customs Commissioners* [2017] EWHC 936 (Ch), [2017] 4 WLR 86, namely that, on an application to set aside a statutory demand, a tax assessment gives rise to a statutory debt; the Tax Tribunal has exclusive jurisdiction to consider and determine challenges to tax assessments; and it is not open to the bankruptcy court to review an assessment or the manner in which it was made. Those considerations were held to represent the rationale underlying a provision within the relevant Practice Direction to the effect that, where the debt claimed in the statutory demand is based on a tax assessment, the court would not at that stage inquire into the validity of the debt nor, as a general rule, adjourn the application to await the result of an appeal. Although there is no similar procedural provision in this jurisdiction, the principles underlying the relevant provision in the English Practice Direction were recognized in case-law which is highly persuasive in this jurisdiction and the reasoning of which applies equally here, particularly since the courts were construing statutory schemes which have effect throughout the United Kingdom.

[35] The judgment of Arnold J in the *Viera* case contains a helpful summary and discussion of earlier case law, including the "long line of cases in which bankruptcy and insolvency courts have declined to go behind tax assessments and have treated the correctness of such assessments as lying exclusively within the province of the relevant tax tribunal", as well as cases in which the courts had appeared to adopt a more flexible approach (see paras [59]-[80] of the judgment).

[36] Following this analysis, he held that the jurisdiction of the court at the statutory demand stage (where the demand was based on a tax assessment) was limited to considering whether, in its discretion, to adjourn the application to set aside the statutory demand to await the determination of an appeal to the tribunal. Moreover, that discretion should be sparingly exercised. In general, the key factors in the exercise of the discretion would be the status and timing of the appeal. The court also held (at para [83]) that:

> "An adjournment is much more likely to be granted in a case where the taxpayer has appealed in time and a decision of the [Tax Tribunal] can be expected reasonably soon than in a case where the taxpayer only appealed after the service of the statutory demand, was out of time for doing so and thus is dependent on the FTT giving him permission to appeal out of time."

[37] Moving on to the position when the court was considering a bankruptcy petition rather than an application to set aside a statutory demand, Arnold J went on (at para [84]) to hold as follows:

> "Turning to the Bankruptcy Court's discretion when considering a petition, I agree with counsel for HMRC that it is wider than when considering whether to set aside a statutory demand, but how wide it is depends on the taxpayer's position with regard to an appeal. If the taxpayer has exhausted his rights of appeal against the tax assessment or is out of time for appealing, then the extent of the court's discretion is that stated in *Lam* and *Chamberlin*: the court will make a bankruptcy order unless, exceptionally, there is sufficient evidence that the assessment is fraudulent or collusive or that there has been some other glaring miscarriage of justice. If, on the other hand, the taxpayer has an extant appeal pending before the FTT, then *D & D Marketing* and *Changtel* show that the court's discretion is broader. In those circumstances, a key factor in the exercise of the court's discretion is whether the court considers that the appeal has a real prospect of success. If the court is satisfied that the appeal has no real prospect of success, then the court should make a bankruptcy order. Otherwise, the court may either adjourn the petition or dismiss it depending on the circumstances."

[38] Similarly, in *Worby v IRC* [2005] EWHC 835 (Ch), [2005] BIPR 1249, one of the cases cited in *Viera*, Sir Donald Rattee dismissed an appeal against a bankruptcy order based upon a statutory demand which, in turn, had been based upon assessments of tax, surcharges and penalties. He held that it was no longer open to the appellant to seek to disturb by the appeal the previous determinations of liability to tax: "That liability could have been challenged only in accordance with the statutory procedure laid down by Parliament for appeals…"

[39] The absence of an extant tax appeal in this case is, therefore, a very significant hurdle for the applicant. The above authorities also illustrate (i) that no significant injustice was suffered by virtue of the appellant not having applied to set aside the

statutory demand; and (ii) that the Master cannot be faulted for taking the approach which she did on the bankruptcy petition. If the previous solicitors had applied to set aside the statutory demand, the Master's discretion would have been limited. She would really only have been able to adjourn the application pending the appeal to the Tax Tribunal (which, at that time, had already been struck out). At the hearing of the bankruptcy petition, when the Master learned that there was no extant appeal before the Tax Tribunal and Mr Rankin had exhausted his appeal rights by way of the tribunal's strike-out, her discretion was again limited. There was certainly no evidence that the assessment was fraudulent or collusive or that there had been some other glaring miscarriage of justice. In those circumstances, the making of a bankruptcy order was virtually inevitable.

Going behind the statutory demand

[40] Notwithstanding the appellant's initial invitation to the court to go behind the statutory demand and inquire itself into the merits of his defence in relation to the VAT penalties and personal liability notices, he provided extremely limited evidence in his affidavit about those merits, including (for instance) when, how and to whom he disposed of any interest he had in JDRC or as to the precise operation of the business model he used and its implications for VAT liability. The thrust of his argument was simply that he would have had substantial points to make (which are identified for present purposes only in very summary terms) if only his solicitors had been more effective in advancing his case.

[41] The paucity of evidence in relation to the substance of any objection the appellant may have might have been the reason why Mr Brennan pitched his request of the court at a modest level. Rather than seeking an order setting aside the bankruptcy order, he commenced his submissions by indicating that he merely asked this court to put a stay on the bankruptcy order which had been against Mr Rankin. This was so that the issue in dispute (the VAT liability) could go forward to (what Mr Brennan described, properly in my view) as "the proper competent authority" to deal with that issue, namely the Tax Tribunal. It is clear that the efficacy or utility of any such approach is dependent on the question of whether or not the tribunal will entertain any such appeal at this stage. I return to that issue below.

[42] It seems to me that Mr Brennan was right not to seek to persuade the court to set aside the bankruptcy order. Any such request faces the difficulty that the appellant has not pursued an appeal to the Tax Tribunal. In any event, as noted above, the evidence relied upon is extremely sparse, amounting to little more than a few bare assertions on affidavit. No supporting documentation in relation to the substance of Mr Rankin's case has been provided. The affidavit is also unreliable at least to some extent. The appellant averred that his application to the Tax Tribunal was "withdrawn… because of advice that I received in that the Statutory Demand would be defended and therefore it [the appeal] was not necessary." However, at the time when the statutory demand was served (6 November 2024) the appeal had

not been withdrawn; rather, it had been struck out. An attempt to advance its reinstatement had been made in October 2024, in advance of Mr Rankin receiving the statutory demand. However, when the reinstatement application was abandoned in March 2025, it is clear that the statutory demand had not been (and was not going to be) set aside. Of perhaps more concern is the fact that the appellant's sworn evidence on 24 June 2025 was that "an appeal *is being made* to the Tax Tribunal." As noted above, insofar as that conveys that an appeal was pending before the tribunal at that point, it is simply incorrect.

[43] In all of the above circumstances, even if I were permitted to go behind the tax assessment, I would not have been persuaded that this was an appropriate case to set aside the bankruptcy order on the basis of the merits of the appellant's opposition to the debt. The above factors are also relevant to the court's assessment of the prospects of Mr Rankin's proposed appeal to the tribunal at this stage.

Should a stay of the order be granted?

[44] The ultimate question in light of how this appeal was presented is whether the court should now grant a stay of the bankruptcy order to permit the appellant to re-engage with the Tax Tribunal to seek to resurrect and pursue his appeal before it. I leave aside for the moment the question of how effective it would be, as a matter of practicality, to seek at this stage to impose a stay on a bankruptcy order which was made over six months ago and took immediate effect at that point. The real question is whether permitting the appellant to re-engage with the tribunal is likely to take matters further.

[45] At the court's request, the parties helpfully provided some additional information, on an agreed basis, in relation to how the Tax Tribunal would approach the question of reinstating the appellant's previous appeal or accepting a fresh appeal. The relevant procedural provisions are contained in the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 (as amended). Rule 2 contains an overriding objective for the tribunal – to deal with cases fairly and justly – in terms which are familiar to those conversant with the similar overriding objective in the Rules of the Court of Judicature. Rule 5 sets out the tribunal's case management powers. It generally regulates its own procedure, subject to relevant statutory provisions. It has an express power to give directions in relation to the conduct of proceedings; and an express power to extend or shorten the time for complying with any rule, practice direction or direction, unless doing so would conflict with a relevant statutory provision (see rule 5(2) and (3)).

[48] Rule 8 provides the tribunal with a power to strike out a party's case, or part of it. In particular, rule 8(1) provides that proceedings (or a part of them) "will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them." There are other circumstances specified in which the tribunal may or must strike out the whole or part of the proceedings.

By rule 8(5), however, if proceedings have been struck out, the appellant may apply for them to be reinstated. Rule 8(6) provides that such an application "must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant." A party may also withdraw proceedings before the tribunal pursuant to rule 17. Similarly, a party who has withdrawn their case may apply to the tribunal for the case to be reinstated. Such an application must also be made in writing and received by the tribunal within 28 days (in this case) after the date when the tribunal received the withdrawal notice or the date of the hearing at which the case was withdrawn orally.

[49] In the present case, where the appellant seeks to reinstate an appeal which has been struck out, it is clear that he will now be well outside the 28-day time limit for doing so. I proceed on the basis that any prospect of mounting an entirely fresh appeal, rather than reinstating a previous appeal, would be even less likely to succeed.

[50] How then would the tribunal treat an application by the appellant to reinstate his appeal against the notices which form the basis of the indebtedness relied upon in the statutory demand in this case? Again, the parties helpfully directed the court to the relevant jurisprudence.

[51] The most recent authority on the point appears to be a decision of Tribunal Judge Redston in *Gill v HMRC* [2025] UKFTT 00930 (TC). In a reinstatement application, the tribunal must consider the factors relevant to the overriding objective set out in rule 2(2). The tribunal will also follow the approach set out in previous authority, namely *Chappell v Pensions Regulator* [2019] UKUT 0209 (TCC), which in turn relied upon *Martland v HMRC* [2018] UKUT 0178 (TCC). The tribunal will consider all the circumstances of the case so as to enable it to deal justly with the application, including the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules, practice directions and orders. The tribunal judge will firstly identify and assess the seriousness and significance of the non-compliance at issue. Assuming the non-compliance was serious and/or significant, the judge will next consider why the default occurred, before going on to thirdly evaluate all the circumstances of the case so as to enable the tribunal to deal justly with the application.

[52] At para [43] of its decision in the *Martland* case, the Upper Tribunal said:

> "The clear message emerging from the cases – particularised in *Denton* and similar cases and implicitly endorsed in *BPP* – is that in exercising judicial discretions generally, particular importance is to be given to the need for 'litigation to be conducted efficiently and at proportionate cost', and 'to enforce compliance with rules, practice directions and orders'. We see no reason why the principles embodied in this message should not apply to

> applications to admit late appeals just as much as to applications for relief from sanctions, though of course this does not detract from the general injunction which continues to appear in CPR rule 3.9 to 'consider all the circumstances of the case'."

[53] Of potential significance in the present case is that, in *Martland*, it was also held that "failures by a litigant's adviser should generally be treated as a failure by the litigant." To similar effect, in *Uddin v HMRC* [2023] UKUT 99 (TCC), the Upper Tribunal held as follows:

> "Why the adviser failed and how they led their client to continue to rely on them is not relevant to the *Martland* analysis, unless the client can show that they did whatever a reasonable taxpayer in that situation would have done (which would generally be to make sufficient efforts to keep tabs on the adviser and make sure that matters were on track)."

[54] The appellant is critical of his previous solicitors, principally in relation to their failure to apply to set aside the statutory demand. After presentation of the petition, he parted ways with those solicitors and was represented, at least in the latter stages of the bankruptcy proceedings before the Master, by his current legal team. Significantly, however, he does not appear – at least in his evidence before me – to criticise his representative before the tribunal. There is nothing to suggest that the solicitors who were previously involved came on record for the appellant in the appeal proceedings before the tribunal. Instead, he appears to have been represented throughout by Mr Clarke (of whom he makes no criticism). It does not seem to me that the solicitors can be blamed for the initial strike-out of the appeal; nor the failure to make a fully particularised application to reinstate. As I have already commented, I also find it difficult to understand how or why the appeal was effectively abandoned in reliance upon the solicitors' advice (see para [17] above).

[55] The respondent further relied upon the fact that none of the documents submitted (whether by way of evidence or submissions) in the previous appeal had been provided to the court. It is therefore difficult for the court to make an assessment of whether there is any merit in the appeal or whether, as HMRC submits, it is simply being used as a delaying tactic. Nor is there any evidence at this point that any recent, active steps have been taken to seek to reinstate the appeal. Mr Brennan's submission was simply that he had *advised* Mr Rankin to pursue the appeal at this point. The period of default continues to run. None of this augurs well for the prospects of the appeal actually being reinstated.

[56] Taking all of the above into account, I see no reasonable prospect of the Tax Tribunal permitting a reinstatement of the appeal at this point. I accordingly have

not been persuaded that this is an appropriate case to stay the bankruptcy order on that ground.

Conclusion

[57] For the detailed reasons given above, I consider that the Master was entitled to make a bankruptcy order in this case on the basis of the facts as they stood before her. I have not been persuaded that there is a proper basis for staying the order, as the appellant now seeks. The appellant should have pursued a timeous appeal to the Tax Tribunal to its conclusion. It is in my view highly doubtful that the tribunal would now permit the appellant to reinstate his appeal. In addition, on the evidence available to me I am not persuaded that the appeal would have a good prospect of success on the merits. Applying the guidance in the *Viera* case, it is not appropriate in the circumstances to grant any relief against the bankruptcy. The appeal is therefore dismissed.