

**Neutral Citation No: [2021] NICH 4**

**Ref: McB11448**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

**ICOS No: 19/085355/A01**

**Delivered: 20/04/2021**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**CHANCERY DIVISION**

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**BETWEEN:**

**DEPARTMENT OF FINANCE, LAND AND PROPERTY SERVICES**

**Plaintiff/Respondent;**

**and**

**GREG FOSTER**

**Defendant/Appellant.**

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**Mr McCausland (instructed by the Crown Solicitor) for the plaintiff/respondent  
The defendant/appellant appeared as a litigant in person**

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**McBRIDE J**

[1] The Department of Finance, Land and Property Services (“the Department”) issued a bankruptcy petition against Mr Greg Foster (“Mr Foster”) based on unpaid rates bills. On 27 November 2019 Master Kelly ordered that Mr Foster be adjudicated bankrupt. Mr Foster now appeals against that decision on a number of grounds ranging from a submission that “the private record of the parties show the matter has already been settled” through to a submission that “no evidence has been presented ... proving [the Department] are the beneficial owners of my life ...”.

**Representation**

[3] The Department was represented by Mr McCausland of counsel. Mr Foster appeared as a litigant in person. I am grateful to all parties for their detailed written submissions and skeleton arguments which enabled the remote hearing in this matter to proceed much more efficiently.

## **The Evidence**

[4] The evidence before the court consisted of two affidavits sworn by Richard Gregg, a Senior Enforcement Officer employed by the Department on 11 February 2020 and 19 January 2021 and two affidavits sworn by Mr Foster on 18 December 2019 and 10 March 2020. In addition to his affidavit evidence Mr Gregg gave oral evidence in which he adopted his affidavit evidence and was then subject to cross-examination by Mr Foster.

[5] Mr Foster was advised by the court that he could give oral evidence but he declined to do so.

[6] In addition to the affidavit evidence before the court Mr Foster sought to admit a bundle of evidence entitled "Private Record of the Parties." He advised the court that he did not consent to these documents being shown to the Department's legal representatives. In these circumstances I acceded to Mr McCausland's request that the court should disregard this documentation as it was not made available to the Department and therefore it could not make contrary submissions.

## **My Findings of Fact**

### **A. Rates Bills**

[7] There is no dispute between the parties that Mr Foster resides at 1 Boulevard, Belfast, County Antrim, BT7 3LW ("the premises") which is a domestic dwelling. I am further satisfied that Mr Foster has a legal interest in these premises as appears from the Land Certificate for these premises.

[8] Between 2014 and 2018 the Department sent a number of rates bills and final demands addressed to Mr Foster at the address of the premises. There is no dispute between the parties that the rates bills remained unpaid.

### **B. Court Decrees**

[9] After the failure of Mr Foster to pay the rates bills and after final demands were issued, the Department applied for decrees in the Magistrates' Court in respect of the unpaid rates bills. The Department gave evidence that it obtained the following decrees against Mr Foster in the Magistrates' Court namely:

- (i) Decree dated 6/10/14 in the sum of £1416.00 and £50 costs.
- (ii) Decree dated 8/3/16 in the sum of £1427.20 and £50 costs.
- (iii) Decree dated 29/7/16 in the sum of £1450.20 and £50 costs.
- (iv) Decree dated 19/10/18 in the sum of £3000.80 and £59 costs.

The Department was initially unable to produce copy decrees to the court. Rather it exhibited screen shots of the Land & Property Services – Rating Court List/Register which set out details of the decrees set out above. One of the screen shots contained a hand written note that on 6 October 2014 the decree was granted after contest by Mr Foster. In correspondence dated 1 November 2018 from Mr Foster to Laganside Court he refers to contested debt proceedings regarding “GREGG FOSTER” which took place on 19 October 2018. Mr Gregg wrote to Mr Foster on 13 November 2018 confirming that Mr Foster was aware of the judgment as he was present in court when the decree was granted by the Magistrate. Mr Gregg also gave evidence by affidavit and orally that Mr Foster had attended before the Magistrates’ Court on 6 October 2014 and 19 October 2018 and that on each occasion he had unsuccessfully contested the Department’s application for a decree. I am satisfied from the evidence of Mr Gregg supported by the hand written note on the Land Property Service’s screen shot and the correspondence that Mr Foster was present in court on 6 October 2014 and 19 October 2018 when on each date, after a contest the Magistrate made the decree.

[10] Mr Foster submitted that the Department had failed to provide proof that the Magistrates’ Court had issued decrees against him and submitted that the documents produced to the court were not legally valid decrees.

[11] The court adjourned the hearing to enable the parties to make further submissions in respect of the decrees. Following this adjournment the Department produced copies of all the court decrees save the decree which was granted on 6 October 2014. For reasons which are set out later in this judgment I am satisfied that the Department obtained all the decrees more particularly set out in paragraph [9] above.

[12] It is common case that Mr Foster never appealed or otherwise sought to set aside any decrees obtained in the Magistrates’ Court.

### **C. Statutory Demand**

[13] On 23 January 2019 the Department served a statutory demand on Mr Foster by first class post claiming the sum of £7,503.20 based on the decrees set out at paragraph [9] above.

[14] In his affidavit sworn on 18 December 2019 Mr Foster averred that “the statutory demand ... has never come to my attention.” Mr Foster when asked to give oral evidence that he had not received the statutory demand declined to do so and consequently his evidence to this effect was never tested under cross-examination.

[15] In his submissions to the court dated 7 March 2021 Mr Foster states that he was not aware of the statutory demand by 23 May 2019 and only became aware of it

when it was exhibited to a letter sent to him by the Crown Solicitor's Office on 11 November 2019. On 15 November 2019 Mr Foster then wrote to the Department stating "Appearing as surety for GREG FOSTER I received the offer from your company LPS "statutory demand" dated 23 January 2019."

[16] A creditor is obliged to take all reasonable steps to bring the statutory demand to the debtor's attention. Rule 6.003(2) of the Insolvency Rules (NI) 1991 provides, if practicable, personal service of the statutory demand should be effected. As a statutory demand is not a court proceeding however no application can be made for substituted service when there are difficulties in effecting personal service. Gowdy & Gowdy in "Individual Insolvency: The law and Practice in Northern Ireland", SLS 2009 at paragraph 3.11 observe,

"Where it can be shown, however, that a debtor resides at a particular address, and he has been invited to make himself available for service, but has failed to do so, leaving the demand at that address ought to be regarded as good service."

On 5 March 2019 a representative of the Department emailed Mr Foster asking him to make himself available for service of a statutory demand in relation to outstanding rates. Mr Foster replied by letter dated 10 March 2019 stating, *inter alia* "I do not consent to you or any representative of [the Department] calling to our property at 1 The Boulevard Wellington Square, Belfast." An unsuccessful attempt was made to personally serve the statutory demand on 17 May 2019. Mr Foster by letter dated 18 May 2019 wrote to the representative of the Department who had attempted to serve the statutory demand on 17 May 2019 advising him that by coming to his property he had committed various criminal offences and was liable to him in damages. The statutory demand was then served by first class post on 20 May 2019. On 8 July 2019 the Department wrote to Mr Foster advising him of service of the statutory demand and advised him of its intention to issue a bankruptcy petition.

[17] In his affidavit dated March 2020 Mr Foster submits: "There is no evidence the statutory demand was brought to my attention." In light of the attempts made to effect personal service and in light of Mr Foster's knowledge that the Department was seeking to serve a statutory demand on him and his deliberate refusal to allow personal service of the statutory demand, I am satisfied that service of the statutory demand by first class post is to be regarded as good service and if this had been a court proceeding the court would have upon application have deemed service good. I am reinforced in this conclusion for the following reasons. After the bankruptcy petition was served on Mr Foster he lodged a 'Notice of Opposition to Bankruptcy' dated 14 November 2019, a 'Motion to Discharge with Prejudice' and a 'Skeleton argument and Summary.' In none of these documents did he allege that the statutory demand had not been served upon him. The first time he alleged he had not received the statutory demand was in his affidavit dated 18 December 2019

when he stated, "... the statutory demand in relation to the bankruptcy petition has never come to my attention." I consider that if the statutory demand had not been received by Mr Foster he would have immediately made this case. I further find that his averment in December 2019 that the statutory demand had never come to his attention was factually incorrect. As appears from his submissions to the court and from correspondence sent by him to the Department on 15 November 2019 he accepted that he had received the statutory demand albeit he now asserts he only received it on 11 November 2019. The fact is that when he swore the affidavit in December 2019 Mr Foster had, even on his own evidence received the statutory demand and therefore I consider little weight can be placed upon his averment that it had "never come to my attention." I also gave Mr Foster the opportunity to give oral evidence to confirm he had not received the statutory demand. He declined to do so and proffered no good reason for his refusal to give evidence even though he was present at court. I consider Mr Foster made a considered decision not to give evidence as he wished to avoid answering searching questions under cross examination. In light of his failure to give oral evidence and the factual inaccuracy of his affidavit and the steps taken to effect personal service upon him, I reject his evidence that he did not receive the statutory demand and I find that it was served upon him in May 2019.

[18] It is common case that Mr Foster failed to comply with the statutory demand within the time specified therein. It is also common case that he has never taken any steps to have the statutory demand set aside.

#### **D. Bankruptcy Petition and Order**

[19] On 10 September 2020 the Department issued a bankruptcy petition against Mr Foster. The bankruptcy petition was based on the statutory demand dated 23 January 2019. Paragraph 5 of the bankruptcy petition stated as follows:

"On 20 May 2019 the statutory demand in respect of the above-mentioned debt was posted via first class post in a sealed envelope addressed to the above-named debtor at 1 The Boulevard, Belfast, County Antrim BT7 3LW and to the best of its knowledge, information and belief the demand will have come to the attention of the debtor by 23 May 2019. To the best of its knowledge and belief the demand has neither been complied with nor set aside in accordance with the rules and no application to set it aside is outstanding."

[20] On 14 November 2019 Mr Foster issued a "Notice of Opposition of Bankruptcy Petition" in which he set out a number of grounds opposing the making of a bankruptcy order.

[21] On 26 November 2019 Mr Foster issued a counterclaim against the Department and others seeking compensation for the theft and demolition of private property owned by him and compensation for various losses arising from his defence of what he termed false claims brought by the Department against him.

[22] Mr Foster attended in person before Master Kelly on 27 November 2019 when the bankruptcy order was made.

[23] Mr Foster issued a Notice of Appeal dated 19 December 2019 supported by an affidavit sworn on 18 December 2019.

#### **E. Mr Foster's Submissions**

[24] Mr Foster made a number of submissions in his Notice of Opposition to Bankruptcy Petition, skeleton arguments and oral submissions. These can be usefully summarised under three headings:

- (a) He was denied a fair hearing before the Master.
- (b) He is not liable for the debt.
- (c) He has discharged the debt.

[25] In respect of ground (b) Mr Foster submitted that he was not liable for the debt on the following grounds:-

- (a) There was no contractual basis for the debt.
- (b) The Department had not produced proof that decrees had been obtained against him and therefore there was no basis for the statutory demand.
- (c) He has a counterclaim which is a complete defence to the petition.
- (d) His affidavit evidence was unrebutted.
- (e) The Department has acted illegally and used fraud, coercion, harassment and intimidation against him.
- (f) The Department owe money to Mr Foster by reason of a judgment of the Lands Tribunal dated 21 October 2015.
- (g) That as a creditor and secured party creditor of government agencies Mr Foster cannot be made bankrupt by any government agency. That there is no evidence presented which proves the Department is the

beneficiary of Mr Foster's life or that the Department has a jurisdictional benefit to his life and property.

[26] In respect of ground (c), that he had discharged the debt Mr Foster referred to the Private Record of the Parties.

#### **F. The Department's Submissions**

[27] The Department submitted that as Mr Foster had never sought to set aside the statutory demand this conclusively determined his liability to pay the debt. His attempt to re-litigate liability at this bankruptcy petition stage was either *res judicata* and/or an abuse of court process.

[28] Secondly Mr McCausland on behalf of the Department submitted that the statutory demand was based on court decrees and therefore the court should not look behind these at the bankruptcy stage as this was not the proper function of the court. Mr Foster, if he disputed the decrees ought either to have applied to have them set aside or appealed the granting of the decrees. It was now too late for him to do this.

#### **Relevant Legislation**

[29] Articles 241-245 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") set out the basis for the presentation of a creditor's petition. They provide as follows:

241. – (1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to Articles 242 to 244, a creditor's petition may be presented to the High Court in respect of a debt or debts only if, at the time the petition is presented –

- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
- (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,

- (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
  - (d) there is no outstanding application to set aside a statutory demand served (under Article 242) in respect of the debt or any of the debts.
- (3) “The bankruptcy level” is £750; but the Department may by order subject to affirmative resolution substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

Definition of “inability to pay”, etc.; the statutory demand

242. – (1) For the purposes of Article 241(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either –

- (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as “the statutory demand”) in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules; or ...

245.- (1) The High Court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either -

- (a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or
- (c) a debt which the debtor has no reasonable prospect of being able to pay when it falls due ...

(3) The High Court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied -



- (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,
- (b) that the acceptance of that offer would have required the dismissal of the petition, and
- (c) that the offer has been unreasonably refused;

and, in determining for the purposes of this paragraph whether the debtor is able to pay all his debts, the Court shall take into account his contingent and prospective liabilities.”

### **Consideration**

[30] An appeal from the Master is a *de novo* rehearing and accordingly such a hearing cures any alleged defects in respect of the hearing at the lower court. Accordingly I do not have to determine the complaints made by Mr Foster regarding the hearing before the Master. This does not mean this court accepts those complaints. It is simply confirming that it is unnecessary for this court to adjudicate upon those matters as the case was heard *de novo*.

[31] Mr Foster seeks to challenge the debt on a number of grounds. The first question which arises for determination is whether he can raise a dispute as to the debt when he has not applied to set aside the statutory demand. Mr McCausland submitted that he could not do so and relied on paragraphs 29 and 30 of *Fulton v AIB* [2014] NICH 10:-

“[29] On the basis of these authorities, I am satisfied that it is now well established that the Bankruptcy scheme set out in the 1989 Order, provides that questions as to the existence of the debt at the date of the presentation of the petition, and any cross-claim, are intended to be dealt with on an application to set aside the statutory demand – that is to say, before the petition is presented. It is therefore incumbent on the debtor, at the statutory demand stage, to raise any defences or cross claims he may have. It is therefore, I find, contrary to the intention of Parliament, having put this Bankruptcy scheme in place in the 1989 Order, for the Court to consider disputes as to the existence of the debt and any cross claim at the Bankruptcy petition stage, save in exceptional circumstances. Exceptional circumstances exist, by way of example, where there has been a significant change in

circumstances since the date the application to set aside the statutory demand was dismissed.

[30] Consequently, failure to apply to set aside a statutory demand or an unsuccessful attempt to do so, conclusively determines the liability of the debtor to pay the debt demanded by the creditor. Any attempt to either litigate or re-litigate liability for the debt at the petition stage, I find, is *res judicata* or otherwise an abuse of the process of court unless there has been a change of circumstances between the dismissal of the application to set aside the statutory demand and the hearing of the Bankruptcy petition.”

[32] 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. Support for this view is found in *Barnes v Whitehead* [2004] BPIR 693. In *Barnes* a debtor sought to dispute the debt at the petition stage in circumstances where he had not applied to set aside the statutory demand. The court held as follows at paragraph [10]:

“It is clear that the requirement of a statutory demand affords the debtor an opportunity to challenge the debt before a petition can be issued. Plainly the correct procedure is for him to do so at that stage by an application to set aside the demand. If he makes the application and it fails, then the decision of the court precludes him from raising the same grounds of challenge, or indeed other grounds available at that hearing, on the principle that it would be an issue already determined (issue estoppel) or in the latter case that it would be an abuse of process. Where however the debtor has not availed himself of the opportunity to challenge the demand by this preliminary procedure, he does of course expose himself to the issue of a petition, but neither of the above principles can be said to apply, as

there would have been no earlier proceedings. He could only be precluded if it could be said that the procedure available to set aside the demand was the only procedure by which the debt could be disputed. That however is not how it is expressed in the Act or the Rules. Furthermore the terms of r 6.25 of the 1986 Rules expressly require the court to be satisfied that the statements in the petition are true. One of those statements is that the debt is due. ... The court does in any case have a discretion and once it appears that there is a dispute on substantial grounds it would be wrong to make a bankruptcy order. On principle therefore it would seem to me that the court would be bound to hear the case that the debt was disputed, notwithstanding the failure of the debtor to raise it by a preliminary application to set aside the demand."

[33] For the reasons set out in *Barnes* and because the court must be satisfied the creditor is owed a debt by the debtor it is my view that the court is not precluded from hearing a dispute as to the debt at petition stage when the debtor has not applied to set aside the statutory demand. In any event the court can additionally entertain the dispute on the basis it retains a discretion to refuse to grant a petition.

[34] Accordingly I now turn to consider the submissions of Mr Foster whereby he disputes the debt.

[35] The grounds for setting aside a statutory demand are set out in Rule 6.005(4) namely:

- “(a) the debtor appears to have a counterclaim, set off or cross demand which equals or exceeds the debts specified in the statutory demand.
- (b) The debt is disputed on substantial grounds.
- (c) The creditor holds security for the debt.”

The court also has a discretion to set aside on other grounds if it is satisfied that the demand should be set aside.

### **Counterclaim/Set off/ Cross claim**

[36] A counterclaim was issued on 26 November 2019 by Mr Foster and his daughter, who may be a minor. The counterclaim is issued against the Department, and named officials of the Department. Mr Foster and his daughter seek compensation for theft and demolition of private property owned by the plaintiff.

They then claim fees for defending 'false claims' by the Department. In relation to the named officials damages are claimed for *inter alia* fraud by misrepresentation, fraud by abuse of position and misconduct in public office and harassment.

[37] In *Hofer v Strawson* [1999] 2 BCLC 336 Neuberger J held that a debtor should only be able to set aside a statutory demand where his counterclaim has a real prospect of success. Mr Foster has presented no evidence in support of his counterclaim. In particular there is no affidavit evidence in support. The only material before the court in respect of the counterclaim consists of the pleadings. The particulars of the counterclaim all relate to the steps taken by the Department to recover rates. Having considered the allegations set out in the counterclaim I am satisfied that it has no reasonable prospect of success as the particulars relate to appropriate and reasonable attempts made by the Department to serve proceedings relating to unpaid rates bills. In my judgement the pleadings would be struck out under Order 18 rule 19 as they do not establish the necessary legal ingredients to establish fraud, harassment or abuse of position. In addition there was significant delay in the issue of the counterclaim and it was only issued after the bankruptcy petition was served. I consider that it was issued as a pretext to stave off bankruptcy. Taking all these matters into account I am satisfied that Mr Foster has failed to demonstrate that his counterclaim has a real prospect of success.

[38] In addition Mr Foster submits that he has a cross demand of a greater amount than the debt on the basis of a failure by the Department to pay compensation ordered by the Lands Tribunal in "In the matter of a Reference R/6/2015, Between Northern Ireland Housing Executive (Applicant) and Stuart William George Foster, Gregg James Foster and Gareth Cummings Scott (Respondents) Re 99 Soudan Street, Belfast."

[39] In respect of Mr Foster's claim that he has a cross demand arising out of the Order of the Lands Tribunal, Mr Foster must satisfy the court that the cross demand is between the parties in the same capacities. In *Hurst v Bennett* [2001] 1 EWCA Civ 182 the court held that lack of mutuality between the parties is fatal to the application on this ground. The Lands Tribunal provided that the Northern Ireland Housing Executive pay compensation to Alliance and Leicester Building Society ("the building society") in respect of premises which were vested. Mr Foster had a legal interest in these premises but as the premises were in negative equity the Lands Tribunal ruled that the compensation should be paid directly to the building society and not to Mr Foster. Although the compensation has not been paid to the building society, I am satisfied the Department owes no compensation on foot of this judgment to Mr Foster. In addition the Lands Tribunal made the order against another party namely the Northern Ireland Housing Executive. Accordingly, I consider that the cross demand has no merit as no monies were to be paid to Mr Foster and even if the Lands Tribunal's order could be construed as an order in favour of Mr Foster the party liable to pay the debt is Northern Ireland Housing Executive which is a legally distinct body from the Department. Accordingly, I am satisfied that the cross demand is not a serious and genuine claim.

## **Debt disputed on Substantial grounds**

[40] If a debtor wishes to set aside a statutory demand on 'substantial grounds' he must show that he has a "potentially viable defence" to the claim. Mr Foster seeks to dispute the debt on the following grounds.

### **A. No contractual liability to pay rates**

[41] Firstly he submits that there is no contractual liability to pay rates. Mr Foster is the owner and occupier of the premises and he accepted that he had previously paid rates in respect of the same premises. I am satisfied that as the owner and occupier of the premises he is liable for payment of rates in respect thereof and therefore this is not an arguable defence to the claim.

### **B. No proof of judgment decrees**

[42] Secondly, he submits that the Department has not provided proof that it obtained decrees in respect of the debt. I reject this argument. The Department after adjournment of the case furnished copy decrees to the court in respect of each debt save that it was unable to provide a copy decree in respect of the decree dated 6 October 2014. I consider that the copy decrees are proof of the existence of the decrees. The only copy decree not provided related to a decree made on 6 October 2014. I have already made a finding that Mr Foster was in attendance at the Magistrates' Court when this decree was made after a contested hearing. I am therefore satisfied that the court made all the decrees against Mr Foster as set out in paragraph [9] above.

[43] Given that decrees were made by the Magistrates' Court it is not the function of this court at the bankruptcy petition stage to look behind those decrees save in exceptional circumstances. As noted by Gowdy & Gowdy at 3.18 paragraph 4.65:

"Thus absent some ground such as fraud or collusion which would vitiate the judgment, a debtor cannot apply to have a statutory demand set aside on the grounds that the debt is disputed on substantial grounds when that debt is a judgment debt."

[44] I am satisfied there are no circumstances present which would persuade the court to exercise its discretion in this way especially as some of the decrees were obtained after contest at which Mr Foster was present.

### **C. Affidavits not rebutted**

[45] Thirdly, Mr Foster submits that his affidavit evidence was unrebutted and therefore the debt is not proved. I reject this submission as the affidavits of Mr Gregg rebut the submissions made in Mr Foster's affidavits.

#### **D. Fraudulent/ illegal acts by the Department**

[46] Fourthly, Mr Foster disputes the debt on the basis the Department acted illegally, fraudulently and coercively and harassed and intimidated him. This claim is similar to the claim made in the counterclaim and for the reasons set out above I do not find that this is a viable defence to the debt. On the basis of all the evidence before the court I am satisfied that there is no evidence to show that the Department acted illegally, fraudulently, or coercively or that it harassed or intimidated Mr Foster.

#### **E. The Department owes money to Mr Foster**

[47] Fifthly, Mr Foster alleged that the Department owed him monies on foot of the judgment of the Lands Tribunal. I reject this submission. As appears from the reasoning set out above the Lands Tribunal judgment did not create any liability on the part of the Department to pay any money to Mr Foster.

#### **F. A Government agency cannot make Mr Foster bankrupt**

[48] Finally, in respect of Mr Foster's submission that he cannot be made bankrupt by any government agency as they do not have a jurisdictional benefit to his life and property, I consider that this argument is legal nonsense. Accordingly, I am satisfied that Mr Foster has not established that there is a potentially viable defence to the claim.

#### **Debt Settled**

[49] Mr Foster's second main submission was that he had settled the debt. This was based on a 'Private Record of the parties.' The private record refers to a letter in which Mr Foster unilaterally appointed certain persons as his trustees and directed them to "close the account." I am satisfied that a unilateral declaration of trust is not valid or capable of discharging a debt. Mr Gregg in his evidence confirmed that the debt remained outstanding and I am therefore satisfied that the debt remains due and owing.

#### **Conclusion**

[50] Accordingly, I am satisfied the Master did not err in finding that Article 245(i) of the 1989 Order was satisfied.

[51] In accordance with Article 245(iii) the court can dismiss a petition if satisfied the debtor has offered to pay the debt. No such offer has been made by Mr Foster.

[52] Accordingly, I find there is no basis upon which the court can or should dismiss the bankruptcy petition and accordingly I affirm the order of the Master making the bankruptcy order and I dismiss this appeal.

[53] I will hear the parties in respect of costs.