

Neutral Citation: [2017] NIQB 22

Ref: STE10210

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

Delivered: 27/01/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN

MICHAEL GERARD McKAY and
GERARD JOSEPH DALRYMPLE

Plaintiffs:

v

BRIAN WALKER and JOSEPH McDONALD
practising as
WALKER McDONALD Solicitors

Defendants:

STEPHENS J

Introduction

[1] This is an application pursuant to Article 277(4) of the Insolvency (Northern Ireland) Order 1989 ("the Insolvency Order") by Michael Gerard McKay and Gerard Joseph Dalrymple ("the plaintiffs") for leave to bring proceedings against Brian Walker ("the first defendant") who was their trustee in bankruptcy. A preliminary point has arisen as to whether a judge sitting in the Queen's Bench Division, has jurisdiction to give such leave, it being suggested by Mr McEwen, who appears on behalf of the defendants, that based upon the English legislation, the application should be made to the Bankruptcy Master and that it is the Chancery Court which has exclusive jurisdiction, rather than the court in which the potential plaintiffs wish to bring the proceedings.

[2] In *Oraki v Bramston* [2015] EWHC 2046 (Ch); [2015] BPIR 1238 Mrs Justice Proudman at paragraph [164] referring to the Insolvency Act 1986, stated:

“Incidentally under s. 304(2) it appears to be the bankruptcy court which is the court to give permission for an application under s. 304(1), and not the court in which the proceedings are being pursued: see the definitions in s. 385 and s. 373(3) IA and see generally also *McGuire v. Rose* [2013] EWCA Civ 429. However, no point has been taken on the alleged fact that the wrong court gave permission in this case.”

[3] However, the provisions of the Insolvency Act 1986 are different from the Insolvency Order. Section 385(1) of the Act provides that the “following definitions have effect” including a definition of “the court”, which in relation to any matter, “means the court to which, in accordance with section 373 in Part X and the rules, proceedings with respect to that matter are allocated or transferred;” One then turns to section 373(3) which provides that jurisdiction “for the purposes of those Parts is exercised—(a) by the High Court or the Central London County Court in relation to the proceedings, which, in accordance with the rules, are allocated to the London insolvency district,....” Section 373(4) goes on to provide that subsection (3) “is without prejudice to the transfer of proceedings from one court to another in the manner prescribed by the rules; and nothing in that subsection invalidates any proceedings on the grounds that they were initiated or continued in the wrong court.”

[4] Article 277(4) of the Insolvency Order provides that the leave of the High Court is required without providing any restrictive statutory definition of the High Court. One then has to turn to Order 1 Rule 10 (b) of the Rules of the Court of Judicature (Northern Ireland) 1980 which provides that proceedings under the Insolvency Order shall be assigned to the Chancery Division. Order 1 Rule 12A(3) provides that the fact that a cause or matter falls within a class of business assigned by these Rules to a particular Division does not make it obligatory for it to be allocated to that Division. The application for leave under Article 277(4) ordinarily, but need not be, assigned to the Chancery Division. Accordingly I consider that this court has jurisdiction to entertain an application for leave. Indeed in some instances the court in which the proceedings are potentially to be brought may be in a better position to determine the likelihood of success, and the risks as to costs of the estate in the event of failure.

[5] I consider that this court does have jurisdiction and I will proceed on that basis.