

Neutral Citation: [2017] NIMaster 1

Ref: 2017NIMASTER1

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

Delivered: 20/01/17

2015/60621 & 2015/60625

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION (BANKRUPTCY)

-----

BETWEEN:

The Governor and Company of the Bank of Ireland

Petitioner:

and

Gerard Noel McFeely & Conal Derek McFeely

Debtors:

**MASTER KELLY**

**Introduction**

[1] This is an application by the debtors by which they ask the Court to exercise discretion under Article 240(3) of the Insolvency (Northern Ireland) Order 1989 (“the Order”) and decline the relief sought by the petitioner on foot of its respective petitions for bankruptcy. Article 240 (3) provides:

“The High Court may, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, dismiss a bankruptcy petition or stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.”

## **Background**

[2] The petitions were presented against the debtors on 25 June 2015. Both petitions are grounded on a judgment of the High Court entered on 3 January 2013 for £5,398,450.51. The judgment debt arises from personal guarantees given by the debtors to the petitioner on behalf of Inis Developments Ltd, a company in which the debtors had an interest. Mr Colmer appeared for the petitioner and Mr Gibson for the debtors. I am grateful to counsel for their helpful and learned submissions both oral and written.

[3] There is a long history to this matter which need not be repeated here. For present purposes, it is enough to say that no attempt on the part of the debtors to challenge the judgment debt either in this Court or elsewhere has been successful. And, following a decision of the Court of Appeal on 1 August 2016, no further avenues are open to them to do so. However, the debtors maintain strong views about the legitimacy of the judgment and the petitioner's right to enforce it, hence this somewhat unusual application in which the debtors ask the Court to look behind the judgment.

## **The law**

[4] A Court exercising jurisdiction under the Order, although it will treat a judgment for a sum of money as prima facie evidence that the judgment debtor is indebted to the judgment creditor for that sum, may in appropriate circumstances go behind the judgment. That is to say that it may inquire into circumstances in which the judgment was obtained and, if satisfied that those circumstances warrant such a course, treat it as not creating or evidencing any debt enforceable in bankruptcy proceedings. But it will only do so if satisfied that the judgment creditor manifestly had no claim against the judgment debtor on which the judgment could have been founded.

[5] The Court in Diawodu-v-American Express Bank [2001] BPIR 983 held that what is required before the Court is prepared to investigate a judgment or judgment debt, in the absence of an outstanding appeal or an application to set it aside, is some fraud, collusion or miscarriage of justice. In other words, what is required is that Court be shown something from which it can conclude that had there been a properly conducted judicial process it would have been found, or very likely would have been found, that nothing was in fact due to the petitioner.

## **Consideration**

[6] With all that in mind, the first question this Court must ask itself is whether in the circumstances of this case it is appropriate to look behind the petitioner's judgment. On all the evidence, in my judgment it is not. Simply put, that is because the inquiry which this Court is being asked to undertake has already been undertaken by the Court of Appeal as part of the debtors' application to extend time for the service of a

notice of appeal of the petitioner's judgment (see: Governor & Company of the Bank of Ireland -v-McFeely & McFeely [2016] NICA 34).

[7] It is clear from its judgment that in applying Davis-v-Northern Ireland Carriers [1979] NI19 the Court of Appeal expressly considered the question of whether any injustice would be caused to the applicants (i.e. the debtors) if their application to extend time was refused. It is also clear that in considering that question the Court of Appeal heard the same substantive legal arguments as those made before this Court in the present application. The decision arrived at by the Court was that no such injustice would be caused.

[8] In summary therefore, both Courts have been asked to undertake the same task for the same reasons - namely, to look behind the petitioner's judgment in the interests of justice. The fact that each Court has been asked to undertake that task within the context of two different sets of proceedings is immaterial because the same fundamental legal principles apply in both.

### **Conclusion**

[9] Accordingly, for the reasons given, the outcome of the Court of Appeal's inquiry into the judgment of 3 January 2013 is binding on this Court. In the circumstances, I refuse the debtors' application to dismiss the petition on the basis that the petitioner is entitled to the relief sought.