



THE COURT OF APPEAL

Neutral Citation No.: [2021] IECA 169

Appeal Record No.: 2019/526

Bankruptcy Summons No. 5942

Baker J.

Noonan J.

Faherty J.

**IN THE MATTER OF THE BANKRUPTCY ACT 1988 (AS AMENDED)
IN THE MATTER OF A PETITION OF BANKRUPTCY BY PROMONTORIA
(ARROW) LIMITED AGAINST RICHARD DINEEN**

BETWEEN/

PROMONTORIA (ARROW) LIMITED

Petitioner/Respondent

- AND -

RICHARD DINEEN

Appellant

COSTS RULING delivered on the 10th day of June, 2021

1. This is the ruling on the costs of the unsuccessful appeal of Richard Dineen (“the appellant”) against the order of Pilkington J. by which he was adjudicated bankrupt: see [2021] IECA 145.

2. The appeal relied on one proposition, that the amount of debt stated in the petition was not a liquidated sum as is required by s. 11(1)(b) of the Bankruptcy Act 1988.

Appellant’s submission

3. The appellant states that he should be awarded costs, or a portion thereof, for three reasons: the judgment has brought clarity to an important area of law regarding the meaning of a “liquidated sum” in the context of the bankruptcy legislation; the appellant brought the appeal despite having emerged from bankruptcy, and thus had nothing material to gain; and that the Court should have regard to the fact that a further submission to the Court was made without the invitation of the Court, or the consent of the appellant, which amounted to a procedural unfairness.

Respondent’s submission

4. The respondent argues that there is no reason to depart from the normal rule that costs follow the event, whether under s. 169 of the Legal Services Regulation Act 2015 or the previous O. 99 of the Rules of the Superior Courts.

5. The respondent argues that the concept of a liquidated sum is well-established in the case law and did not require clarification. The respondent does not accept that there was nothing material for the appellant to gain by bringing an appeal, owing to the consequences of bankruptcy mentioned in the judgment. The respondent states that it was proper to draw the attention of the Court to its recent decision in *Gladney v. Tobin* [2020] IECA 49, and that the appellant did not make any argument from that authority, nor did he request an opportunity to further consider that authority.

Decision

6. The Court is of the view that the judgment involved the application of well-established principles regarding the definition of a “liquidated sum”. All decisions in a common law system to some extent clarify or explain existing legal principles and that fact alone does not make the case one of public importance justifying a departure from the principles regarding the award of costs: see the recent decision of this Court in *Lee v. Revenue Commissioners* [2021] IECA 114 and see also the decision of the Divisional Court in *Collins v. Minister for Finance* [2014] IEHC 79.

7. The appellant’s argument that he had nothing material to gain from an appeal is not a factor justifying a departure from established costs principles, and the judgment identifies some of the effects of adjudication that persist after a statutory discharge. The appellant himself says the appeal was a matter of “personal vindication” for him.

8. The respondent acted appropriately in drawing the attention of the Court to the recent case of *Gladney v. Tobin* [2020] IECA 49, and an obligation exists on the legal representatives of parties to litigation to bring to a court’s attention a recent and relevant authority which may not otherwise come to its attention. The appellant had the opportunity to address the Court on that authority and did not do so.

9. The appellant withdrew his separate appeal against an order of Costello J. see: [2018] IEHC 430. The withdrawal of that appeal was confirmed in submissions lodged prior to the hearing, and the costs of that appeal must in those circumstances fall to the respondent.

10. There being no reason why the Court should depart from the normal rule, the Court will award the respondent the costs of both appeals, to be adjudicated in default of an agreement.