

Banking

Quinn – Northern Ireland Court Decision

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On the 10th of January, 2012, on foot of an application of the Irish Bank Resolution Corporation Limited (the “IBRC”), the High Court in Northern Ireland annulled the Bankruptcy Order previously obtained from that court by Sean Quinn on the grounds that it had been granted erroneously as Mr Quinn’s centre of main interests (“COMI”) at the time of bringing the petition was not in Northern Ireland but rather within the jurisdiction of the High Court in Dublin. In reaching this decision, the court relied on the provisions of the EC Regulation 1346/2000 on Insolvency Proceedings and provided further analysis on the concept of COMI

The Judge acknowledged the significant disparity in the periods of discharge from bankruptcy between the jurisdictions (Northern Ireland and the Republic of Ireland) and the clear incentives for a party to seek to avail of the much shorter time limits in Northern Ireland. Currently, the Northern Irish position allows for discharge following a period of 12 months as opposed to 12 years in the Republic, although the position in the Republic is under review.

Notably, the court set out two questions to be considered in determination of whether Mr Quinn should be allowed proceed with his bankruptcy proceedings in Northern Ireland. Firstly, where was Mr Quinn's COMI where he conducted the administration of his business on a regular basis prior to the presentation to the petition of bankruptcy? Secondly, was that centre ascertainable by third parties, in particular his creditors?

The court decided that Mr Quinn's COMI was in the Republic of Ireland.

The concept of COMI is undefined and its operation relies on the court's interpretation of the facts of each case. In this instance the court found the fact that Mr Quinn has been habitually resident in the Republic for 32 years, that he pays 20% of his tax in the Republic and holds an Irish passport to be considerable and compelling evidence of his COMI. Furthermore the court believed his main interests in the months prior to filing for bankruptcy were the litigation in which he was engaged in the High Court in Dublin and the potential establishment of a new business in Cavan (which is in the Republic of Ireland).

Dealing with the second question, the court decided that if Mr. Quinn (contrary to the court's finding) did operate an office in Northern Ireland in the period leading up to the petition, the court decided that this was not sufficiently or reasonably ascertainable by third parties. Accordingly, the Northern Ireland court annulled the Bankruptcy Order.

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