

**THE HIGH COURT
BANKRUPTCY**

[2021] IEHC 669
[Petition No. 4699 P]

IN THE MATTER OF A PETITION FOR ADJUDICATION OF BANKRUPTCY

BETWEEN

DANSKE BANK A/S TRADING AS DANSKE BANK

PETITIONING CREDITOR

AND

THOMAS GERARD MULLANEY

DEBTOR

AND

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DANSKE BANK A/S TRADING AS DANSKE BANK

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AND

BREEGE MULLANEY

DEBTOR

JUDGMENT of Humphreys J. delivered on Wednesday the 27th day of October, 2021

1. The debtors commenced a banking relationship with National Irish Bank, the predecessor of the petitioning creditor, in 1989.
2. A fresh facilities letter was issued in October, 2010 by Danske Bank but repayment difficulties arose which ultimately gave rise to the judgment being relied on by the creditor.
3. Proceedings were brought by a receiver appointed by the bank over certain property seeking injunctive relief against the debtors: *Tennant v. Mullaney* [2014 No. 10113 P].
4. High Court summary proceedings were brought against the debtors and orders were obtained in the amount of €239,095.20 in proceedings Record No. 2013 No. 3359 S, and in the amount of €69,061.66 in proceedings Record No. 2013 No. 3420 S.
5. Meanwhile, Mr. Mullaney brought counter-proceedings against Danske Bank, Grant Thornton Corporate Finance Ltd. and the receiver, Mr. Tennant, seeking various reliefs including declarations nullifying various mortgages registered over his lands: *Mullaney v. Danske Bank* [2014 No. 4055 P].
6. A bankruptcy summons was issued dated 25th March, 2019 and served on 3rd May, 2019.
7. An affidavit of service of the summons was filed on 11th July, 2019.
8. No payment was made on foot of summons and a petition for the adjudication of the debtors as bankrupt in each case was filed on 11th July, 2019. That was served on 23rd

July, 2019 and an affidavit of service filed on 29th August, 2019. The petitions were returnable for 14th October, 2019 and have been adjourned from time to time over the past two years, primarily because the debtors were seeking to avail of the Personal Insolvency Act 2012.

9. On 2nd December, 2019, when the matter was listed, the court was informed that a protective certificate had been issued. The court was later informed that it would expire on 23rd March, 2020.
10. When the matter was relisted on 8th June, 2020 the court was informed that the debtors had appeals under s. 115A of the 2012 Act listed for mention in the Circuit Court later that month.
11. In the personal insolvency application, both debtors accepted the debt, in Mr. Mullaney's case in the amount of €1,599,330.84, and in Mrs. Mullaney's case in the amount of €1,538,564.29.
12. There was an undertaking to discontinue the plenary action. That did not happen and Her Honour Judge Enright ultimately refused the application for a personal insolvency arrangement on 22nd July, 2021.
13. The present matter was listed again on 11th October, 2021 where the debtors sought a further opportunity to put in an affidavit. Given the lengthy period already provided, I afforded a fairly brief period for that to be done forthwith. This was taken up and affidavits were exchanged.
14. The matter was heard on 13th October, 2021 and having heard submissions I announced the order being made and now take the opportunity to give reasons.

Criteria for adjudication

15. Section 11(1) of the 1988 Act provides as follows:

"A creditor shall be entitled to present a petition for adjudication against a debtor if—

- (a) the debt owing by the debtor to the petitioning creditor (or, if two or more creditors join in presenting the petition, the aggregate amount of debts owing to them) amounts to more than €20,000,
- (b) the debt is a liquidated sum,
- (c) the act of bankruptcy on which the petition is founded has occurred within three months before the presentation of the petition, and
- (d) the debtor (whether a citizen or not) is domiciled in the State or, within 3 years before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in the State or has carried on business in the State personally or by means of an agent or manager, or is or within the said

period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager.”

16. I consider that on the evidence those criteria are satisfied here on a *prima facie* basis in each case.
17. I have also considered the alternatives to bankruptcy pursuant to s. 14 of the 1988 Act and the other matters to which regard should be had under that section and I consider that alternatives to bankruptcy are not suitable here, especially seeing as that process has already been availed of unsuccessfully.
18. The entitlement to an order for adjudication having been established in each case on a *prima facie* basis, one then turns to the defences advanced by the debtors.

Defences advanced

19. Helpfully, Mr. Mullaney’s affidavit sets out five numbered points as to why it is contended that there is a defence to the petition. Those points are as follows:
 - (i). An incorrect folio number was used. Even assuming that a number used was incorrect, that goes to the mechanics of enforcement rather than the existence of the debt as such. It does not nullify the criteria in s. 11 nor have the effect that the sum demanded is in excess of that due: see *Murphy v. Governor and Company of Bank of Ireland* [2014] IESC 37, [2014] 1 I.R. 642.
 - (ii). It is said that the plenary summons should be dealt with first. The problem there is that there was an agreement to discontinue the proceedings, and in addition the debt was admitted in the Circuit Court. Under those conditions, the continued existence of the plenary action is not a bar to adjudication.
 - (iii). It is said that Danske Bank did not provide a “certificate of deed of redemption”. It is not clear to me what this means and was not evidentially developed, and it hasn’t been made out how this amounts to a defence.
 - (iv). It is contended that the “farm is a full working dairy farm and is a viable business”. That may well be so, but unfortunately in itself is not a defence. Any given debtor is not entitled to continue to operate assets at the expense of creditors, and *ad misericordiam* points such as a wish to continue to operate a family farm, while understandable, are generally not of significant weight in such a context. The machinery of bankruptcy is meant to provide an objective system which among other things delivers fairness to creditors whose legal right to payment has not been satisfied, and it would nullify both the objectivity and the fairness of the process for the court to be unduly swayed by pleas of hardship or other such *ad misericordiam* factors.
 - (v). It is also contended that if Danske had agreed to a restructure in 2010 then the debt would be much less. That again may well be so, but the debtors have not

demonstrated that Danske's failure to agree to such a restructure was unlawful so as to disentitle the bank from seeking the order of adjudication.

Order

20. For those reasons the order made on 13th October, 2021 was to adjudicate each debtor bankrupt.