

# THE HIGH COURT

[2023] IEHC 543

RECORD NO: 2021 / 6215 S

**IN THE MATTER OF A BANKRUPTCY SUMMONS ISSUED AGAINST PATRICK  
DOHERTY BY BLESSVILLE UNLIMITED COMPANY, OF IDA BUSINESS PARK,  
BALLYNATTIN, ARKLOW, CO. WICKLOW**

**BETWEEN**

**PATRICK DOHERTY**

**APPLICANT/DEBTOR**

**AND**

**BLESSVILLE UNLIMITED COMPANY**

**RESPONDENT/CREDITOR**

**Judgment of Mr. Justice Mícheál P O’Higgins delivered on the 18<sup>th</sup> July 2023**

## **Introduction**

1. This is an application to dismiss a bankruptcy summons. The case raises the interesting question as to the criteria to be applied when considering such an application, where the creditor has already obtained judgement against the debtor and the judgement is being relied upon as the basis for the bankruptcy summons.

2. The background to the matter is that on the 26<sup>th</sup> of July 2021, an application was made on behalf of the Respondent/Creditor to Humphreys J. sitting in the Bankruptcy List for the

issuance of a bankruptcy summons against the Applicant/Debtor pursuant to the provisions of s. 8 of the Bankruptcy Act 1988 as amended. For ease of reference in this judgement, I will refer to the Applicant/Debtor as the “Debtor” and the Respondent/Creditor as the “Creditor”.

3. The application for the summons was grounded on an affidavit of Mr. David Cahill, a director of the creditor company. In his affidavit he avers that the Debtor, Patrick Doherty, of Cornerstown House, Ballybride Road, Shankill, Co. Dublin, is justly and truly indebted to the said company in the sum of one hundred and fifty one thousand euro (€151,000) for an order of the High Court in the sum of €151,000 given on the 14<sup>th</sup> of February 2020 in proceedings bearing record no. 2016 / 10841 P.

4. In the same affidavit Mr. Cahill states that an account in writing of the particulars of demand notice requiring a payment was on or about the 28<sup>th</sup> of October 2020 sent by certified post addressed to the said Patrick Doherty of Cornerstown House, Ballybride Road, Shankill, Co. Dublin aforesaid, and payment of the same has been on more than one occasion required of him.

5. It is agreed between the parties and indeed clear from the terms of the bankruptcy summons itself that Humphreys J. was content to grant the application and the warrant duly issued under the hand of the assistant Examiner. The warrant issued on the 26<sup>th</sup> of July 2021.

6. In this application, the Debtor seeks an order dismissing the summons pursuant to the procedure provided for that purpose in s. 8 (5) of the Bankruptcy Act 1988. That provision provides as follows: -

“5. A debtor served with a bankruptcy summons may apply to the Court in the prescribed manner and within the prescribed time to dismiss the summons.

Section 8(6) provides as follows :

The Court—

(a) may dismiss the summons with or without costs, and

(b) shall dismiss the summons if satisfied that an issue would arise for trial”.

7. Before I summarise the legal submissions made by the parties, it is necessary first to say something about the alleged debt the subject matter of the proceedings. The indebtedness of the Debtor is said to arise from two High Court orders made by Pilkington J. on the 6<sup>th</sup> of November 2019 and the 14<sup>th</sup> of February 2020 respectively. Those orders were made by Pilkington J. in the context of proceedings carrying record no. 2016 / 10841 P with Patrick Doherty as plaintiff and Blessville Limited as defendant.

8. It is common case that the Debtor initiated the proceedings on foot of which the alleged debt arises. It is clear from the affidavit of David Cahill of the 18<sup>th</sup> of November 2022 that the Debtor’s claim was pleaded by way of a statement of claim dated the 21<sup>st</sup> of December 2016 wherein the Debtor pleaded that his address was Cornerstown House, Ballybride Road, Shankill, Co. Dublin, which is the address to which the bankruptcy summons was directed. At para. 10 of the same affidavit Mr. Cahill avers that on or about the 30<sup>th</sup> of May 2018, the Debtor swore an affidavit of discovery and on or about the 5<sup>th</sup> of November 2019, he swore a supplemental affidavit as to documents in the said proceedings in which he averred that his address was Cornerstown House, Ballybride Road, Shankill, Co. Dublin. Mr. Cahill also relies on the fact that the orders of Pilkington J. made on the 6<sup>th</sup> of November 2019 and 14<sup>th</sup> November 2020 respectively in the said proceedings identify the Debtor by necessary reference to the proceedings and pleadings that I have just referenced. He avers that it was never communicated to the Creditor or to the Court that the Debtor had changed address. The relevant statement of claim, affidavit of discovery and supplemental affidavit as to documents are exhibited to Mr. Cahill’s affidavit. The relevance of all of this is that there is a major dispute between the parties as to whether the Debtor resided or operated a business from the said address. The Creditor’s basic point is that the Debtor’s own

pleadings in the underlying proceedings strongly indicate that the address in Shankill was the Debtor's address.

9. In the first order of Pilkington J. in the said proceedings dated the 6<sup>th</sup> of November 2019 it was noted that a settlement had been reached between the parties and produced to the court. By consent it was ordered that the plaintiff (Patrick Doherty) will remove all of the goods and chattels the subject matter of the claim herein from a named address in Co. Wicklow on or before the 31<sup>st</sup> of January 2020 at his own expense. It was also ordered by consent that the plaintiff would pay the sum of €46,000 to the defendant within the period of 28 days of the date hereof. The following additional recitals appear in the order of the 6<sup>th</sup> of November 2019: -

*“And in default of the plaintiff removing the said goods and chattels and paying the said sum of €46,000 within said period of 28 days of the date hereof as herein before ordered, it is **ORDERED AND ADJUDGED** that the defendant do recover as against the plaintiff the sum of €151,000 on foot of the counterclaim herein.*

*And **IT IS ORDERED** that the defendant do recover as against the plaintiff his costs (including any reserved costs) of the proceedings herein – said costs to be taxed in default of agreement.*

*And **IT IS ORDERED** that this action do stand adjourned for mention on Friday the 7<sup>th</sup> of February 2020”.*

10. David Cahill in his affidavit of the 18<sup>th</sup> of November 2022 avers at para. 6 that due to the non-compliance by the Debtor with the terms of the order, the Creditor sought and obtained a further order from Pilkington J. dated the 14<sup>th</sup> of February 2020, directing that the Debtor pay the sum of €151,000 to the Creditor. A copy of the second order of Pilkington J. is exhibited.

11. It is apparent from the face of the second order that although the Debtor was represented before Pilkington J. by counsel, there was no appearance by him. The order records that counsel for the plaintiff informed the Court that the plaintiff failed to contact him, and counsel was seeking to come off record for the plaintiff. The order also records counsel for the defendant informing the Court that the plaintiff failed to comply with the settlement agreement the subject of the first order. The curial part of the Order then reads as follows: -

*“IT IS ORDERED AND JUDGED that the defendant do recover as against the plaintiff the sum of €151,000 on foot of the counterclaim herein.*

*AND IT (sic) FURTHER ORDERED that the balance of the Orders made by this Honourable Court on the 6<sup>th</sup> of November 2019 are to remain in place and that these proceedings be struck out”.*

12. One of the legal issues that falls to be determined in this case is whether the Debtor should be permitted to “go behind” or revisit in some way the Order evidently made by Pilkington J. on the 14<sup>th</sup> of February 2020.

On the 4<sup>th</sup> of July 2022, Sanfey J. heard an application by the Creditor seeking an order for substituted service, permitting the Creditor to serve the bankruptcy summons and other documents upon the Debtor by ordinary prepaid post at the said address of Cornerstown House, Ballybride Road, Shankill, Co. Dublin. That application for substituted service was grounded on an affidavit of Karl Howe, solicitor, sworn on the 23<sup>rd</sup> of June 2022. At para. 5 Mr. Howe avers that a bankruptcy summons issued on the 26<sup>th</sup> of July 2021, and he exhibits the said bankruptcy summons and affidavit for bankruptcy summons. At para. 6, he says that

RB Legal Services Limited of 10 Merrion Square, Dublin 2 is a company providing services to the legal profession including summons serving. He says that on or about the 30<sup>th</sup> of July 2021, he furnished RB Legal Services Limited with two copies of the original sealed bankruptcy summons with particulars of demand and annexed same and instructed RB Legal Services Limited to serve the Debtor with the said bankruptcy summons.

**13.** At para. 7, Mr. Howe avers that he was informed by Gerald Field, summons server of RB Legal Services Limited that he attended at the residential address at Cornerstown House, Ballybride Road, Shankill, Co. Dublin on four separate occasions between the 6<sup>th</sup> of August 2021 and the 19<sup>th</sup> of August 2021 to serve the creditor (sic) with the said bankruptcy summons (I take that reference to creditor to be an error and that Mr. Howe is referring to service upon the debtor, not the creditor). Mr. Howe then goes on to say in the affidavit that it appeared to Mr. Field that the creditor was evading service and in that regard, he exhibits a letter from Mr. Field dated the 24<sup>th</sup> of August 2021.

**14.** As is perhaps to be expected, the summons server's letter contains a number of hearsay references and also attributes a number of remarks to unnamed individuals to whom the summon server spoke. Having regard to those frailties and also because it is not necessary to do so at this juncture, I propose not to make any findings on the disputed issues of fact relating to the Cornerstown House address which arise from the summons server's letter and from the respective affidavits of the parties. That said, I think it useful for context to refer to relevant portions of the summons server's letter as follows: -

*“On my first attempt, the gates at the entrance to the property were closed. I received no answer on the intercom at the entrance to the property. I left a voice message on*

*the intercom for Mr. Doherty. There did not appear to be an external post box at the property.*

*After I left the property, I was waved down by a young man on the side of the road.*

*This man was aged in his twenties approximately. He asked me if I was trying to gain access to Cornerstown House. I confirmed that I was and informed him that I had a delivery for Patrick Doherty. He informed me that Patrick Doherty does not reside at Cornerstown House. He informed me that he had no knowledge of where Patrick Doherty currently resides.*

*On my second attempt, I spoke with an elderly man over the intercom. He informed me that Patrick Doherty no longer resides at Cornerstown House, he informed me that Mr. Doherty moved out of the property approximately 12 years ago. I spoke with a neighbouring couple, who informed me that Patrick Doherty currently resides at Cornerstown House. They informed me that Mr. Doherty runs his business from the office building on the land. They were of the opinion that the young man I met on the roadside on my first attempt, may have been Mr. Doherty's son, who resides in another property, the Coach House, also on Mr. Doherty's land. They informed me that the majority of the properties on the road have external post boxes behind the entrance gates. I also spoke with three other neighbouring residents, all of whom were of the opinion that Patrick Doherty continues to reside at Cornerstown House.*

*On my third attempt, I received no answer on the intercom. I spoke with another neighbouring lady who confirmed to me that Mr. Doherty currently resides at Cornerstown House. She pointed out to Mr. Doherty, who was standing on his lawn. I approached Mr. Doherty's property and called out to him. He ignored me and went inside his property.*

*On my final attempt, I spoke with a man over the intercom. He informed me that Mr. Doherty no longer resides at Cornerstown House. He informed that Mr. Doherty moved out approximately ten years ago.*

*I was unable to serve Patrick Doherty at Cornerstown House, Ballybride Road, Shankill, Co. Dublin, as it appears he is evading service with the aid of his family. It is possible that Mr. Doherty denied his identity to me and provided with misleading information on his whereabouts. . . .”.*

**15.** It is evident from the letter that the summons server had received conflicting information on the question whether the Debtor did or did not reside at Cornerstown House. Some of the persons Mr. Field spoke to said that he did; some of the persons said that he did not. In my view, it is not necessary for me in this application to make any finding on these factual issues for three reasons: first, the issue of service of the bankruptcy summons is no longer a live issue in the case, since the Debtor accepts, one way or another, that he received the summons. Second, Sanfey J. was content to make the order for substituted service on the 4<sup>th</sup> of July 2022, permitting service of the bankruptcy summons and other related documentation by ordinary prepaid post to the Debtor at the relevant address in Shankill. The Creditor submits that unless the order of Sanfey J. is set aside, it stands and may be relied upon by the Creditor. Third, I take the view that, from a fair procedures point of view, the issue concerning whether the Debtor resided at the relevant time in the property in Shankill is an issue which should best be left over to the bankruptcy petition stage, if there is a petition stage. I will come back to that issue later on in this judgment.

**16.** Finally, before I leave the affidavit of Karl Howe Solicitor, it was stated at para. 8 of the affidavit that the summons server had not in fact been provided with the affidavit for



bankruptcy summons sworn by David Cahill on the 23<sup>rd</sup> of June 2021 on behalf of the creditor. Mr. Howe states that he accepts that had personal service been achieved by the summons server of the bankruptcy summons without the affidavit for bankruptcy summons, it would not have been effective.

17. At para. 9 of the same affidavit Mr. Howe avers that on or about the 13<sup>th</sup> of December 2021, after the date of the issuance of the bankruptcy summons, the creditor converted from a limited company to an unlimited company. The relevant letter from the Companies Registration Office is exhibited to the affidavit. I mention this detail because it has a relevance to one of the points of objection originally raised by the Debtor in this application to dismiss the summons.

#### **Legal submissions on behalf of the applicant/debtor**

18. In support of his application to have the summons dismissed, the Debtor submits that he is a British citizen and resident and that therefore the leave of the court was required to serve the applicant outside of the jurisdiction under O. 11 of the Rules of the Superior Courts, but that this was not done. Instead, the respondent served a bankruptcy summons at the address of the applicant's son's residence in Dublin, the Debtor having used that address for service and legal proceedings instituted by him against the Creditor in 2016.

19. The Debtor submits that service of the bankruptcy summons on his son's address was not proper, but even if the Court does not find with the Debtor on that point, the Debtor never received particulars of demand at that address or otherwise, and service of same has not been proven by the Creditor.

**20.** Counsel submits that the Debtor's centre of main interests ("COMI") is not in Ireland. Rather, it is in Scotland, where he resides with his wife. In support of the position that his COMI is in Scotland, the Debtor has exhibited to his affidavits the following: -

- Numerous utility bills in his name (Exhibit PD 1 to the grounding affidavit of Patrick Doherty sworn on the 27<sup>th</sup> of July 2022) dating back to 2019 in respect of his residential address, which is in Scotland, notwithstanding that the Creditor has attempted to make issue out of the property being in his wife's name. In response to the Creditor's claim that the property could be leased, the Debtor said that if that were so, presumably the relevant utility bills would be in the name of the lessee/tenant and not in the name of the Debtor.
- Payslips and P60 addressed to the Debtor's address in Scotland in respect of calendar years 2021 (when the Creditor issued the bankruptcy summons) and 2022 (when the summons was served at the Debtor's son's residence). These are exhibited at Exhibit 2 to the grounding affidavit.
- Scottish Bank, Yorkshire Bank and British credit card statements dating back to 2019 which issued to the Debtor's home in Scotland (Exhibit PD 2).
- Correspondence from the Department of Work and Pensions in the United Kingdom to the Debtor's home in Scotland confirming details of his pension as a British citizen and resident (see Exhibit PD 6).

### **Claim that the Debt is Disputed**

**21.** In oral argument, counsel for the Debtor emphasises that her main point is that the debt is disputed, and as such, is not suitable for the bankruptcy process, and certainly not for the bankruptcy summons process. Counsel acknowledges that there was an initial Order made by Pilkington J. implementing agreed settlement terms but she makes essentially two

submissions in support of the contention that the debt in question is disputed and that under s. 8 (6) of the Act, an issue arises for trial and the court should therefore, in those circumstances, dismiss the summons. Counsel emphasises the use of the word “shall” in s. 8 (6) (b) which indicates that it is mandatory that the summons be dismissed, if the Court is satisfied that an issue for trial arises.

**22.** Counsel submits that there is a dispute regarding the correct meaning of the wording of the order of Pilkington J. where the use of “and” and the omission of “or” or the omission of “and/or” renders unclear the consequences or actions to be taken in the event of one task being carried out by the Debtor but not both. Counsel submits that where the terms were drafted by the Creditor, the Debtor’s case is that he should be entitled to rely on the ambiguity in the terms of the Order. In other words, the Debtor says that it is unclear how the defendant in that order of Pilkington J. (who is the Creditor herein) could recover against the plaintiff, if there was default on only one but not both, of the actions the subject of the order.

**23.** Counsel submits that there was no provision in the order (or the founding settlement agreement) for the defendant to recover if the default related to removing the chattels *or* paying the sum (as opposed to “and” which was the word stipulated). In the affidavit grounding the application to dismiss the summons, the Debtor asserts that at the very least the term is ambiguous in this regard and where same was drafted as the term of a settlement agreement on behalf of Blessville Limited and signed by him as the party making the payment, the benefit of such ambiguity ought to rest with the Debtor.

**24.** The second submission made by the Debtor regarding the existence of the debt is that the Debtor had not been made aware in advance of the subsequent application to the Court in February 2020, which resulted in a further order of the Court being made, directing the

Debtor to pay €151,000 and remove chattels from the Creditor's premises. Moreover, he asserts that the alleged debt accruing from that Order was met indirectly by the Creditor preventing the Debtor from being able to comply with the other terms of the order. More specifically, the Debtor stated in a replying affidavit that two of his agents attended the Creditor's premises for the purpose of collecting his chattels, as was stipulated in the order, but they were refused access.

**25.** Accordingly, the Debtor makes the point that, as a matter of justice, in circumstances where the Creditor remains in possession of the chattels and their value would, according to the Debtor, more than meet the purported debt under the court order, as is evidenced by the reconstructed breakdown of inventory exhibited to the Court in the affidavits and said to total the sum of €234,758.04, on that standalone basis the Debtor is entitled to a dismissal of the summons. The Debtor says that all of these points amount to “an issue that would arise for trial” within the meaning of s. 8 (6) of the Act and therefore the Court should dismiss the bankruptcy summons.

**26.** In summary, the Debtor submits that where there is a dispute regarding (a) the wording of the order in terms of the meaning of “and/or” and (b) the Debtor claiming that he was prevented from being able to comply with certain terms of the Order by virtue of the Creditor's actions, and further that this action on the part of the Creditor put the Creditor in possession of assets worth at least as much as the purported debt, there is a real and genuine dispute between the parties as to whether *any* debt is owed by the Debtor to the Creditor and the Court is consequently required to dismiss the summons.

**27.** Counsel for the Debtor also made submissions concerning the legal principles regarding the COMI issue. Reliance was placed on a number of authorities including a decision of the European Court of Justice in *Case C – 104 [2006] – Susanne Staubitz – Schreiber*, a Northern Ireland decision entitled *Irish Bank Resolution Corporation Limited v. John Ignatius Quinn* [2012] NI Ch 1 and a decision of the Irish Supreme Court entitled *In re: Eurofood IFSC Limited* [2006] IR 307.

**28.** The Debtor accepts that the affidavit evidence establishes that he provided a Dublin address (which he maintains is his son's address) as an address for service in legal proceedings which were instituted by him against the Creditor in Ireland in 2016. He maintains that there were subsequent arrangements put in place during those legal proceedings to use his solicitor's address for service for the purpose of those proceedings. Counsel submits that use of that address does not establish residence or COMI now and it is further urged that the Debtor does not live there and has no entitlement to the property or to reside there. It is said that the Debtor used to be a shareholder of a company that was subsequently struck off but which the Creditor notes owns the property in Dublin where the Debtor's son, it is said, resides. The Debtor counters this by saying the Debtor clarified on affidavit that the property was legally owned by that company, but a trust granted same to the Debtor's sons, before the company was struck off. It is said that some of the paperwork remains to be finalised, but the Debtor does not reside in the property and has no entitlement thereto.

**29.** Insofar as there is a reference in the affidavits of the Creditor that a private investigator, a Mr. O'Sullivan, claims he was told by unidentified local residents that the Debtor drives a particular van near the Dublin property and that Mr. O'Sullivan on the 25<sup>th</sup> of

November 2022 took a photograph of the said van outside a pub that he claims he was told the debtor frequents regularly, the Debtor responds to this by saying he has put evidence before the court showing that he was not in Ireland at the time that it was suggested that he was in the pub in question; he was attending a matter in court in North Shields in England on the 25th of November 2022, and he has exhibited in his affidavit proof of travel to and from North Shields on that date.

**30.** The Debtor also submits that the Court has been provided with an affidavit of a Mr. James Doherty (no relation to the Debtor) which although unsworn due to Mr. Doherty having suffered a stroke and being hospitalised, sets out that in fact it is James Doherty who owns and drives the van in question and that the Debtor has never driven the said van and that it was Mr. James Doherty who had travelled in the van that he owns to the public house in question, on the night in question. Counsel acknowledges that the weight the Court can attach to this evidence is minimal in circumstances where the affidavit remains unsworn but reliance is placed upon a separate affidavit of a Mr. Murtagh, solicitor, who attended the hospital with the intention of witnessing Mr. James Doherty's signature and who avers as to his conversation with Mr. Doherty in the hospital and his observation that Mr. Doherty wished to sign the document in front of him, but it appears became unwell and was unable to do so.

### **Submissions on behalf of the creditor/respondent**

**31.** The Creditor's starting position is the contention that the Debtor is very clearly indebted to the Creditor on foot of a High Court order. Counsel submits that the reasons raised by the Debtor as to why he claims he is not indebted are not valid and lack any credibility. In any event, it is contended, the Debtor is impermissibly seeking to go behind the

second order of Pilkington J. and this, it is urged, is in breach of the principle of *res judicata* and in breach of any principle of finality. Counsel submits that the Debtor is effectively inviting the Court to second guess an extant order of the High Court which speaks for itself and this is not permissible.

**32.** Counsel for the Creditor submits that where a party has already sued and obtained judgment against another party, then there is no issue on the debt that would arise for trial. Where a party has judgment for a debt, as is the case here, then it cannot be disputed that it enjoys the status of a creditor. Bankruptcy petitions are ordinarily presented by parties who have already obtained judgment. Here, judgement was obtained and has not been appealed or set aside and therefore, it is contended, should be given effect to.

**33.** Apart from the issue of the extant judgment of Pilkington J., counsel for the Creditor submits that the Debtor is incorrect to assert that the terms of the order regarding his indebtedness are ambiguous. He submits that the terms of both orders of Pilkington J. are very clear, and the allegations or suggestions regarding ambiguity are unfounded, as confirmed by Mr. Cahill in his first affidavit at para. 19. Counsel submits that the Debtor failed to comply with the first order of Pilkington J. and that necessitated the court making the second order. It is submitted that the second order is crystal clear and indicates in the clearest of terms that the Debtor must pay €151,000 to the Creditor.

**34.** Further, counsel submits that the Debtor did not remove the goods or pay the €46,000 as required by the first Order. The Creditor eventually disposed of the goods. In any event, the order dated the 14<sup>th</sup> of February 2020 confirms that the Debtor did not comply with the original order and must pay €151,000. Counsel urged that the Debtor had the opportunity to oppose the second order being made but did not do so. The Debtor had the opportunity of

making whatever arguments he wished to make before Pilkington J. at the time and failed to do so. He says the Debtor makes excuses regarding his failure to comply with the first order by stating that he could not collect the goods. However, Mr. Cahill confirmed that nobody turned up to collect the goods (see para. 7 of Mr. Cahill's third affidavit). In any event, it is too late now to seek to unwind the Order of Pilkington J. which is presumptively valid and speaks for itself.

**35.** Insofar as the Debtor claims that he did not know about the application for the second order in advance of it being made, and his further contention that he did not see the second order until these proceedings commenced (second affidavit of Patrick Doherty, para. 9), counsel points to what he says is an inconsistency in Mr. Doherty's position. He says that one paragraph earlier Mr. Doherty states that he found out about the second order that evening (see second affidavit of Mr. Doherty at para. 8 b). In addition, Mr. Cahill confirmed that the Debtor was in court on the first date when the case was adjourned to February 2020.

**36.** All told, counsel for the Creditor urges that the Debtor had every opportunity to make such arguments as he wished before Pilkington J. at the time but failed to do so. As a result of the Debtor's non-compliance with the order, Pilkington J. made the second order in February 2020. Counsel says the Debtor is clearly indebted to the Creditor and his excuses and noncompliance are simply not credible. Moreover, he could have appealed the second order, which even at the height of his case he admits he was aware of, but did not. Counsel urged that the reality of the situation is that the Debtor's position is without any substantive merit and he pointed out that the Debtor had at no stage paid even the reduced amount of € 46,000 referenced in the first order of Pilkington J.



### **Narrow scope of an application to dismiss a bankruptcy summons**

**37.** In relation to the Debtor's jurisdictional arguments, counsel for the Creditor submits that an application to strike out a bankruptcy summons can only be brought in particular circumstances. He relies upon s. 8 (6) of the Bankruptcy Act 1988 as amended. Insofar as the section states that the court shall dismiss the summons "if satisfied that an issue would arise for trial", counsel urged that, properly construed, this means that the Court must be satisfied that an issue *relating to the debt* would arise for trial. Counsel submits that s. 8 (6) (b) applies to situations where a party obtains a bankruptcy summons on the basis of being a creditor, but the party's claim to be a creditor is disputed and its claim has not been determined by a court at trial. Counsel submits it is not the role of a judge hearing the bankruptcy petition to determine the merits of the underlying dispute, which may involve hearing an entire case. Counsel submits that where a party has already sued and obtained judgment against another party, then there is no issue that would arise for trial. Where a party has judgment for a debt, then it cannot be disputed that it is a creditor. That is why it is regularly the case that bankruptcy petitions are presented by parties who have already obtained judgment.

**38.** Counsel for the Creditor relies upon O. 76, r. 13(2) of the Rules of the Superior Courts which outlines what a debtor must do if he wishes to dispute a debt in a summons. According to the rule, the debtor must file an affidavit within 14 days after service of the summons stating (a) that he is not so indebted or only so indebted to an amount of €20,000 or less, or (b) that before the service of the summons he has obtained the protection of the court, or (c) that he has secured or compounded the debt to the satisfaction of the creditor (see O. 76, r. 13(2)).

**39.** Counsel submits that in relation to requirement (a) whether the debtor is or is not indebted will depend on whether there is an issue for trial. If there is a judgment, then the debt cannot be disputed. The second requirement, the €20,000 threshold, is simply a statutory

threshold in s. 8 of the Bankruptcy Act. Requirement (c) does not arise as it simply deals with situations where a debtor has resolved the debt.

**40.** Counsel also calls in aid the draft court forms for bankruptcy and personal insolvency proceedings. He refers to Appendix O of the Rules, Form 6 providing the template for an affidavit to ground application to dismiss bankruptcy summons. The form sets out identical grounds for dismissing a bankruptcy summons as appeared in O. 76, r. 13 (2).

**41.** Drawing on these points, counsel for the Creditor submits that an application can only be brought to dismiss a bankruptcy summons if (a) the debtor is not indebted or is indebted less than €20,000 or, (b) that before service the debtor had obtained the protection of the court, or (c) that the debt has been secured or compounded to the satisfaction of the creditor. Accordingly, he submits the debtor cannot make a jurisdictional challenge in a motion to dismiss a bankruptcy summons. Counsel contends that the jurisdictional issue raised by the Debtor – concerning the question of the Debtor’s COMI - is a matter to be dealt with at the presentation of the bankruptcy petition. In that regard, he also relies upon s. 11 (d) of the Bankruptcy Act 1988 as amended.

**42.** In the alternative, if the COMI issue does arise at the summons stage, counsel for the Creditor submits that the Debtor’s jurisdictional objection is without merit and that the Irish High Court does have jurisdiction to hear and determine these proceedings.

**43.** As to the merits of the Debtor’s COMI objections, counsel for the Creditor submits that if the Debtor’s COMI is indeed in Scotland – which is disputed – then he cannot rely upon the concept of COMI. That is because COMI is a concept which is relevant if a debtor claims to reside in an EU Member State. The problem for the Debtor, says counsel for the

Creditor, is that the Debtor claims that his Centre of Main Interests is in Scotland, which, as we all know, is no longer part of an EU Member State. Counsel refers to the EU Insolvency Regulation 2015, at para. 25 which provides that: -

*“This Regulation applies only to proceedings in respect of a debtor whose centre of main interests is located in the Union”.*

**44.** Counsel submits that in accordance with the EU Withdrawal Agreement dated 24<sup>th</sup> of January 2020 between the United Kingdom and the European Union on the 1<sup>st</sup> of January 2021, the United Kingdom left the Union and regulations such as the EU Insolvency Regulation 2015 ceased to apply to it. Accordingly, counsel submits that if the Debtor’s COMI is indeed in Scotland, the Regulation does not apply and the law relating to jurisdiction in the (Irish) Bankruptcy Act of 1988 applies.

**45.** In that regard, counsel refers to s. 11 of the Bankruptcy Act which sets out the requirements of a creditor to present a bankruptcy petition against a debtor. The requirements are set out at subs. (a) to (d). Subsection 11(d) concerns jurisdiction and allows a creditor to present a petition for adjudication against a debtor if: -

*“(d) the debtor (whether a citizen or not) is domiciled in the State or, within three 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”.*

**46.** Accordingly, the creditor submits that a creditor can present a bankruptcy petition if it proves any one of the following: -

(i) The debtor is domiciled within the State, or,

(ii) Within three years before the date of presentation of the petition: -

(a) The debtor has ordinarily resided in the State, or

(b) The debtor had a dwelling house in the State, or

(c) The debtor had a place of business in the State, or

(d) The debtor has carried out business in the State personally or by means of an agent or manager, or,

(e) The debtor is or within the set period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager.

**47.** Counsel submits that on the evidence disclosed in the various affidavits, he meets the threshold of demonstrating that the Debtor has resided in the State, or had a dwelling house in the State, or had a place of business in the State within the last three years. He submits the Debtor either lives in Cornerstown House, Ballybride Road, Shankill, Co. Dublin, or resided there within the last three years, or it is a dwelling house of his, or he used it as a place of business within the last three years. In addition, he says the affidavit evidence discloses that the Debtor carried on business in the State within the last three years.

**48.** Counsel for the Creditor also makes a general submission as to the credibility of the Debtor's position. He submits that the Debtor's evidence cannot be relied upon. The Debtor is in breach of two court orders and continues to deny liability. Moreover, despite the Debtor confirming in multiple court documents including swearing on affidavit that he lived at the

property in Shankill, he continues to maintain the position that he never in fact lived there (see Patrick Doherty's second affidavit at para. 6). Further, counsel submits that the Debtor has made contradictory averments on affidavit concerning his knowledge of the second order of Pilkington J.

**49.** All told, counsel submits that the Debtor is simply attempting to avoid his legal obligations through denial and the use of companies and family members, and, in that regard, reliance is placed upon the affidavits of Mr. Cahill, the private investigator Denis O'Sullivan, and the various affidavits and materials dealing with the question of service.

### **Discussion**

**50.** It is noteworthy that many of the affidavits filed for the purpose of this application concern factual disputes as to whether the Debtor did or did not reside, or was or was not present, at the address in Cornerstown House in Shankill when agents of the Creditor attended for the purposes of serving the bankruptcy summons. While a lot of time has been taken up with this issue, involving a backwards and forwards of affidavits as to alleged sightings of Mr. Doherty on the property, it seems to me a better starting point is to consider the first paragraph of the Debtor's own affidavit grounding this application. In his affidavit sworn on the 27<sup>th</sup> of July 2022, Mr. Doherty confirms that the bankruptcy summons was served at what he terms "my son's" residential address at Cornerstown House, Ballybride Road, Shankill, Co. Dublin. He also candidly accepts that he received the summons on the 18<sup>th</sup> of July 2022. However, he goes on in the same paragraph to state that he is not indebted to the said Blessville Limited in any sum amounting to more than €20,000 or otherwise.

**51.** It follows from this that the *agreed* position is that since no later than July 2022, the Debtor has had notice of the summons, of the amount claimed and the basis for it. He is also on notice of the warning contained on the face of the summons that unless within fourteen days after service of the summons, the €151,000 is paid to the Creditor, he will then have committed an act of bankruptcy, in respect of which he may be adjudged a bankrupt, on a petition being presented against him by the Creditor.

**52.** The second thing established in the evidence is that no part of the alleged debt has been paid – not even the settlement figure of € 52,000 referenced in the first Order of Pilkington J.

**53.** In my view, viewed from the perspective of these agreed facts, it is simply not necessary for the Court at this stage to make findings on whether Mr. Doherty was, or was not, living or seen at the property in Shankill on any of the relevant dates. Those issues and factual disputes may loom large at a later stage of the process, but they do not fall for adjudication now.

**54.** Moreover, if it is the case that the Debtor needs any additional documents to be furnished, there is nothing to prevent him writing to the Creditor's solicitors for any documents he feels he may be missing.

**55.** As to the Debtor's jurisdictional argument, in the course of the hearing I canvassed with counsel for the Debtor that, from a fair procedures point of view, it might be more advantageous from the Debtor's perspective if the COMI/domicile/residence issue is held over until the petition stage, if any. Holding over the jurisdiction issue has the distinct benefit

that the parties, if they feel they need to, can supplement their proofs in relation to the factual issues that arise. To take an example, the Debtor may wish to further address the argument identified by the private investigator Mr. O’Sullivan at para. 4 of his affidavit. Mr O’Sullivan exhibits a letter of consent for planning permission dated the 10<sup>th</sup> of August 2022 which appears to have been signed by the Debtor. In that document, the signatory appears to indicate that his address is indeed Cornerstown House in Shankill. Apart from what the document indicates on its face, the Creditor makes the point that a letter of consent for planning permission is required if the party applying for planning permission is not the owner of the property. The letter of consent is to be provided by the owner of the property pursuant to Article 22 (2) (g) of the Planning and Development Regulations 2001 as amended. Accordingly, the Creditor points to this document as demonstrating that the Debtor has confirmed in this document that he owns the property as of the 10<sup>th</sup> of August 2022. The Creditor effectively submits that the planning permission letter, coupled with the fact that the Debtor appears to have listed the property as his address from 2016 to 2022, demonstrates the necessary jurisdiction to anchor the proceedings in Ireland.

**56.** I wish to emphasise that I am not deciding that issue in this application as I feel it is an issue that is best kept over to the petition stage, in the event a petition stage is ever reached.

**57.** Without necessarily deciding the point, I think there is merit in the point that the Oireachtas has been careful in s. 11 of the Bankruptcy Act 1988 to set out in some detail the jurisdictional requirements for presenting a bankruptcy petition. Since the legislature focuses on the jurisdictional requirements at the petition stage, and does not do so in s. 8 dealing with the bankruptcy summons stage, it is contended that that is a pointer in favour of the contention that the jurisdictional issues raised by the Debtor in this instance are more

properly matters to be dealt with at the presentation of the bankruptcy petition and do not fall for adjudication in an application to dismiss a bankruptcy summons. It seems to me I do not have to decide this issue in this application. Having regard to the helpful submissions made by respective counsel in the case, it appears to be accepted by the parties that the Debtor can make his jurisdictional objections at the petition stage, in the event the process gets that far.

**58.** Since I do not wish in any sense to tie the hand of any Court that might hear a bankruptcy petition, I propose not to make any findings on the law or on the facts relating to the COMI or domicile issue.

**59.** In oral argument counsel for the Debtor emphasised that the point that was being most strenuously pressed in the present application was the contention that there is no debt due and owing to the Creditor, having regard to the alleged ambiguity in the Order of Pilkington J., the alleged frustration of the Debtor's attempts to remove the goods in the first set of proceedings, and the assertion that the Creditor had wrongfully retained the chattels and that they are worth a sum of money far in excess of the amount claimed in these bankruptcy proceedings.

**60.** S. 8(6) of the Bankruptcy Act 1988 provides in reasonably clear terms that the Court shall dismiss the summons "*if satisfied that an issue would arise for trial*". It seems to me that the net issue for me in this application is to determine whether the Debtor has established whether an issue arises for trial relating to the debt, that warrants the dismissal of the summons.



61. In *Minister for Communications, Energy and Natural Resources and Michael O'Connell v. Richard Wood and Michael Wymes* [2017] IESC 16, the Supreme Court (Dunne J.) stated the following: -

*“ . . . It is mandatory on the Court to dismiss the summons having regard to the provisions of s. 8(6)(b) if an issue arises on the summons. There is no choice in this matter. The summons must be dismissed. That begs the question as to what is an issue that could give rise to the dismissal of a bankruptcy summons. In Minister for Communications v. M.W. McGovern J. described the test to be applied in deciding whether an issue would arise for trial as follows: '...this is a real and substantial issue and which is, at least, arguable and which has some prospect of success.' (at para. 24). In two subsequent decisions of the High Court, I accepted that this was the appropriate approach to be taken in considering whether an issue would arise for trial. (See *Allied Irish Banks plc v Yates* [2012] I.E.H.C. 360 at p. 29 and *Marketspreads Ltd. v O'Neill and Rice* [2014] I.E.H.C. 14 at p. 32.*

*Thus, in order for an application to dismiss a bankruptcy summons to succeed, the issue raised by an applicant must be a real and substantial issue. It should not be fanciful or unreal. It may be an issue of fact or law. If the issue raised is an issue of fact it must have some credibility. If, for example, the applicant for an order pursuant to s. 8(6)(b) of the Act of 1988 denies that he owes the money sought in a bankruptcy summons but has already suffered judgment in that amount, then the conclusion that he or she did not owe the money would simply not be credible. If the issue raised was an issue of law which was well established and as to which there was no doubt and could not avail the applicant, raising such an issue could not give rise to the dismissal of the bankruptcy summons.*

*There is some assistance to a Court in considering whether the issue raised is a real and substantial issue to be found by comparing an application to dismiss a bankruptcy summons and the test as to what amounts to an arguable defence on foot of an application for summary judgment. In that context, Hardiman J. in Aer Rianta Cpt. V. Ryanair Limited [2001] 4 I.R. 607 asked (p. 623):*

*'Is there either no issue to be tried or only issues which are simple and easily determined? Do the defendant's affidavits fail to disclose even an arguable defence?'*

*(emphasis added).*

**62.** In the same case, Dunne J. for the Supreme Court emphasised that an application to dismiss a bankruptcy summons should not be granted unless it is very clear that no issue arises. Dunne J. also emphasised that a mere assertion that an issue arises would be insufficient to succeed in an application to dismiss a bankruptcy summons.

**63.** In *Noreen Hynes v John and Bridget Atkinson* [2021] IEHC 598 Humphreys J. observed – having considered the Supreme Court’s decision in *Wood* - that a debtor has to do more than simply raise some asserted point : “...*It has to be a point that represents a viable defence to the summons in the legal context in which that summons is brought, as opposed to some hypothetical context unbounded by statutes of limitation or other legal constraints.*”

**64.** Humphreys J. went on to state that :

*“I agree that in the context of an application to dismiss a bankruptcy summons, the debtor does not have to definitively demonstrate that she is correct, but she must raise a credible point based on some evidence that might be accepted, by analogy with the law on summary*

*judgement as set out in Harrisrange Ltd v Duncan 2202 IEHC 14, 2003 4 IR 1, as indicated by Dunne J. (Denham CJ and Charleton J. concurring) in Minister for Communications, Energy and Natural Resources v Wood 2017 IESC 16 (Unrep. Supreme Court 9<sup>th</sup> March 2017).*

65. Applying the above case law, it seems to me that the Debtor faces an insurmountable difficulty arising from the existence and contents of the order of Pilkington J. dated the 14<sup>th</sup> of February 2020. That order states on its face that the High Court has ordered and adjudged that the defendant (Blessville Limited) do recover as against the plaintiff (Patrick Doherty) the sum of €150,000 on foot of the counterclaim herein. The fact of the matter is that that order was never appealed and nor was any application made to have it set aside or otherwise revisited. The Debtor was represented in that hearing before Pilkington J., albeit he was not present in person.

65. Moreover, I note from the replying affidavit of Patrick Doherty sworn on the 2<sup>nd</sup> of January 2023, at para. 8 (b) that he acknowledges that he was notified no later than the evening of the application before Pilkington J. on the 14<sup>th</sup> of February 2020. Had he wished to revisit the order made, or put before the court additional materials or arguments, he had ample time to do so. In the overall circumstances of the case, and taking the Debtor's position at its height, I am not persuaded that there is any basis for revisiting or calling into question the validity of the order of Pilkington J.

66. In my view, the evidence offered by the Debtor to justify the Court going behind the second Order of Pilkington J. is weak, patchy and at times inconsistent. He avers at para 10(b) of his first affidavit that the debt was being disputed because the Creditor acted outside

the spirit of the Order / settlement agreement and prevented him from complying with his obligations under the first order. He says that within approximately a week of the order being made, *“on my attempt to access the site to remove said chattels, I was denied access and prevented from removing the chattels”*. He then says that since the Creditor retained the proceeds of the chattels, *“where I expected that the value attained for same would have been circa the value payable by me under the agreement/Order, same was not subsequently discharged by me.”*

**67.** In his second affidavit, he says that on the 2<sup>nd</sup> December 2019 he had agents (a Graham McKeever, Lindsay Brown and 4 other assistants) attend at the address in Wicklow to remove the chattels. They arrived with 2 large trucks to facilitate removing the goods but were told by an (unnamed) foreman on site that they were not getting the goods; that the items had been sold; and they were being refused access to the site. They left but returned later and at that point there was a different (again unnamed) gentleman who told them he had been specifically told not to allow inspection of the goods or for any goods to be removed.

**68.** In his affidavit, the Debtor alludes to the possibility of Mr McKeever and Mr Brown each swearing their own affidavit to confirm the events of the 2<sup>nd</sup> December 2019. However, it is noteworthy that no such affidavit has been provided to the Court. This is in circumstances where in the Creditor’s affidavit of 24 February 2023 para 7, Mr Cahill avers that nobody attended at Glenealy on 2 December 2019 on behalf of Mr Doherty to collect the chattels and he asserts that Mr Doherty’s claim in that regard is completely unsubstantiated.

**69.** In my view, a distinction can be drawn between the issue whether the Debtor was frustrated in his efforts to comply with the first Order of Pilkington J. and the separate issue

whether, on fair procedures grounds, the Debtor should be permitted to “go behind” or revisit the second Order of Pilkington J. Since this is an application to dismiss a bankruptcy summons, the Court should consider the Debtor’s affidavits at their height and assess whether the Debtor has met the low threshold of identifying an issue for trial. It seems to me that there is conflicting affidavit evidence before the Court on the question whether the Debtor was, as he claims, frustrated in his efforts to comply with the first Order. Since the relevant deponents have not been cross examined, the Court is unable to form a definitive view on this discrete factual issue.

**70.** However, in my view that is not the key point in this application. It seems to me that since the Creditor has already obtained judgement from the High Court in the amount of the debt the subject of the bankruptcy summons, the issue as to existence of the debt should not be revisited or “gone behind” unless the Debtor puts forward clear and compelling reasons why the second Order of Pilkington J. should be disregarded or set aside or somehow revisited. Having carefully considered the affidavit evidence on this issue, I am not satisfied that any basis has been established for going behind Pilkington J.’s second Order.

**71.** The Debtor may now *wish* that he had challenged the order at the time, or appealed it, but that is very different to the Debtor, at this remove, being allowed to ignore or go behind the order.

**72.** I find persuasive the Creditor’s argument that, if the Debtor felt that he was wrongly frustrated by the Creditor from complying with his obligations under the original settlement agreement, or believed that he was being unfairly treated and that he had not in fact breached the first Order of Pilkington J, then he would have made it his business to attend before Pilkington J. to explain his position and make appropriate submissions. Instead, the Debtor now offers conflicting reasons as to why he did not turn up for the court appearance before

Pilkington J. on the 14 February 2020. In his first affidavit grounding the application to dismiss the summons, he offers no commentary or evidence as to why he did not turn up in court on that occasion. In his second affidavit sworn on 12 January 2023 he says at para 8(b) that he was not in attendance “*as I was only notified on the evening of the application (by the solicitors on record for me at the time) that the application had taken place that day*”. In para 9 in response to the Creditor’s point that he had every opportunity to dispute the debt in February 2020 when the matter came before Pilkington J. he says that he was not in attendance and he claims that he had “*...no knowledge of the application in advance or at the time of the application.*” He says he believes he was not notified by his solicitors of the pending court application or of their intention to apply to come off record and so was not in a position to make the case that he now makes. This issue is not further developed in the Debtor’s third affidavit.

**73.** In the replying affidavit of the Creditor sworn 24 February 2023, Mr Cahill points out that the Debtor was in court on 6 November 2019 when Pilkington J originally adjourned the matter to 7 February 2020. The matter was further adjourned to 20 February 2020 because there was a judicial conference on the 7th February. He avers that when the matter came before the Court on 14 February 2020, Mr O’Doherty’s former solicitors informed the Court that they had been unable to make contact with Mr O’Doherty and were therefore applying to come off record. Mr Cahill says that the Debtor deliberately failed to engage with his solicitors and to attend court on the return date because he knew that he had not complied with the terms of the Court Order of Pilkington J. dated 6 November 2019 and that judgement would therefore be entered against him, as indeed it was. He says it is fanciful to believe that the debtor’s former solicitors were all of a sudden able to contact him after judgement had been entered against him, but did not try to make any contact with him in advance of 14

February 2020. He says his view in this regard is reinforced by the fact that Mr Doherty could have written to the creditor's solicitors and explained the alleged reason for his non-attendance and/or could have attempted to have the matter re-listed before the High Court before the Order was perfected, but failed to do any of these things.

**74.** I find the Debtor's reasons for not attending court on the 14 February 2020 unconvincing and wholly lacking in credibility. First, on his case, a burning injustice had occurred in that the Creditor had wrongfully frustrated his efforts to comply with the first order of Pilkington J. One would expect a litigant in such circumstances to be "chomping at the bit" to explain his position and keen to take all necessary steps to ensure the Court is put right on the factual position and that, at the very least, he would be present in court for the return date to defend his position.

**75.** Second, it is apparent from the terms of the first Order of Pilkington J. dated 22 November 2019 that the Debtor's action stood adjourned to Friday, 7<sup>th</sup> February 2020. The Debtor knew this because he was present.

**76.** Third, it seems to me there is an inconsistency in the Debtor's position as to why he did not turn up in court in February 2020 or seek to revisit the matter later. On the one hand, he claims that he had no knowledge in advance or at the time of the application, and yet on the other hand he accepts that he was notified on the evening of the application. All of this is unconvincing and lacking in credibility, particularly in circumstances where he now claims he had a strong story to tell.

**77.** Apart from the factual merits, it seems to me that at a level of principle, the Debtor's argument necessarily involves the Court second guessing, or revisiting in some way, an Order made by the High Court more than 3 years ago. In my view, the Debtor cannot now "unring

the bell”. The High Court has already granted judgment in the sum captured in the bankruptcy summons.

**78.** In oral argument before me, the point was made that the Debtor had effectively taken the view that “sleeping dogs should be let lie”, and since the Creditor had held on to the retained chattels which on the Debtor’s case exceeded the value of the sum owed, then that state of affairs would mean in substance that the debt was met and that, as a matter of justice, that should be the end of the matter. In my view, it simply wasn’t open to the Debtor to adopt that position, if indeed that was the position he adopted. A debtor can’t unilaterally choose to ignore a judgement or deem it no longer applicable. In my view, it is not open to the Debtor in this instance to invite the Court to effectively ignore, or set aside, the order of Pilkington J. Those proceedings have long since come to an end and the final outcome was reached, resulting in the second order of Pilkington J. To hold otherwise would be to ignore the principle of finality and the doctrine of *res judicata* in my view.

**79.** Applying the rationale of the Supreme Court in *Wood*, particularly the portion of the judgement that I have underlined above, the issue comes down to whether the defence raised by the Debtor is “real and substantial”. I hold that it is not. The point raised by the Debtor is unreal and depends on factual assertions which lack credibility. No sustainable argument has been made why the Court should overlook or disregard the Order made by Pilkington J. A mere assertion by the Debtor that he has a defence to the debt is not enough. Nor is it sufficient for the Debtor to say that Pilkington J. would not have made the Order had he been present in court to make the arguments that he now wishes to make. In *Wood*, Dunne J. makes clear that where an applicant for a dismiss order under s 8(6)(b) denies that he owes



the money sought in a bankruptcy summons, but has already suffered judgement in that amount, “*then the conclusion that he does not owe the money would simply not be credible*”.

**80.** Of course, the *res judicata* principle should not be applied inflexibly or in a manner that closes out a party’s rights to fair procedures. There may well be exceptional cases where it will be appropriate to go behind a judgement that has been granted previously. I do not rule out such a possibility where a debtor puts forward cogent evidence that calls into question the reliability or fairness of the earlier proceedings. For instance, were a debtor to establish *prima facie* proof that the earlier judgement was procured by fraud or mistake, or in circumstances of fundamental unfairness such that it should be set aside, then the interests of justice might necessitate at least a revisiting of the earlier Order. In this way, the principle of finality will not operate as an inflexible or absolute rule and a Court will retain a residual discretion to revisit an earlier Order where the individual circumstances of a case may require it.

**81.** In my view, the Debtor here comes nowhere near demonstrating why the Order of Pilkington J. should be varied or set aside. Since that order stands, the debt the subject of the bankruptcy summons is due and owing.

**82.** For these reasons, I hold that the Debtor has failed to reach the light threshold of demonstrating that an issue would arise for trial. On that basis, I dismiss this application.

**83.** For completeness, there was one other argument made by the Debtor at para 2 of his grounding affidavit to the effect that the bankruptcy summons was invalid as it contained an error in the title of the served summons where it relates to “Blessville Limited” and not “Blessville Unlimited Company” which is the new name for the company since 13 December 2021. The Debtor asserts in the original affidavit that Blessville Limited has not existed in law since 12 December 2021 and that since the serving of the summons took place at a time

when the company as the purported creditor on that summons did not exist, the summons is “invalid in law”. I propose not to adjudicate or dwell on this issue because it did not feature in counsel’s submissions, either written or oral. I note that the point is addressed in Mr Cahill’s replying affidavit at para 7 where he says that on 13 December 2021, the Creditor changed from a limited to an unlimited company and consequently its name changed from “Blessville Limited” to “Blessville Unlimited Company”. He says the party that issued the summons is the same party that served the summons and that is still before the Court as the Creditor now. He says there has been no change of Creditor or party. He says this is a common occurrence in litigation. The bankruptcy summons itself had the then correct name of the creditor when it issued. He asserts that it continues to be valid.

**84.** I mention all of this for completeness only, because it seems to me that I do not have to decide this issue in circumstances where it did not feature in the parties’ submissions at the hearing or in the written submissions. In my view, the issue should be left over, if it arises at all, to the bankruptcy petition stage, if any.

**85.** Finally, my provisional view on the issue of costs is that as the Creditor has succeeded in the application, the *Creditor’s costs only* should be reserved to the hearing of the petition, if any. What I have termed the “jurisdictional” arguments, relating to the Debtor’s COMI and domicile, have been held over to the next stage of the process. For that reason, and also to reflect the Creditor’s success in this motion, I propose to reserve to the hearing of the petition the Creditor’s costs only. That is the order I propose to make, unless the parties seek a hearing for the purpose of making submissions on costs.

Signed: Micheál O’Higgins.

Appearances : Pamela Keegan BL instructed by P.B. Cunningham and Co. Solicitors for the Debtor. Neal Flynn BL instructed by HPMO Solicitors LLP for the Creditor.