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High Court prevents City law firm from making debtor bankrupt over unpaid fees

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In the recent High Court case of Digby-Rogers v Speechly Bircham LLP [2019] EWHC 1568 (Ch), a City law firm which was owed £167k was prevented in its attempt to make the debtor bankrupt. The judgment demonstrates the Court's discretion in making an insolvency order and that regard should be given to the interests of others creditors.

Background

The plaintiff, Mr Digby-Rogers, was indebted to a number of creditors in the combined amount of £1,255,591. The debts were not disputed including one which was owed to a law firm, Speechly Bircham LLP ("Speechly"), at the amount of £167,266, representing 13 per cent of the total indebtedness to his creditors. Speechly petitioned for Mr Digby-Rogers' bankruptcy based on an unsatisfied statutory demand.

The hearing of the petition was adjourned several times on the basis of Mr Digby-Rogers' expectations of receiving payment of a significant fee from a Mongolian mining project. If paid, this would have enabled the plaintiff to pay each of his creditors in full, including Speechly. It was also alleged by Mr Digby-Rogers that the expectant payment was the only asset he had and that if the Court refused to allow the adjournment and made the bankruptcy order, it was very likely that his creditors would receive nothing.

Finally, at the sixth hearing, the plaintiff again requested a further adjournment. This was opposed by Speechly resulting in a bankruptcy order being granted. Mr Digby-Rogers appealed.

The decision

In finding for Mr Digby-Rogers, the Court held that during the previous hearing, the rights of the other creditors did not receive sufficient attention and that "before coming to the decision whether to adjourn in the debtor's favour, the judge was required to consider and evaluate the views of the other creditors". In doing so, the Court held that this exercise was quite different from evaluating whether the debtor had demonstrated credible evidence that the project payment was actually, on the balance of probabilities, going to be forthcoming. Mark Anderson QC went on to opine:-

"Having heard no submissions based on [Glenn Maud v Aabar Block [2016] EWHC 2175 (Ch)] it is clear from his ruling that the judge overlooked what Snowden J described in that case as a critical stage in the exercises of his discretion. He considered only the discretion to adjourn on the ground that there was credible evidence of a reasonable prospect of payment within a reasonable time. He made no mention of the interests of creditors as a class, nor the weight to be accorded to their views. I must therefore respectfully conclude that he misdirected himself in law."

Comment

It is clear from Mr Anderson QC's judgment that the position of the other creditors, who were owed 87 per cent of the outstanding debts could have been decisive to the question of whether to grant a further adjournment. However, the failure to even consider their views was in itself a misdirection of law.

For example, in assessing their views, the Court should have had proper regard to the professional qualifications of the other debtors (comprising of another firm of solicitors and an insolvency practitioner, amongst others) and the fact that no other creditor, apart from Speechly, actually opposed the adjournment. In fact, all other creditors actively supported it, given the promise of the project payment which would result in a full recovery for each of them if it actually came to fruition.

The judge also noted that since Speechly gave no evidence against the adjournment, it did not contradict Mr Digby-Rogers' assertion that he had no other assets and thus it begged the question:- what was the bankruptcy order likely to achieve if anything at all?

This decision should serve as a reminder to creditors and debtors alike that in enforcement actions where there are other known creditors, their views will matter – it should not be taken for granted that the petitioning creditor will be the only voice in the room.

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