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2011 No. 133303

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION (BANKRUPTCY)

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AND IN THE MATTER OF THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989

BETWEEN:

IRISH BANK RESOLUTION CORPORATION LIMITED

Applicant;

-and-

JOHN IGNATIUS QUINN
ALSO KNOWN AS SEAN QUINN

Respondent.

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DEENY J

The proceedings

[1] On 10 November 2011 the respondent John Ignatius Quinn, commonly known as Sean Quinn, filed a debtor's bankruptcy petition in the High Court of Justice in Northern Ireland requesting that a bankruptcy order be made against him pursuant to the provisions of the Insolvency (Northern Ireland) Order 1989 ("the Order").

[2] This petition was heard by the Master in Bankruptcy on 11 November 2011. She accepted the submission of Mr John Gordon, solicitor, of Messrs Napier and Sons, that, despite his habitual residence in the Republic of Ireland, the centre of his main interests pursuant to EC Regulation 1346/2000 was in Northern Ireland and he was therefore entitled to bring such a petition here.

[3] Paragraph 1 of the petition reads as follows:

> "Although I am not now resident in Northern Ireland, my centre of main interest, being the place where I conduct the administration of my interest, is located within the United Kingdom, at Gortmullen, Derrylin, County Fermanagh, Northern Ireland, BT92 9AU, which is the registered office and place of business of the companies in the Sean Quinn group of which I have been a director and from where I have performed my duties and conducted my business affairs. I am domiciled for taxation purposes in Northern Ireland and my tax affairs are conducted within the United Kingdom under UK National Insurance and Tax References."

[4] The petition was accompanied by a Statement of Affairs and for these purposes it is sufficient to note that at paragraph 11.2 Mr Quinn disclosed that he had been excluded from the running of the Quinn group business by the Irish Bank Resolution Corporation Limited (the Bank). At several places in the Statement of Affairs he refers to litigation in which he is a defendant to claims brought by the bank or a third party in relation to proceedings brought by his children as the shareholders in almost all the Quinn companies against the Bank.

[5] On foot of the Petition and Statement of Affairs and the submissions made to her the Master made a Bankruptcy Order on 11 November 2011.

[6] On 17 November 2011 the Irish Bank Resolution Corporation Limited ("the Bank"), formerly named Anglo-Irish Bank, filed an application to, *inter alia*, annul the said order pursuant to Article 256(1)(a) of the 1989 Order and to rescind the order pursuant to Article 371 of the Order or within the inherent jurisdiction of the court on the basis that the court lacked the jurisdiction to open main proceedings under Article 3(1) of EC Regulation 1346/2000 or on the basis that the *ex parte* order had been obtained through misrepresentation and/or non-disclosure.

[7] The matter came before me on 24 November 2011. On that occasion I gave directions as to the service of replying and rejoinder affidavits and of skeleton arguments. The matter came on for hearing on 19 and 20 December 2011. Mr Mark Horner QC, Mr Gabriel Moss QC and Mr David Dunlop appeared for the bank. Mr Mark Orr QC, Mr Richard McLaughlin and Mr John Briggs appeared for Mr Quinn. Mr William Gowdy, of counsel, appeared for the Official Receiver. I am grateful to counsel for their able and erudite written and oral submissions. I have taken these into account in writing this judgment even if not all are expressly referred to.

[8] For completeness I should say that at the time that Mr Quinn brought his petition in this jurisdiction he was facing summary proceedings in the High Court in Dublin. Mr Justice Kelly in that court gave an initial adjournment to allow the Official Receiver to make representations. Subsequently he proceeded to hear the

applications for summary judgment and indeed to grant summary judgment against Mr Quinn on behalf of the Bank for very large sums of money including, on 23 November 2011, $219,901,910.64 and €253,951,810.67. However he made clear then and on a subsequent occasion that in doing so he was not challenging the right of this court to determine whether it had jurisdiction with regard to Mr Quinn's bankruptcy. He made it clear that if this court upheld the order of bankruptcy on Mr Quinn in the United Kingdom the bank would have to prove the sums as creditors in such a bankruptcy.

The law

[9] The starting point for any consideration of the relevant legal principles must be Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings. This was a Regulation made by the Council of the European Union and binding on all Member States (except Denmark) but including the United Kingdom and Ireland.

[10] I note that recital 4 of the preamble reads as follows:

> "It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping)."

[11] Pausing there the court cannot overlook the fact that the current period for discharge from bankruptcy in this jurisdiction by effluxion of time is one of twelve months. That, of course, does not affect the property remaining vested in the Official Receiver for a further two years or the potential for either period of time to be extended in appropriate circumstances. But it does contrast with a period of twelve years which the court was advised currently prevails in the neighbouring jurisdiction. That has, the court was informed, recently been somewhat mitigated by legislation allowing discharge after five years if preferred creditors are paid. The duration of these periods is a matter of policy for the legislature. The twelve month period in Northern Ireland, introduced after 2005, has the advantage of keeping us in line with England and Wales. What is the appropriate period, balancing the encouragement of enterprise with the protection of those people and companies providing goods and services, and lenders is not for the court but, since the devolution of justice in Northern Ireland, for the Minister of Justice and the Northern Ireland Assembly.

[12] Counsel for Mr Quinn sought to argue that the Bank's application to annul the order was an attempt to oppress Mr Quinn with the longer period that would apply to any bankruptcy if he were made bankrupt in the Republic of Ireland. Counsel for the Bank was instructed that their motivation was merely to avoid an additional layer of costs that would be incurred if the bankruptcy were in this

jurisdiction rather than in the High Court in Dublin where extensive proceedings already exist involving Mr Quinn. It seems to me that the issue of motivation is not one that is relevant to the decision of this court and I shall say nothing further about it. Suffice it to say that where there is such a contrast between the equivalent periods in the two neighbouring jurisdictions there will always be a temptation for persons, such as Mr Quinn, with dealings on both sides of the border, to seek to avail of the much shorter time limits in this jurisdiction.

[13] To return to the Regulation one notes that the thirteenth and fourteenth paragraphs of initial recitals read as follows:

> "(13) The 'centre of main interest' should correspond with the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.
>
> (14) This Regulation applies only to proceedings where the centre of the debtor's main interests is located in the Community."

[14] Article 3 (1) to (3) of the Regulation reads as follows:

> "International Jurisdiction
>
> 1. The courts of the Member States within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.
>
> 2. Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effect of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.
>
> 3. Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2, shall be secondary

> proceedings. These latter proceedings must be winding up proceedings."

[15] There is no definition of "centre of main interests" ("COMI") so that the case law has inevitably relied to a significant extent for guidance on recital 13, already quoted.

[16] Although it might be possible in certain circumstances for a different point in time to be applicable I am content here to accept the agreement of the parties that for the purposes of this adjudication the court must decide what Mr Quinn's COMI was at the time of the presentation of his petition for bankruptcy on 10 November 2011.

[17] Article 47 of the Regulation provides that it will enter into force on 31 May 2002 and "be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community".

[18] The Insolvency Regulation, as the respondent's counsel point out, was made following the failure to complete agreement on a European Union convention on insolvency proceedings by an agreed deadline, due to the attitude of the United Kingdom in regard to another matter of then current controversy. The parties accept the opinion expressed by Advocate General Jacobs in Eurofoods, to which I will turn in a moment, to the effect that "the explanatory report on the Convention written by Professor Miguel Virgos and Mr Etienne Schmit ("The Virgos-Schmit Report") may provide useful guidance when interpreting the Regulation.

[19] Paragraph 75 of the Virgos-Schmit Report states:

> "The concept of "centre of main interests" must be interpreted as the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.
>
> The rationale of this rule is not difficult to explain. Insolvency is a foreseeable risk. It is therefore important that international jurisdiction (which, as we will see, entails the application of the insolvency laws of that Contracting State) be based on a place known to the debtor's potential creditors. This enables the legal risks which would have to be assumed in the case of insolvency to be calculated.
>
> By using the term 'interests', the intention was to encompass not only commercial, industrial or professional activities, but also general economic activities, so as to include the activities of private individuals (e.g. consumers). The expression "main"

> serves as a criterion for the cases where these interests include activities of different types which are run from different centres.
> In principle, the centre of main interests will in the case of professionals be the place of their professional domicile and for natural persons in general, the place of their habitual residence. Where companies and legal persons are concerned, the Convention presumes, unless proved to the contrary, that the debtor's centre of main interests is the place of his registered office. This place normally corresponds to the debtor's head office."

[20] It can be the seen that the first paragraph therein is the basis for recital 13 in the Regulation. The second paragraph rightly points out that it is important that international jurisdiction be based on a place "known to the debtor's potential creditors". It must, as a matter of public policy, be the purpose of any proper system of commercial law to ensure, so far as possible, that debts lawfully owed should be repaid. That must be of importance to any free market operating effectively.

The respondent understandably relies on the reference to the COMI of natural persons being the place of their habitual residence but this is rightly said to be "in general". Professor Virgos subsequently published with a Professor Garcimartin (Kluwer 2004) a text book which at paragraph 56(c) said as follows:

> "For individuals, if the debtor is engaged in an independent business or professional activity, the centre of main interest will normally correspond to the State where he has his business or professional centre (ie. his "professional domicile"), provided that it is business or professional activity that is at the root of the insolvency. In other cases is will be the individual's habitual residence."

This is echoed in another text book, *The EC Regulation on Insolvency Proceedings:* A *Commentary and Annotated Guide*, 2nd Edition, Oxford University Press 2009, edited by Mr Moss QC, Professor Fletcher and Mr Isaacs QC, where at paragraph 8.96 it is said:

> "The COMI of natural persons will generally be their place of habitual residence. In the case of 'professionals', however, it will be the place of the professional domicile. This suggests that the centre of main interests is linked to the type of activity from which the insolvency or need for rescue/reconstruction arises. Thus, where an

> individual is carrying on business activities and it is the business that is at the root of insolvency or need for rescue/restructuring, the centre of main interests may well be in the place of business rather than in the place of habitual residence (if different)."

[21] The applicant here relies on these opinions, which, without disrespect to them, are obviously of a different order of weight to the decisions of the European Court to which I will come, as supportive of its case. It is not in dispute that Mr Quinn's habitual residence is in the Republic of Ireland. The bank says that the court should find on the facts that the root of the insolvency is to be found in the Republic also.

[22] This issue has been considered by the European Court of Justice in two cases. In Eurofood IFSC Limited case C-341/04; [2006] Ch. 508; the Supreme Court (Ireland) referred the matter to the European Court which sat in Grand Chamber to consider the reference. Eurofood was an Irish registered company but was a wholly owned subsidiary of Parmalat SP, a Company incorporated in Italy. The judgment of the Grand Chamber recites the relevant passages in the Regulation including Article 16(1):

> "Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings."

Understandably the reference is coloured importantly by the corporate status of the bankrupt person there. The fourth question posed by the Irish Supreme Court asked : "What the determining factor is for identifying the centre of main interests of a subsidiary company, where it and its parent have their respective registered offices in two different Member States?" The relevant paragraphs of the decision of the court for current purposes are as follows:

> "31. The concept of the centre of main interest is peculiar to the Regulation. Therefore, it has an autonomous meaning and therefore must be interpreted in a uniform way, independently of national legislation.
>
> 32. The scope of that concept is highlighted by the thirteenth recital of the Regulation, which states that the 'centre of main interest' should correspond to the place where the debtor conducts the administration of

> his interests on a regular basis and is therefore ascertainable by third parties.
>
> 33. That definition shows that the centre of main interest must be identified by reference to criteria that are both objective and ascertainable by third parties. That objectivity and that possibility of ascertainment by third parties are necessary in order to ensure legal certainty and foreseeability concerning the determination of the court with jurisdiction to open main insolvency proceedings. That legal certainty and that foreseeability are all the more important in that, in accordance with Article 4(1) of the Regulation, determination of the court with jurisdiction entails determination of the law which is to apply."

[23] Before leaving Eurofoods I also wish to quote paragraph 41 of the judgment:

> "41. It is inherent in that principle of mutual trust [between Member States] that the court of a Member State hearing an application for the opening of main insolvency proceedings check that it has jurisdiction having regard to Article 3(1) of the Regulation, i.e. examine whether the centre of the debtor's main interests is situated in that Member State. In that regard, it should be emphasised that such an examination must take place in such a way as to comply with the essential procedural guarantees required for a fair legal process (see paragraph 66 of this judgment)."

Without turning to the matters set out in paragraph 66 I do have to express concern that a petition filed on 10 November was dealt with on 11 November without the Official Receiver being given an opportunity to reflect on whether he would wish to make any representations. He is the only notice party required under the Rules. Counsel for the Official Receiver said the justification for that was that notification to the largest or any particular creditor would be unfair to other creditors. That may well be right but it does seem to me to reinforce the need that the Official Receiver be given at least a few days to reflect on a petition, with any supporting documents, before the Master should decide whether to make an order. With regard to paragraphs 41 and 66 this hearing provides the procedures necessary for a fair legal process in which an aggrieved creditor can be heard.

[24] The issue of centre of main interest was also considered by the European Court of Justice in Interedil Srl v Fallimento Interedil Srl and Another Case 396/09; [2011] All ER (D) 195 (Oct). This was again a reference to the court for a preliminary

ruling relating to a corporate entity, not a natural person. It affirms that guidance as to the meaning of COMI is to be found at recital 13 in the preamble to the Regulation. It reaffirms paragraph 33 of Eurofood IFSC in effect stating "that the centre of a debtor's main interest must be identified by reference to criteria that are both objective and ascertainable by third parties, in order to ensure legal certainty and foreseeability concerning the determination of the court with jurisdiction to open the main insolvency proceedings. That requirement for objectivity and that possibility of ascertainment by third parties may be considered to be met where the material factors taken into account for the purposes of establishing the place in which the debtor company conducts the administration of its interests on a regular basis have been made public or, at the very least, made sufficiently accessible to enable third parties, that is to say in particular the company's creditors, to be aware of them." (Paragraph 49).

[25] The court in considering the objective and ascertainable factors which might rebut a presumption with regard to a corporate body that its head office was its centre of main interest said the following:

> "52. The factors to be taken into account include, in particular, all the places in which the debtor company pursues economic activities and all those in which it holds assets, insofar as those places are ascertainable by third parties. As the Advocate General observed at point 70 of her Opinion, those factors must be assessed in a comprehensive manner, account being taken of the individual circumstances of each particular case."

See also paragraph 33.

[26] These decisions of the court are binding upon me. I take into account the additional authorities, in particular from the United Kingdom, relied on by counsel. It seems to me that the court, in determining this matter and applying the facts before it must determine two questions. (I say this not disregarding the use of "therefore" in recital 13. That implies that the administration of interests will be ascertainable by third parties for that very reason. But in fact the latter depends on how that administration is conducted e.g. covertly or overtly). Firstly: where was the debtor's centre of main interests where he conducted the administration of his interests on a regular basis before the presentation of the petition for bankruptcy (but bearing in mind the factual matrix or historical facts, per Chadwick LJ at [55](2) in Shierson v Vileland-Boddy [2005] 1 WLR 396, CA)? Secondly: was that centre of administration ascertainable by third parties, in particular his creditors?

[27] In answering those questions I must do so in a way that is capable of application in a uniform way throughout Member States rather than peculiar to this

jurisdiction. The criteria to be identified in answering the two questions must be objective and ascertainable by third parties.

[28] With regard to the second question i.e. the second part of recital 13 relied on by the European Court in its two considerations of this issue, I note that 'ascertainable' is not further defined. It must, I think, normally be less than a requirement for the COMI to have been notified to actual or potential creditors; that verb is not used nor its synonyms. The court in Interedil does refer in paragraph 49 to the "possibility of ascertainment by third parties" but goes on to say that that is achieved if the material factors "have been made public or, at the very least, made sufficiently accessible to enable third parties, that is to say in particular the company's creditors, to be made aware of them." Ascertainable in English in this context would mean to find out or learn for certain. That again would indicate something different from being actually notified. If not made public it must be "sufficiently accessible". It seems to me therefore that a debtor does not appear to be obliged to advertise his centre of main interest but nor may he hide it. It should be reasonably or sufficiently ascertainable or ascertainable by a reasonably diligent creditor. To make the COMI available on the internet or through telephone directories or trade directories or otherwise generally available in the Member State in which he has established his centre of main interest would make it public. Something less than that may be enough if it is in the Member State where the debtor incurred the debts. Any finding will inevitably be fact sensitive. If, for example, he has moved his centre of main interest from one Member State to another that will inevitably make the task of a third party more difficult. The debtor's new COMI will have to be reasonably ascertainable to such third parties. If he chose to move from these islands to a Balkan member of the European Union or from Finland to the south of Spain, for example, it may be necessary for him to give notice to actual or potential creditors to render his COMI "ascertainable to third parties". A creditor could not be expected to search every telephone book in Europe. The legal principle of interpretation must be applicable across the Member States. Given the considerable geographical spread involved across a large part of the continent it seems to me that a centre of main interest is not "ascertainable" within the meaning of recital 13 of the EC Regulation if can only be ascertained by a third party employing private detectives to follow the debtor or otherwise investigate his whereabouts. *Prima facie* , the debtor is under a legal obligation to repay his debts or, in the event of his insolvency, as much of them as can be payable from his remaining assets. It would be contrary to the purpose of the Insolvency Regulation to impose on actual or potential creditors the burden of expensive investigation procedures to establish a debt or a centre of main interest before themselves commencing insolvency proceedings in a Member State which might prove entirely futile if in the interval the debtor or another creditor had opened such proceedings in a Member State which in truth held his centre of main interest.

Centre of Main Interests : Unit 1

[29] In arriving at a decision in this matter and answering the questions I have identified above at [26] the court takes into account a number of items in writing and one piece of oral evidence. The items in writing include the bankruptcy petition of Mr Quinn of 10 November with the appended Statement of Affairs of the same date; the affidavit of Richard Woodhouse, who is the Group Head of Specialised Asset Management at the applicant Bank, of 17 November 2011 supporting its application to annul and rescind; the affidavits of John Gordon, solicitor and of Sean Quinn, both of 7 December 2011 and the supplemental affidavit of Richard Woodhouse of 15 December. A number of these affidavits exhibited relevant written material. In addition Mr Woodhouse was cross-examined on oath in court on Tuesday 20 December by Mr Mark Orr QC for Mr Quinn. Mr Quinn was present and was able to respond through his counsel to some enquiries which the court put. However counsel for the bank did not seek to cross-examine him.

[30] In his affidavit of 7 December Mr Quinn makes averments with regard to an office in Northern Ireland which he says that he has used since 2 May 2011. This is an important point and it seems to me that it is one on which I have to form a view as a question of fact before I can properly reach a conclusion on the first question of where his centre of main interests is. The background is that Mr Quinn in his series of commercial and industrial endeavours had acted through a series of companies. For the avoidance of tax upon their demise he and his wife had transferred ownership of the shares of these companies to their four daughters and their only son. Mr Quinn continued to hold office in the companies at a senior level. However in recent years he lost office in Quinn Insurance, was induced to resign office in April 2010 in the Northern Ireland companies and was excluded from his remaining office in the parent Quinn company, registered in the Republic of Ireland, with effect from 14 April 2011 on the appointment of a Mr Kieran Wallace as share receiver over the Quinn group. It is uncontested that the headquarters of the Quinn group remained at Derrylin, County Fermanagh in Northern Ireland and indeed still remains there. The evidence before me shows that about half of the companies in the group operated or operate in Northern Ireland and half in the Republic. Quinn Insurance was always based in the Republic. It is common case that Mr Quinn's home is at Greaghrahan, Ballyconnell, County Cavan. That is a mile or two south of the border while Derrylin is about four miles north of the border between the two parts of Ireland. Mr Quinn avers that he conducted his own personal affairs from that office and used the same secretary who acted for him in his corporate and business affairs. This is not fully accepted by the Bank nor the Official Receiver who point to utility bills relating to his home in the south being addressed to that address. Indeed Her Majesty's Revenue Commissioners write to him at that address also. But in any event he has, in Mr Orr's word been "expelled" from the premises at Derrylin since 14 April 2011. His family has brought proceedings in the south, I was informed, to set aside the appointment of the Share Receiver and his actions but those proceedings await a full hearing in the High Court in Dublin. I must arrive at a conclusion based on the fact of his exclusion without ruling on its lawfulness. As I pointed out to counsel, he was excluded from the offices, not Northern Ireland.

[31] At paragraph 55 and following in his affidavit of 7 December Mr Quinn avers that he was for some weeks after 14 April "in shock". After it became clear that the Share Receiver was not going to seek to rely on his knowledge and expertise of the group to assist him in the running of the group Mr Quinn said that he realised he "needed a place from which to work and to be able to deal with the challenges which would lie ahead. Many of the local population in Derrylin were extremely supportive of my position and offered to help me. This is the village in which I have run my affairs in the past and will always run my affairs from. One friend and local businessman operates a plant hire business from premises at Unit 1, Derrylin Enterprise Park. He offered me the use of my own office space within his unit. I decided to accept the offer and I moved into the office in May of this year." He then referred to and exhibited a Lease agreement for the first floor of that Unit and also some stationery which he had purchased.

[32] Mr Quinn goes on to aver that since that time he has based himself in the new office and "worked from there most days". Obviously he has not been as busy as previously but he deals with his personal mail and domestic affairs including "involvement in the on-going litigation". He is being sued by the applicant in two sets of proceedings and has been joined as a third party to a further claim brought by his wife and children. He asserts, I am sure correctly, that these "are difficult and complex proceedings. I have spent a lot of time studying the proceedings from my office. I have had to give instructions to my solicitors in Dublin and deal with lots of calls and attend consultations". I pause there to say that in his affidavit it appears that Mr Gordon of Napier and Sons, who is a specialist in insolvency matters, was only instructed on 3 November 2011. There was no evidence of Mr Quinn otherwise having solicitors in this jurisdiction. He goes on in his affidavits to say that he has been taking an interest in some forestry in County Fermanagh which may now need thinning and which would be paid for by his children who leased the lands from his wife and him. He says that many people come to see him about their own position in the light of the Quinn group and to discuss relevant matters. He also has a number of embryonic business ideas which he would like to put into effect having been an entrepreneur all his life. He is hesitant about disclosing the details of those.

[33] Mr Moss expressed the view that unless Mr Quinn could show that he was engaged in business in this jurisdiction he could not establish that his centre of main interests was here. As expressed in the text books the position would then be that he was a natural person and his habitual residence would be synonymous with his centre of main interests. Mr Orr argued against that, I think rightly, and indeed Mr Gowdy was inclined to agree with him. My own view is that a natural person could have main interests which might not constitute a business. The conduct of complex and demanding litigation with or without other factors might constitute such main interests. It seems to be therefore, as indicated above, that I have to decide whether these averments of Mr Quinn are evidence on which the court can safely act in arriving at a conclusion. The Bank urges me to reject them. I have to form a view of the facts based on the balance of probabilities.

[34] The Lease exhibited to Mr Quinn's affidavit is a somewhat curious document. It is headed 'Commercial Lease' and gives the impression that it might have been drafted by a solicitor. But no solicitor avers that he or she did draft it and furnish it to the parties, either at all or prior to the date on which it purports to be signed, ie. 2 May 2011. No solicitor has witnessed it. Indeed it is not witnessed at all but only signed, apparently, by Mr Quinn and by the lessor, Michael Brady.

[35] The rent of this office at Unit 1 in the Derrylin Enterprise Park is £50 per month. Even allowing for the location this seems close to a peppercorn rent for the first floor of a presumably modern unit. That would be not inconsistent with Mr Quinn's averment that Mr Brady "provided me with this office space as a gesture of his friendship and loyalty to both me and my family". The court can readily understand that there must be a considerable residuum of goodwill towards Mr Quinn in this locality as someone who brought very substantial employment to the area. But if the office is being provided on that basis why have a commercial lease at all? Why have Clause 11- Lessor's Remedies on Default? Why enter into it barely two weeks after the exclusion of Mr Quinn from his headquarters office? One would have thought the contrast between office space in a unit of an industrial estate and his former eminence could be painful to him, especially as the location appears to be only a couple of miles from his former headquarters.

[36] Mr Quinn also relies on an invoice from Print In Time, printers, of Tallaght, Dublin, I note, dated 7 July 2011, for letterheads and business cards. Examples of these were handed into the court following a request from me. They do give the address of Unit 1, Derrylin Enterprise Park. But Mr Moss queries how one can be confident that the material was indeed printed at that time. There was no affidavit from the printer. Nor, he says, can one be confident that the letterhead and business cards referred to are those handed in. I note that what has been given to me consists not only of a business card and an A4 sheet with a letterhead but also a compliment slip. There is no reference to compliment slips on the invoice from Print In Time. If 500 sheets were printed with this address in July 2011 why were there not copies of letters sent on this mail from recipients who had received them in the second half of 2011? Not one such letter from a colleague or friend, solicitor or accountant was exhibited.

[37] The Bank invites the court to contrast this claim with the Petition and Statement of Affairs lodged by Mr Quinn on 10 November 2011. In paragraph 1 of the petition Mr Quinn gives his centre of main interests as the registered office of the Sean Quinn group at Gortmullen, Derrylin, County Fermanagh BT92 9AU. But the office which he now claims he has been using from 2 May has the postal address BT92 9LA. Clearly they are two different locations. If Mr Quinn was really there why did he not say so? I have listened to the answers given by his counsel to this and various other points and I take them into account. Some of them are double-edged swords for Mr Quinn on the issue of ascertainability. I find it very hard to understand why if this had been his office for the previous six months he did not give this address to Mr Gordon to put in the petition at the time it was filed.

[38] Mr Quinn submitted a Statement of Affairs at the same time as the petition. That involved a declaration that it was true and accurate to the best of his knowledge and belief. Section 2 is entitled Business Details. It begins: "Please complete this section if you are or have been self-employed (including a partner in a partnership) at any time in the last two years". All the questions there are answered "N/A" i.e. not applicable. Mr Quinn's answer to that now is that he has never been formally dismissed from the Quinn parent company although his salary did cease a couple of months after 14 April 2011. But it is a little surprising that if he was in talks with people to set up an embryonic business that he made no reference to it in this section.

[39] Mr Moss also points out that he chooses not to give a name and address for either his accountant or solicitor. If he was really, over a period of six months one notes, seeking to explore business opportunities is it not surprising that he had not retained professionals in either of those fields? At Section 3 he is obliged to state his assets. He does not include the leasehold but I am inclined to accept Mr Orr's argument that that is not something that would occur to him as a valuable asset, even if it were genuine. At Section 6 he is obliged to give his employment and present income. In 6.1 he described himself as unemployed. Again that is somewhat surprising when he is now asking the court to believe that for some months prior to 10 November he had not only been interesting himself in forestry and litigation but exploring business opportunities. In Section 8 he is obliged to answer questions regarding current property "including properties used for residential and business purposes". There is no reference to what he says now was the office to which he goes "most days" of the week for a period of some six months.

[40] This is relevant to the issue of non-disclosure as it is important for a creditor to know where a debtor can be found and it would be an important non-disclosure if the bankrupt had in fact been using this office for some six months. But he makes no disclosure about this office. Section 8.2 expressly asked: "Give details of any properties you rent or lease either alone or jointly". The answer to that is "N/A". While it might be understandable if some of these answers were given for the reasons advanced by Mr Orr it seems to me that is an utterly inexplicable answer if in truth Mr Quinn had been in Unit 1 of the Derrylin Enterprise Park for a period of six months or anything like it. I have no doubt that if he had told Mr Gordon that he would have insisted on providing such details to the Official Receiver in this form.

[41] Although it overlaps to some degree with ascertainability I do, of course, note Mr Quinn's partial explanation that at first he desired privacy from the media and indeed from the Bank. But he claims that it had become common knowledge in the locality that this was where he had an office. Why seek to hide it from his solicitors and the court if in truth he was conducting his main interests from it for a period of months?

[42] I might add that, although Mr Quinn says he does not use a computer himself, I find it incredible, if in fact he had established a centre of main interests here for any reasonable period of time before 10 November, that there would be no correspondence to be exhibited to him at that address by way of e-mail or post. Even if he was using Mr Brady's computers through a secretary one would have thought that material would have come to him in this day and age in that way. His explanation that post comes to him simply addressed to Sean Quinn, Derrylin and it is sometimes delivered to this office and sometimes to his sister's office does not adequately answer the absence of convincing documentation for the use of this alternative address as his alleged centre of main interest. We have no evidence of how he replied to this alleged correspondence.

[43] Taking into account these and other submissions of counsel both for and against Mr Quinn I conclude, on the balance of probabilities, that this lease has been prepared at some much later date to try and bolster the case now being made. If the invoice for letterheads and visiting cards is genuinely dated it is likely that it refers to other letterheads and cards than the ones furnished to the court. I reject the claim that Unit 1 was where he administered his main interests on a regular basis in the period prior to the presentation of his Petition.

Centre of Main Interests – Where Located?

[44] Having disposed of that I must decide where the bankrupt had his centre of main interest where he conducted the administration of his interests on a regular basis - has he established that his centre of main interest is in Northern Ireland rather than in the adjoining jurisdiction? In support of his contention that it is I note the following. I note that he was born and bred in Northern Ireland and began his working life there. I note the historical facts that he kept the headquarters of his group there and roughly half of his business operations (while bearing in mind Mr Moss's point that these are in a corporate form which in his contention would not avail Mr Quinn in any event). However I am dealing with the period prior to the presentation of the petition. His connections with Northern Ireland are that he is a UK taxpayer. But the tax authorities write to him at his address in the Republic and 20% of his tax is, by agreement, paid to the Republic. He still visits people in Derrylin and he may have recently taken possession of this office at Unit 1 in the Derrylin Enterprise Park but not, on the balance of probabilities, before 10 November and he certainly has not used it on a regular basis. He may well have walked some forestry lands leased to his children but a decision as to whether or not that forestry should be thinned not only does not constitute a business but is a decision of an hour or two and one to be financed, as he admits, by his children and not him.

[45] Against that there is a very considerable and compelling weight of evidence. His habitual residence has been in the Republic of Ireland for some 32 years. He has an Irish passport. That is perfectly lawful in Northern Ireland and quite common. I observe that it is not uncommon and again can be lawful for persons to have both

British and Irish passports but he does not have a UK passport. Nevertheless that nationality and the fact that he votes in the Republic are, although material, not determinative of a test as to the place where he administers his main interests.

[46] I accept the evidence of Mr Richard Woodhouse, both on affidavit and orally, that Mr Quinn is a regular visitor to premises in Belturbet. He asserted that in his affidavit and defended it in the witness box. He had learnt from the press and from the internet that Mr Quinn was seeking to set up a new insurance company or something of the like in Belturbet, which is in County Cavan near his home. He did not have Mr Quinn nor his family nor his associates followed but he did have the premises of which he had learnt observed by the firm which sought to effect service from time to time on Mr Quinn. They observed him visiting those premises. This is hearsay evidence but of a character on which I place weight. I consider it more likely that that is where Mr Quinn is discussing any new business propositions. He admits to going there but says it is really for social reasons to visit his former colleagues. Nevertheless it does mean that he is regularly going to this converted tyre factory where apparently office space has been fitted out and I conclude not solely for social reasons.

[47] I bear in mind the admission extracted by Mr Orr in his searching cross-examination that the Bank had never looked in Northern Ireland for an office for Mr Quinn and the admission that his contract of employment was in Northern Ireland and that he was paid in sterling. But it is common case that he had ceased to be paid some months before this petition. He put it to the witness that Mr Quinn had been expelled from his place of business after many decades but Mr Woodhouse robustly pointed out that the Bank was owed "an obscene amount of money" and it was necessary for them to take these steps to try and recover it.

[48] While there was some exchange of affidavit evidence about companies of which Mr Quinn is a director is seems to me that this is not of great assistance in forming a view here. It does seem that although he is still a director of a number of Republic of Ireland companies he is either seeking to resign from those or the companies are dormant or both.

[49] It is true that the then Anglo Irish Bank did have an office in Northern Ireland but it is clear on the evidence before me that the dealings of Mr Quinn were with the headquarters of that Bank at St Stephen's Green in Dublin. While his business prior to the mid-1990s was predominantly in Northern Ireland its balance then shifted significantly towards the Republic.

[50] I consider it of relevance that the loan facilities from the Bank tabulated at Tab 10 to his affidavit range as follows: 13 to 1,035 million Euro; 13,219 million Japanese Yen; 10 to 242 million US Dollars. None of the loans are in Sterling. This is an Irish Bank pursuing him in the High Court in Dublin. Until this petition for bankruptcy he was not involved in proceedings here but he was heavily involved in litigation in Dublin. He admits to having consultations but there are no suggestions

that they were other than in the Republic. There is evidence that he and his family both have solicitors and counsel in the Republic but until the instruction of Mr Gordon on 3 November, none in Northern Ireland. Mr Justice Kelly has found that the guarantees of these loans now being enforced against Mr Quinn are governed by the law in his jurisdiction. There was no evidence to contradict that view which I am happy to accept. It is clear that the "root of insolvency" is not in this jurisdiction, although such a finding is not, I am inclined to believe, essential in reaching a conclusion here.

[51] I find that Mr Quinn's main interests in recent months were the litigation which he and his family are embroiled and the salvaging of what he can from the situation in which he finds himself. I find the centre of Mr Quinn's main interests is in the Republic of Ireland. I find that prior to 10 November 2011 he was not conducting the administration of his interests on a regular basis in Northern Ireland. I find that the probability is that the administration of his interests was shared between his home, Belturbet and Dublin where he continues to have professional advisors.

Was his centre of main interests ascertainable by third parties?

[52] Given my finding just made it is not strictly necessary to deal with this issue. But in case a different view was taken elsewhere of the matters with which I have dealt I propose to address this issue too. I apply the law as I find it at paragraphs 9 to 28 above.

[53] If Mr Quinn, contrary to my finding, did operate the office at Unit 1, Derrylin Enterprise Park in the period leading up to the presentation of the petition I find that it was not sufficiently or reasonably ascertainable by third parties. He admits himself that initially he kept his profile at the office quite low and would have parked his car behind the office building and out of sight. He says he did so to maintain some privacy from the media or indeed the Bank "to avoid snooping into my family's affairs and also to provide a level of protection". He is perfectly entitled to take that approach but he cannot then claim that he has established an office at a centre of main interest which is ascertainable by third parties. The two positions are completely inconsistent. He goes on to say that he believes that "quite a number of people now know where I have been working". That fact is of no assistance to the Bank or other potential creditors. I accept the sworn evidence of Mr Richard Woodhouse that he was unaware of Unit 1 until he saw the affidavit of Mr Quinn. It may be that Mr Quinn was photographed by a local journalist coming out of the office but that could be on an occasional visit to these premises which he admits are owned by a supportive friend of his. (I observe that although the friend's signature appears to be on the lease it is not inevitable that it bore the date it now bears at the time that he signed it.)

[54] He has not made the office public by putting the telephone number and address on the internet or in a trade directory or phone book. He chose not to

inform the Bank of it. He does not appear to have informed the Revenue of it nor indeed anyone else because he does not exhibit a single letter addressed to him at Unit 1, Derrylin Enterprise Park. For these reasons and the other reasons advanced by counsel I conclude that even if he had an office there it was not sufficiently or reasonably ascertainable by third parties.

[55] In contrast the Bank had ascertained that he was visiting the office in the former tyre factory at Belturbet. They were aware, of course, of his main residence at Ballyconnell. They frequently sought to effect service upon him but always in the Republic of Ireland. It seems to me therefore that, as I have found, his centre of main interests was in the Republic, shared between his home, Belturbet and the offices of his professional advisors and, perhaps, those of his family. That centre of main interest had been correctly ascertained by the third party most concerned, that is the Bank.

Non-disclosure

[56] Having found that Mr Quinn did not, in truth, administer his main interests from Unit 1, Derrylin Enterprise Park on a regular basis from May to November 2011 it logically follows that his petition should not be set aside for failing to disclose that information. The Bank have not argued that if I reached that conclusion I should accede to the application on the basis that I will have found that Mr Quinn attempted to mislead the court. Given the finding against him in any event I shall say nothing more about that possibility while noting that it may be a ground in appropriate circumstances for reaching an adverse conclusion.

[57] The principles of law regarding non-disclosure are clear. As Lord Brandon of Oakbrook said in Baly v Barrett [1980] NI 368 at 417 H.L. "… it is a well-established general rule of law that, when a party makes an *ex parte* application to the court of any kind he must make a full and frank disclosure of all relevant matters." In that case counsel for the defendants expressly disavowed any contention that the solicitor for the plaintiff had been guilty of bad faith in the matter and Lord Brandon in delivering the only written judgment of the House said that "… I am willing to accept that the want of full disclosure which occurred was the result of a mistake rather than deliberate policy. On that basis I will not allow the appeal on the ground of a non-disclosure alone, but would consider the case by reference to the whole of the evidence which was ultimately put before the court on the defendant's application to set aside the *ex parte* order." In the event the House did allow the defendant's appeal from the order of the Court of Appeal in Northern Ireland.

[58] I note Mr Orr's reference to The Dadourian Group International v Simms [2007] EWCH 1673, an *ex tempore* judgment at first instance altering a draft judgment but I note also Mr Moss's response to that in his closing submissions. See also Dillon LJ in Cornhill PLC. v Cornhill F.S. Ltd [1992] B.C.C. 818 at 856.

[59] The availability to the court of a power to make orders *ex parte* in favour of a litigant appearing before it is a valuable weapon in the administration of justice. It can allow orders to be made, when justified, with great speed. The granting of such orders can prevent unlawful steps for which damages could not be an adequate remedy. However, it is crucial for the proper administration of justice that a party seeking an order of the court, enforceable against other parties, sometimes by penal sanctions, should make full and candid disclosure of all relevant matters, including those adverse to the party making the application.

[60] This is a general principle which goes well beyond the facts of this particular case. But it seems to me no less applicable to an application of this kind. The burdens on the Master in Bankruptcy and the Official Receiver are extensive. Appellate courts have held that bankruptcy proceedings should be dealt with with expedition. It is essential that if they are to be dealt with in that way, which I fully agree with, that a person petitioning for bankruptcy set out all relevant matters for the assistance of the court and the Official Receiver.

[61] Attention was drawn by the respondent at one stage to the relatively modest space available on the form for dealing with the basis of a claim regarding the petitioner's centre of main interests. But Mr Moss pointed out that the Statement of Affairs coming with such a petition expressly allows for the addition of extra pages if they are needed. I might add that a petitioner or his advocate appearing before the Master in Bankruptcy would be under a continuing duty to draw to the court's attention any additional matters which were relevant and which had come to light even after the drafting of the petition and Statement of Affairs. In saying that I make it clear that I consider the petitioner's solicitor here to be a person of integrity and I am sure that he would have disclosed any adverse relevant matters of which he was aware which he considered to be relevant. Mr Orr indeed submitted that he went far beyond what was required at the initial stage pointing out from Section 8.2 of the Statement of Affairs that some documents at least can be sent to the Official Receiver and not necessarily attached to the Statement of Affairs.

[62] What then did Mr Quinn fail to disclose? On the evidence before me this seems to really boil down to three matters. He did not disclose that he had an Irish passport and no United Kingdom passport. While that fact would not prevent him establishing a centre of main interests in the United Kingdom I do accept the submission on behalf of the Bank that it is a relevant matter that is of some weight. It ought to have been disclosed.

[63] He is a voter in the Republic of Ireland. If that was on its own I think that might be overlooked as one would consider that a natural corollary of his habitual residence in that jurisdiction.

[64] He did not disclose that, although a United Kingdom taxpayer, 20% of his taxes were paid, by agreement, to the authorities in the south. Again if that was on

its own it might not be fatal, but having made the assertion about being a United Kingdom taxpayer the duty of candour ought to have led him to disclose to his solicitor and the court that information.

[65] Taking these matters together I consider they are material and ought to have been disclosed. I do not think I could safely conclude that that was a deliberate attempt to deceive on the part of Mr Quinn. Nevertheless given the great importance of full and frank disclosure in ex parte applications I find that this is an independent and freestanding ground on which I would have exercised my discretion to rescind the ex parte Bankruptcy Order of 11 November 2011. As however I am annulling the Bankruptcy Order that would now be otiose.

[66] For the reasons stated above and pursuant to Article 256 (1) of the Insolvency (Northern Ireland) Order 1989, I hereby annul the Bankruptcy Order of the 11th November 2011 obtained by Sean Quinn on the ground that it should not have been made as the centre of the debtor's main interests was not in Northern Ireland at the time of bringing the Petition but within the jurisdiction of the High Court in Dublin.