



NEW INSOLVENCY PROPOSALS

- Pat Ahern

HIGH COURT CASE ON LIABILITY FOR REMEDIATING A SITE

- Aoife Shields

Last week the Government published a scheme for forthcoming revamp of bankruptcy laws to be entitled the Personal Insolvency Bill 2012. Submissions are invited by 31 March 2012 and in any event the published text is stated to be subject to (further?) legal advices from the Attorney General. Significant from a property perspective is that:

- Secured debt (with or without unsecured debt) with a value of more than €20,000 can be the subject of a Personal Insolvency Arrangement, which is intended to allow for a reduction of debt, with a need for approval from a qualified majority of creditors, and protection against write-down of secured debt to less than the value of the secured property..
- The increase of the review period for alleged fraudulent preferences of creditors or of voluntary or undervalued transfers of property, for a period of three years in each case. If the legislation is to be enacted in 2012, this would raise the possibility of the three year period allowing for a greater look back at transactions following bankruptcy than would have been the case if a person becomes or is made bankrupt before the publication of these proposals. It may rest with the Supreme Court to decide whether such retrospective action is constitutional.

Clean Build carried on a waste business on a site leased from John Ronan & Sons. A large amount of waste was stockpiled on site in breach of Clean Build's waste permit. Ronan sued Clean Build under the Waste Management Act to require Clean Build to remove the waste and remediate the site. In the meantime, Clean Build went into voluntary liquidation and consequent on this, the lease came to an end and Ronan became the occupier of the site. South Dublin County Council then instituted similar proceedings against Clean Build, its directors and John Ronan. Both cases were heard together in August 2011.

The High Court found that the former directors of Clean Build were personally liable for the cost of removal and for remediating the site independent of their position as Directors of the Company, because those directors had direct involvement in the running of the company and the accumulation of the waste on the site. Section 57(1) of the Waste Management Act enables the court to make a remediation order against the person who is 'holding' the waste. The court found that John Ronan as the current occupier of the site can be regarded as a holder of the waste and therefore liable under the Act, although held here to be entitled to an indemnity for the cleanup costs from the former directors of Clean Build.

This case held that the extent of remediation required to clean up the site should be proportionate and appropriate, and a more economical solution should be regarded as appropriate once equally effective and

satisfactory to restore the site to a condition where there is no longer a risk of environmental pollution.

Source *John Ronan and Sons Ltd v. Clean Build (in voluntary liquidation) and others; South Dublin County Council v Ken Fennell (Liquidator) and others* (2011) IEHC 350.

FULLY CHARGED

- Pat Ahern

Following on from the enactment of the Local Government (Household Charge) Act 2011, the Department of the Environment has set up a website www.householdcharge.ie. This cannot of course cover all queries, nor in the depth that might be necessary, but it does at least act as a filter and might indeed be a point of reference for clients. That website also sets out the “2012” list of “unfinished housing estates”.

The owner of a residential property in an unfinished development contained in one of these lists is entitled to a waiver from payment of the household charge in 2012. These lists (apparently) consist of developments where:

- (a) A receiver has not been appointed and the developer is still in place but effectively inactive.
- (b) The development has been effectively abandoned and is posing serious problems for residents.

The list does not include estates where:

- (a) The development is still being actively completed by the developer; or
- (b) Where a receiver has been appointed.

The list was compiled by the Department from a survey carried out in 2011 by officials from the Department of the Environment, Community and Local Government in conjunction with various planning departments.

CATCH-UP

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Readers will be aware that:-

- The Government announced last December that it will not be proceeding with legislation banning the operation of upwards only rent reviews in pre-March 2010 Leases, citing constitutional and cost concerns.
- NAMA is actively enforcing its security. It has variously appointed Receivers to and has sold properties secured against loans acquired by it from the Banks.
- The provision in last summer’s Civil Law (Miscellaneous Provisions) Act 2011 allowing scope for the Land Registry to register easements obtained through prescription (i.e. unauthorised but open use for more than 20 years) is limited to uncontested applications.

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