[2020] IEHC 506

THE HIGH COURT

[No. H:IS:HC:2019/000478]

IN THE MATTER OF PART 3, CHAPTER 4 OF THE PERSONAL INSOLVENCY ACTS 2012 TO 2015
AND IN THE MATTER OF BERNARD MURPHY OF 31 ALL HALLOWS SQUARE, DRUMCONDRA, DUBLIN ("THE DEBTOR")
AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 115A(9) OF THE PERSONAL INSOLVENCY ACTS 2012 TO 2015

JUDGMENT of Mr. Justice Mark Sanfey delivered on the 12th day of October, 2020

Introduction

1. By notice of motion of 3rd April, 2020, Mr. John O'Callaghan, a Personal Insolvency Practitioner ('the PIP'), sought an order on behalf of Bernard Murphy ('the debtor') pursuant to s.115A(9) of the Personal Insolvency Acts 2012-2015 (referred to collectively as 'the Act') confirming the coming into effect of a proposed personal insolvency arrangement (or 'PIA') according to the criteria set out in that section.

2. Section 115A(9) is as follows:

> *"(9) The court, following a hearing under this section, may make an order confirming the coming into effect of the proposed Personal Insolvency Arrangement only where it is satisfied that –*
>
> *(a) the terms of the proposed Arrangement have been formulated in compliance with section 104,*
>
> *(b) having regard to all relevant matters, including the terms on which the proposed arrangement is formulated, there is a reasonable prospect that confirmation of the proposed Arrangement will –*
>
> *(i) enable the debtor to resolve his or her indebtedness without recourse to bankruptcy,*
> *(ii) enable the creditors to recover the debts due to them to the extent that the means of the debtor reasonably permit, and*
> *(iii) enable the debtor –*
> *(I) not to dispose of an interest in, or*
> *(II) not to cease to occupy,*
>
> *all or a part of his or her principal private residence,*
>
> *(c) having regard to all relevant matters, including the financial circumstances of the debtor and the matters referred to in subsection (10)(a), the debtor is reasonably likely to be able to comply with the terms of the proposed Arrangement,*
>
> *(d) where applicable, having regard to the matters referred to in section 104(2), the costs of enabling the debtor to continue to reside in the debtor's principal private residence are not disproportionately large,*

(e) the proposed Arrangement is fair and equitable in relation to each class of creditors that has not approved the proposal and whose interests or claims would be impaired by its coming into effect,

(f) the proposed Arrangement is not unfairly prejudicial to the interests of any interested party, and

(g) other than where the proposal is one to which section 111A applies, at least one class of creditors has accepted the proposed Arrangement, by a majority of over 50 per cent of the value of the debts owed to the class."

3. An issue arises in the course of the court's consideration as to whether the debtor satisfies the eligibility requirements to enable him to avail of s.115A(9). As s.115A(9)(1)(b) requires that "the debts that would be covered by the proposed Personal Insolvency Arrangement include a relevant debt", the debtor must satisfy the court that there is such a relevant debt as defined by s.115A(18). It is accepted by counsel for the PIP that this is a "gateway requirement" which the debtor must satisfy in order to invoke s.115A(9).

4. This judgment therefore deals with the question of whether the debtor has met the requirements of s.115A(18) and has established that there is a "relevant debt" for the purpose of the s.115A(9) application.

Background

5. The notice of motion set out the basis of the application, and appended the usual proofs required by s.115A(2), including a certificate with the result of the creditors' meeting which had been held on 27th March, 2020, and the PIP's report pursuant to s.107(1)(d) of the Act.

6. At the creditors' meeting, 65% of the total amount of the debt due present and voting was in favour of the proposed PIA. 100% of the total value of secured creditors was in favour of it. However, only 46% of the total value of unsecured debt present and voting voted in favour of the proposed PIA. Approval of the PIA, pursuant to s.110(1)(c) of the Act, requires "more than 50 per cent" of unsecured creditors who are entitled to vote and have voted, to vote in favour of the proposal before the PIA can be deemed to be approved by the creditors meeting.

7. The debtor therefore instructed the PIP to apply to this court pursuant to s.115A(9) on his behalf. Service was effected in accordance with the requirements of s.115A and, when the matter came before me on 22nd June, 2020, there were no creditors present to oppose the application of the PIP.

8. In the summary at the beginning of the proposed PIA itself, the rationale behind the PIA was set out as follows:

"Main features of PIA

Bernard Murphy is looking to return himself to solvency. He lives with his girlfriend in Drumcondra, Dublin 9. His ex-wife and her two children are in Cork. The home specified above is the original family home in which he and Sinead O'Donnell lived previously. They separated in July 2009 and ultimately divorced in January 2016. There are two issues in this case: One is the property portfolio, which has seriously devalued, with many rental voids and the overall inability to fund capital and interest payments to the lenders. The other is the business failure of McNamara & Murphy Solicitors. The intention of this PIA is to totally dispose of the properties and pay a dividend on the insecure [sic] portion of the debts so that the creditors are treated as fairly as possible. The proposal plans for a Restructure Mortgage on the family home, so that a more affordable and suitable PPR can be provided. The unsecured creditors will be significantly better treated in this proposal than would be their treatment under bankruptcy, as in bankruptcy they would get zero. This PIA is to be considered in conjunction with that of Sinead O'Donnell. PIA is planned to be a 6-year (72 month) PIA."

The issue of "relevant debt".

9. An issue arose during the hearing of the application as to whether there was a "relevant debt" for the purpose of s.115A(1)(b), which requires that "the debts that would be covered by the proposed personal insolvency arrangement include a relevant debt…". It was accepted by counsel for the PIP, Mr. Brian Hallissey BL, that the PIP was obliged to establish for the purpose of the application that there was a relevant debt, which is defined in s.115A(18) as follows:

"(18) In this section –

'relevant debt' means a debt –

(a) the payment for which is secured by security in or over the debtor's principal private residence and

(b) in respect of which –

(i) the debtor, on 1 January 2015, was in arrears with his or her payments, or

(ii) the debtor, having been, before 1 January 2015, in arrears with his or her payments, has entered into an alternative repayment arrangement with the secure creditor concerned."

10. 'Principal Private Residence', referred to in this judgment for convenience as 'PPR' is defined at s.2 of the Act as follows:

"'principal private residence' means a dwelling in which the debtor ordinarily resides and includes –

(a) any building or structure, or

(b) any vehicle or vessel (whether mobile or not),

together with any garden or portion of ground attached to and occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling;…"

11. The PIP swore an affidavit of 9th May, 2020 grounding his application. The affidavit covered the usual matters canvassed in such an affidavit. The PIP swore to his belief that there had been compliance with the appropriate procedural requirements under the Act and the Rules of the Superior Courts. At para. 12 of his affidavit, the PIP averred as follows: -

"12. I say that the debtor's principal private residence at 1st January 2015 was 10 Abbotswood Downs, Monastery Road, Rochestown, Cork and the address at 31 All Hallows Square, Drumcondra, Dublin is a rented property where he is currently resident. I say that I am instructed by the debtor that the property at 10 Abbotswood Downs, Monastery Road, Rochestown, Cork was the Debtor's Principal Private Residence and they ordinarily resided there on 1st January 2015 and that it remains the family home."

12. The debtor also swore an affidavit of 19th May, 2020 in support of the application. At paras. 10, 11 and 33 of that affidavit, he stated as follows:

"10. I say that my Principal Private Residence at 1st January 2015 was 10 Abbotswood Downs, Monastery Road, Rochestown, Cork and the address at 31 All Hallows Square, Drumcondra, Dublin is a rented property where I currently reside for work purposes. I say that I remain a legal joint registered owner of the property at 10 Abbotswood Downs, Monastery Road, Rochestown, Cork which remains the family home. I believe that it is consistent with the intent of the Personal Insolvency Act and I say that the definition of a Principal Private Residence in the Personal Insolvency Act does not require that a debtor must reside in the property as of any particular date.

11. I say and I have reviewed the Personal Insolvency Act and say that I do have a relevant debt in that my home at 10 Abbotswood Downs, Monastery Road, Rochestown, Cork was my Principal Private Residence. I say that I ordinarily resided there on 1st January 2015 and that there is debt secured on the property that is classified as a Principal Private Residence Mortgage and that I had been before the 1st January 2015 in arrears in this mortgage and I had entered into an alternative repayment arrangement with the secured creditor. I say further that I can only ever have one principal private residence mortgage at any one time and as I remain a party to this debt in the PIA and for the remaining term of the mortgage I saw that this further confirms that I have a relevant debt for the purposes of Section 115A of the Act…

33. In conclusion for the reasons as stated which I summarise as follows:

- *I have a debt on my family home which was my Principal Private Residence where I resided at the time of the arrears and so have a relevant debt;*
- *I have a debt on the family home for which I remain liable;*
- *My dependent children currently reside in the family home;*
- *I remain a legal owner of the family home;*
- *No creditor is being prejudiced and no creditor has objected to the within application;*
- *I do not own any other property;*

I respectfully pray this Honourable Court to allow the herein section 115A review."

13. Although the debtor resided at 10 Abbotswood Downs on 1st January, 2015, it is not suggested by him that he has at any time resided there since the commencement of the personal insolvency process. As the debtor's counsel put it at para. 3 of the debtor's written submissions:

> *"The issue before this Court is whether an applicant satisfies the 'relevant debt' requirements of s.115A(18) if he or she was not ordinarily resident in the Principal Private Residence at the commencement of the proceedings."*

Debtor's submissions

14. Counsel argued that the debtor had established a 'relevant debt' within the meaning of s.115A(18), and made very helpful oral and written submissions to support the debtor's position. It was submitted that s.104 was of relevance in setting out the purpose of a PIA. In as far as is relevant, the section is as follows:

> *"104. (1) In formulating a proposal for a Personal Insolvency Arrangement a personal insolvency practitioner shall, insofar as reasonably practicable, and having regard to the matters referred to in subsection (2), formulate the proposal on terms that will not require the debtor to –*
>
> *(a) dispose of an interest in, or*
>
> *(b) cease to occupy,*
>
> *all or a part of his or her principal private residence and the personal insolvency practitioner shall consider any appropriate alternatives.*
>
> *(2) The matters referred to in subsection (1) are –*
>
> *(a) the costs likely to be incurred by the debtor by remaining in occupation of his or her principal private residence (including rent, mortgage loan repayments, insurance payments, owners' management company service charges and contributions, taxes or other charges relating to*

ownership or occupation of the property imposed by or under statute, and necessary maintenance in respect of the principal private residence),

(b) the debtor's income and other financial circumstances as disclosed in the Prescribed Financial Statement,

(c) the ability of other persons residing with the debtor in the principal private residence to contribute to the costs referred to in subsection (2), and

(d) the reasonable living accommodation needs of the debtor and his or her dependents and having regard to those needs the cost of alternative accommodation (including the costs which would necessarily be incurred in obtaining such accommodation)."

15. Counsel submitted that the use of the disjunctive "or" between alternatives (a) and (b) in s.104(1) quoted above suggests that the legislature envisaged a PIA covering two different situations: one where the debtor was already in occupation (option (b)), and one where the debtor was not in occupation (option (a)). It was thus suggested that occupation of the PPR for the purpose of a PIA was not a sine qua non.

16. Counsel then referred to two decisions of McDonald J. in this Court which he submitted were of relevance. In *re Ahmed Ali* [2019] IEHC 138, the creditor bank objected that the debtor, Mr. Ali, had not established a relevant debt. He had lived in the PPR from 2004 to 2011, at which point he moved out of the property to live in rented accommodation. The debtor's wife appears to have moved out of the property at some time in 2014. In June 2015, Mr. Ali returned to live in the property. It appears that he did so on realising that he had a personal liability on foot of the mortgage, and commenced at that time to make payments towards that liability. The property was therefore unoccupied between some time in 2014 and June 2015. He ordinarily resided there at the commencement of the personal insolvency proceedings. The creditor argued that, as Mr. Ali did not reside in the property on 1st January, 2015, there was no relevant debt for the purpose of s.115A.

17. This argument did not find favour with McDonald J., who stated *inter alia* as follows:

"7. While I understand why the bank should make this submission, it is noteworthy that there is nothing in the language of the definition of 'relevant debt' which expressly requires that the debtor should reside in the principal private residence as of 1 January, 2015. What is required is that the mortgage loan should be in arrears as of that date. However, there is no express requirement that the debtor should reside in the principal private residence as of that date.

8. There are two aspects to the definition of 'relevant debt' in s.115A, namely:-

(a) the requirement that there should be a debt secured over the principal private residence; and

(b) that the debt was in arrears as of 1 January, 2015, or had been in arrears prior to that date and the debtor had entered into an alternative repayment arrangement with the secured creditor concerned.

9. It is obviously a critical component of the definition of 'relevant debt' that there should be arrears as of 1 January, 2015, or arrears before that date. Notably, s. 115A(18) does not go so far as to require that the debtor must reside in the property as of that date. For the subsection to operate, there must be a mortgage over the principal private residence of the debtor prior to 1 January, 2015. There must also be a 'principal private residence'. That term is defined in s. 2 of the 2012 Act as meaning (insofar as relevant): 'a dwelling in which the debtor ordinarily resides.' Importantly, there is nothing in the definition of 'principal private residence' in s. 2 to require that the debtor must reside in the dwelling as of any particular date."

18. Counsel for the debtor in the present case lays particular emphasis on the finding of the court that the definition of 'principal private residence' does not "require that the debtor must resident in the dwelling as of any particular date", and also attaches particular significance to the following paragraph from the *Ali* decision:

"12. Had it been the intention of the Oireachtas to require that the debtor should actually reside in the principal private residence as of 1 January, 2015, it would have been a very simple matter for that requirement to be spelt out in section 115A(18). No such provision was made. I can see no basis on which such a requirement can be read into s. 115A(18). In fact, no argument was addressed to me at the hearing that would provide any proper basis for the court to conclude that it is implicit in the definition of 'relevant debt', that the debtor should be resident in the relevant property as of 1 January, 2015."

19. Counsel submits that these dicta suggest that "if it was the intention of the Oireachtas to require a debtor to reside in the PPR as of the commencement of the proceedings, it would have been expressly spelt out in the legislation". [Para. 16 written submissions].

20. Counsel also made reference to the decision of McDonald J. in *Re Taaffe* [2018] IEHC 468. In that case, the debtor referred to a property in County Clare as his PPR in the PIA, and in particular in the executive summary. The debtor was not in fact in arrears with his payments to the bank in respect of the debt secured on this property. The objecting creditor therefore submitted that there was no relevant debt, and no basis on which to invoke the court's jurisdiction under section 115A.

21. However, the debtor swore an affidavit stating that, while the property in Clare was his family home, his PPR was in fact an apartment in Smithfield, Dublin 7, on the basis that he ordinarily resided there, albeit that he spent weekends at the property in the County Clare. He averred *inter alia* as follows:

"9. *I say that at the time of the application for a Protective Certificate and at the time of the making of the PIA proposal to creditors, and at the time of the making of the s. 115A application, I ordinarily resided in the Smithfield property*…" [referred to at para. 8 of judgment of McDonald J.].

It is notable from this averment that the debtor in that case appears to have considered these three points in time to be the points at which he might have to establish that he ordinarily resided at the Smithfield property.

22. McDonald J. held that the erroneous reference in the PIA to the County Clare property was not fatal to the debtor's application. Counsel drew my particular attention to paras. 71 and 72 of the court's judgment:

"*71. Crucially, it seems to me that* [the terms of the PIA] *are all capable of being performed and enforced even if it transpires that the location of the principal private residence of the debtor has been incorrectly described in the executive summary. In fact, the terms would all be capable of being applied and enforced whether the executive summary had described the principal private residence as the Smithfield apartment or the Co. Clare property. While, as a matter of law, the identity of the principal private residence is critical to the potential application of s. 115A, it does not appear to me to be critical to the operation of the arrangement contained within the PIA. In my view that arrangement would be capable of taking effect and would be legally enforceable (if confirmed by the court under s. 115A) irrespective of the identification of the Co. Clare property as the principal private residence of the debtor. In this context, I do not see anything in ss. 99 or 104 that would cause me to alter this view. S. 99 sets out in detail the mandatory requirements concerning PIAs but does not make any provision that the address of the principal private residence must be stated either accurately or at all. S. 104 is the statutory provision which places the principal private residence at the centre of the PIA process but, again, it contains no specific provision requiring that the PIA should record its address in any particular way. Nor does it contain any provision which suggests that any adverse consequences should flow from a failure to correctly identify the address*.

72. However, it is clear that court confirmation could not be forthcoming unless the court can be satisfied that some property other than the Co. Clare property constitutes the principal private residence of the debtor. This is for the simple reason that there is no relevant debt within the meaning of s. 115A in respect of the Co. Clare property, such that this particular gateway requirement could not be satisfied."

23. Given the unopposed nature of the debtor's application in the present case, counsel very fairly and properly conceded that it was at least arguable that the use by McDonald J. of the word "*constitutes*" in para. 72 above suggested that the property the subject of the s.115A application must be the current PPR of the debtor in order to establish a relevant

debt. Counsel however argued against such an inference, and submitted that the *ratio decidendi* in *Taaffe* was set out as follows at para. 73:

> *"73. That brings me to the question of how the gateway relevant debt requirement should be addressed on a s. 115A application. In this context, it seems to me that, for the purposes of any contested application under s. 115A, neither the court nor the objecting creditors can be bound by the description of the principal private residence given in the PIA. In my view, given the critical importance of the 'relevant debt' requirement in the context of s. 115A, the relevant factual constituents of the 'relevant debt' would require to be proved by appropriate evidence at the hearing under s. 115A."*

24. Counsel's essential conclusions from the legislation and case law were concisely expressed as follows:

> *"(i) There is nothing expressly provided in the legislation requiring a debtor to be ordinarily resident [in] the PPR at a particular date;*
>
> *(ii) Re Taaffe did not determine whether a debtor requires to be ordinarily resident at the time of the commencement of the proceedings;*
>
> *(iii) Re Ali confirmed that there is no requirement that the Debtor live in the property at any particular date…"* [para. 27 written submissions]

25. Counsel further submitted that a finding that a debtor must be ordinarily resident at the time of the commencement of the proceedings would result in debtors such as the applicant, who have had a relationship breakdown and have left the family home, unable to avail of s.115A(9). It was submitted that this would not be in the spirit of the legislation, particularly given that the Act acknowledges the fact of relationship breakdowns by deeming domestic support orders to be excluded debts under the statutory scheme. The point was made that the present debtor, notwithstanding having moved out of the family home due to relationship breakdown, remains a joint owner who is jointly and severally liable for the debts secured on the family home. In such circumstances, it was suggested, it was fundamentally unfair that such a debtor could not avail of s.115A(9). It was further suggested that such a situation could lead to a debtor having to resume occupation of a family home, notwithstanding marital breakdown, in order to be able to avail of the section.

Discussion

26. The general purpose of s.115A(9) of the Act was considered by Baker J. in *re Sarah Hill* [2017] IEHC 18. In that case, having set out the terms of the subsection, the court commented as follows:

> *"8. The statutory provisions were formulated to enable a qualifying applicant to preserve an entitlement to retain ownership, or remain in occupation, of a principal private residence in certain circumstances, and have the effect that a creditor holding security over a principal private residence of a debtor may find that its*

rejection of a PIA can be overridden by the court. The creditor holding security of that type is treated differently from creditors holding other security, or unsecured creditors."

27. Baker J. considered the import of the section further in *re JD* [2017] IEHC 119 as follows:

> *32 the amending legislation by which was added s. 115A, affords the far-reaching power of the court to approve a PIA notwithstanding its rejection by creditors. The public interest is in is* [sic] *the maintenance of a debtor's occupation and ownership of a principal private residence. That social and common good is concretely referable to the continued occupation by a debtor of a principal private residence, and the power contained in the section is limited by the fact that only those persons who had a relevant debt secured over his or her principal private residence which was in arrears as defined by s. 115A(18) on 1st January, 2015 could avail of this exceptional remedy. The statutory provision then must be seen as a limited protection of persons whose mortgage payments on their principal private residence fell into arrears at the height of the financial crash. Absent a 'relevant debt', a debtor may not seek to engage the jurisdiction of the court to overrule the result of a creditors' meeting: see Hill and Personal Insolvency Acts [2017] IEHC 18".*

28. The court went on to state as follows:

> *"34 I consider it relevant too, that s. 115A does not have as its focus the continued ownership by a debtor of his or her family home, but rather the continued occupation of that premises, and the section is concerned with enabling a debtor not to dispose of an interest in a property, rather than positively stated as enabling the debtor to continue to own the property. Thus, the perceived public interest in the continued occupation of a premises is not a focus on the acquisition of a capital asset, but rather the preservation of a right to live in a premises."*

29. It is certainly the case that there is nothing in the legislation expressly requiring a debtor to be ordinarily resident for the purpose of the section at a particular date. It is also the case that, as the decision in *Ahmed Ali* makes clear, the debtor does not require to be resident in the PPR as at 1st January, 2015.

30. However, the definition of "relevant debt" requires that the debt is one in respect of which payment is secured "by security in or over the debtor's principal private residence…". In the present case, the debtor resided at the Abbotswood Downs address at 1st January, 2015, but did not reside there at any stage of the personal insolvency process, i.e. from his application for a grant of a protective certificate onwards. His situation is, in a sense, the inverse of the situation in which Mr. Ali found himself, i.e. that Mr. Ali did not reside in the property on 1st January, 2015, but did reside there at the commencement of the personal insolvency process. As McDonald J. stated in that case:

"10. It is clear that Mr. Ali did not ordinarily reside in the property in issue here as of 1 January, 2015. However, there is no doubt (on the basis of the evidence before the court) that as of the date of commencement of the proceedings under the 2012-2015 Acts in 2017, he was ordinarily resident in the property.

11. Thus, for the purposes of these proceedings, the property is Mr. Ali's principal private residence within the meaning of s. 2. Furthermore, there is a debt secured over that property in favour of the bank. That debt was in arrears as of 1 January, 2015. In these circumstances, each of the express requirements set out in the definition of 'relevant debt' are satisfied. There is accordingly a 'relevant debt' within the meaning of s. 115A(18)."

31. While McDonald J. was not required to consider the specific circumstances before this Court, he was clearly of the view that being "ordinarily resident" at the date of commencement of the proceedings was sufficient to ensure that the property was Mr. Ali's principal private residence within the meaning of s.2. Also, the judge's use of the present tense in para. 11 quoted above ("the property is Mr. Ali's principal private residence within the meaning of s.2") is notable. It is consistent with the definition in s.2 of the Act that the PPR is a dwelling "in which the debtor ordinarily resides". The use of the present tense ("ordinarily resides") in a term – "principal private residence" – which is an integral part of the definition of "relevant debt" is in my view significant. The concept of "relevant debt" arises only in the context of an application under s.115A(9). One does not require to prove a relevant debt for the purpose of a PIA; it may be that a PIA put before the creditors does not involve a debt secured on the debtor's PPR at all. However, if the creditors vote against a PIA proffered on behalf of the debtor, a s.115A(9) application can only be made to court by a debtor who establishes the existence of a "relevant debt", involving a dwelling in which the debtor "ordinarily resides". It seems to me that this strongly suggests that the primary purpose of s.115A is to provide for the continuing occupation by the debtor – the court being satisfied as to the matters set out in s.115A(9)(a) and (b) – of the PPR in which he "ordinarily resides".

32. It is true that, as McDonald J. pointed out in *Ahmed Ali*, the definition of "principal private residence" does not require that the debtor must reside in the dwelling as of any particular date; however, that is not to say that the definition does not require the debtor to reside in the dwelling at all. In my view, it is not possible to regard that definition other than as requiring that the debtor "ordinarily resides" in the dwelling in question – not that he has resided there at some time in the past, but no longer does so.

33. That in turn begs the question as to the point at which the debtor must establish that he "ordinarily resides" in the dwelling. A number of dates suggest themselves as possibilities: the date of presentation of the prescribed financial statement, the date of issue of the protective certificate, the date on which the PIA is circulated to the creditors, the date of the hearing of the s.115A(9) application, etc. Further issues may arise: what if the residence of the debtor changes during the course of the personal insolvency process? If, for example, a debtor resides in dwelling A when the PIA has been

circulated, but by the time the arrangement has been rejected by the creditors and he has applied to court for an order pursuant to s.115A(9), he has for whatever reason left dwelling A, which would undoubtedly satisfy the definition of "relevant debt" if he still resided there, and now resides in dwelling B, which has no secured debt and thus no "relevant debt", has such a debtor lost the right to avail of s.115A(9)?

34. The answers to these queries are not expressly set out in the Act. However, they do not have to be resolved in the present application. Although the debtor resided in the Abbotswood Downs property on 1st January, 2015, that date is irrelevant for the purpose of establishing the point at which the debtor "ordinarily resides" in the property. As Baker J. pointed out at para. 32 of the *JD* decision quoted at para. 27 above, the requirement of a debt secured on the PPR in arrears at 1st January, 2015 suggests that s.115A "must be seen as a limited protection of persons whose mortgage payments on their principal private residence fell into arrears at the height of the financial crash".

35. The debtor did not reside in the Abbotswood Downs property at any point in the personal insolvency process. He must establish a "relevant debt" in order to avail of the section, and this in turn requires that he establish a debt, "the payment for which is secured by security in or over [his] principal private residence…". To comply with this requirement, he must show that the dwelling over which security exists is one in which he "ordinarily resides". In my view, it is clear that the debtor, who at one time resided in the property but did not do so at any stage of the personal insolvency process, is unable to comply with this requirement.

36. It may be that, as counsel for the debtor submitted, an inability of a debtor to avail of s.115A(9) due to having moved out of the family home as a result of a relationship breakdown prior to engaging with the personal insolvency process could lead to substantial unfairness, and would indicate a failure on the part of the legislature to be supportive of couples experiencing relationship difficulties who would wish to avail of the insolvency process, notwithstanding its support in other aspects, such as the inclusion of domestic support orders as excludable debts.

37. However, it seems to me that, as Baker J. put it at para. 32 of in *Re JD*, "the public interest [served by s.115A] is in the maintenance of a debtor's occupation and ownership of a principal private residence. That social and common good is concretely referable to the continued occupation by a debtor of a principal private residence…". As the primary focus of s.115A is, as Baker J. puts it, "the preservation of a right to live in a premises", it follows that s.115A cannot avail a party who formerly resided in the dwelling in question, but did not do so at any point in the insolvency process. The court must interpret the legislation as it is, and any perceived unfairness arising from its provisions is a matter for the legislature.

Conclusion

38. For the reasons set out above, I am of the view that the debtor does not have a "relevant debt", and is not entitled to avail of s.115A of the Act. Accordingly, there will be an order refusing the PIP's application.

39. As this judgment is being delivered electronically, I will give liberty to the parties to furnish, within 14 days of delivery of this judgment, written submissions in relation to the precise terms of the orders to be made by this Court as a result of the judgment, including and in particular in relation to the question of costs.