



Warehousing and Insolvency Plans

Re: Callaghan [2017] IEHC 325

June 2017

The High Court in *Re: Callaghan* (Unreported, High Court, Baker J., 22 May 2017) [2017] IEHC 325 has rejected a lender's proposal to deal with outstanding mortgage debt on the principal private residence of a debtor.

The Debt

The debt arose from a mortgage in favour of KBC. The secured amount was €285,647. The mortgage debt fell into arrears. The principal private residence was valued in accordance with s.105 of the Personal Insolvency Acts 2012 to 2015 ("the Act") at €105,000.

Personal Insolvency Arrangement

A six-year Personal Insolvency Arrangement ("PIA") was proposed. As part of the PIA it was proposed that €474 be paid per month to service mortgage repayments. At the expiry of the PIA term this amount was due to increase to €582 for the remainder of the mortgage term. It was proposed as part of the PIA that for the period of the PIA the interest rate on the mortgage would be reduced to 2.5% and thereafter would revert to 4.5% for the balance of the term. The mortgage term was also due to be extended by six years with a proposal to write-off €165,647 from the mortgage leaving a live mortgage balance of €120,000.

Alternative Proposal

KBC proposed an alternative approach to deal with the mortgage debt that arose in this case to that put forward in the PIA under the Act. The alternative proposal made by KBC to deal with the secured debt was to write off part of the mortgage debt such that it was reduced to €270,000 (a write-down of approximately €15,000) and

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thereafter to split the secured debt into two portions of €135,000 each. It was proposed that the term of the PIA would be twelve months and that during that twelve month period the active part of the mortgage would be paid at €350 per month, and thereafter for the balance of the existing term paid at standard variable interest rates.

KBC proposed that the amount of €135,000 would be treated as inactive and would be placed in a “warehouse” account carrying 0% interest. The debtors would be given “lifetime tenure” in their principal private residence and the security would not be enforceable until after the survivor of them died. It was accepted in the course of the hearing that the KBC proposal would permit the debtors, if their means allowed, to repay some or all of the warehoused amount during their lives, whether during the period of the active mortgage, or thereafter. The stated advantage of the counterproposal identified by KBC was that the debtors would be permitted to occupy their principal private residence for their respective lives, that the mortgage payments in the meantime would be sustainable and affordable by them, but that KBC would still, in time, recover the balance of the loan amount.

The Statutory Scheme

The counter proposal made by KBC was deemed by the court to be capable of creating circumstances amounting to insolvency at the end of the mortgage term. Due to the fact that a PIA is a once in a lifetime solution and in these circumstances could result in insolvency at a future date the court believed it would be against the statutory scheme.

The court held that a warehousing solution should offer a solution to indebtedness that is likely to be achieved. It was suggested that if the debtors had the benefit of some type of future lump sum to deal with the warehoused amount then the court would have reached a different conclusion.

Comment

Banks will need to be mindful of this decision in any negotiations with customers that involves or proposes the freezing of part of a mortgage for a period of time as it appears that a full and final settlement when negotiating in these circumstances is the courts’ preferred option.

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