

Application was Indirect Attempt to Enforce Foreign Revenue Debt

13 June 2024

Redefine Australian Investments Limited (**Company**), an Irish-registered company was placed in voluntary liquidation on 24 January 2018. Martin Ferris was appointed as the liquidator (**Liquidator**).

The Proceedings

By originating notice of motion, the Liquidator sought orders from the High Court (**Court**) under sections 604 and 608 of the Companies Act 2014 to reverse a transaction where the Company had paid GB£55,916,731 to the second respondent, Redefine Cyprus Limited (Redefine Cyprus), a Cyprus-registered company, on 18 September 2015. Redefine Cyprus was the Company's sole shareholder when it entered liquidation. The Liquidator claimed that this transaction was a fraud on the creditors in circumstances where the Australian Tax Office subsequently issued an assessment against the Company for more than AUS\$29 million in capital gains tax, which, in light of the payment to Redefine Cyprus, the Liquidator was not in a position to discharge.

The Company sought to strike out the Liquidator's originating notice under the Rules of the Superior Courts (Order 19, Rule 28) or the Court's inherent jurisdiction. The Company's application was based on several grounds, but its main objection was that the Liquidator's claim was an indirect attempt by a foreign tax authority to enforce a claim. The Company contended that there is a long-established rule, sometimes called the Revenue Rule, that it is impermissible to bring an action in an Irish Court to recover tax owed to a foreign tax authority. On this basis, they argued that the Liquidator's claim was bound to fail.

The Revenue Rule

The Revenue Rule means that a court has no jurisdiction in an action to enforce, directly or indirectly, the penal, revenue, or other public laws of a foreign state.

The Revenue Rule is one of universal application, and as noted by the Court, it forms part of the Irish common law as established in *Peter Buchanan Ltd v McVey* [1954] IR 89.

The Revenue Rule can be disapplied in certain circumstances, such as where a state has made provision for mutual recognition of taxes due in other states by statutory exemptions or through international agreements.

The Liquidator resisted the application on several grounds, including that the Revenue Rule should be disapplied because the state had provided for the mutual recognition of taxes due in other states by way of Regulation 1346/2000 on Insolvency Proceedings (**Regulation 1436/2000**), and a 2011 Convention on mutual assistance in tax matters to which legal effect was given in Ireland by SI 34 of 2013 (**2011 Convention**).

Decision

The Court found that the Liquidator's application was an indirect attempt to enforce the Company's Australian tax debt. The purpose of the liquidators' proceedings was to recover money and pass it to a foreign revenue authority. Regarding whether the Revenue Rule was disapplied in this case, the Court ruled out the relevance of Regulation 1436/2000, as it only applies to member states. It also dismissed the 2011 Convention's relevance

because Ireland had entered “reservations” to the 2011 Convention, to the effect that it would not provide assistance in the recovery of any tax claim. The Court found that in entering the reservations, the Irish state reasserted the applicability of the Revenue Rule. This “fatally” undermined the Liquidator’s claim that the Revenue Rule was disapplied. The Court, therefore, ordered the dismissal of the Liquidator’s application in the exercise of this court’s inherent jurisdiction.

Conclusion

Although it is well settled that the courts will not facilitate claims to enforce foreign revenue debts, this decision is a rare example of a court deciding that an application before it was one to enforce a foreign revenue debt. In the absence of any international agreement or law displacing the common law rule, the Liquidator’s claim was bound to fail and was struck out on that basis.

The Court also considered the scope of the Superior Court Rule to strike out proceedings under the new Order 19 Rule 28. Order 19 Rule 28 was amended in September 2023 and allows the court to strike out a claim that discloses no reasonable cause of action, is bound to fail, has no reasonable prospect of success, or constitutes an abuse of process. The old Order 19 Rule 28 provided the jurisdiction to strike out could be exercised in respect of a “pleading”. The amended rule applies more broadly to a “claim” or part of a claim. In this case, the Court confirmed its jurisdiction to strike out under Order 19 Rule 28 applied to an originating notice of motion.

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