Browne Jacobson

Predicting the future (and getting it wrong); when a bankrupt's bad deal can't be undone

Good news for personal insolvency practitioners, the High Court appears to have closed the door to claims by bankrupts seeking to recover pension contributions made via Income Payments Agreements.

05 February 2020

Summary

In some good news for personal insolvency practitioners, the High Court appears to have closed the door to claims by bankrupts seeking to recover pension contributions made via Income Payments Agreements ("IPAs") following the case of Elston v King & Anor [2020]. Claims of this kind had begun to arise following a period of uncertainty in the pensions arena between 2012 and 2016.

An IPA is a voluntary agreement whereby a bankrupt agrees to make certain payments into his bankruptcy estate for a specified term. This might be appropriate if a bankrupt is thought to receive income beyond his/her reasonable domestic needs. If the bankrupt is of an age when a pension could be drawn this could also be captured. In the absence of an IPA, the insolvency practitioner can apply to court for an Income Payments Order ("IPO").

Background

In 2012, the High Court case of Raithatha v Williamson held that pension payments which a bankrupt could elect to take at the date of his bankruptcy, but which he had not elected to take, were payments that would constitute "income" for the purposes of an IPO. Permission to appeal in the case was granted, but an appeal never proceeded.

In November 2014 Mr Elston, in compromise of a potential application for an IPO, entered into an IPA which made provision for him to pay to his Trustee in Bankruptcy, sums via various pension plans in his name. Mr Elston was obliged to draw down available lump sums under his pensions as and when they became available to him pursuant to the terms of those plans.

On 17 December 2014 judgment in the case of Horton v Henry (another High Court case) cast doubt on the decision in Raithatha and by deciding uncrystallised pension rights did not constitute "income" for the purposes of an IPO

In April 2016 the Court of Appeal affirmed the decision in Horton v Henry protecting a bankrupt's pension rights and decided against Raithatha v Williamson.

The Claim

Pursuant to the IPA, Mr Elston made payments of over £48,000 between 2015 and 2017. He applied to recover those payments on the basis that, following the Court of Appeal decision in Horton v Henry, his Trustee had been unjustly enriched because his IPA had been concluded under a mistake of law. He asked for his IPA to be set aside and for the payments he had made to be repaid to him.

Mr Elston's argument was that, having read the Raithatha case himself (having no funds to take legal advice or oppose an application for an IPO) he believed it was inevitable that his pension would be included as part of an IPO. He agreed to an IPA on that basis.

Decision

The Court held that each party had made an assessment or ‘a prediction’ of the likely outcome had an application to the Court for an IPO been made, and on that basis a compromise in the form of an IPA had been agreed.

The Court gave detailed analysis of why an IPA was a form of contract, and assessed the remedy sought by Mr Elston in this light.

The Court considered that Mr Elston had, in fact, made a mispredicton (as to the way the law might develop) rather than a common mistake of law made between the parties. The claim therefore failed to meet the primary requirement (common mistake) needed to set aside a contract. The application was dismissed.

The Court also held that, as the IPA was a form of compromise, it could not have been avoided for mistake.

Why is this significant?

The decision sends out a clear message to bankrupts to accept the consequences of their actions and suggests that you cannot rely on a misprediction to unpick what turns out to be a bad deal.

This decision could have application beyond the sphere of IPAs and pension liabilities and could be relied upon by counterparties to other types of compromise agreements where there has been a change in the law which, with the benefit of hindsight, would have influenced the way the parties chose to proceed.

We advise insolvency practitioners and individuals in relation to IPAs and IPOs and all other aspects of personal insolvency. Please contact us to find out more.

Contact

Joe Price

Senior Associate

Joe.Price@brownejacobson.com

+44 (0)330 045 2864

Related expertise

Banking and finance