

DISPUTE RESOLUTION | MAY 2022

BORIS BECKER: A LESSON UNDER THE INSOLVENCY ACT 1986

Boris Becker has been sentenced to two and a half years in prison in relation to the four criminal charges he was convicted of under the Insolvency Act 1986.

On 8 April 2022, following a trial at Southwark Crown Court, former tennis player Boris Becker was convicted of four counts against the Insolvency Act 1986 (the **IA 1986**). Mr Becker was subsequently sentenced to two and a half years in prison on 29 April 2022.

The Bankruptcy

Boris Becker was declared bankrupt on 21 June 2017 (the **Bankruptcy Order**) following a petition made on 28 April 2017 from Arbuthnot Latham & Co, a private bank, regarding an unpaid loan of around EUR 4,600,000 on Mr Becker's estate in Mallorca, Spain.

Over the course of his tennis career, Mr Becker argued that his approximately USD 50,000,000 earnings were consumed by his divorce from his first wife, child maintenance payments and general "expensive lifestyle commitments". Mr Becker also cited his drastic reduction in income upon his retirement in 1999 as a contributing factor towards the bankruptcy.

The Charges

Under the Bankruptcy Order, Mr Becker was under (i) a statutory duty to provide full disclosure of assets to the trustee; and (ii) to inform lenders of a bankruptcy when seeking to borrow more than GBP 500.

However, the Official Receiver of Mr Becker's estate found a series of undisclosed transactions which occurred before and after the Bankruptcy Order worth more than GBP 4,500,000.

Mr Becker was subsequently charged with 24 contraventions under the IA 1986 but was only found guilty of four of those charges, namely:

1. Removal of property worth around EUR 427,000 from his bankruptcy estate, in contravention of s. 354(2) IA 1986.
2. Failure to disclose ownership of a property in Germany in contravention of s. 353(1) IA 1986.
3. Concealment of a loan of EUR 825,000 from the Bank of Alpinum of Lichtenstein in contravention of s. 354(1)(b) IA 1986.
4. Failure to disclose ownership of 75,000 shares in Breaking Data Corp in contravention of s. 353(1) IA 1986.

Mr Becker was acquitted of another 20 charges against him which included (i) nine counts of failing to hand over trophies and medals from his tennis career; (ii) three counts of failing to disclose estate; (iii) one count of removal or property and (iv) seven counts of concealing property.

The IA 1986

Sections 353 to 359 IA 1986, make it a criminal offence for a bankrupt (if they have the intent to defraud creditors or conceal their affairs) and they:

- fail to disclose details of all property within the bankruptcy estate (and any disposals made thereof); and or
- conceal, or fail to deliver, any property that falls within the bankruptcy estate; and or
- remove any property worth more than GBP 1,000 from the bankruptcy estate; and or
- fail to account for the loss of the substantial part of their property for the 12 months preceding the bankruptcy order; and or
- make a false, fraudulent or materially incomplete statement regarding their affairs or fail to notify the trustees of a false claim made by a purported creditor; and or

- dispose of any property forming part of the bankruptcy estate, or dispose of any property within five years preceding the bankruptcy order; and or
- leave or prepare to leave England and Wales with property belonging to the bankruptcy estate in excess of GBP 1,000 after the bankruptcy order has been made; and or
- dispose of any property obtained on credit which has not been settled in the 12 months preceding the bankruptcy order (excluding any disposals made in the ordinary course of business).

Schedule 10 to the IA 1986 provides the sentencing guidelines for the above offences, which in some instances can be up to 7 years on indictment.

The Sentencing

On 29 April 2022, Mr Becker was sentenced to two and a half years in prison. Judge Taylor stated that, in reaching her decision, she concluded that Mr Becker had shown no remorse or humility.

In addition to his sentencing, Mr Becker's discharge from bankruptcy has been suspended indefinitely. Accordingly, whilst normally a bankrupt is discharged from bankruptcy (and the restrictions imposed thereof) after 12 months, it will be up to the Official Receiver as to when Mr Becker will be freed from bankruptcy.

Mr Becker is also subject to a 12-year Bankruptcy Restriction Undertaking which will take effect as of 17 October 2019. Accordingly, Mr Becker will be subject to the restrictions contained therein up to and including 16 October 2031.

Commentary

Mr Becker's conviction is proof that, regardless of celebrity status, the court will take a strict approach when a bankrupt has been found to be contravening the IA 1986. Indeed, as Dean Beale (Chief Executive of the Insolvency Service) stated at the time of Mr Becker's conviction, "[t]his conviction serves as a clear warning to those who think they can hide their assets and get away with it. You will be found out and prosecuted."

The Court's approach to sentencing in this regard shows that offences under the IA 1986 are taken seriously and will be prosecuted accordingly.

Additional research conducted by Trainee Solicitor **Annabella Ferrari**.

For more information, please contact the author(s) of this alert



RICK BROWN

Partner, London

T +44 (0)20 7264 8461

E rick.brown@hfw.com



NICOLA GARE

Professional Support Lawyer, London

T +44 (0)20 7264 8158

E nicola.gare@hfw.com

hfw.com

© 2022 Holman Fenwick Willan LLP. All rights reserved. Ref: 004000

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please email hfwenquiries@hfw.com

Americas | Europe | Middle East | Asia Pacific