

BORIS BECKER

FROM BRILLIANCE TO BANKRUPTCY

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In arguably the most high-profile conviction ever under the Insolvency Act of 1986 (the IA 1986), former tennis champion Boris Becker has been sentenced to 2.5 years imprisonment. Following his bankruptcy in 2017, Becker was legally obliged to disclose his assets so that his trustee could distribute available funds to his numerous creditors. However, Becker failed to do so and in fact concealed and removed significant assets from the Official Receiver and his Trustee in Bankruptcy. This led to his discharge from bankruptcy being suspended indefinitely. He was also subject to a 12-year Bankruptcy Restrictions Undertaking, effective from 17 October 2019. A prosecution was brought by the Insolvency Service, on behalf of the Secretary of State for Business, Energy and Industrial Strategy.

Following a trial at Southwark Crown Court, Becker was convicted on four counts against the IA:

- Removing property totalling close to €427,000 from his bankruptcy estate (count 4)
- Failed to disclose ownership of a property in Leiman in Germany (count 10)

- Concealed a loan of €825,000 from the Bank of Alpinum of Lichtenstein (count 13)
- Ownership of 75,000 shares in Breaking Data Corp (count 14)

Whilst Becker was acquitted of no fewer than 20 additional charges against him, (including nine counts of failing to hand over trophies and medals from his tennis career), those 4 counts listed above were enough to warrant a 2.5-year sentence. In a cruel twist of fate, Becker now finds himself in Wandsworth prison, just a stone's throw from the Wimbledon courts. Is this a cautionary tale warning all bankrupts of the consequences of contravening the Insolvency Legislation? Or rather, is this a high-profile case in which sentencing would not have so harsh had Becker not been a celebrity? Here we take a brief look at the decline of Becker, who is no stranger to litigation, and try to make sense of this astonishing insolvency case.



Decline to Bankruptcy

Becker was declared bankrupt on 21 June 2017 following a petition

made on 28 April 2017 from private bank Arbuthnot Latham & Co. The bank had lent him circa EUR 4,600,000 on his estate in Mallorca and Becker had failed to make payments.

In those proceedings, Becker argued that his earlier fortune (of approximately USD 50,000,000) had been eaten up by his divorce from his first wife, Barbara.

It was Becker's contention that high school fees, child maintenance payments and general "expensive lifestyle commitments" accounted for his overall dwindling finances. There are also reports that Becker was also unable to repay a loan he took from British businessman John Caudwell, who founded Phones 4u. Nevertheless, Becker's fortune had already taken a tumble following his retirement. It was seemingly his divorce from first wife which marked the real start of his financial plight, and ultimately acted as a catalyst for his decline to bankruptcy. Divorce is a great leveller, as we are all aware.

Under Becker's Bankruptcy Order, he was legally bound under a statutory

duty to both provide full disclosure of assets to his trustee and to inform lenders of a bankruptcy when he was seeking to borrow more than GBP 500. However, the Official Receiver of the estate found a series of undisclosed transactions worth more than GBP 4,500,000. During proceedings, it was found that Becker had removed property worth around EUR 427,000 from his bankruptcy estate, in contravention of s. 354(2) IA 1986; he had failure to disclose ownership of a property in Germany in contravention of s. 353(1) IA 1986; he had concealed the aforementioned EUR 825,000 from the Bank of Alpinum of Lichtenstein in contravention of s. 354(1)(b) IA 1986; and he had failed to disclose ownership of 75,000 shares in Breaking Data Corp in contravention of s. 353(1) IA 1986.



Becker's Sentence

On 29 April 2022, Judge Taylor sentenced Becker to two and a half years

in prison. She concluded that although Becker had been humiliated during the trial, he had shown no remorse nor humility. This behaviour, or lack thereof, seems to have played into her decision. It is schedule 10 to the IA that provides the sentencing guidelines for the four offences, which if one looks at the requisite sections 343 & 345, in some instances it can be up to 7 years on indictment. So evidently, it could have been a lot worse for Becker. Nevertheless, in addition to the 2.5yrs sentencing, Becker's discharge from bankruptcy has been suspended indefinitely. Therefore, it will be up to the Official Receiver to free Becker from bankruptcy. Becker is also subject to the previously mentioned 12-year Bankruptcy Restriction Undertaking, which will take effect as of 17 October 2019. Consequently, Becker will be subject to the restrictions up to 16 October 2031.

Moreover, there is a question mark over whether Becker will be able to stay in the UK. Becker, it is believed, does not have British citizenship, and so could either be considered for deportation under the previous version of the UK Borders Act 2007, or the more stringent updated version, which was implemented on 31 December 2020. Ultimately, what this means is any foreign national who is convicted of a crime and goes to prison is considered for deportation at the earliest opportunity.

So in theory, the Home Office could claim that Becker's criminal offences continued after the Brexit withdrawal agreement were implemented on 31 December 2020, which made immigration law for EU citizens (Becker is German) more stringent, and Becker could be forced to leave the UK after he has served his sentence.



Uncharted Territory

Evidently, this is not just an interesting insolvency case involving a tennis star, known for his rather racy liaison in a Nobu broom cupboard, a

divorce, and a bankruptcy. This could become a sophisticated and potentially protracted immigration case which makes legal precedent. As it stands, Becker's story is a stark and very public reminder of the powers afforded to Trustees and how the Insolvency Act can be used to not just recover assets for creditors but can also have criminal consequences if ignored.

So, what does the immediate future hold for Becker? Because of this being a white-collar offence, he could theoretically be moved to a low-category prison – though in practice this may be unlikely as usually one would have to go through parole to obtain a decision to be moved from a category B to a category C. Becker could of course seek to appeal Taylor's judgment, but this is also unlikely due to the high costs and timeframes involved. What is more likely is that he will serve at least half of his sentence and the rest shall be on probation. Thereafter, he may need to consider whether he wishes to fight for his right to remain the UK or indeed return to his native Germany. That is so say, if Becker is not a UK national. Either way, the rise and fall of Becker is certainly not over. We anticipate Becker will reinvent himself once he is out of prison. After all, the British public do like a story of redemption. And Becker shall need a source of income, considering the sanctions he is under. One can envisage a talk show, a sports commentary role, or perhaps Strictly Come Dancing. In the interim, this fascinating case continues to unfold.

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