



THE HIGH COURT

BANKRUPTCY

[No. 3379]

IN THE MATTER OF SECTION 85A OF THE BANKRUPTCY ACT, 1988 AS AMENDED

IN THE MATTER OF PATRICK J. DALY, A BANKRUPT

**JUDGMENT of Ms. Justice Costello delivered on the 15th day of October, 2018**

1. This is an application brought by the Official Assignee for an order pursuant to s. 85A(1) and (4) of the Bankruptcy Act, 1988 as amended to postpone the automatic discharge from bankruptcy of the bankrupt on the basis that he has (a) failed to cooperate with the Official Assignee in the realisation of the assets of his estate or (b) has hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of his creditors. In the alternative an order pursuant to s. 85A(3) was also sought and an order pursuant to 85A(3) was made on the return date of the notice of motion, the 7th November, 2016.

**Factual background**

2. Mr. Patrick Daly and his wife, Mrs. Anne Daly engaged in building and property development over a number of years through a number of companies and partnerships. They jointly owned a large family home in Westmeath known as Ballinagore House, Ballinagore, Co. Westmeath comprised in Folio 21625F WH, County Westmeath. They were also the sole shareholders and directors in two companies, Star Alliance Limited and Jalpa Properties Limited. Star Alliance owned property adjacent to Ballinagore House which was comprised of an equestrian centre set upon approximately 50 acres of land. Mr. and Mrs. Daly also owned a holiday apartment in Spain, 11 La Pinta, Aloha Golf, Nueva Andalucia, Marbella, Spain which they held through a Spanish company.

3. In 2012 they were seriously insolvent and Bank of Ireland had instituted one set of proceedings and was threatening to commence a second set of proceedings. In May, 2012 Mr. and Mrs. Daly took legal and financial advice in relation to their affairs and they entered into three transactions in relation to these assets.

4. Ballinagore House was valued by Sherry Fitzgerald on 3rd July, 2012 at €550,000. On 1st July, 2012 Mr. and Mrs. Daly entered into a contract for the sale of the house. It was a most unusual sale. It involved reserving exclusive rights of residence in favour of Mr. and Mrs. Daly and their daughter Laura Daly. This reduced the value of the house from €550,000 to €100,000. The house was sold to a friend and business associate of Mr. Daly who resided in America, Ms. Devon Anne McNeil. The second unusual aspect of the sale was the purchase price was by way of a payment of €5,000 and subsequent annual instalments of €5,937.50 each over a period of sixteen years.

5. The second transaction involved the issuing of shares in Star Alliance Limited to Jalpa Properties Limited for a sum of €23,000. This had the effect of reducing Mr. and Mrs. Daly's 100% ownership of Star Alliance Ltd to less than 10% at a time when it was the owner of the Equestrian Centre and other lands and buildings adjacent to Ballinagore House. At the same time substantial shares in Jalpa Properties Ltd were issued to Mr. Brendan Daly, brother of Mr. Daly, in exchange for investment by him in Jalpa Properties Ltd, so that Mr. Brendan Daly became the person indirectly with by far the most substantial interest in the assets held by Star Alliance Ltd which was previously owned solely by Mr. and Mrs. Daly jointly.

6. By the third transaction in 2012 Mr. and Mrs. Daly transferred their shares in the Spanish company which owned the apartment in Spain to Mr. Brendan Daly apparently in payment of unspecified debts due to Mr. Daly. Originally Mr. and Mrs. Daly reserved a right to stay in the apartment for a period of two weeks each year though subsequently they surrendered this right also in 2014.

7. On 12th June, 2012 Bank of Ireland sued Mr. and Mrs. Daly for a sum in excess of €4.4 million. On 30th July, 2012 Mr. and Mrs. Daly consented to judgment in favour of the bank in the amount of €4,435,278.61 together with the costs of the proceedings.

8. Ultimately the bank petitioned for the bankruptcy of both Mr. and Mrs. Daly. Mr. Daly was adjudicated bankrupt on 23rd November, 2015 and he was informed of this fact by Mrs. Daly the next day.

9. In May, 2015 the bankrupt left Ballinagore House and went to live in Kent with his son. He did not provide the Official Assignee with his address or a telephone number and he did not respond to emails sent to his personal email address.

10. The Official Assignee obtained a personal email address for the bankrupt from the petitioner. His office emailed the bankrupt on the 1st December, 2015 and furnished him with an information leaflet, a draft statement of personal information and a draft statement of affairs to be completed and returned to the Official Assignee. He was reminded of his failure to comply with his statutory obligations by email on the 8th January, 2016. He was informed that if he did not provide the information sought within two weeks that the Official Assignee would have to consider bringing an application to extend the period of his bankruptcy. He was sent a final reminder on the 23rd February, 2016. The letter stated:

*"Our office has attempted to contact you in relation to fulfilling your statutory obligations as a bankrupt on numerous occasions since December 2015 by post, email and phone with no response.*

*It is advised that your ongoing failure to cooperate with this office means that you are in breach of your duties pursuant to s. 19 of the Bankruptcy Act, 1988, a copy of which I enclose for your reference."*

He was informed that a failure to disclose assets on the statement of affairs will result in an application by the Official Assignee for an extension of his discharge date.

11. The bankrupt effectively ignored his bankruptcy until after the motion seeking to extend his bankruptcy have been brought by the

Official Assignee and advertised in February, 2017 in the Irish Independent and Westmeath Examiner newspapers. On 24th March, 2017 he swore a statement of affairs and on 6th April, 2017 he delivered a statement of personal information. He swore his first replying affidavit on 28th April, 2017. He attended for interview with the Official Assignee on 25th May, 2017.

12. Throughout he maintained that he had since March, 2017 cooperated with the Official Assignee and complied with his statutory obligations.

### **Grounds for the application.**

#### **(1) The bankrupt's address**

13. The bankrupt was adjudicated a bankrupt on the 23rd November, 2015. He was required to notify the Official Assignee of his address or of any change of address. Prior to his adjudication, he had resided in the family home, Ballinagore House, Ballinagore, County Westmeath. In his fourth affidavit sworn on the 25th October, 2017 the bankrupt averred that he had not resided at Ballinagore House since 2012. However, in each of the four affidavits sworn in relation to this motion he gave Ballinagore House as his address. The Official Assignee was unable to serve the bankrupt at Ballinagore House. He was obliged to make enquiries with the gardaí at the Kilbeggan garda station and the Mullingar garda station as to the current address of the bankrupt but without success. It was necessary to make an order on the 6th February, 2017 that advertisement of the proceedings in the Irish Independent and the Westmeath Examiner would be good and sufficient service of the notice of motion on the bankrupt. The bankrupt indicated in his first affidavit sworn on the 28th April, 2017 that "in circa May 2015 he moved to Kent to assist his son in renovating a public house". He said he did not return to Ireland until late 2016 but acknowledge that he travelled to Ireland for family visits during the period. He was aware of the existence of the petition as he had been in court on the first return date. He was informed of his adjudication the day after by his estranged wife, Mrs. Anne Daly.

14. He gave no explanation why he did not comply with his statutory obligation to furnish the Official Assignee with his address and to notify him of any change of address. It would appear that he still may not have complied with his statutory obligation. In both the statement of affairs and statement of personal information which were filed on the 24th March, 2017 and 6th April, 2017 respectively, he gave Ballinagore House as his address. At interview with the Official Assignee on the 27th May, 2017 he said that he lived between an apartment at Ballinagore House and Ballinagore House. In the circumstances, it is not clear to me that he has complied with this statutory obligation.

#### **(2) Ignoring his bankruptcy**

15. For sixteen months the bankrupt completely ignored the fact that he had been adjudicated a bankrupt and failed to comply with any of his statutory duties and obligations. In his affidavit of 28th April, 2017 his only explanation was that he "*simply did not care*", though as he accepts himself, he was aware of the fact of his adjudication from the day after the order was pronounced.

16. I am satisfied, notwithstanding his bald assertions to the contrary, that he received the emails sent to him by staff at the office of the Official Assignee at his personal email address.

17. The bankrupt did not reply to any of these emails. However, on the 10th March, 2016 Mr. Hayes of the Insolvency Service of Ireland wrote to the bankrupt at the same email address and instructed him to cease contacting tenants of the Ballinagore Equestrian Centre and apartment and demanding payment of rents from the tenants. The letter and email were addressed to the bankrupt personally. The following day Mr. Eamonn Saoire, of Jalpa Properties Ltd emailed Mr. Hayes in response to the email of the 10th March, 2016 referring to the correspondence addressed to the bankrupt. Jalpa Properties Ltd is a company which was previously owned and controlled by the bankrupt and Mrs. Daly and is now controlled by his brother, Mr. Brendan Daly. The email of the 10th March, 2016 was not addressed to Jalpa Properties Ltd. I am satisfied that Jalpa Properties Ltd could only have received a copy of the correspondence from the bankrupt himself. While the bankrupt's affidavits are replete with protests in relation to a number of matters, he never said that the email address was not his or that he no longer had access to it. In the circumstances, I reject his assertions that he did not receive the prior communications addressed to him by email. It follows that his failure to cooperate with the Official Assignee at all during the year of his bankruptcy was entirely wilful and deliberate.

#### **(3) Failure to swear a statement of affairs or file a statement of personal information.**

18. For sixteen months the bankrupt failed to swear a statement of affairs and comply with his statutory obligation in this regard. He did so finally on the 24th March, 2017 some four months after he ought to have been automatically discharged from bankruptcy. He did not file a statement of personal information until even later, the 6th April, 2017 thus for the entire projected period of his bankruptcy the Official Assignee could not ascertain where he lived or contact him and had no information from the bankrupt about his estate.

#### **(4) Failure to furnish all books and records.**

19. Bankrupts have a duty to hand over all documents, books and records in their power or procurement promptly to the Official Assignee to enable the Official Assignee properly to investigate and administer their estates. The information available to the Official Assignee was provided solely by the Petitioner as the bankrupt did not furnish any books or records himself to the Official Assignee. The Official Assignee was not aware until April 2017 of the fact that his solicitor, Mr. Tom Casey, had a file in relation to the sale by the bankrupt and Mrs. Daly of the family home to Ms. Devon Anne McNeil. The file was only furnished to the Official Assignee in July 2017. The file revealed very pertinent and highly relevant information about the sale of Ballinagore House, a significant asset of the bankrupt's estate. The Official Assignee instituted recovery proceedings against Ms. McNeil and the American company to whom she sold her interest in Ballinagore House in 2017, Irish Ventures Corp. in proceedings entitled "2017 No. 6590 P *Lehane v. McNeil v. Irish Ventures Corp*". On 9th March, 2018 the High Court declared that the Official Assignee is the legal and beneficial owner of Ballinagore House comprised in Folio 21625F register of freeholders, Co. Westmeath and that the transfer of 22nd May, 2017 is void insofar as it purports to transfer the folio from the first named defendant to the second named defendant. On 23rd March, 2018 the High Court declared that the agreement or transfer dated 1st July, 2012 recorded on the folio is void insofar as it purported to transfer the interests of Mr. and Mrs. Daly to the first named defendant. Thus Ballinagore House has been recovered by the Official Assignee for the estates of the bankrupt and Mrs. Daly.

20. The bankrupt still has not provided all documents relating to his affairs and assets to the Official Assignee, particularly in relation to the transfer of his shares in the company which holds the property in Spain for the bankrupt and Mrs. Daly to the bankrupt's brother, Mr. Brendan Daly. This continued delay in furnishing necessary documents to the Official Assignee is continuing to frustrate the proper investigation and administration of his estate. He likewise has not provided all the documentation relating to the issuing of shares in Star Alliance Ltd and Jalpa Properties Ltd in 2012.

#### **(5) Failure to cooperate at interview**

21. The bankrupt is obliged to attend for interview with the Official Assignee if required and to cooperate with inquiries made by the

Official Assignee into assets which either are or may be brought into his bankruptcy estate. His duty in this regard is not confined to answering questions put to him by the Official Assignee. He must proactively disclose relevant information to the Official Assignee. At the interview conducted on the 25th May, 2017 the bankrupt failed to inform the Official Assignee of the reasons for the three transactions which were under investigation and which, on their face, required commercial justification: the sale of Ballinagore House to Devon Anne McNeil, the issuing of shares in Star Alliance Ltd and Jalpa Properties Ltd to Mr. Brendan Daly and the transfer of the bankrupt's interest in the shares in the Spanish company holding the apartment in Spain to Mr. Brendan Daly. When asked about this, he flatly refused to provide any explanation. The Official Assignee is entitled to his assistance and entitled to investigate whether these three assets could be recovered for the benefit of the bankruptcy estate.

22. The only information volunteered by the bankrupt is at para. 11 of his first affidavit:

*"We took legal and financial advice as regards our circumstances. With the benefit of this advice, we entered into a contract on 1 July, 2012 with regard to Ballinagore House pursuant to which the Property was purchased by a Ms. Devon Anne McNeil for a sum of €100,000, a figure which at that point represented the property's market value and the fact that the purchaser, Ms. McNeil, agreed to your Deponent, Mrs. Daly and our daughter Laura (for as long as she is in fulltime education) residing in the property. This sale price was supported by a professional valuation obtained whereby we sold the property to a Devon Anne McNeil for the then property's market value".*

23. At the interview of the 25th May, 2017 the following exchange occurred:

*"So you, post [May 2012], you entered into a number of transactions. You entered into transaction number one with Devon Anne McNeil. You entered into a transaction number two in relation to the Spanish property. You entered into a transaction through your directorship and shareholding of Jalpa and Star Alliance. Would you like to explain your thinking as to the reasons you entered into those transactions?"*

*Answer: No."*

He clearly was uncooperative at interview and failed to provide information in relation to his assets and estate in a proactive fashion.

#### **(6) Concealing his continued interest in assets**

24. The contract for the sale of Ballinagore House was dated the 1st July, 2012 for the purchase price of €100,000. The sale was subject to an exclusive right of residence in favour of the bankrupt and Mrs. Daly and Laura Daly. The purchaser, Devon Anne McNeil, is an old friend and business associate of the bankrupt and his brother who lives in America. Ballinagore House was valued by Messrs. Sherry Fitzgerald, Davitt and Davitt on the 3rd July, 2012 at €550,000. The purchase price was reduced to €100,000 because the property was to be sold subject to the exclusive rights of residence in favour of the bankrupt and Mrs. Daly. Furthermore, the purchase price was payable by instalments over a period of sixteen years: a sum of €5,000 to be paid on or before completion and the sum of €5,937.50 per annum on the 1st day of August of each subsequent year.

25. On the 3rd December, 2012 a payment from the Tullamore Credit Union to Tom Casey solicitors' office, solicitor for the bankrupt and Mrs. Daly, apparently reflects the first payment due. Tom Casey solicitor wrote two office cheques in favour of the bankrupt and Mrs. Daly dated 19th December, 2012 totalling €5,000. The bankrupt says that these sums represent part payment by Devon Anne McNeil of purchase price due in respect of Ballinagore House.

26. At its height, the evidence establishes that Devon Anne McNeil paid €35,000 out of the total of €100,000 due under the contract. In 2017 Devon Anne McNeil sold her interest in Ballinagore House to Irish Ventures Corporation for the sum of €120,000. This was a company incorporated in America in October, 2016. The evidence is that Devon Anne McNeil has not discharged the balance of the purchase price due to the bankrupt and Mrs. Daly in respect of the sale of 2012. In evidence, the bankrupt stated that he had no interest in this sale and had made no inquiries in relation to the payment of the outstanding purchase monies.

27. In his first affidavit the bankrupt insisted that the transaction is and was a genuine purchase and he maintained this position throughout the hearing. He also maintained that he had cooperated fully with the Official Assignee in relation to this matter. He denied that it was a stratagem to allow the property to be held by a third party and/or if necessary for it to be transferred to his children so as to prevent creditors having recourse to it.

28. However, Mr. Casey's file furnished to the Official Assignee in July, 2017 is inconsistent with the statements and explanations, such as they are, of the bankrupt.

29. On 12th July, 2012 Mr. Casey emailed Ms. McNeil as follows:

*"subject: sale of Ballinagore House*

*Devon,*

*Further to my earlier email, as part of a transaction I understand you are giving an Option to [the bankrupt] and Anne's children to repurchase the property from you.*

*A form of Option agreement in this regard is attached."*

30. On the 17th July, 2012, before the sale closed, Ms. McNeil wrote to Mr. Casey stating:

*"At any point during the term of this contract should I develop tax problems here in the US, that property could become fair game for the IRS here ... I am happy to do what is needed but at some point maybe another mortgage could be filed against the title to protect against such a problem".*

31. Mr. Casey replied on the 18th July, 2012:

*"Re the IRS if anything prejudicial was to occur [the bankrupt's] and Anne's children would need to exercise their option to purchase the property from you."*

32. On 15th May, 2013 Messrs O'Sullivan O'Dowd, Mrs. Anne Daly's solicitors, wrote to Mr. Tom Casey, solicitor for the bankrupt. In the fourth paragraph they stated as follows:

*"our concern at this stage however, is that our client has made us aware of a purported conveyance of the family home whereby without the benefit of separate legal advice she appears to have been party to a sale of the premises to one Devon Anne McNeil of New York. That sale of the property is in respect of a purchase price of €100,000. It appears to us that the sale may well have been at an undervalue and given that no independent legal advice was afforded to her we have serious concerns about any completion that there might be of that transaction."*

33. Mr. Casey replied by letter dated 16th May, 2013 as follows:

*"In relation to the content of the fourth paragraph of your letter, as to a purported conveyance of the family home, as your client is aware she and Mr. Daly executed a contract in relation to a sale of the property to Devon Anne McNeil, whom Ms. Daly advised was a long standing friend of both she and her husband. **No consideration passed from Ms. McNeil in connection with the sale and Ms. McNeil holds the property on trust for Mr. and Mrs. Daly (in addition the parties executed an option agreement which provided for your client's children to call upon Ms. McNeil to reconvey the property to them or at their direction).** ... In the event that your client is serious in relation to her now purporting to adopt a position that she and her husband effected a **sale** of the family home to Ms. McNeil at an undervalue and as a result she now wishes to withdraw her instruction to complete Ms. McNeil's registration as owner of the Property, please revert to confirm that this is her position". (emphasis added).*

34. This correspondence is inconsistent with the position maintained by the bankrupt. Further, the High Court has set aside the purported sale of Ballinagore House to Ms. McNeil and declared the purported transfer to be void yet, the bankrupt did not co-operate with the Official Assignee in the recovery of this valuable asset, as was his statutory duty. On the contrary, in these proceedings he insisted on affidavit that it was a bona fide genuine sale while refusing to give any explanation for what was clearly a sham transaction entered into with a view to defeating creditors.

35. The bankrupt failed to provide the detailed information required in relation to the issuing of shares in Star Alliance Limited and Jalpa Properties Ltd. In 2010 the company accounts for Star Alliance Limited showed tangible assets of €846,000. In 2011, these were reduced to €819,000. Subsequently accounts were filed showing the company had tangible fixed assets of €795,525. The assets included the lands comprised in Folio WH15306 which is the lands upon which the Ballinagore Equestrian Centre are situate. On 12th September, 2012 Sherry Fitzgerald, Davitt and Davitt valued the equestrian centre situate on approximately 1.8 acres and comprising a selection of stables, indoor sand arena and a light industrial unit in the sum of €120,000. The bankrupt says that in addition Star Alliance Limited owned a two bedroomed apartment and office unit situate at Ballinagore. Thus, while the full picture has yet to emerge, it is clear that Star Alliance Limited owned considerable assets in 2012 worth at a minimum €120,000.

36. On 26th July, 2012 Star Alliance entered into a share subscription agreement with Jalpa Properties Limited. Immediately before completion the bankrupt and Mrs. Anne Daly each owned 56,000 ordinary shares in the company. After the agreement Jalpa Properties Limited owned 2.37 million ordinary shares of one cent each while Mrs. Daly retained 56,000 shares of €1.27 each. Furthermore, on 13th July, 2012 Mr. and Mrs. Daly and Mr. Bernard Daly and Jalpa Properties Limited entered into a share subscription agreement which resulted in the shareholding in Jalpa Properties Limited changing from one share each held by Mr. and Mrs. Daly to Mr. and Mrs. Daly each holding 944 shares and Mr. Bernard Daly holding 18,114 shares. Mr. Bernard Daly paid the sum of €23,000 for the shares in Jalpa Properties Limited. The net effect of these transactions is that for the sum of €23,000 Jalpa Properties Limited acquired assets considerably more valuable and Mr. Bernard Daly became by far the largest shareholder in Jalpa Properties Limited.

37. The bankrupt has not assisted the Official Assignee in relation to his investigations into the effective sale of assets worth considerably more than €100,000 for €23,000.

38. The bankrupt relies upon an affidavit he swore in proceedings brought by Bank of Ireland in 2012 in which he explains the commercial basis of these transactions. The explanation was to a third party, not the Official Assignee and does not satisfy his personal obligations as a bankrupt to disclose and explain transactions and to provide all relevant documentation pertaining to the transactions legitimately the subject of investigation by the Official Assignee.

39. The Official Assignee has instituted proceedings in relation to these transactions and the question of the validity of the transactions is not one which can or should be resolved in these proceedings. However, it is clear that the bankrupt is under a duty to cooperate fully with the Official Assignee in his enquires into these transactions and he is obliged to provide all supporting and vouching documentation in his power or procurement relevant to the transactions. As of the date of the hearing of the motion he had failed to do so.

40. Likewise, the Official Assignee has asked the bankrupt to explain the transfer of the shares in the company which holds the Spanish apartment to his brother, Mr. Brendan Daly and to provide confirmation of the valuation of the property at the date of the transfer. The bankrupt says he transferred the shares to Brendan Daly in satisfaction of a debt. Neither the bankrupt nor Mr. Brendan Daly have provided any further details of the debt or any supporting documentation to show that the value of the apartment was approximately equal to the debt due to Mr. Brendan Daly.

### **Conclusion on the application**

41. It is clear that the bankrupt was totally non-cooperative for fifteen months after the date of his adjudication. He failed to comply with the expressed statutory duties to furnish his address and to file a statement of affairs. He gave the Official Assignee no information whatsoever about his estate. The actions of the bankrupt were deliberate and he offers no excuse for his failure other than *"I didn't care"*.

42. He tries to make the case that he became cooperative in March, 2017 and that his discharge from bankruptcy should not be further postponed in view of his cooperation. He provided limited cooperation to the Official Assignee. He provided a statement of affairs and a statement of personal information and his solicitor, Mr. Casey, furnished his file in relation to the Ballinagore House transaction. He attended for interview with the Official Assignee in May, 2017. This was all with a view to obtaining his discharge from bankruptcy.

43. However, he is by no means a fully cooperative bankrupt even at the end of the hearing of this motion. As I have stated above, the issue of his address still remains unclear. He persisted in refusing to assist the Official Assignee in his enquiries into the sale of Ballinagore House. He refused to furnish any explanation for the three transactions with which the Official Assignee was particularly concerned. While the Official Assignee has in fact recovered Ballinagore House for the benefit of the bankruptcy estate and that of Mrs. Anne Daly, this was entirely without any assistance from the bankrupt. On the contrary, the bankrupt insisted on maintaining that it was an arm's length genuine transaction.

44. Whether or not the share subscription agreements in relation to the shares in Star Alliance Limited and Jalpa Properties Limited will be the set aside is not a matter which can be resolved in these proceedings. They clearly reflect transactions which the Official Assignee is entitled and indeed required to examine in the administration of the bankrupt's estate. The duty of the bankrupt is to cooperate fully with the Official Assignee in this regard on a proactive basis. To date he has failed so to do in that he has failed to furnish the Official Assignee with relevant documentation supporting the transactions or explanations which could help to establish the commercial validity or otherwise of the transactions. Such explanation for the transactions as he relies on, he gave to a third party.

45. The same criticisms apply in relation to the transfer of the shares in the Spanish company holding the Spanish apartment to Mr. Brendan Daly.

46. I am satisfied therefore that the Official Assignee has shown that the bankrupt has failed to cooperate with him in the realisation of the assets and has hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of his creditors within the meaning of s. 85A(1). That being so, I am satisfied that it is appropriate to make an order postponing the automatic discharge of the bankrupt from bankruptcy pursuant to s. 84A(4) of the Act of 1988 as amended.

#### **Duration**

47. Section 85A was amended by the Bankruptcy Amendment Act, 2015. The amendment came into effect on the 29th January, 2016. The notice of motion before the court issued on the 25th October, 2016. For the reasons explained in the decision of Sean Dunne, a bankrupt, 2nd October, 2018, s. 85A(4) as amended by the 2015 Act applies to this application. The subsection now provides:

*"(4) Where the Court is satisfied that the bankrupt has—*

*(a) failed to co-operate with the Official Assignee in the realisation of the assets of the bankrupt, or*

*(b) hidden from or failed to disclose to the Official Assignee income or assets which could be realised for the benefit of the creditors of the bankrupt,*

*the Court may, where it considers just to do so, order that, in place of the discharge provided for in section 85, the bankruptcy shall stand discharged on such later date—*

*(i) being not later than the 8th anniversary of the date of the making of the adjudication order, as the Court considers just,*

*or*

*(ii) being not later than the 15th anniversary of the date of the making of the adjudication order, which the Court considers just in view of the seriousness of the failure to co-operate referred to in paragraph (a) or the extent to which income or assets referred to in paragraph (b) were hidden or not disclosed, or both, as the case may be."*

48. It is thus open to the court to order that the bankruptcy shall stand discharged on such later date, being not later than the 8th anniversary of the date of the making of the adjudication order (23rd November, 2015), as the court considers just or not later than the 15th anniversary of the date of the making of the adjudication order. The latter, longer period applies where the court is of the opinion that the failures are sufficiently serious to warrant such further extension of the period of bankruptcy.

49. It is clear that the making of an order pursuant to s. 85A(4) is made inter alia to protect the integrity of the bankruptcy process and it acts as a sanction against the individual bankrupt. As I said in *McFeely*, the Oireachtas contemplated a spectrum of orders reflecting a spectrum of more or less egregious behaviour by bankrupts which would justify the making of orders pursuant to s. 85A(4). In this case the non-cooperation of the bankrupt was initially total and deliberate and a matter of choice. His continued non-cooperation was likewise deliberate and a matter of choice. His refusal to explain or to provide proper information regarding the three transactions addressed in this judgment is ongoing. He insists that each of these transactions were bona fide. In relation to the purported sale of Ballinagore House, his actions potentially cost his creditors €250,000 or more. His approach to the bankruptcy was obstructive. He failed to furnish an address and he did not acknowledge emails which he clearly received. This required the Official Assignee to make extensive enquiries of local gardaí and ultimately to obtain an order for substituted service by way of advertisement in local newspapers.

50. In his first affidavit he sought to refer to information available to the Official Assignee from third parties or to rely upon disclosure made by the bankrupt to other parties in other proceedings. This is not sufficient compliance with his statutory obligations.

51. He was afforded the opportunity to rectify the situation and to cooperate with the Official Assignee. In effect he did not really avail of this opportunity and to a significant extent his cooperation is still significantly wanting. While his solicitors' file in relation to the Ballinagore House sale was handed over, he refused at interview to give any explanation in relation to the three transactions at issue. He has withheld meaningful substantive cooperation with the Official Assignee in the administration of his estate and he has failed by and large to produce the necessary supporting documents which he is required by law to produce.

52. An illustration of the way in which he has made life difficult for the Official Assignee and not assisted him in his investigations is to be found in relation to Ms. Devon Anne McNeil. He did not clarify that she was the same person as Devon Anne Ralls who was involved in a consortium that included the bankrupt and which invested in Panama. Ms. Devon Anne Ralls was trying to recover money for the benefit of the members of the consortium including the bankrupt. The Official Assignee wished to ascertain whether any moneys in fact had been recovered from this failed investment and to explore whether moneys furnished by Ms. McNeil/Ralls to Mr. Casey were in respect of the Panamanian investment rather than in respect of Ballinagore House. The bankrupt's explanation for failing to say that she was involved in the Panamanian investment was because he was not specifically asked this question by the Official Assignee. As was clearly set out in *McFeely's* case and Dunne's case, this does not amount to cooperation on the part of a bankrupt. It reflects the inadequate nature of his purported cooperation with the Official Assignee.

53. Similarly, he had no intention of making any enquiries in relation to the company which purported to purchase Ballinagore House from Ms. McNeil at a time when Ms. McNeil had yet to pay the full purchase price due pursuant to the contract of the 1st July, 2012.

54. He took until his fourth affidavit to explain that the reference made by Mrs. Anne Daly to an interest in an apartment in Kilbeggan, County Westmeath was mistaken because, while he had investment properties in Kilbeggan, he never had any apartments in Kilbeggan.

and these had been sold long ago. An inadequate explanation in his first affidavit led to the Official Assignee expending considerable effort exploring matters further before the matter was fully explained in his fourth affidavit.

55. I regard his failure to cooperate with the Official Assignee as being on the very serious end of the spectrum. He made belated, qualified, efforts to cooperate but meaningful substantive cooperation has still been withheld. I regard this failure to take the opportunity to comply, albeit belatedly, with his statutory obligations as an exacerbating factor. I therefore order that the bankruptcy shall stand discharged on the tenth anniversary of the date of the making of the adjudication of order, on the 23rd November, 2025.