

**THE HIGH COURT  
BANKRUPTCY**

**[No. 4292]**

**IN THE MATTER OF DEIRDRE DENNIS, A DISCHARGED BANKRUPT**

**JUDGMENT of Ms. Justice Pilkington delivered on the 19th day of May, 2020**

1. This is an unusual application.
2. By notice of motion, Ms. Dennis seeks the following reliefs:-
  - (1) An order pursuant to s. 85C of the Bankruptcy Act, 1988 annulling the adjudication of bankruptcy of Deirdre Dennis dated 23rd October, 2017.
  - (2) Further, or in the alternative, an order pursuant to the inherent jurisdiction of this Honourable Court annulling the adjudication of bankruptcy of Deirdre Dennis dated 23rd October, 2017.
  - (3) Further, if this Honourable Court deem it so appropriate and necessary, an order compelling Bank of Ireland Mortgage Bank, the Governor and Company of Bank of Ireland and their solicitors, Fieldfisher (formerly McDowell Purcell), to provide to Deirdre Dennis, the catalogue of documentation sought by her and on her behalf, since 1st February, 2019, so as to allow Deirdre Dennis to show cause to this Honourable Court as to why it is just and equitable that her adjudication of bankruptcy dated 23rd October, 2017 be annulled.
  - (4) An order directing that any property of the applicant, Deirdre Dennis, now vested in the Official Assignee shall be re-vested in or returned to Deirdre Dennis.
  - (5) An order directing the Official Assignee in Bankruptcy to provide the applicant, Deirdre Dennis, a certificate of annulment of her adjudication of bankruptcy of 23rd October, 2017.
  - (6) The standard reliefs of further and other orders and costs.
3. Whilst the Official Assignee, the Governor and Company of the Bank of Ireland, Bank of Ireland Mortgage Bank, Allied Irish Banks PLC and the Revenue Commissioners were on notice of the motion, there was an initial representation in respect of Bank of Ireland (for both of the Bank of Ireland entities on notice to the motion) who indicated they did not propose to make any submissions. The Official Assignee's position was that he was neither consenting nor objecting to the application and in the absence of an appearance from any other notice party I am assuming that they have all also have adopted the same position.
4. Deirdre Dennis applied as a personal debtor to be self-adjudicated bankrupt, pursuant to s. 15 of the Bankruptcy Act, 1988 (as amended) ("the 1988 Act").
5. She was adjudicated a bankrupt by order of Costello J. on 23rd October, 2017.

6. Her bankruptcy was thereafter automatically discharged twelve months later and a letter formally confirming this position was sent by the Insolvency Service of Ireland to her on the 14th day of January, 2019 in the following terms:-

"I am writing to inform you that your bankruptcy automatically stands discharged, pursuant to Section 85 of the Bankruptcy Act 1988 (as amended)..

Please regard this letter as a Certificate of Discharge from your bankruptcy as of the 23/10/2018.

I would like to wish you every success in the future....."

7. An extensive grounding affidavit to this motion was sworn by Ms. Dennis on 19th November 2019. It does appear (and counsel for Ms. Dennis agreed) that much of its contents, together with its 82 exhibits, contain matters which do not relate to the application before this Court.
8. In Ms. Dennis' statement of affairs grounding her application to be adjudicated a bankrupt, it discloses that, her family home at 5 Seaview Terrace, Killala, Co Mayo, comprised within folio 47702 ("the property") had significant indebtedness to Bank of Ireland Mortgages and the document also records that the deeds to this property had previously been voluntarily surrendered on the 29th March, 2017.
9. On the 1st February, 2019, Ms. Dennis received a letter from Bank of Ireland Mortgages and it is the contents of this letter and what followed subsequently that forms the basis of her application to this Court. In part, the letter states as follows:-

"We have now completed our review of your mortgage loan account 29227946 under the tracker mortgage examination. During the review, we identified that we failed to provide you with a tracker rate on your mortgage at a time when you were entitled to one according to the contract. We unreservedly apologise for our failure. We fully accept that it was a factor in you losing ownership of your property at 5 Seaview Terrace, Killala, Co. Mayo.

We have now taken the following steps to put our failure right.

We are aware that you were adjudicated bankrupt on the 23rd day of October, 2017 and we submitted our claim on the bankruptcy in respect of a residual unsecured remaining balance of €97,580.51 on this mortgage account and €18,687.05 on mortgage account 29316797. We have now written to the Insolvency Service of Ireland's Official Assignee formally withdrawing this claim.

In order to meet our obligations to the Official Assignee, we have also advised him of the redress and compensation, set out below, due under the examination so that he can confirm what portions of these funds are to be paid to him for the benefit of your creditors. The redress and compensation payments that will be available to

you under the examination are as follows [the figures are then set out totalling almost €97,000].”

The letter continues:-

“As soon as we have received direction from the Official Assignee with regard to the treatment of redress and compensation payments, we will again write to you to advise of residual funds that can be made available to you.

It is recommended that you seek independent legal and financial advice. Your redress in financial payments includes €1,000 which can be used for independent legal and/or financial advice.

I appreciate that this may be a very difficult time for you. Again, please accept my deepest apology on behalf of the Bank.”

10. On the 21st May, 2019 (there had been correspondence in the interval), the Insolvency Service of Ireland wrote to O’Dwyer Solicitors (acting for Ms. Dennis) in the following terms:-

“Further to your letter dated 30th April, 2019 and 20th May, 2019, the position of the Official Assignee is as follows:

- Your client was self petitioned bankrupt on 23rd October, 2017 and was discharged on the 23rd October, 2018.
- We have administered the estate per our statutory function.
- We note that the bankruptcy notice has not been annulled.
- The compensation paid under the tracker redress programme related to a pre-adjudication event and the Official Assignee’s policy regarding redress was followed.
- As there are other creditors claiming in the estate, namely, AIB and the Revenue Commissioners, an amount of €60,672.72 was claimed.
- There has been no distribution from the estate to date.
- The property at 5 Seaview Terrace was sold by the secured creditor, as there was no positive equity, the estate received no distribution from the sale.

Should you require anything else, please do not hesitate to contact me.”

11. At the request of Ms. Dennis’ solicitors, ISI again wrote on the 29th August, 2019, essentially expanding upon the information set out above. The ISI did again confirm that, noting the withdrawal of Bank of Ireland as a creditor in the estate, there were outstanding debts to AIB and the Revenue Commissioners, as two outstanding creditors. In those circumstances, the ISI confirmed that it remained an active bankruptcy estate with the amount of €60,672.72 claimed from the Bank of Ireland Redress Scheme and available for distribution to those creditors. The Official Assignee confirmed that they are obliged to continue to discharge their statutory function. That assertion is entirely correct.

12. On the 7th November, 2019, O'Dwyer solicitors wrote to ISI notifying them of this application and asking for a stay on the distribution in the sum of €60,672.72.

13. The plaintiff seeks relief pursuant to s. 85C of the 1988 Act. It states:-

"85C – (1) A person shall be entitled to an annulment of his adjudication –

- (a) where he has shown cause pursuant to section 16 , or
- (b) in any other case where, in the opinion of the Court, he ought not to have been adjudicated bankrupt.

(2) An order of annulment shall provide that any property of the bankrupt then vested in the Official Assignee shall be revested in or returned to the bankrupt, and that order shall for all purposes be deemed to be a conveyance, assignment or transfer of that property to the bankrupt and, where appropriate, may be registered accordingly.

(3) A person whose bankruptcy has been annulled may apply to the Official Assignee for the issue of a certificate that the bankruptcy has been annulled."

14. Section 135 of the 1988 Act states:-

"The Court may review, rescind or vary an order made by it in the course of a bankruptcy matter other than an order of discharge or annulment."

15. Within the course of this application, it was accepted by Ms. Dennis that the monies paid (the sums being the amount of €60,672.72 which have been already referred to as the amounts for the discharge of the other creditors (AIB and the Revenue)) could be now utilised for that purpose.

16. Ms. Dennis' position is very straightforward. She maintains, and maintains very strongly, that had the Bank of Ireland Mortgage Department not made the error (which it now somewhat belatedly admits), she would never have been put in the financial position she was in. The result of this was that, in her view, she had no option but to file for self-petitioned bankruptcy. Her difficulties in seeking to deal with her finances, including ongoing communications with Bank of Ireland with regard to the tracker mortgage (and, of course, ultimately, she was entirely correct in the position she adopted) and Circuit Court possession proceedings all led her to believe that she had no option but to surrender her family home to the mortgagee and to then rent another home. The stress and distress of these matters has been duly noted.

17. These matters have ensured in my view, that the bulk of her application and, certainly, the contents of her grounding affidavit very much goes to issues which she has with Bank of Ireland. Many of the issues raised and, indeed, the voluminous correspondence exhibited, are not directly relevant to this application. The ISI obtained the application by Ms. Dennis for her own personal adjudication as a bankrupt and behaved entirely properly throughout. Its correspondence is clear that at all times it acted fully in accordance with

the terms of the 1988 Act. What has happened to Ms. Dennis has occurred outside of those parameters of the 1988 Act.

18. Counsel for the defendant very fairly pointed out that there was no caselaw directly on point. However, he did open and rely upon the case of *SFS Markets Limited v. Rice* [2015] IEHC 42 (*'Rice'*) where Costello J. stated:-

" Section 85C(1) (and s. 85(5) before that) is intended to give statutory effect to the previously existing jurisdiction of the High Court to annul a bankruptcy on equitable grounds or under its inherent jurisdiction. In *O'Maoileoin (A Bankrupt) v. Official Assignee* [1999] IEHC 75 Laffoy J. confirmed that the court had an equitable jurisdiction to annul a bankruptcy which had existed for over a century before the coming into effect of the Bankruptcy Act, 1988. It is important to note that it is a discretionary jurisdiction in that the court may annul adjudication where in the opinion of the court a person ought not to have been adjudicated bankrupt. In *Re Gorham* [1924] 2 I.R. 46 Pim J. identified three circumstances where it would be proper to exercise the inherent jurisdiction of the court to annul a bankruptcy. These were where there was a doubt as to whether the bankrupt was alive at the time of the adjudication, where the bankruptcy had been obtained by fraud or where the bankruptcy was an abuse of the process of the court. In *Gill v. Philip O'Reilly & Co. Ltd* [2003] 1 I.R. 434 at p. 441 Fennelly J. held:-

*"The machinery of bankruptcy... cannot be undone without extremely compelling reasons."*

11. Thus, in considering the debtor's application the court is exercising a discretionary equitable jurisdiction such as is normally used in the case of a fraud or abuse of the process of the court and it should not exercise the jurisdiction without extremely compelling reasons."
19. It must be pointed out that the factual matrix in *Rice* was very different to the one under consideration. *Rice* was in the context of an appeal from an order of Dunne J., being a petition for the adjudication of the respondent debtor as a bankrupt. After filing the notice of appeal, some months later, the debtor then issued a separate motion seeking to annul his adjudication of bankruptcy pursuant to s. 85C of the Bankruptcy Act, 1988 and/or the inherent jurisdiction of the court. That is manifestly different from the facts of this case.
20. Within this judgment Costello J. also stated:-

"A High Court judge cannot act as a court of appeal in respect of a judgment of another High Court judge. Furthermore, a consideration of paras (a) and (b) of s. 85C(1) shows that the statutory jurisdiction to annul an adjudication of bankruptcy is an exceptional and limited jurisdiction. It is concerned first and foremost with a failure to satisfy the technical requirements as set out in section 11. Normally this would constitute grounds of appeal. However, a debtor is entitled to show cause to set aside an order of adjudication within a very tight time limit (of no more than 14

days from the date of adjudication). This is clearly to deal with the situation where an error may have been made and it is imperative that the draconian effects of an adjudication be reversed as expeditiously as possible in appropriate cases. The second statutory ground upon which an adjudication may be annulled clearly relates to the equitable jurisdiction of the High Court and is directed primarily towards reversing abuses of process and fraud. It is not a general alternative to an appeal on a point of law such as arises in the normal way in respect of any decision of the High Court.”

21. The inherent difficulty in this case is that the reasons for seeking to set aside the order adjudicating Ms. Dennis bankrupt lie outside of the bankruptcy process. The matters of which Ms. Dennis complains were only confirmed by Bank of Ireland mortgages after her discharge as a bankrupt.
22. As Costello J. set out above, the equitable jurisdiction of the High Court is very much directed towards reversing abuses of process and fraud. Here, in my view, there was no fraud and no abuse of process within the bankruptcy process itself.
23. Rather, by virtue of certain matters outside of that process, it now appears that certain indebtedness which Ms. Dennis understood to have incurred to Bank of Ireland Mortgage was in fact incorrect or, certainly, had not been properly dealt with.
24. One of the issues of concern is that since 23 October 2018 there has been a discharge of Ms. Dennis from bankruptcy. Section 135 of the 1988 Act precludes any review, rescission or variation of an order of discharge. How then can a court annul a bankruptcy order leaving the discharge from that order extant? No case law was opened to me as to how a court can annul an order of bankruptcy that has already been discharged.
25. Section 85 (1) of the 1988 Act provides (subject to exceptions which do not apply to this case) that every bankruptcy, shall, on the first anniversary from the date of adjudication, stand discharged, unless prior to that date it has been discharged or annulled. This bankruptcy is discharged and I do not see how, in such circumstances, it can now be annulled.
26. Whilst one can have considerable sympathy for Ms. Dennis and the matters with which she has had to deal with over a significant number of years and the considerable distress and difficulty that this has occasioned her, nevertheless, in my view, this application is misconceived.
27. Ms. Dennis is legally represented and, in my view, if redress is to be sought by her arising from the matters set out above (and it is not for me to comment at all in that regard) then, in my view, that redress lies elsewhere.
28. I accept Ms. Dennis’ averments that if the indebtedness to Bank of Ireland Mortgage did not exist (and the background difficulties with regard to Circuit Court proceedings seeking possession of her family home, its surrender and so on) that she would likely not have

considered the process of self adjudication as a bankrupt. She, therefore, seeks annulment on that basis. In my view, that is not a matter in which I can exercise the court's equitable jurisdiction pursuant to s. 85C (1)(b) of the 1988 Act in her favour. The bankruptcy process was initiated by her, completed, and the certificate of discharge issued twelve months thereafter.

29. In my view the grounds relied upon by Ms. Dennis do not relate directly to the bankruptcy process as set out by the 1988 Act. For other reasons (which may be entirely correct) she now believes that it was a process that, had her issues with Bank of Ireland mortgages been resolved (or had not occurred) she would never have required, and nor would she have ever sought self-adjudication within the bankruptcy process. The reasons why she now holds these views and any issues that arise from this, do not, for the reasons set out above, arise within the bankruptcy process or the parameters of the 1988 Act.
30. Accordingly, with regard to the notice of motion itself, the orders sought at (3) and (4) are matters in respect of which I make no order. For the reasons set out above, I decline the reliefs sought at orders (1), (2) and (5) of Ms. Dennis' notice of motion.
31. I will hear the parties as to what if any consequential or other orders are required including any as to costs.