

**THE HIGH COURT**

**BANKRUPTCY**

**[2012 No. 2480 BANKRUPTCY]**

**[2012 No. 2479 BANKRUPTCY]**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 61(7) OF THE BANKRUPTCY ACT 1988 (AS AMENDED)**

**AND**

**IN THE MATTER OF BRIAN O'DONNELL (A BANKRUPT)**

**AND MARY PATRICIA O'DONNELL (A BANKRUPT)**

**BETWEEN**

**BRIAN O'DONNELL (A BANKRUPT) AND**

**MARY PATRICIA O'DONNELL (A BANKRUPT)**

**APPLICANTS**

**AND**

**CHRISTOPHER LEHANE**

**OFFICIAL ASSIGNEE**

**AND**

**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND, BANK OF IRELAND PRIVATE BANKING AND TOM KAVANAGH**

**RESPONDENTS**

**JUDGMENT of Ms. Justice Costello delivered on 18th day of January, 2016.**

1. On 2nd September, 2013, each of the applicants were adjudicated bankrupt by orders of the High Court. The bankruptcy orders were appealed to the Supreme Court and the judgment and orders of the High Court were ultimately affirmed by the Supreme Court on 28th February, 2015. Pursuant to s. 19 of the Bankruptcy Act 1988, as amended, each of the Bankrupts herein had an obligation within the prescribed time to file in the Central Office a statement of affairs in the prescribed form and to deliver a copy of same to the Official Assignee. It is common case that neither of the Bankrupts have delivered a statement of affairs in the prescribed form nor furnished the Official Assignee with a copy of their statements of affairs.

2. The Bankrupts' position is that they are not in a position to complete their statements of affairs as they do not possess certain specific information which they require in order to do so. They have been requesting the respondents to this motion to provide the information and the respondents have refused to provide the information sought by the Bankrupts.

3. The Bankrupts say that they have requested the Official Assignee to ask the respondents to provide the Bankrupts with the information they seek in order that they may comply with their statutory obligations to file statements of affairs. By letter dated 21st July, 2015, the Official Assignee wrote to the Bank of Ireland requesting that they furnish the Bankrupts with the information sought by the Bankrupts.

4. By notice of motion dated 31st July, 2015, the Bankrupts sought orders, pursuant to s. 61(7) of the Bankruptcy Act 1988, as follows:-

"... that the Official Assignee and the Respondents shall provide the detailed financial information required for the Applicants to complete the Statements of Affairs

2) And/or in the alternative the Respondents shall provide the detail financial information required to complete the Statements of Affairs pursuant to contract and common law".

5. Order 76, r. 80(5) of the Rules of the Superior Courts provides that:-

*"[u]nless the Court otherwise directs, the bankrupt shall, not later than two clear days before the day fixed for the statutory sitting, lodge with the Official Assignee his statement of affairs in the Form No. 23 and the Official Assignee shall examine same so as to ascertain whether it be so complete, and shall refuse to stamp same, and the bankrupt shall not file same, until presented to the Official Assignee complete, unless the Court shall otherwise direct."*

6. Thus, the statement of affairs must be delivered not later than two clear days before the date fixed for the statutory sitting. In this case, due to the appeal against the adjudication of the bankruptcies (and also the application to annul the bankruptcies) no date for the statutory sitting has, in fact, been fixed.

7. The Bankrupts have not attempted to deliver statements of affairs to the Official Assignee. The Official Assignee has indicated both in correspondence, on affidavit and before the Court that debts and liabilities can be estimated in the Form No. 23. He wishes the Bankrupts to complete statements of affairs to the best of their ability based on the information available to them at present. He argues that they are, and have been since their adjudication, in a position to do so.

8. He points out that the Bankrupts each petitioned for their own bankruptcy in London in 2012. As part of their applications, they each produced statements of affairs as required by the relevant provisions of the bankruptcy code in England and Wales. The Bankrupts were in a position to prepare and swear those statements of affairs as of 26th March, 2012. They have not attempted to utilise the information available to them to comply with the equivalent Irish rules.

9. Instead, they have taken the view that they require detailed information from the respondents in relation to their affairs in order, as they maintain, that they may properly complete the Form No. 23, in respect of each of them.

10. Much of the information actually sought by the Bankrupts is not, in fact, necessary in order that they may complete and file their statements of affairs. Mostly it relates to individual facilities or guarantees which they entered in to with the second named respondent ("the Bank of Ireland"). However, the Bank of Ireland instituted proceedings on 23rd December, 2010, seeking summary judgment against the Bankrupts bearing High Court Rec. No. 2010/6100 S based upon these facilities and guarantees. It also brought proceedings against companies related to the Bankrupts, namely Avoca Properties Limited (bearing High Court Rec. No. 2010/6098 S); Greystoke Société Anonyme (bearing High Court Rec. No. 2010/6101 S); and Vico Swiss Holdings AG (bearing High Court Rec. No. 2010/6102 S).

11. The proceedings were settled and the terms of the Settlement Agreement were not adhered to by the Bankrupts. As a result, upon application by the Bank of Ireland, the High Court entered judgment against the Bankrupts on 12th December, 2011, in the sum of €71,575,991.29. As and from the date of the judgment of the High Court, the underlying claims of the Bank of Ireland have now merged with the judgment. Thus, the debt due and owing to the Bank of Ireland, is the judgment sum together with Courts Act interest thereon from the date of judgment. This is readily ascertainable.

12. By letter dated 4th March, 2013, the solicitors for the Bank of Ireland, Arthur Cox, wrote to the Bankrupts stating that the Bank of Ireland had realised certain property in part satisfaction of the judgment of 12th December, 2011, and setting out that, as of 4th March, 2013, the sum then due and owing by the Bankrupts to the Bank, was the sum of €74,442,432.30. The letter attached a table setting out the calculation of interest on the judgment sum, the reductions made from the principal sum to reflect credits arising from the realisation of certain secured property and the net due and owing as of 4th March, 2013.

13. Thus, the Bankrupts were in the position to state an exact figure of the sum claimed by their major creditor six months prior to the date of adjudication. The only changes to this figure would come from any realisations by the Bank of Ireland and continuing Courts Act interest on the principal sum.

14. It is important to note that the statement of affairs is intended to reflect the position of the bankrupt as of the date of adjudication (though where, as here, there has been a considerable passage of time since the date of adjudication it is permissible but not obligatory, to complete the statement of affairs with more up-to-date information). This is because it is required to enable the Official Assignee to investigate the affairs of the bankrupt and to realise the assets of the bankrupt. It is not a substitution for the proof of debts by creditors of the bankrupt. Any alteration in the figures, whether arising on the basis of accrued interest or reductions to reflect realisations in respect of the debts are matters which relate to the proof of debts and are matters which are the concern of the Official Assignee. They are not matters which need concern a bankrupt in preparing his or her statement of affairs.

15. In any event, Arthur Cox wrote to the Bankrupts by letter dated 3rd June, 2015, updating the schedule enclosed in the letter of 4th March, 2013, setting out the further interest which had accrued and giving credit for the further realisations that had occurred. As of that date, the Bank of Ireland claimed to be a creditor of the Bankrupts in the reduced figure of €70,452,884.75.

16. The Bankrupts are, and at all material times were, in a position to swear and file a statement of affairs as they are obliged to do pursuant to s. 19 of the Bankruptcy Act 1988, since the date of adjudication of the applicants as bankrupts on 2nd September, 2013. It has always been acceptable to include estimates of debt or valuations where the precise figure is not known. Furthermore, it is acceptable to complete the form by entering the figure claimed by a creditor and indicating that the debt or the amount of the debt is not accepted or is disputed.

17. Pending the hearing of the appeal by the Supreme Court against their adjudication as bankrupts, the Official Assignee and the Bankrupts reached a settlement in relation to their application for a stay on the realisation of their assets by the Official Assignee. The Bankrupts agreed to attend for interview in relation to their estates on, or before, 17th January, 2014, and to prepare and file statements of affairs within seven days of the interview. In the event the interview did not take place until April, 2014 and no statement of affairs has been filed by either of them. This is a clear breach of their agreement with the Official Assignee.

18. The Bankrupts do not require the information they seek in order to complete their statements of affairs. They have ample information to hand to do so and where there is any dispute in relation to the amount due to the Bank of Ireland, they may enter the figure furnished by the Bank's solicitors and, if they wish, indicate that the sum is disputed. It will be a question for the Official Assignee to accept or reject the proof of debt submitted by the Bank of Ireland in due course. It is not a reason for the Bankrupts to fail to furnish statements of affairs as required by the provisions of the Bankruptcy Act 1988 and in accordance with their agreement with the Official Assignee.

19. Finally, the application itself is misconceived. Section 61 of the Bankruptcy Act 1988 is concerned with the functions of the Official Assignee. The Official Assignee will, in due course, investigate and verify or dispute or reject the claims of any creditors of the Bankrupts who seek to prove in the bankruptcy, including the Bank of Ireland. The powers given to him under s. 61 are to enable him to carry out his functions and duties. It is no function of the Official Assignee to complete the statement of affairs on behalf of a bankrupt or to procure information from third parties to enable a bankrupt to complete his statement of affairs. Accordingly, I refuse the reliefs sought against the Official Assignee in the notice of motion.

20. As this Court has held that the Bankrupts do not in fact need the information they seek from the second, third and fourth named respondents in order for them to complete their statements of affairs, it is not necessary for the Court to consider whether or not to grant the relief sought against these respondents. The issue as to whether or not the Bank of Ireland has properly credited the amounts realised from the sales of secured properties or whether there was any breach of duty on the part of the fourth named respondent in relation to the sales and/or his expenses and fees relates to the estates of the Bankrupts and the debts claimed by the creditor. As such, it is a matter for the Official Assignee and not the Bankrupts. I therefore refuse all reliefs sought against these

respondents.