

## THE HIGH COURT

## BANKRUPTCY

No. 3729

## IN THE MATTER OF THE BANKRUPTCY ACTS, 1988 TO 2015

## IN THE MATTER OF PAUL O'SHEA

## JUDGMENT of Ms. Justice Costello delivered on the 21st day of February 2018

**Introduction**

1. The Official Assignee issued two motions which were heard together in the bankruptcy of Paul O'Shea ("the bankrupt"). The first motion sought an order pursuant to s. 61 of the Bankruptcy Act 1988, as amended, sanctioning the sale of the family home of the bankrupt and his spouse, Ms. Emer O'Shea situate at Davidstown, Castledermot, Co. Kildare comprised within Folio 38675F of the Register of Freeholders Co. Kildare ("the family home"). The second motion was brought pursuant to s. 85A and sought orders pursuant to subs. (3) that the bankruptcy period of the bankrupt should not stand discharged until after investigation and pending the making of a determination upon the application and an order pursuant to subs. (4) extending the bankruptcy period of the bankrupt to the fifteenth date of the date of adjudication or for such other term as may be deemed appropriate by the court.

**Motion seeking the sanction of the sale of the family home**

2. The bankrupt was adjudicated bankrupt on the 4th July, 2016. As a consequence of his adjudication all of his property vested in the Official Assignee pursuant to s. 44 of the Bankruptcy Act 1988 as amended. This included the family home which was comprised of within Folio 38675F of the Register of Freeholders Co. Kildare .

3. The bankrupt was registered as the sole owner of the lands comprised in Folio 38675F on 15th August, 2002. On 27th September, 2016 the Official Assignee was registered as the full owner.

4. The bankrupt has not cooperated in any way in the administration of his bankruptcy. He has sworn no statement of affairs nor completed a statement of personal information. As of 6th February, 2018 the Official Assignee was aware of only two creditors of the bankrupt, Kildare County Council claiming the sum of €7,580 and Danske Bank AS, the petitioning creditor who obtained a judgment against the bankrupt on 4th March, 2013 in the sum of €1,296,114.47 and claims to be a creditor for in excess of €1.5 million. It registered a judgment mortgage against the family home but has agreed to release that judgment mortgage. The petitioning creditor has a registered charge on other lands of the bankrupt comprised in Folio 976 of the County of Kildare.

5. The bankrupt took no part in the application. His wife, Ms. Emer O'Shea, was a notice party to the proceedings. She represented herself and swore three affidavits opposing the application of the Official Assignee. She stated that she is a homemaker and the mother of two young children aged 7 and 1. She instituted proceedings entitled "The High Court Record No. 2015 3633P. between Emer O'Shea, plaintiff and Paul O'Shea, defendant" on 12th May, 2015 seeking a declaration inter alia that she has a 50% interest in the lands comprised in the family home. Her case is that she became involved with the bankrupt and prior to living at what is now the family home she invested all her savings and earnings in renovating a derelict old farm house in the farmyard to make the family home a habitable house. She said that the bankrupt made no contribution towards the renovation or upkeep of the family home. Despite many urgings so to do, she adduced no evidence to support her claim to a propriety interest in the family home and produced no vouching documentation or even bank statements indicating the source or amount of money invested by her.

6. Many of her submissions were directed towards attacking the loan issued by Danske Bank to the bankrupt and the charge of Danske Bank over Folio KE976. On the basis of an allegation that the bankrupt was not indebted to the petitioning creditor, or because the security held by the petitioning creditor was invalid she alleged that the Official Assignee had no standing to bring the proceedings.

7. Danske Bank, the petitioning creditor, obtained a judgment from the High Court on 4th March, 2013. The judgment creditor petitioned for the bankruptcy of the bankrupt. By order of the High Court he was adjudicated a bankrupt on 4th July, 2016. The title of the Official Assignee in these proceedings springs from the order of adjudication and s. 44 of the Bankruptcy Act, 1988 as amended. He is registered on the folio as the full owner. His title is not based upon any charge held by Danske Bank and therefore whether or not that charge is void by reason of the provisions of the Family Home Protection Act 1976 as amended does not arise.

8. The notice party says that she is not bankrupt. She is not a debtor. She is an innocent party and the property in question is the family home of herself and her two young children. Sale of the property would be disproportionate in the circumstances as it would render her and her children homeless. Postponement of an order for sale would afford her no assistance for the same reason.

**The principles applicable**

9. Section 61(4) and (5) of the Bankruptcy Act 1988 provides as follows:

*"(4) Notwithstanding any provision to the contrary contained in subsection (3), no disposition of property of a bankrupt, arranging debtor or person dying insolvent, which comprises –*

*(a) a family home within the meaning of the Family Home Protection Act, 1976, of the bankrupt or bankrupt's spouse, or*

*(b) a shared home (within the meaning of the Civil Partnership and Certain rights and Obligations of Cohabitants Act 2010) of the bankrupt or the bankrupt's civil partner (within the meaning of that Act),*

*shall be made without the prior sanction of the court, and any disposition made without such sanction shall be void.*

*(5) On an application by the Official Assignee under subs. (4) for an order for the disposition of a family home or shared home, the court, notwithstanding anything contained in this or any other enactment shall have power to order postponement of the sale of the family home or shared home, as the case may be, having regard to the interests of the creditors, spouse or civil partner (within the meaning of the Civil Partnership and Certain Rights and Obligations of*

*Cohabitants Act 2010), and any dependants, of the bankrupt, arranging debtor or person dying insolvent, as the case may be, as well as to all the circumstances of the case."*

10. The Official Assignee may not dispose of the family home of a bankrupt or of the bankrupt's spouse without obtaining the prior sanction of the court to the disposition. Any disposition made without such sanction shall be void. On an application by the Official Assignee to sanction a disposition of the family home of the bankrupt or the bankrupt's spouse, the court has power to order postponement of the disposition of the family home. It may do so having regard to:

- (1) the interest of the creditors,
- (2) the spouse of the bankrupt,
- (3) any dependents of the bankrupt and
- (4) all the circumstances of the case.

In effect the court is asked to balance the interests of the creditors against the interests of the spouse and dependents of the bankrupt.

11. In *Rubotham v. Young* (unreported, High Court, McCracken J., 23rd May, 1995) McCracken J. accepted that if a discretion is to be exercised in favour of the family of a bankrupt this must only be in exceptional circumstances. In balancing the interests of the creditors on the one hand, and the interests of the spouse and the dependents of the bankrupt on the other hand, and all the other circumstances of the case, he held as follows:

*"As far as the creditors are concerned, the bankrupt was adjudicated almost seven years ago, and the creditors have been paid nothing, and will be paid nothing unless and until the family home is sold. Even then, they will not be paid in full, and there will be no funds available to meet any claim they might have in relation to interest to compensate them for the long delay. On the other hand, the spouse and dependents have lived in the house, in reality at the expense of the creditors, for almost seven years, and while at the time of the adjudication, some of the children were minors, they are now all of full age, although two of them are unemployed."*

He held that in effect there had been a postponement of sale of seven years and he postponed the sale for a period of four months to allow the spouse and the adult children residing in the family home a reasonable opportunity of acquiring a new house with her share of the proceeds of sale.

11. In *Rubotham v. Duddy* (unreported, High Court, Shanley J., 1st May, 1996) the court confirmed that it may only exercise the power to order a postponement of sale when it has had regard to the interest of a number of parties – the creditors, the spouse, the dependents of the bankrupt – as well as to all the circumstances of the case. Shanley J. said that the court must consider whether there exists in the particular case exceptional circumstances which would allow the court to make an order postponing the sale of the family home. In other words, absent exceptional circumstances, there should be either no postponement or the postponement should be of a relatively short duration as occurred in *Rubotham v. Young*.

12. In *Rubotham v. Duddy*, Shanley J. held that there were exceptional circumstances and he distinguished the case from Young's case. The indebtedness was relatively modest (IR£20,000) compared with the debt in Young's case (IR£224,000). The value of the property in Young's was between IR£190,000 and IR£135,000 as opposed to IR£65,000 in Duddy's case. The special circumstances which he identified were the very straightened financial circumstances of the wife of the bankrupt. She had lived in the premises for 38 years. She was 66 years of age and had been married to the bankrupt for 48 years. She suffered from hypertension, arthritis and agoraphobia and had been under psychiatric care on and off since 1967. She and the bankrupt were in receipt of a joint pension of £100 a week and her adult daughter who resided with them contributed £30 a week towards her upkeep and household expenses. The interest of the Official Assignee had been assessed at 40% as against the spouse's interest of 60% and she had made an offer of £16,000 to acquire the interest of the Official Assignee in the family home. The Official Assignee rejected the offer. Shanley J. concluded that the case differed significantly from *Rubotham v. Young* as to the amount of the indebtedness in question, the value of the property and the existence of special circumstances. He sanctioned the sale of the family home and postponed it for a period of ten years from the date of the judgment.

13. The Official Assignee also drew my attention to the decision of the Court of Appeal in *Muintir Skibbereen Credit Union Ltd v. Crowley* [2016] 2 I.R. 665. In that case the defendants, Mr. Cornelius Crowley and Mr. Brendan Hamilton, each obtained loans from the plaintiff for property development, which they were subsequently unable to repay. The plaintiff obtained judgment against each defendant and registered the judgments on the folios comprising, in each case, properties which were jointly owned by each of the defendants' wives. The wives were never consulted about the loan drawdown from the plaintiff nor did they sign any documentation providing the family home as security. The plaintiff brought an application pursuant to s.31 of the Land and Conveyancing Law Reform Act, 2009 for well charging orders and for orders of sale of the properties. The High Court refused the orders and on appeal, the Court of Appeal made well charging orders in respect of those properties. However it refused to order the sale of the jointly owned family homes pursuant to s.31(2)(c) of the Act of 2009.

14. Mr. Justice Hogan gave the judgment of the court. He said that the court must endeavour to balance and respect competing constitutional rights, including the property rights of the judgment mortgagee and those of the spouses. The lending by the credit union in both instances was unsecured and personal to each judgment debtor. He held that the Family Home Protection Act, 1976:

*"...reflected a fundamental policy choice made by the Oireachtas which – reflecting constitutional values embraced in both Article 40.5 (inviolability of the dwelling) and Article 41 (protection of family life) – sought to prevent the sale or disposal of the family home by the unilateral act of one spouse at the expense of the other. That objective would be seriously compromised if a family home which the couple co-owned could be effectively sold by court order over the heads of the wives in the present cases given that they had no involvement in the business affairs of their respective husbands and, critically, where they had never been given a prior opportunity to consent to such loan transactions."*

15. He continued at para. 32 of the judgment as follows:

*"It is true that the rights of the judgment mortgagee are liable to be defeated if the two family homes in question are not sold. But the Credit Union's entitlements cannot prevail as against the rights of the two innocent parties, namely, Ms. Crowley and Ms. Hamilton, who had nothing to do with these transactions and who did not give formal consent to*

*them. In any event, as, moreover, Denham J. indicated in First National Building Society v. Ring [1992] 1 I.R. 375, partition of a family home in these circumstances is not a realistic possibility and the sale of a divided moiety of a family home would not represent a marketable title, even if such a thing were possible."*

The court refused to make an order for sale of the family home principally because the effect of the order would be to direct the sale of the family home over the wishes of the innocent spouse who was not a party to the loan transaction which gave rise to the judgment mortgage in the first instance and who had never formally consented to same.

16. That case was concerned with s.31 of the Land and Conveyancing Law Reform Act, 2009. Insofar as is relevant the section provides:

*" (1) Any person having an estate or interest in land which is co-owned whether at law or in equity may apply to the court for an order under this section.*

*(2) An order under this section includes—*

*...*

*(c) an order for sale of the land and distribution of the proceeds of sale as the court directs,*

*(3) In dealing with an application for an order under subsection (1) the court may—*

*(a) make an order with or without conditions or other requirements attached to it, or*

*(b) dismiss the application without making any order, or*

*(c) combine more than one order under this section.*

*(4) In this section—*

*(a) "person having an estate or interest in land" includes a mortgagee or other secured creditor, a judgment mortgagee or a trustee,*

*...*

*(5) Nothing in this section affects the jurisdiction of the court under the [Family Home Protection Act] 1976, .."*

17. It is immediately apparent that this section is quite different from the provisions of s.61(4) and (5). Section 61(4) explicitly contemplates the court sanctioning the sale of a family home within the meaning of the Family Home Protection Act, 1976 of the bankrupt or the bankrupt's spouse i.e. the innocent non debtor, whereas s.31(5) expressly provides that s.31 does not affect the jurisdiction of the court under the Act of 1976. Section 61 applies whether or not the spouse has an interest in the family home, provided the family home is property of a bankrupt, whereas s.31 is concerned with co ownership of land. A court may sanction the sale of a bankrupt's or a bankrupt's spouse's family home despite the prejudice suffered by the non bankrupt spouse and the dependants of the bankrupt. It is within the contemplation of the subsection that the court would sanction a sale the effect of which would be to direct the sale of the family home over the wishes of the innocent spouse who is not a party to the incurring of the debts which gave rise to the bankruptcy of the other spouse in the first instance and who never formally consented to any judgment mortgage of the family home.

18. In *Muintir Skibbereen Credit Union Ltd v. Crowley* the Court of Appeal held that the rights of the judgment mortgagee could not prevail as against the rights of the two innocent parties who had nothing to do with the transactions and who did not give formal consent to them. In other words the interest of one creditor was defeated by the rights of the innocent spouses. The question for consideration on this application is whether the Oireachtas intended such a result in circumstances where the Official Assignee acting on behalf of all of the creditors of the bankrupt seeks an order for the sale of the family home. The Oireachtas has provided in subs. (5) that the court "notwithstanding anything contained in this or any other enactment, shall have power to order postponement of the disposition of the family home...". The phrase "any other enactment" must include the Family Home Protection Act, 1976, particularly when it is expressly referred to in the preceding subsection. I therefore read subs. (5) as conferring on the court a power to order the postponement of the sale of the family home notwithstanding any of the rights conferred upon a spouse by the Family Home Protection Act, 1976. This seems to me to be the critical distinction between the instant case and the situation in *Muintir Skibbereen Credit Union Ltd*. In that case, the decision was based upon the fact that the Act of 1976 sought to prevent the sale or disposal of the family home by the unilateral act of one spouse at the expense of the other and nothing in s.31 affected the jurisdiction of the court under the Act of 1976. That policy choice of the Oireachtas was weighed in the balance in assessing the competing interests of the judgment mortgagee and the spouses. But in enacting s.61(5) the Oireachtas expressly provided that the court's power to order the postponement of the disposition of the family home applied notwithstanding inter alia the provisions of the Family Home Protection Act, 1976.

19. Furthermore, it is notable that pursuant to s.31(3) of the Act of 2009 the court is empowered to make an order with or without conditions or to dismiss the application without making any order or to combine more than one order under the section. In contrast, under s.61, the court has power to sanction the disposition of a family home and to order postponement of the disposition of the family home. Where the court sanctions the disposition of the family home the Act specifies the matters to which the court is to have regard when deciding whether to postpone the sale of the family home. It expressly enjoins the court to have regard to the interests of the creditors as well as the spouse and any dependants of the bankrupt. It seems to me that this is inconsistent with the conclusion that the interests of the spouse and any dependants must outweigh those of the creditors to the extent that they preclude the court sanctioning the sale of the family home. It further seems to me that the balance between the competing interests of the creditors of the bankrupt and the spouse and dependants of the bankrupt is to be achieved by the length of any postponement of the order sanctioning the disposition of the family home. I conclude therefore that the decision of *Muintir Skibbereen Credit Union Ltd v. Crowley* does to preclude me from sanctioning the sale of the bankrupt's family home pursuant to s.61(5) of the Act of 1988.

20. I will sanction the sale of the family home by the Official Assignee. The issue then is whether, and if so, for how long, the sale should be postponed.

**Factors relevant to the exercise of the discretion of the court to postpone the sale of the family home**

21. On the facts in this case the following factors are relevant to the exercise of the court's discretion on this application.

- (1) It involves the sale of a family home
- (2) The spouse of the bankrupt is not bankrupt
- (3) It is the home of the spouse and young dependant children of the bankrupt.
- (4) The spouse was not a party to any of the loans of the bankrupt.
- (5) The spouse instituted proceedings against the bankrupt in 2015 seeking a declaration that she is entitled to a 50% interest in the lands comprised in the family home. Since the institution of the proceedings, they have not been progressed in any fashion.
- (6) Despite being afforded a number of opportunities so to do, the spouse has adduced no evidence at all as to her interest in the family home or the value of that interest. The Official Assignee is the registered full owner of the lands. In the absence of any evidence to the contrary he is the 100% owner of the family home.
- (7) The spouse (and the bankrupt) has refused to allow a valuer appointed by the Official Assignee access to the family home in order to provide a valuation for the court. The Official Assignee obtained orders on 9th October and 6th November, 2017 directing that his valuer be granted access to the family home for the purpose of carrying out a valuation. Ms O'Shea appealed each of these orders and refused to afford the valuer access to the family home despite the fact that there was no stay on either order.
- (8) The house has been valued at €275,000
- (9) The family home is unencumbered and therefore provides a real prospect of recovery for the benefit of creditors
- (10) While the spouse currently does not work outside the home and is the carer of her young children, she is not to be equated to the spouse in *Duddy's case*. She is a young woman and she confirmed to the court that she previously worked in a bank and, on her own case, had in the past earned sufficient monies to generate savings which allowed her to renovate and restore the house as set out above.
- (11) No offer has been made to purchase the Official Assignee's interest in the family home
- (12) The bankrupt is entitled to earn and is entitled to a living allowance in accordance with the Insolvency Service of Ireland Guidelines which includes cost of living expenses for himself and his family. This would include the cost of renting a family home. There was no evidence before the court regarding his income, though he remains in occupation of and is working a farm.
- (13) Very substantial monies are due to the creditors
- (14) There has been no recovery to date despite the fact that the petitioning creditor obtained a judgment against the bankrupt on the 4th March, 2013. A receiver has been appointed by the judgment creditor over the farmlands of the bankrupt and he has experienced very considerable difficulties in obtaining possession of the lands and securing a sale of the lands. The bankrupt has indicated that he will not cooperate with the sale of any of the assets of the estate. The Official Assignee anticipates that it will be very difficult to realise any assets for the benefit of creditors.
- (15) Postponement of the order for sale involves the family of the bankrupt living in the family home at the creditors' expense while interest on the substantial sums continues to accrue.

22. Having considered all of these factors and balancing the interests of the creditors on the one hand with the interests of the spouse and the young dependants of the bankrupt on the other hand and all of the circumstances in the case, I direct the sale of the family home and I postpone the sale for a period of one year.

**Section 85A application**

23. The second motion brought by the Official Assignee was for an order pursuant to s.85A(3) that the bankruptcy period of the bankrupt shall not stand discharged until after investigation and pending the making of a determination on the application and for an order pursuant to s.85A(4) extending the period of bankruptcy of the bankrupt to either the 8th or the 15th anniversary of the date of adjudication or for such other term as may be deemed appropriate by the court on the basis that the bankrupt has:

- (a) failed to cooperate with the Official Assignee and 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 Official Assignee's case**

24. The application was grounded upon an affidavit sworn by the Official Assignee on the 19th June, 2017. There was no replying affidavit and the bankrupt did not appear at any stage to contest a motion.

25. The evidence of the Official Assignee was that the bankrupt has failed to cooperate with him in any way. Despite being informed of his obligations on many occasions both in writing and in person, no statement of affairs or statement of personal information have been filed by the bankrupt. By letter dated the 7th July, 2016 he was informed of his obligation to provide both a statement of affairs and a statement of personal information. He did not reply to the letter. A further letter was sent on the 3rd August, 2016 advising him that the Official Assignee would apply to extend the period of his bankruptcy if he continued to fail to provide a statement of affairs

and a statement of personal information and to cooperate with his office. The Official Assignee personally had telephone conversations with the bankrupt in August, 2016 and 5th October, 2016. He attended a meeting with the Official Assignee on the 13th October, 2016 but he brought no documentation with him and he refused to complete a statement of affairs or a statement of personal information. The Official Assignee stated that on the 13th October, 2016 the bankrupt made it clear that he would not cooperate with any process that involved the sale of any of the assets of his estate. He agreed to attend a subsequent meeting on the 27th October, 2016 and he was requested to complete a statement of affairs and statement of personal information in advance of that meeting. .

26. The bankrupt subsequently refused to attend on the 27th October, 2016. The only contact received from the bankrupt thereafter was a letter dated the 20th December, 2016 enquiry as to the progress of the Official Assignee's investigation into the debt due to Danske Bank, the petitioning creditor, which he vehemently disputed.

27. The only interest the applicant showed in the bankruptcy proceedings was to seek to challenge orders that had previously been obtained in the High Court and the Court of Appeal and the Supreme Court. Cross J. entered judgment against the bankrupt on the 4th March, 2013 in favour of Danske Bank in the sum of €1,296,114.47. There is no stay on the order. Laffoy J. gave a written judgment on the 19th July, 2013 accepting the validity of the mortgage created on the 15th October, 2003 over Folio KE976 and finding that the receiver had been validly appointed on foot of the mortgage. The Supreme Court by order of the 11th October, 2013 refused the bankrupt an application for a stay on the order. Noonan J. and Gilligan J. each accepted the validity of the security created by the mortgage dated 15th October, 2003 over Folio KE976 and the validity of the appointment of the receiver by orders dated 22nd December, 2014 and 8th July, 2015 respectively. The Court of Appeal dismissed the bankrupt's application for an extension of time to appeal the order of Noonan J. of the 22nd December, 2014.

28. The principal asset of the estate is a farm comprised in folios KE976 and KE386775 (which also contains the family home) and 24 acres at KE5445. The farm is being worked and at the date of the swearing of the affidavit there was a crop of rapeseed on the lands. The bankrupt has not indicated that he has any income of any kind. Twice he has been requested to enter into an income payment agreement with the Official Assignee, by letters dated the 26th January, 2017 and 17th February, 2017. There was no response to either letter.

29. The Official Assignee was concerned that the bankrupt may also have hidden from or failed to disclose to him income or assets which could be realised for the benefit of his creditors. The bankrupt had previously sworn a statement of affairs dated the 9th October, 2012 which listed among his assets certain plant and machinery and vehicles valued at €178,000. The Official Assignee requested the bankrupt to provide him with full details of this farm machinery on the 3rd August, 2016 and to deliver the machinery to him the following month. He wrote again on the 22nd November, 2016. The bankrupt informed the Official Assignee that the assets had been sold for cash "and then also stated that they belonged to a company called Cannon Agri Ltd which had nothing to do with him". He did not say when they had been sold or what had become of the proceeds of sale. The Official Assignee said that he believed that Cannon Agri Ltd is a company of which the bankrupt was a director, secretary and full shareholder since its incorporation in October, 2011 up until 14th October, 2013. The records in the CRO indicate that the shares were transferred to other parties some time before the annual returns were prepared in April, 2014 and the directors of the company have also changed. The Official Assignee says that he does not believe that this was a bona fide transfer and that "*it appears that Cannon Agri Ltd is being used to frustrate the realisation of assets.*"

30. It is also alleged that the farmlands are subject to 24 year leases from the bankrupt to Cannon Agri Ltd despite the fact that the mortgage registered against KE976 prohibits the bankrupt from granting any such lease or tenancy without obtaining the prior written consent of the charge holder. The charge holder, Danske Bank, did not consent to a lease of the lands by the bankrupt to Cannon Agri Ltd.

## **Discussion**

31. The evidence clearly establishes that there has been a total failure of cooperation on the part of the bankrupt with the Official Assignee. He has failed to swear a statement of affairs or to file a statement of personal information. He has ignored communications from the Official Assignee save as set out above. He clearly is generating income from farming activity but has failed to furnish any details of his income to the Official Assignee. He has not entered into any bankruptcy payment order or agreement. In a written judgment of the 19th July, 2013 Laffoy J. held that the receiver over the lands of the bankrupt had made out a "strong *prima facie* case" that the lease in favour of Cannon Agri Ltd was void against Danske Bank and the receiver because the bankrupt did not get the consent in writing of Danske Bank to the creation of the lease. By order of the 11th October, 2013 the Supreme Court refused the bankrupt's stay on the order of Laffoy J. He therefore can have been under no illusion as to the legal frailty of the lease entered into between himself and Cannon Agri Ltd.

32. The bankrupt has given no information as to when he says he sold his valuable farm machinery to Cannon Agri Ltd or what became of the proceeds of the sale. In my judgment, in these circumstances, there is a clear case for making an order postponing the discharge from bankruptcy of the bankrupt.

## **Under which subsection should the order be made?**

33. I was invited by counsel on behalf of the Official Assignee to make an order pursuant to s.85A(4) for the maximum period allowed under the section in light of the total failure of cooperation in this case and the evident prejudice to the creditors. It was submitted that in the event the bankrupt ultimately cooperated with the Official Assignee and complied with his statutory duties then it would be open to either the Official Assignee or the bankrupt to apply to court for an order pursuant to s.135 of the Bankruptcy Act, 1988 rescinding or varying the order postponing the discharge of the bankruptcy. I accept that it is open to a court to review, rescind or vary an order made by it in the course of the bankruptcy other than an order of discharge or annulment. This would include reviewing, varying or rescinding an order made pursuant to s.85A(4). However, I would prefer to have further information regarding the affairs of the bankrupt, the recovery of assets, if any, by the Official Assignee for the general body of creditors, information regarding creditors other than the two already identified and a clearer picture overall of the ongoing attitude of the bankrupt to the bankruptcy process prior to deciding whether or not to make an order pursuant to s.85A(4) postponing the discharge from bankruptcy of the bankrupt for a considerable number of years.

34. I therefore propose to adjourn the motion to the 18th February, 2019 with a request that the Official Assignee deliver an affidavit update in the court in relation to the progress of the bankruptcy in the intervening period.