

THE HIGH COURT

Bankruptcy

[2013 No. 2478]

IN THE MATTER OF A PETITION FOR ADJUDICATION OF BANKRUPTCY BY ULSTER BANK IRELAND LIMITED AGAINST SEAN DUNNE

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 13th day of August 2014

1. This judgment arises out of a number of legal issues raised before the court in these bankruptcy proceedings. By notice of motion dated 3rd December 2013, the bankrupt sought a number of reliefs, including the return of documentation connected with Family Law proceedings which were seized from a property known as 19, Churchfield, Straffan, County Kildare (hereinafter referred to as the "K Club property"). That notice of motion sought other reliefs which have been dealt with on an earlier date.

2. On 29th July 2013, the Official Assignee obtained a warrant of seizure (the "warrant of seizure") pursuant to s. 27 of the Bankruptcy Act 1988 ("the Act"). On 26th November 2013, by order of Cooke J., the Official Assignee was granted a search warrant pursuant to s. 28 of the Act. At issue in this application is the right of the Official Assignee to inspect the Family Law documentation found by him at the K Club property. He wishes to do so in order to ascertain the full extent of the bankrupt's financial position and the existence, if any, of assets which could have been concealed from the bankruptcy process.

3. By notice of motion dated 27th January 2014, the Official Assignee sought an order that he be made a party to the Family Law proceedings and that order was made on 7th March 2014. Thereafter, an argument developed about the extent of the disclosure of documentation in the Family Law proceedings that should be made to the Official Assignee. The bankrupt maintained that the disclosure which had previously been made to the National Asset Management Agency ("NAMA") pursuant to order of the High Court made on 6th December 2013 is the extent of the disclosure that should be made. The Official Assignee does not accept this.

The Issues

4. The issue before the court is whether the Official Assignee is entitled to examine documents relating to the Family Law proceedings found at the K Club property, and also the documents filed in the Family Law case to which the Official Assignee has been joined as a party.

5. Section 19 of the Act provides that:

"19.—*The bankrupt shall—*

(a) unless the Court otherwise directs, forthwith deliver up to the Official Assignee such books of account or other papers relating to his estate in his possession or control as the Official Assignee may from time to time request and disclose to him such of them as are in the possession or control of any other person;

. . .

(d) give every reasonable assistance to the Official Assignee in the administration of the estate."

The Official Assignee relies on this section and also the observations of Gibson L.J. in *Re Konigsberg* [1989] WLR 1257, where he stated at p. 1267 :

" . . . in my judgment, it is appropriate to treat the trustee as being in the shoes of the bankrupt for the purpose of privilege in proceedings against the joint client. It would be very odd if the trustee, entitled, as he is, to, and in possession of, the information cannot use it in the performance of his duties in seeking to recover the bankrupt's property."

6. The Official Assignee submits that, as he has been joined in the Family Law proceedings, he stands in the shoes of the bankrupt so far as the *in camera* rule is concerned. The bankrupt, for his part, argues that the Family Law papers fall outside the scope of "*books relating to the estate*". He also argues that the seizure of documents relating to that matter at the K Club property was unlawful and on foot of a deficient warrant. The warrant stipulates the removal of "property" only, and not documentation or papers, and he urges the court to construe strictly the terms of the warrant. Section 3 of the Act defines property as follows:

" 'property' includes money, goods, things in action, land and every description of property, whether real or personal and whether situate in the State or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined."

In oral submissions to the court, counsel for the bankrupt argued that the Official Assignee could seek discovery of documents. He also says that when the Official Assignee sought a search warrant, it was for the purpose of searching for paintings and valuables but not documents.

Conclusion

7. It is important to put this application in context. In seeking a search warrant in respect of the K Club property, the Official Assignee swore an affidavit in which he stated that he was informed and believed that there exists at the property artwork which is the property of the bankrupt. He said, at para. 13 of his affidavit:

"I am concerned that the said contents, including the artwork, may be removed from the property and seek an order for the issue of a search warrant to the Bankruptcy Inspector and myself pursuant to s. 39 of the Bankruptcy Act 1988, and further orders as the court deems necessary or required to secure the contents and preserve same pending further order of this honourable court."

He also confirmed that the US trustee concurred with and supported the application. It is clear from the contents of the affidavit that

the Official Assignee's concern was not confined to the removal of artwork, but also the contents of the property.

8. Section 19 of the Act requires the bankrupt to deliver up to the Official Assignee the material specified in the section, including ". . . *books of account or other papers relating to his estate*". I am quite satisfied that this includes any Family Law documents found at the K Club property. The property of the bankrupt includes ". . . *every description of property, whether real or personal, and includes the papers of the bankrupt*". While the bankrupt argues that "property" as defined in s. 3 of the Act, is limited to items of a monetary value as opposed to personal papers, such an argument flies in the face of the plain language of the Act, and I do not accept it.

9. I also reject the bankrupt's claim that his rights to privacy are breached if the Official Assignee is allowed inspect the Family Law documents found at the K Club property or produced in the Family Law court proceedings. Against the background circumstances of this bankruptcy, the actions taken by the Official Assignee are neither arbitrary nor disproportionate and are necessary to enable him to carry out his function expressed under s. 61(2) of the Act, to get in and realise the property, to ascertain the debts and liabilities, to distribute the assets of the bankrupt in accordance with the provisions of the Act. To some extent, this seems to be accepted by the bankrupt whose written submissions state that the Official Assignee's right to access the bankrupt's Family Law documentation is strictly limited to the right to review documents relevant to his economic estate. It seems to me that this is precisely what the Official Assignee seeks to do. Insofar as there is an interference in the right of the bankrupt to privacy, it seems to me that it does not go beyond what is justified and permissible, having regard to the necessity of the Official Assignee to investigate the financial affairs of the bankrupt. Furthermore, as the Official Assignee is a party to the Family Law proceedings, he is governed by the *in camera* rule.

10. It is clear that the Official Assignee does not seek inspection of the Family Law documents other than for the purpose of ascertaining relevant information which will enable him to carry out his duties under the Act.

11. So far as the documents found at the K Club property are concerned, the Official Assignee wishes to examine the documentation and establish whether it is relevant to the estate of the bankrupt, and has stated that he will return any irrelevant documentation as soon as this process has been carried out. In my view, this is both reasonable and lawful.

12. The Official Assignee is the appropriate person to examine the documentation and determine what is relevant or irrelevant in ascertaining the assets of the bankrupt. Since he has agreed to return such documents as are irrelevant for that purpose, I refuse the reliefs sought in para. 1 of the notice of motion of 3rd December 2013.

13. As far as the Official Assignee's motion of 1st May 2014 in the Family Law proceedings is concerned, I will make an order that the Official Assignee is entitled to examine all documentation in relation to the Family Law proceedings [1997 No. 58 M], an order allowing him inspection of all Family Law documentation of the respondent held by Clerkin Lynch Solicitors, and that he shall be entitled to take copies of such documents as he considers relevant for the carrying out of his duties as Official Assignee in this bankruptcy.