

## THE HIGH COURT

## BANKRUPTCY

## IN THE MATTER OF SECTION 85A OF THE BANKRUPTCY ACT, 1988

## AND

## IN THE MATTER OF GODFREY LALOR (A BANKRUPT)

**JUDGMENT of Ms. Justice Pilkington delivered on the 31st day of July, 2019**

1. The motion brought by the Official Assignee seeks an order pursuant to s. 85A and s. 85A(4) of the Bankruptcy Act, 1988 extending the discharge from bankruptcy of Godfrey Lalor on the basis that he has failed to cooperate with the Official Assignee and the realisation of the assets of the bankrupt, and/or hidden from or failed to disclose income or assets which could be realised for the benefit of this creditors. A maximum period of extension (now fifteen years) is sought by the Official Assignee.
2. Godfrey Lalor (a bankrupt) ("Mr. Lalor") was adjudicated bankrupt on 27 June, 2016. An order extending his period of bankruptcy pending this adjudication pursuant to s. 85A (3) was granted by the court on 19th June 2017.
3. The motion itself was originally issued on 9 June 2017. However, other issues arose within this bankruptcy process which were initially required to be dealt with. It is a matter in which extensive affidavits (and even more extensive exhibits) has been filed; within this application I have received five affidavits sworn by the Official Assignee and six from Mr. Lalor (who has represented himself throughout).
4. In addition, by order of Costello J. on 12 March, 2018 pursuant to s. 21 of the Bankruptcy Act, 1988 ("the 1988 Act"), the court directed that a summons issue directing that Mr. Lalor appear before the court pursuant to s. 21 of the Bankruptcy Act, requiring him to be examined on oath and produce documentation in respect of his estate.
5. That hearing took place before O'Connor J. on 23 April 2018 and a transcript has been provided. At its conclusion O'Connor J. made certain orders for the collection, by an official of the Official Assignee's office, of documentation held by Mr. Lalor at a property known as Rosedale House ('Rosedale') and that two firms of solicitors furnish documentation in respect of the title to a property known as Monte Rosa, Sorrento Road, Dalkey Co Dublin ('Monte Rosa').
6. A number of complaints are raised against Mr. Lalor. Initially any bankrupt is obliged to furnish a sworn and completed statement of personal information and statement of affairs in a timely manner post adjudication as a bankrupt. Some degree of time is afforded any bankrupt in order to deal with this state of affairs. The initial documentation from the Official Assignee's office seeking that documentation dates from 29 June, 2016, 15 July, 2016 and 23 September, 2016. On 23 October, 2016 (four months' post adjudication), the SPI statement of affairs was furnished. In essence, the Official Assignee held it to be seriously defective and in part wholly illegible. On 1 March, 2017, additional documentation was furnished – again in the view of the Official Assignee incomplete and in part illegible. On 15 March, 2017, Mr. Lalor was asked to provide a proper original sworn copy by post together with various outstanding information that was still being sought.
7. On foot of various matters, the Official Assignee instructed the bankruptcy inspector to attend at certain properties to assess Mr. Lalor's assets. The reports of the bankruptcy inspector dated 4 August, 2016 (in respect of Rosedale House) and 26 April, 2017 (Monte Rosa) discloses some degree of cooperation only.
8. In the events that have happened, an ongoing difficulty arose in seeking to discern the beneficial ownership of Monte Rosa. It is fair to say that the Official Assignee seeks a significant extension to the period of Mr. Lalor's bankruptcy, in large part owing to what he alleges to be his conduct in withholding information in respect of his interest in Monte Rosa.
9. The position with regard to Monte Rosa was set out by Mr. Lalor at addendum 2 of his statement of personal information dated 1 March 2017 is as follows: -
 

"Note 10 - Chateaubern SARL and Chateauberne SARL are companies registered in France and Luxembourg. I borrowed approximately €3.2 million and lent it to Berncastle Ltd. This was subsequently loaned to Chateaubern SARL which invested in a development property in France. The sale proceeds of this investment repaid the intercompany loan and Chateaubern SARL invested c.800k in another property in France, repaid the loan to Berncastle Ltd which in turn partially repaid the directors loan to me. Chateaubern SARL also invested approximately €5.5 million in a development property in Sorrento Road in Dalkey and this was purchased by me in trust. The asset is currently worth approximately €2.5 million. There is an outstanding CGT liability of approximately €3-4 million in France, the payment of which was intended to be by way of the development and sale of the Sorrento Road site. The €800k investment in a French Development Company Rinardoo SARL was invested through a company owned by Chateaubern SARL called Chateauberne SARL and registered in Luxembourg. Most of the €800 investment has been repaid to Chateaubern SARL and repaid to Berncastle Ltd in repayment of the inter company loan, which in turn, has been repaid to me as a directors loan repayment between approximately 2011 and 2016. There is approximately €10k remaining in Rinardoo SARL that remains to be paid to Chateauberne SARL as part of the final account as the property has been sold. The receipts and expenses relating to Chateaubern SARL and Chateauberne SARL are available for inspection if required."
10. The company Berncastle Limited ("Berncastle") referred to above is a company in respect of which Mr. Lalor was a shareholder, his spouse holding the remaining shareholding. CRO records disclose it was dissolved on 21 May 2014.
11. Up until the s. 21 hearing before O'Connor J. on 23 April, 2018, the position regarding Monte Rosa was shrouded in confusion. Analysing the affidavits sworn by the Official Assignee, on the basis of the information then available to him, clearly shows how his understanding of Mr. Lalor's ownership or potential ownership of that property changes markedly over time.
12. He avers in his first affidavit, sworn on 8 June, 2017, that it was only following the interview meeting arranged with Mr. Lalor on 8 February, 2017 that Mr. Lalor indicated that he may be the beneficial owner of that property. He was, thereafter, asked to provide details and, in particular, supporting documentation of that claim. This was done by letters dated 9 February, 2017, 15 March, 2017

and 26 April, 2017. On 2 May, 2017, Mr. Lalor advised that he was trying to retrieve the trust documents. He again confirmed that he was seeking the documentation from storage in an email of 12 May, 2017.

13. The second affidavit of Christopher Lehane sworn on 8 March, 2018, grounded an application to examine Mr. Lalor pursuant to s. 21 of the 1988 Act. This affidavit discloses that the bankruptcy inspector had attended Monte Rosa on 14 November, 2017 and had met with a family member (the bankrupt's son) who stated that it was in fact the family home. Another feature of this matter is that Mr. Lalor has indicated throughout that he in fact resides at Rosedale House and I shall revert to this point.

14. At that time, the Official Assignee's understanding of the ownership was set out at para. 13 as follows: -

"The bankrupt suggested that the property is owned by a French company called Chateauburn SARL (registration number 327096186)... From my investigations, the property may in fact be owned by a Luxembourg company Chateauberne SARL (company number B141753)... which I believe is in turn owned by a company called Berncastle Limited. It is possible that Monte Rosa was purchased by the bankrupt with money lent to him by either the French company or the Luxembourg company. "

15. It was on the basis of these matters that it proved necessary to examine the bankrupt before the court. That examination took place, as I said, before O'Connor J. on 23 April, 2018.

16. The third affidavit of Christopher Lehane is sworn on the 20th day of June, 2018. Within that affidavit, Mr. Lehane confirms that the s. 21 motion was adjourned to afford an opportunity to obtain the documents concerning Monte Rosa from Rosedale House, Pearse Mehigan Solicitors and Eversheds Sutherland ('Eversheds') Solicitors. At that point, the Official Assignee is waiting for an affidavit from Ms. O'Neill, the bankrupt's spouse, but avers at para. 25: -

"...There is absolutely no doubt that in disguising the transaction which was used to purchase Monte Rosa, the bankrupt deliberately concealed either a 50% interest in the property (through a 50% shareholding in Berncastle Limited or a 100% interest in the property on the basis that he is the true owner of the premises which appears to me to be the case).

At a minimum, and on the best case of the bankrupt and his spouse, the deliberate non-disclosure amounted to concealing assets potentially worth €2.75 million – which would be a 50% interest in the house – having regard to the full valuation of Monte Rosa at €5.5 million."

17. In the affidavit of Christopher Lehane, sworn on 8 October, 2018, it in turn references the affidavit of Mr. Lalor's spouse, Ms. Eunice O'Neill ("Ms. O'Neill"), sworn on 4 September, 2018. He states on the basis of the information contained within Ms. O'Neill's affidavit that Mr. Lalor either holds a 100% interest in the property or does so subject to any claim by Ms. O'Neill in respect of the premises. He sets out in detail the evidence of Ms. O'Neill as to how the property was acquired and this is detailed below.

18. It is only in the fifth affidavit of Mr. Lehane, sworn on the 9th day of January, 2019 that the position of Monte Rosa appears to be fully clarified on the basis of the documentation furnished by third parties, the averments of Ms. O'Neill and the subsequent mediation (which Mr. Lalor declined to attend) on 11 December, 2018. That affidavit discloses that it appears that the position with regard to the Monte Rosa property has been finally elucidated – the Official Assignee points out that that was notwithstanding court orders of 23 April, 2018 (consequent upon the s. 21 examination) and 12 March, 2018.

19. In his examination before O'Connor J., Mr. Lalor stated that the position with regard to the ownership of that property would be clear from documentation held in Rosedale, from documents held within his former solicitors, Eversheds and his wife's solicitors, Pearse Mehigan & Co. Solicitors. In light of this information, the s. 21 motion was adjourned to obtain that documentation. It ultimately transpired that the Official Assignee having sought and been given the information from these respective sources, was thereafter (and only thereafter) able to determine the ownership of the Monte Rosa property.

20. All the matters raised previously by Mr. Lalor suggested what appeared to be a very complex trust holding with regard to the property, the reality is more straightforward.

21. As set out above Ms. O'Neill swore an affidavit on 4 September 2018, in respect of these proceedings where she was separately legally represented and dealing with the Official Assignee in respect of her interests in this matter. She also furnished information with regard to the Monte Rosa property and I consider this below.

22. A photocopy of a cheque drawn on Permanent TSB, Bray, Co. Wicklow whose signatories are Mr. G. Lalor and Mrs. E. O'Neill shows that on 11 August, 2008, O'Donnell Sweeney Eversheds Solicitors were furnished with a cheque signed for the sum of €5.1 million.

23. In any event the documentation (a very small bundle) discloses the transaction to acquire Monte Rosa as follows;

(a) By letter dated 12 August, 2008 from O'Donnell Sweeney Eversheds to Mr. Lalor, Mr. Lalor is informed that matters are nearing completion for the purchase of the Monte Rosa property and that his solicitors have prepared a declaration of trust and a further deed vesting the property in his name. It is pointed out that at any point his instructing solicitor could "collapse the trust" and vest the property into his sole name.

(b) By a letter from the same firm of 22 August, 2008 to Mr. Lalor, it is confirmed that the purchase has been completed and that his solicitor (Ms. Casey) is executing a declaration of trust in his favour confirming that the property had been purchased in her name, merely on trust for him. It is further confirmed that his identity as purchaser has not been disclosed to the vendor and the letter then goes on to deal with matters concerning stamp duty and so on.

24. The deed of assignment is dated 21 August, 2008 between William O'Dwyer and Mary Hennessy of the one part and Miriam Casey of the other part whereby the Monte Rosa premises are assigned to Ms. Casey for the residue of the term of the lease, subject to its terms and conditions insofar as they affect the scheduled premises.

25. By declaration of trust of the same day (21 August, 2008) between Miriam Casey of the one part and Goff Lalor of the other part, the declaration, being supplemental to the contract of sale and the deed of indenture of conveyance and assignment to Ms. Casey, states that the beneficiary provided the entirety of the purchase money and that the property was assigned and conveyed to Ms. Casey as trustee for Mr. Lalor and that she holds the entirety of the interest for him and will at his request convey that interest to him.

26. By a further deed of the same date (21 August, 2008) between Miriam Casey as trustee of the one part and Goff Lalor as beneficiary of the other part after reciting the indenture of assignment and conveyance of 21 August, 2008, the trustee at the request of the beneficiary, assigns and conveys the assured premises (Monte Rosa) to the beneficiary. The deed thereafter reflects that the premises have been assigned to Mr. Lalor to be held by him for the residue of the lease and subject to its terms and conditions insofar as they affect the assured property.

27. It must be pointed out that the documents set out above are not unusual in any conveyancing type transaction. Monte Rosa is purchased in trust which is not in and of itself unusual. Thereafter the declaration of trust and the assignment of the interest are what would be expected in a property purchased by Mr. Lalor's solicitor in trust. It is, therefore, difficult to understand how Mr. Lalor would himself not understand that he has an interest in a very valuable property in Sorrento Road, Dalkey.

28. Mr. Lalor on more than one occasion demurred with the suggestion that he was in any sense a prosperous or experienced businessman. All the more reason, therefore, with regard to the assets he held, that he would have a clear recollection as to the ownership of what appears to be the most expensive asset for which he paid €5.1m and one in which he and his family resided for many years.

29. There is then a document headed "Declaration" dated the 25th day of August, 2008. It was not executed by his solicitor. In any event, it recites the Indenture of Conveyance and Assignment of 21 August, 2008 between Miriam Casey and Mr. Lalor. Pursuant to the terms of this declaration Mr. Lalor then declares that he holds the entirety of his interest in trust for the beneficiary (Berncastle Limited).

30. The document is executed by Mr. Lalor in the presence of Ms. O'Neill and Ms. O'Neill signs on behalf of Berncastle Limited (it does not appear that a seal was affixed) and her signature on behalf of Berncastle Limited is witnessed by Mr. Lalor.

31. There is no documentation evidencing that the property was at any point conveyed to any other person other than Mr. Lalor save that in the declaration of 25 August, 2008, he states that he holds the property on trust for Berncastle.

32. Accordingly, the legal owner of the Monte Rosa property is Mr. Lalor; there is a question mark over whether Berncastle (now dissolved) has any beneficial interest in the property. In any event within the fifth affidavit sworn by Christopher Lehane on the 9th day of January, 2019, with regard to the Monte Rosa property and the interest or potential interest of Berncastle, Mr. Lehane avers that in accordance with the mediated agreement with Ms. O'Neill, she executed a stop transfer form of her 50% interest in Berncastle and accordingly, the Official Assignee is now a 100% shareholder of that entity. Mr. Lalor therefore retains no interest, legal or beneficial, in Monte Rosa.

33. The purpose of tracing the derivation of ownership to Monte Rosa is not to deal with any title issue but to illustrate that, once the appropriate documents were before the Official Assignee, determining the interest of Mr. Lalor to the Monte Rosa property was a relatively straightforward exercise.

34. Whilst it must be acknowledged that the trail of documentation was alluded to by Mr. Lalor in evidence on 23 April, 2018 before O'Connor J. in that he did correctly identify the entities who retained the appropriate documentation, I am at a loss as to understand how this information could not have been furnished earlier and in a more straightforward manner without the necessity of the hearing before O'Connor J.

35. Ms. O'Neill (and it appears that her averments with regard to Monte Rosa are broadly accepted by the Official Assignee) avers that there were initially borrowings (by herself and Mr. Lalor) from Bank of Scotland. Those monies were in turn transferred to Berncastle (now dissolved) and thereafter to the French company, Chateaubern SARL (which may in turn possibly have been owned by Berncastle, but this is unclear). The monies were utilised to buy French properties which were then sold. The monies from the sale of those French properties was in turn lodged to Berncastle, a sum of €5.1 million drawn on Berncastle and lodged to the joint TSB account of Ms. O'Neill and Mr. Lalor and from there a cheque in the sum of €5.1 million was lodged in the TSB joint account which was in turn made payable to O'Donnell Sweeney Solicitors for the purchase of the property.

36. Ms. O'Neill also avers that she was 'horrified' to learn that Mr. Lalor had averred that Monte Rosa was not their family home. She avers that she has resided there with her family since 2008 and that Rosedale (which Mr. Lalor asserts to be the family home) was always run as a business and nothing more.

37. The affidavits of the Official Assignee set out the ongoing situation with regard to Monte Rosa. In addition, as adverted to within those affidavits, at the time of Mr. Lalor's examination pursuant to s. 21 of the 1988 Act, the transcript discloses that counsel for the Official Assignee was, at that point, entirely unclear as to the ownership of that interest. That was almost three years' post-adjudication of Mr. Lalor as a bankrupt.

38. Initially there is the following interchange between counsel for the Official Assignee, and Mr. Lalor: -

"Q. Mr. Farrelly: Mr. Lalor, if I can start and ask you are you familiar with the property called Monte Rosa on Sorrento Road.

A. Yes, I am, yeah.

Q. When did you first move into that property and what periods did you live in it from?

A. I haven't moved into it at any point.

Q. Have you ever lived in the property?

A. I never lived there, I've stayed there the odd night.

Q. OK, can I ask you to go to your statement of personal information."

39. This contrasts with the affidavit of Ms. O'Neill who confirms that has been the home of herself, her spouse Mr. Lalor and their two children since its acquisition.

40. Counsel at a later point then continues to ask about the Monte Rosa property with the following interchange between himself and

Mr. Lalor: -

"Q. Who did you purchase that (a reference to Monte Rosa) in trust for?

A. Well, this is on my SOA in the absence of any information I believe to be correct, I believe to be correct to the best of my ability, as is required by the Act. So this, you know, this has got to be verified that my belief is that Chateaubern, because the intention obviously was Chateaubern made the funds in order to buy the property so it would be, it's my belief that the company is vested in Chateaubern or -

Q. I am not asking you about your beliefs. I am asking you who you purchased the property and trust for?

A. I don't know, I've only said what I believe.

Q. Are you telling the court that you don't not know who you purchased the property in trust for?

A. I don't know, I never signed the trust document.

Q. So there is no trust?

A. There may be a trust, I'm pretty sure there is.

Q. When you gave instructions to Eversheds Solicitors, was there a declaration of trust?

A. That will come out in the wash when we see the documents from Pearse Mehigan.

Q. Mr. Lalor, are you telling the court you don't remember anything about this transaction essentially?

A. I remember a reasonable amount about it, but I...

Q. It was a €5.5 million house Mr. Lalor, did you buy it in trust for somebody?

A. I believe I did.

Q. You believe you did?

A. Yeah.

Q. Do you believe there was a declaration of trust Mr. Lalor?

A. Of course I do, yeah, I said that.

Q. Who did you purchase it in trust for, who were the trustee on the declaration of trust, did you purchase for the property in trust for?

A. It would have been, I don't know exactly, that I imagine it would have been purchased in trust for either Berncastle Limited which had lent the money to Chateaubern or it would have been, in the absence of that, a new company would have been set up and it would have been a sister company of the French company."

41. Within his evidence, Mr. Lalor points out that Pearse Mehigan acted for his wife and that he had been represented in the transaction by Eversheds. At question 205, the following interaction occurred between O'Connor J. and Mr. Lalor:-

"Q. Mr. Justice O'Connor: Okay. If it was put in trust for Berncastle, who put it in trust for Berncastle?

A. Well Eversheds I guess who were instructed by me at the time.

Q. Mr. Justice O'Connor: And you are saying that they took it upon themselves to do that. Did they not give you a reason, for somebody else other than you to be the beneficiary?

A. Into trust first. Well, because the money was lent by Berncastle, right, to the French company so it wouldn't have been mine personally, you know, unless there was a loan repayment aspect of it, for example..."

42. By letter dated 20 November, 2016, Mr. Lalor was invited to engage in mediation with Ms. O'Neill, the Official Assignee and a nominated mediator; which invitation Ms. O'Neill accepted but Mr. Lalor declined. In his letter to the solicitors for the Official Assignee dated 3 December 2018 he states;

"Further to your 'urgent' correspondence of today's date, I will not be engaging in mediation without a firm commitment from your client that my bankruptcy be immediately terminated and that costs be paid by the Plaintiff.

As you clarified ..... under section 44 and section 85, assets at the time of adjudication of bankruptcy remain vested in your client, thereby not being influenced by the termination of bankruptcy.

Therefore, on receipt of the above, I will be agreeable to entering into discussions with a view to reaching a settlement."

43. Arising from the mediation Ms. O'Neill has reached a confidential agreement (she was legally represented throughout the process) with the Official Assignee. Mr. Lalor did not take part.

44. Mr. Lalor asserts that he has fully cooperated to the best of his abilities throughout. He complains (on more than one occasion) that his first meeting with the Official Assignee (through Martin O'Reilly) did not take place until 10 February, 2017 (in excess of seven months post his adjudication as a bankrupt in June, 2016). He confirms that he found that meeting extremely useful but was disappointed with the attitude of the Official Assignee thereafter. Throughout he has explained that unless or until the Official Assignee was able to provide him with appropriate professional advice, in the form of an accountant or bookkeeper who could provide

the requisite level of advice, then he was in difficulty in furnishing the information sought.

45. He confirms that the documentation within his statement of affairs and statement of personal information is correct and was submitted to the best of his abilities, without any assistance. Within the papers for this application Mr. Lalor sought adjournments on the basis that he wished to obtain legal aid and the matter was adjourned for a significant period to permit this. In any event Mr. Lalor has represented himself throughout.

46. In his final affidavit, sworn on 24 January, 2019 in respect of this application, with regard to the property at Monte Rosa, he makes the following averments: -

"7.0 I say that the reason I said this is that professional analysis would unequivocally show the assets of Monte Rosa to be owned by the French company who provided the funds and Rosedale to be subject to a mortgage with the equity company who purchased the loan from Bank of Scotland and is in negative equity.

8.0 I say that this is entirely consistent with my SOA and PI forms and that Eunice O'Neill has been incorrectly advised that Monte Rosa is her family home. The plaintiff has already agreed that Chateauberne SARL has paid for Monte Rosa. The sale of Monte Rosa by Chateauberne SARL has paid for Monte Rosa. The sale of Monte Rosa by Chateauberne SARL would not release any funds for the benefit of the plaintiff as the company has a loan of approximately €2.5 million to €3 million repayable to the equity fund who purchased the loan from Bank of Scotland. Further, Chateauberne SARL owes a further €2 million to the French Tax Authorities for CGT on the sale of the French property. The market value of Monte Rosa (an asset of Chateauberne SARL) obtained by the plaintiff and included as an exhibit in the booklet of exhibits accompanying his affidavit, sworn on the 12th October, 2018 places a value of €2.75 million to €3 million on the property.

A professional analysis would reveal that Chateauberne SARL paid for the purchase of Monte Rosa and that an attempt by the plaintiff to sell the property would be in breach of the first charge for the amount of the borrowing and also in breach of the European Dual Tax Treaty given the level of CGT due to the French Tax Authorities by Chateauberne SARL, a French company.

9.0 Eunice O'Neill no longer resides in Monte Rosa and is aware that she resided in Monte Rosa on a caretaker's agreement which specifically states that it is not a family home. This agreement is with Berncastle Ltd. which was instructed by Chateauberne SARL as a property management agent, the owner of Monte Rosa....

12.0 I say the plaintiff is fully aware that there isn't a web of companies and that Monte Rosa is owned by a single French company, Chateauberne SARL. In fact, the plaintiff has acknowledged that Chateauberne SARL is the beneficial owner of Monte Rosa and is merely clutching at straws in his utterly false claim that it isn't.

13.0 I say that the plaintiff is aware of the European Dual Tax Treaty and am surprised that he should attempt to contravene the terms of this treaty. By his continued refusal to instruct an independent professional, he reveals his true nature of attempting to seize the asset without proper analysis. I say that this is because he knows that an in-depth analysis would prove that any remaining assets of the French company are owned by the French tax authorities and would remove his claim to them.

14.0 Again, I say that a professional investigation would very quickly reveal that a single French company owns Monte Rosa and the funds for its purchase came from the sale proceeds of a house in France."

47. It is noteworthy that these averments were made by Mr. Lalor on 24 January 2019 are after his examination before O'Connor J. on 23 April, 2018, the affidavit of Christopher Lehane on 9 January 2019 setting out and exhibiting the documentation and position with regard to the Monte Rosa property.

48. At no point does Mr. Lalor deal with the dissolution of Berncastle. In any event, within that affidavit he also exhibits a caretaker's agreement dated 5 September, 2009 between himself and Ms. O'Neill stating that they have been put into possession of the premises known as Monte Rosa they are in possession as a bare licensee and caretaker only for Berncastle Limited. They give certain undertakings including indemnities in respect of Berncastle. The document appears to be signed by Mr. Lalor and Ms. O'Neill – not by Berncastle. I do not understand what, if anything, turns on this document.

49. The parameters of the jurisprudence concerning s. 85A of the Bankruptcy Act, 1988 (as amended) are now well settled.

50. Clarke J. in delivering the judgment of the Supreme Court in *Killally, a bankrupt v. The Official Assignee* [2014] IESC 76 ('*Killally*') stated as follows:-

"...I am satisfied that s. 85A involves two potentially different approaches which the Court can apply depending on the circumstances of the case. Where, as a result of an established failure to cooperate, hiding or failure to disclose, the Court feels that further inquiries require to be made, then the Court can postpone making an order under s. 85A(4) and direct inquiries under s. 85A(3). The Court can, thereafter, consider what to do about making a substantive order under s. 85A(4) in the light of the progress and results of the relevant inquiries.

On the other hand, the Court can, independently of directing any inquiries, and, it seems to me, independently of taking the view that such inquiries might be required, simply extend the period of bankruptcy as a sanction to reflect the established failure to cooperate, hiding or failure to disclose relevant assets. It is, of course, the case, as the Court of Appeal in the United Kingdom pointed out, that a suspension of discharge from bankruptcy of that nature is necessarily penal in character and it follows that any wrongdoing would require to be clearly established before the jurisdiction is invoked and further that the extent of any extension of the period of bankruptcy ordered by the Court would have to be proportionate to the established wrongdoing."

The court continued:-

"On behalf of the Official Assignee, on the other hand, it was contended that the personal bankruptcy regime relies to a significant extent on individual bankrupts to cooperate fully with the Official Assignee and the process. In those circumstances it is said that it is entirely appropriate for the Oireachtas to consider, for the purposes of discouraging non-compliance, that the Court should be empowered, in an appropriate case, to extend the period of bankruptcy in cases of significant failure of compliance."

In conclusion, Clarke J. stated:-

"For the reasons set out in this judgment I am, therefore, satisfied that, on its proper construction, s. 85A of the 1988 Act confers on the Official Assignee a jurisdiction to seek, and on the High Court a jurisdiction to impose, a postponement of the entitlement of a bankrupt to be discharged provided that the Court is satisfied that a failure to cooperate or a hiding or failure to disclose assets, in accordance with the terms of the section, has been established. That jurisdiction exists even though any wrongdoing thus established may be completed and, indeed, remedied. It is not necessary, in order for the jurisdiction to arise, that it be established that there are further inquiries to be made or action to be taken for the purposes of furthering the getting in and distribution of the estate of the bankrupt. I am, therefore, satisfied that a jurisdiction arose to make the order in this case."

51. In *Killally*, the extension of one year was upheld by the Supreme Court, largely on the basis of the undischarged bankrupt's failure to cooperate with the Official Assignee and, in particular, with regard to the sale by him of certain equipment (which had also attracted a criminal sanction).

52. In *McFeely v. The Official Assignee* [2017] IECA 21 and [2016] IEHC 299, (*McFeely*) the Court of Appeal were considering a very different set of circumstances where the court was satisfied that there had been a serious attempt by the undischarged bankrupt to hide assets and to fail to properly disclose them, constituting an ongoing failure to cooperate with the Official Assignee.

53. In *McFeely*, a number of grounds were advanced on behalf of the applicant but and specifically in respect of an alleged failure of Costello J. to properly consider the proportionality of the extension order that she had granted. The Court of Appeal concluded:-

"I find no error of fact or law in those conclusions. Despite the appellant's protestations by way of attempting to refute the Official Assignee's allegations of non co-operation, I am completely satisfied that it was open on the evidence for the trial judge to conclude that the level of non co-operation is established to the upper end of the spectrum of gravity, and that it was deliberate and ongoing. In my view, the trial judge was justified in ordering the extension of 4 years and 10 months, allowing a small deduction of two years on account of the appellant's age, though she considered also that little if any weight ought to be attached to the age of the bankrupt having regard to the aim of the section, namely '*not just to deter the individual bankrupt but also to deter others and to protect the public*'."

It is noteworthy that, both judgments of the High Court and the Court of Appeal quoted extensively from *Killally*. In *McFeely*, the High Court had extended the bankruptcy for the maximum period with a slight reduction due to the age of the bankrupt (there then being an eight-year maximum period of extension).

54. In *Lehane v. Farrell* [2016] IEHC 637, the court concluded in extending the bankruptcy for a period of four years (the period being up to a possible five years) and stated:-

"In my judgment, there have been serious, multiple, continuous breaches and wrongdoings by the respondent during the course of her bankruptcy. It is important to maintain the integrity of the bankruptcy process and to encourage bankrupts to cooperate fully with the bankruptcy process. It has not been established that the acts or omissions of the respondent damaged her creditors, as opposed to the bankruptcy process. I am, therefore, of the opinion that while grave, this is not the most extreme case to come before the courts."

55. In *John Gaynor (a bankrupt)* [2017] IEHC 27 Costello J stated;

"The conduct of the bankrupt in relation to his bankruptcy challenges the integrity of the bankruptcy process. It cannot be ignored by the court. The maintenance of the integrity of the bankruptcy process requires to be encouraged by the imposition of sanctions for breaches of the process...."

56. The Official Assignee is obviously tasked with seeking to realise all of a bankrupt's assets for the benefit of his creditors. At a minimum, the time and effort of the Official Assignee in doing so in this case, particularly regarding Monte Rosa, has been considerable.

57. The juxtaposition between the evidence before O'Connor J. on 23 April, 2018, the clear averments by the Official Assignee in his affidavit consequent upon the documentation being procured by him, setting out the title position of Monte Rosa; notwithstanding all of these matters, in his latest affidavit quoted at length above, Mr. Lalor's continued averments appear to contradict all documentary evidence available to the Official Assignee and this Court.

58. It is remarkable that Mr. Lalor can continue to maintain his position as to what I might describe as the "status" of Monte Rosa. It almost flies in the face of logic not to mention law.

59. On more than one occasion, Mr. Lalor took issue with being defined as a savvy property developer. He confirmed he was nothing of the sort. All the more reason why Mr. Lalor should have a sound understanding regarding a significant asset. The Official Assignee believes its value to be in excess of €2 million and it is wholly implausible that Mr. Lalor would not have a clearer understanding of the legal interests in that property than he has heretofore disclosed either within this application, the affidavits grounding it, and his sworn testimony before O'Connor J. on 23 April, 2018. It is one thing to have a very fixed view of the legal ownership of Monte Rosa; in my view it is quite another in the face of documentation procured by the Official Assignee, exhibited by him and fully explained within his affidavit, to thereafter maintain the same position. There is also the affidavit of Ms. O'Neill which, in many and indeed all significant matters concerning Monte Rosa, contradicts the averments of Mr. Lalor, confirms the documentary evidence and the subsequent averments of the Official Assignee in that regard.

60. Two bases are put forward (and I am satisfied that I have jurisdiction to deal with either or both in my assessment of whether to extend the time for Mr. Lalor's discharge from bankruptcy). Within the Act, those comprise that he has:-

(a) Failed to cooperate with the Official Assignee and the realisation of his assets, and/or

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

61. The case law makes it very clear that there are what might be described as degrees of misconduct that I must consider in assessing the above matters and, therefore, the period of extension (if any) prior to Mr. Lalor's discharge from bankruptcy.

62. The Official Assignee contends that were it not for the efforts of his office and the significant steps it had to undertake, before the courts and elsewhere that a very considerable asset, Monte Rosa, would not have been available for the benefit of creditors. The Official Assignee asserts that it is apparent that Mr. Lalor throughout endeavoured to suggest that it was an asset not owned by him and accordingly, as owned by third parties was not a recoverable asset.

63. It is undoubtedly clear in my view that Mr. Lalor has failed to cooperate with the Official Assignee and the realisation of his assets. I simply cannot accept that the documentation which sets out the position with regard to Monte Rosa (comprising in essence a handful of documents), in respect of which it is a perfectly straightforward conveyancing transaction, could not have been disclosed at an earlier stage.

64. At best, Mr. Lalor could have, from the outset, disclosed who was holding the relevant documentation (a matter he only disclosed before O'Connor J. in his examination under oath on 23 April, 2018). Even at that stage, it was left for the Official Assignee to procure the documentation. It was only at that point that the location of the documentation (previously asserted by Mr. Lalor to be held in storage) was, as it transpired, correctly revealed.

65. His description of the ownership of Monte Rosa, even up to his last affidavit sworn on the eve of this application on 24 January, 2019 clearly discloses that Mr. Lalor retains the belief (in my view, possibly still retains it), all evidence to the contrary, that there is a complex trust structure involving a French company who has an interest in Monte Rosa. That is simply not the case.

66. Mr. Lalor is of course entitled to his beliefs but what I do criticise him for is his failure to disclose where the documentation might be located until almost two years post his adjudication as a bankrupt. The efforts thereafter by the Official Assignee has now resolved the issues with regard to Monte Rosa, in that the Official Assignee can now proceed to realise that asset for the benefit of the creditors.

67. However, it is clear that a significant amount of additional time, effort and energy was expended by the Official Assignee in dealing with Mr. Lalor and in particular in seeking to ascertain the position with regard to Monte Rosa when it could in a more straightforward manner have been set out at an early stage in proceedings. That, in my view, constitutes a failure to cooperate with the Official Assignee in the realisation of Mr. Lalor's assets and in particular with regard to the significant asset at Monte Rosa.

68. I find it difficult to discern whether Mr. Lalor deliberately hid or failed to disclose the true position with regard to Monte Rosa. Certainly at the initial stages of his bankruptcy, he did not choose to reference Monte Rosa until in a schedule to his statement of affairs dated 1 March 2017 (recited at paragraph 9 above) he gave a description of its ownership which could only be described as a model of obfuscation. I also note his continued and ongoing insistence that Monte Rosa was not his family home. This was directly and firmly contradicted by Ms. O'Neill who stated that it was their family home (herself, Mr. Lalor and their two sons) since its acquisition. Mr. Lalor asserts that he no longer resides there but I am satisfied that it was his family home and should have been so disclosed in the information sought by the Official Assignee.

69. The Official Assignee contends that it was always Mr. Lalor's intention to ensure that the Official Assignee did not take steps to enquire into the Monte Rosa property. In the initial documentation, the family home is stated to be Rosedale (which in my view is incorrect). The Official Assignee further contends that the initial information, furnished by Mr. Lalor, would lead one to believe that Monte Rosa was held by another (non-Irish) entity and accordingly that there was nothing within that entity available for this Official Assignee to realise for the benefit of Mr. Lalor's creditors. I accept that. The information furnished by Mr. Lalor initially was disingenuous at best. Accordingly, I am satisfied that, with regard to Monte Rosa, Mr. Lalor hid or failed to disclose the Official Assignee, for a significant period of time, his legal and beneficial interest in the Monte Rosa property which must now be realised for the benefit of his creditors.

70. I appreciate that the position has now been clarified, but other than the reference by Mr. Lalor to the two named firms of solicitors dealing with the matter, in my view, he has provided no other assistance to the Official Assignee in determining the position regarding Monte Rosa. It is also noteworthy that this information was only furnished when he submitted to a sworn examination before O'Connor J. in April, 2018 and that no steps were taken by him thereafter to deal with the matter further.

71. Pursuant to s. 19 of the Bankruptcy Act (and indeed s. 20), a bankrupt is under an obligation to properly cooperate with the Official Assignee in the conduct of his examination of the bankrupt's estate. Whilst some latitude might be afforded initially, it is clear that Mr. Lalor, more particularly with regard to Monte Rosa, maintained and perhaps still maintains that he holds the property in trust for a third party (non-Irish) entity. It has taken a considerable amount of patience, effort, energy and (I assume) expense, on the part of the Official Assignee to ensure that this asset is now available for the benefit of the creditors with, I regret to say, little assistance from Mr. Lalor.

72. It is for this reason that, in my view, Mr. Lalor's bankruptcy should now be extended for a further period of time. I have had regard (as have previous cases) to Mr. Lalor's age and further note (as have previous cases, particularly the decision of Costello J. in the matter of *Paul O'Shea* [2018] IEHC 181) that, if Mr. Lalor were to cooperate more comprehensively with the Official Assignee than heretofore, this might be a matter to which the Official Assignee (and possibly the Court) could have regard into the future.

73. Accordingly whilst in my view there are grounds under both criteria set out within s. 85A and s. 85A(4) of the Bankruptcy Act, 1988 for extending the period of Mr. Lalor's bankruptcy, I would be happy to consider, having heard the parties, whether this matter should be adjourned for a short period of time (perhaps a period of months) to see if any further cooperation might arise, in which case this could well determine the extent of any bankruptcy extension concerning Mr. Lalor.

74. Accordingly, I will hear the parties as to whether it would be appropriate to permit a short extension of this matter prior to any final adjudication upon the possible time extension of the bankruptcy of Mr. Lalor and any other orders and reliefs that might be required.