

**THE HIGH COURT
BANKRUPTCY**

[2021] IEHC 2
[Bankruptcy Record No. 3713]

BETWEEN

ANNE DALY

APPLICANT

AND

CHRISTOPHER LEHANE, OFFICIAL ASSIGNEE

RESPONDENT

AND

THE HIGH COURT

[2015 No. 4822 P]

ANNE DALY

PLAINTIFF

AND

**BANK OF IRELAND, MALACHY STEPHENS, N.J. DOWNES & COMPANY, JIMMY
MCDONNELL AND P.J. DALY**

DEFENDANTS

**JUDGMENT of Mr. Justice Richard Humphreys delivered on Thursday the 21st day of
January, 2021**

2007 - Guarantee and first set of proceedings

1. In October 2007, the applicant/plaintiff Ms. Anne Daly executed a guarantee in favour of Bank of Ireland. Proceedings were brought against her husband in *Bank of Ireland v. Daly* [2011 No. 4178 S], and against herself in *Bank of Ireland v. Daly* [2012 No. 2353 S], [2012 No. 141 COM]. A consent order was made by the court on 30th July, 2012 granting judgment to the bank against Ms. Daly and her husband in the sum of €4,435,278.61.
2. Despite that being a consent order, she sought an extension of time to appeal the judgment in August 2014. The appeal was transferred from the Supreme Court to the Court of Appeal and refused by the latter court: *Bank of Ireland v. Daly* [2015] IECA 103 (Unreported, Court of Appeal, 15th May, 2015, Irvine J. (Peart and Hogan JJ. concurring)). That application also involved an attempt to appeal a judgment in the 2011 proceedings against her husband.

2013 – Bankruptcy proceedings

3. In 2013 Bank of Ireland then commenced bankruptcy proceedings against Ms. Daly [Petition No. 1676 P].

2015 - Applicant's plenary proceedings

4. The applicant then issued plenary proceedings against the present defendants and brought a motion on 12th June, 2015 seeking an order preventing the bank from progressing the bankruptcy application as well as other orders. She brought a further motion on 29th June, 2015 seeking discovery. Gilligan J. refused those reliefs on 10th July, 2015 insofar as the reliefs related to declarations and discovery. The claim for an injunction was transferred to the bankruptcy list.

2016 - Adjudication in bankruptcy

5. Ms. Daly was adjudicated bankrupt on 27th June, 2016. Thereupon, the chose in action represented by her plenary proceedings became vested in the Official Assignee under s. 44 of the Bankruptcy Act 1988. She thereupon ceased to be entitled to proceed further in the plenary proceedings without an order of the court.
6. Despite this, she brought a motion seeking to have certain individuals produced to the court to give evidence and sought to have the bankruptcy summons dismissed. Those applications came for hearing before Costello J. on 22nd and 23rd October, 2015 and all reliefs were refused with costs.
7. Ms. Daly sought leave to appeal to the Supreme Court, which was refused: *Daly v. The Governor & Company of the Bank of Ireland* [2017] IESCDet 48 (Unreported, Supreme Court, O'Donnell, McKechnie and Dunne JJ., 25th May, 2017).
8. She was discharged from bankruptcy on 26th June, 2017 but her assets remained vested in the Official Assignee.

2016 - Withdrawal of appeal to Court of Appeal in the plenary proceedings

9. The applicant, having appealed the order of Gilligan J., subsequently withdrew that appeal in July 2016. She then brought a motion in the Court of Appeal on 21st March, 2018 seeking a stay on the proceedings in the High Court. The Court of Appeal held in an *ex tempore* judgment delivered by Irvine J. on 20th April, 2018 that the relief sought was in effect precluded by the fact that Ms. Daly had withdrawn the appeal in July 2016 and thus the court lacked jurisdiction.
10. She then sought leave to appeal to the Supreme Court, which was refused: *Daly v. Bank of Ireland* [2018] IESCDet 121 (Unreported, Supreme Court, Clarke C.J., McKechnie and Dunne JJ., 1st April, 2018).

2017 – Laura Daly proceedings

11. The applicant's daughter, Laura Daly, brought related but separate proceedings, *Daly v. Daly* [2017 10029 P]. Those proceedings, while not otherwise relevant, come into one of the motions that is currently before the court.

Motions before the court

12. The first motion with which I am dealing is a motion dated 2nd April, 2019 in the plenary proceedings, *Daly v. Bank of Ireland* [2015 No. 4822 P], which is primarily seeking legal aid. That motion was transferred to the bankruptcy list by order of O'Connor J. on 14th May, 2019.
13. The second motion before the court is dated 30th August, 2019 in the bankruptcy proceedings [Bankruptcy No. 3713], for liberty to herself continue to prosecute the plenary proceedings [2015 No. 4822 P].
14. In relation to the two motions before the court I have heard helpful submissions from the applicant, Ms. Anne Daly, *pro se*, and from Mr. Edward Farrelly S.C. for the Official Assignee.

Legal aid motion

15. The legal aid motion (which confusingly seeks "*AN ORDER relating to the outstanding issue of a Free Legal Aid Support Certification*") involves a misconception of the procedure. If a litigant wants legal aid for civil proceedings, he or she should apply to the Legal Aid Board. If refused, there is a review procedure. And if still refused, there is the option of judicial review against the board, or alternatively possible action against the State if the refusal arises from the terms of the relevant legislation. One cannot simply bring a motion in the proceedings themselves seeking relief against the other side.
16. The second relief in that motion is "*AN ORDER ... to allow the joining of proceedings Record Number 2015 4822P, in respect of the proceedings 2017 10029P*", that is the Laura Daly proceedings. But the basis for such an order is not in any way made out and in any event the applicant is not entitled to seek such a relief without first obtaining an order allowing her to prosecute the 2015 proceedings.

Order for liberty to prosecute the 2015 proceedings

17. The Official Assignee's view was that the 2015 proceedings didn't appear to disclose a cause of action: see affidavit of Christopher Lehane at para. 9. The Official Assignee, as the person in whom the assets are vested for the benefit of the creditors, is in the best position to take a view in the first instance as to how the assets (including choses in action) are to be managed, and no basis to show that his position here creates any injustice or other problem warranting court intervention has been made out.

Order

18. I therefore dismiss both motions.