



**THE COURT OF APPEAL  
CIVIL**

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**Neutral Citation No. [2024] IECA 93**

**Court of Appeal Record No. 2023/88**

**High Court Record No. Bankruptcy No. 5403**

**Whelan J.  
Pilkington J.  
Butler J.**

**IN THE MATTER OF SECTION 85A OF THE BANKRUPTCY ACT 1988 AS  
AMENDED**

**IN THE MATTER OF K.J., A BANKRUPT (NO. 5403)**

**BETWEEN/**

**OFFICIAL ASSIGNEE IN BANKRUPTCY**

**APPLICANT/  
RESPONDENT**

**- AND -**

**K. J.**

**RESPONDENT/  
APPELLANT**

*[NOTE: ANONYMITY – ORDERS MADE UNDER S.45 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT, 1961 PROHIBIT THE PUBLICATION OR BROADCAST OF THE ANY MATTER RELATING TO THESE PROCEEDINGS THAT WOULD OR COULD IDENTIFY THE APPLICANT/APPELLANT]*

**JUDGMENT of Ms. Justice Pilkington delivered on the 25<sup>th</sup> day of April 2024**

1. This is an appeal by K.J. (“Mr K.J.” or “the appellant”) from the principal judgment of Sanfey J. delivered on 3 February 2023 and his subsequent judgment (described as a Ruling) on 29 March 2023, which deals primarily with certain costs issues. There is also a cross appeal by the Official Assignee in Bankruptcy (“the Official Assignee” or “the OA”).
2. The starting point is the judgment<sup>1</sup> of Humphreys J. in proceedings entitled “*Petition No. 4905P in the matter of a petition for adjudication and bankruptcy between Emmet Kilduff, Petitioning Creditor, and KJ, Debtor*”, in which he adjudicated Mr K.J. bankrupt. The date of adjudication is 22 November 2021.
3. In the normal course pursuant to the provisions of s.85(1) of the Bankruptcy Act 1988 (‘the 1988 Act’) Mr K.J. would be discharged from bankruptcy on the first anniversary of his adjudication. However, as explored in more detail below, the 1988 Act permits an application to be made by the OA to extend the period of an individual’s bankruptcy.
4. The question of the extension of Mr K.J.’s bankruptcy is the central issue in this appeal. Throughout these proceedings Mr K.J. has represented himself.

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<sup>1</sup> [2021] IEHC 709

## **Background**

5. On 11 November 2022 the OA issued a Notice of Motion seeking an order upholding the OA's objection to the discharge of Mr K.J. from bankruptcy pursuant to s.85A(1) of the 1988 Act. Orders were also sought;

(a) pursuant to s.85A(3) of the 1988 Act, that Mr K.J.'s period of bankruptcy not be discharged until after the conclusion of an investigation in relation to his assets. An interim extension order was granted by Sanfey J. on 21 November 2022 so as to prevent any automatic discharge from bankruptcy.

(b) an order extending his bankruptcy period from the date of his adjudication to a period to be determined by the court pursuant to s.85A(4) of the 1988 Act on the basis that Mr K.J. had failed to cooperate with the OA in the realisation of his assets and failed to disclose information to the OA in relation to any income and assets which could be realised for the benefit of creditors.

6. On 18 November 2022, Mr K.J. issued a motion, also returnable on 21 November 2022, seeking various orders and reliefs relating to discovery, particularly documentation allegedly exhibited by the OA in his affidavits as it related to family law proceedings involving Mr K.J. and his former spouse. In addition, he also sought his discharge from bankruptcy and certain other orders including an order granting him permission to pursue certain litigation without recourse to the OA.

7. Arising from Mr K.J.'s reference to in camera proceedings, the OA then issued a motion on 16 January 2023 seeking an order pursuant to s.134 of the 1988 Act that his application against Mr K.J. proceed in private and also, pursuant to s.40(8) of the Civil

Liability and Courts Act 2004 and/or the inherent jurisdiction of the court, seeking a direction of disclosure of certain documentation in relation to these family law proceedings, which the OA contended were relevant to the administration of Mr K.J.'s estate in bankruptcy.

**Order of Sanfey J.**

8. By Order dated 30 January 2023 Sanfey J. granted an order pursuant to s.134 of the 1988 Act and directed, subject to certain limitations requested by Mr K.J.'s former spouse, the release of certain documentation to the OA.

9. He further directed that all other outstanding issues would be heard together.

**Hearing**

10. By the time of the substantive hearing, Sanfey J. had initially reduced the issues for adjudication to two:

- (a) The application of the OA for an order extending Mr K.J.'s bankruptcy pursuant to s.85A of the 1988 Act and
- (b) The motion issued by Mr K.J. as set out at para. 6 above.

11. These two issues were then refined further as it is clear from the judgment that the motion brought by Mr K.J. did not proceed and Sanfey J. was satisfied that no orders were required to be made on foot of it. Accordingly, the only issue requiring his adjudication was the reliefs sought by the OA pursuant to s.85A of the 1988 Act.

**S.85A of the 1988 Act**

**12.** The relevant portions of s.85A of the 1988 Act are as follows:

*“85A.-(1) The Official Assignee, the trustee in bankruptcy or a creditor of the bankrupt may, prior to the discharge of a bankrupt pursuant to section 85, apply to the Court to object to the discharge of a bankrupt from bankruptcy in accordance with section 85 where the Official Assignee, the trustee in bankruptcy or the creditor concerned believes that the bankrupt has –*

- (a) failed to cooperate with the Official Assignee in 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.”*

**13.** The section entitling the trial judge to make the Interim Extension Order – s.85A(3) is as follows:

*“Where it appears to the Court that the making of an Order pursuant to subsection (4) may be justified, the Court may make an order that the matters complained of by the applicant under subsection (1) be further investigated and pending the making of a determination of the application the bankruptcy shall not stand discharged by virtue of section 85.”*

**14.** The criteria for making the Order within s.85A(3) and also within s.85A(4) require the Court to be satisfied that the bankrupt has:

*“(a) failed to co-operate with the Official Assignee in 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.”*

and in such circumstances:

*“The Court may, where it considers just to do so, order that, in place of the discharge provided for in section 85, the bankruptcy shall stand discharged until such later date*

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*(i) being not later than the 8th anniversary of the date of the making of the adjudication order, as the Court considers just, or,*

*(ii) being not later than the 15th anniversary of the date of the making of the adjudication order, which the Court considers just in view of the seriousness of the failure to co-operate referred to in paragraph (a) or the extent to which income or assets referred to in paragraph (a) were hidden or not disclosed, or both, as the case may be.”*

**15.** Finally sub section (5) confirms:

*“Where the Court has made an order under subsection (4), no further application may be made under subsection (1).”*

### **Issues Before the High Court**

**16.** Following a review of the extensive documentation grounding the OA’s complaints as to why Mr K.J.’s period as a bankrupt ought to be extended, Sanfey J. considered that the issues could be narrowed to two. They are;

(a) A property in Thailand, and

- (b) Issues potentially affecting Mr K.J. arising from the death of a parent in October 2022, concerning the details of that estate and his entitlement to any inheritance.

**17.** The issues concerning the estate of Mr K.J.'s late parent, which I refer to as 'the inheritance' or 'the inheritance issue' are relatively straightforward and in my view had been largely clarified by the time the appeal came before this Court. The principal issue concerns the Thai property.

***The Thai property***

**18.** In his judgment Sanfey J. initially considered the documentation furnished by Mr K.J. after his bankruptcy adjudication. In the normal course Mr K.J. was obliged to submit a Statement of Affairs and Statement of Personal Information.<sup>2</sup> The trial judge observes<sup>3</sup> that its most notable feature is Mr K.J.'s assertion that he holds a one eighth share in what he describes as a timeshare rental property in Thailand. Within that documentation he estimates its current value at €60,000, with a mortgage of €80,000 and therefore having a negative estimated value of €20,000. He then describes this property, which is specifically identified, and states it is not rented and furthermore is unoccupied and derelict.

**19.** The judgment records that following delivery of this Statement of Affairs there is then extensive correspondence between the OA (and later his solicitors Clark Hill) and Mr K.J. seeking clarification regarding his bankruptcy estate with a particular focus on this Thai property.

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<sup>2</sup> S. 19(c) of the 1988 Act

<sup>3</sup> Para. 15 of the judgment

20. At para. 16 of his judgment Sanfey J. points to an affidavit sworn by the OA in which he exhibits an email from Mr K.J. who attributes a value of some €700,000 to the Thai property. The OA also exhibits internet searches made in 2022 by his office which show the Thai property listed for rental at rates between US\$775-US\$1,605 per night. Within the same affidavit a company search instigated by the OA reveals that a company Ka-Nit Limited ('Ka-Nit'), appears to be the owner of this Thai property and that it has only one director, Mr K.J., appointed on 23 January 2008. Moreover, it is stated that the company's documentation requires that *"one director shall sign and affix the company's seal"*. It also discloses that 11,698 shares held by Mr K.J. in Ka-Nit were in turn transferred to a company incorporated in the British Virgin Islands ("*BVI*") on 10 March 2021. Understandably, this information resulted in further queries of Mr K.J. from Clark Hill.

21. Arising from these issues Sanfey J. stated at para. 32:

*"In the hearing before this Court, the bankrupt did indeed concede that there were errors and inconsistencies in the provision by him of information to the OA. He emphasised that he did not have the benefit of legal advice in this regard, and candidly and rather disarmingly acknowledged that he had "royally messed up" in relation to some issues. He insisted however that he had done his best to cooperate, a task which he contended was made more difficult by his inability to retrieve documentation in relation to his affairs, which he attributed to confiscation of records by his landlord."*

22. It is fair to say that submissions of a similar type were advanced by Mr K.J. before this court.



**23.** At paras. 41- 46 Sanfey J. summarises his current understanding with regard to the Thai property. At para. 41 he initially sets out what the OA has discovered arising from his enquiries and this appears to disclose:

- (i) that Mr K.J. has held title deeds to the Thai property since December 2019,
- (ii) that Ka-Nit is its owner with Mr K.J. listed as the sole director of that company;
- (iii) contrary to the position in his Statement of Affairs and Statement of Personal Information, Mr K.J. has never held a mortgage over his interest in the Thai property and has provided differing valuations in respect of it, but no supporting documentation in respect of these claims;
- (iv) that Mr K.J.'s previous conflicting responses are errors which he asserts have been made under extreme duress and due to litigation fatigue.

**24.** At para. 42 Sanfey J. makes reference to a letter from Mr K.J. to the OA dated 9 January 2023 where he confirmed the location of the Thai property and that within this specific geographic location ownership of such property is not permitted by foreigners, there are no mortgages available to purchase property in that part of Thailand and title is extremely difficult to prove. He does however confirm that his former wife handed over proof of ownership documentation to him in December 2019 (para. 43).

**25.** Within the same paragraph Sanfey J. considers an email by Mr K.J. of 15 April 2022 to the OA where he confirms that, following this handover of this documentation to the Thai property, he then travelled to inspect it. He stated that he found it in a derelict state and was about to be seized by the Thai government. He then confirms that, in order to be rid of it, he sold his interest in the property for €10,000. He appears to confirm that, as a part of this transaction he procured a verbal understanding confirming his entitlement to a two-week

annual timeshare arrangement for his ongoing use of the property. Arising from this unusual contract, Sanfey J. found at para. 44:

*“44. The bankrupt is adamant that he is no longer the owner of the property in Thailand, and that he has disposed of his interest for €10,000 in 2020. He has not advanced any explanation as to why his statement of affairs suggested that he had an interest in the property which was the subject to a mortgage. He is unable to explain why he remains the sole director of the company, in circumstances where the company search suggests that the company cannot pass resolutions without an approval of “the majority of the attending directors”. He states that he has “no paperwork pertaining to the property as there was very little to begin with...and anything I had was seized, along with my computers, by my landlord during my eviction.”*”

**26.** In the next paragraph, the trial judge doubts Mr K.J.’s contention that he sold his one-eighth share in the company and received €10,000 for this share. The Court also states that it is not apparent from the company search of Ka-Nit that Mr K.J.’s entitlement was only to a one-eighth share in the property. The court then summarises its understanding at para. 46:

*“46. If this information is correct – and it was not contradicted in any respect by the bankrupt – it is totally inconsistent with a one-eighth share being owned by the bankrupt. No explanation has been given by the bankrupt for this. Given that, on the face of the information available, Mr [K.J.] appears to be the sole director of the company, it is suggested by counsel for the OA that the bankrupt remains in control of Ka-Nit Limited, and thus the Thai property, which promotional material would suggest has been restored to prime condition and is available for rent at a rate of \$775-\$1,605 per night’s stay.”*

27. Arising from these conclusions, the High Court noted that the information regarding Mr K.J.'s estate has been largely provided to the Court, arising from investigations and searches conducted by the OA, rather than any information furnished by the bankrupt.

28. In considering the criteria to be considered within s. 85 A (3) and (4) – failing to cooperate with the Official Assignee in the realisation of the assets of the bankrupt and hiding or failing to disclose assets at para. 28 of his judgment Sanfey J. cites the judgments of Costello J. in *In Re Sean Dunne* [2018] IEHC 813 ('Dunne') and *In Re Thomas McFeely (a bankrupt)* [2016] IEHC 299 ('McFeely'). In *McFeely* she stated as follows:

*“6. Cooperation, first and foremost by the bankrupt, but by others also, with the Official Assignee is absolutely essential to the operation of the bankruptcy process. Quite simply, it cannot operate without the full cooperation of bankrupts. They have the information in relation to their estates and normally have possession of both the property and the relevant documentation or the relevant information and/or documentation is in the possession of their accountant, solicitor or other agents. It is essential to the integrity of the bankruptcy regime that the various obligations imposed by the Act on each bankrupt personally are observed and complied with fully and to the best of their respective abilities. There is no such thing as a minimum threshold of cooperation. It is for this reason that the Oireachtas has conferred a power upon the court to extend the period of bankruptcy and not to permit the automatic discharge from bankruptcy after the expiration of three (and now one) years from the date of adjudication where the court is satisfied that there has been either non-cooperation by the bankrupt with the Official Assignee and in the conduct of the bankruptcy or there has been a failure to disclose assets or an attempt to hide assets from the Official Assignee”.*

**29.** Arising from that quotation, Sanfey J. continues within his judgment:

*“29. In practical terms, a failure to cooperate with the Official Assignee has a serious adverse effect on the administration of the individual bankruptcy estate, and on the bankruptcy regime in general. The staff of the ISI, already hard pressed to cope with the vastly increased numbers of bankruptcies in recent years, has to waste time and resources on investigating issues in respect of which full disclosure should be made by individual bankrupts in a given case. They may have to engage legal professionals or others to assist them in getting to the bottom of issues which have been rendered opaque by the failure of bankrupts to cooperate. Any costs or expense in this regard will almost invariably be borne by the creditors, in that professional fees discharged from the estate of a given bankrupt depletes the pool of assets which should be available for distribution to the creditors of that estate.”*

**30.** Sanfey J. then cites *Dunne* as follows;

*“A bankrupt cannot unilaterally decide whether an asset should be disclosed to the Official Assignee. A bankrupt’s statutory obligations and liabilities cannot be limited by his alleged subjective belief as to the extent of those obligations and liabilities. They are as laid out in statute and as interpreted by the courts. Not only may a bankrupt not be the arbiter of which obligations he is required to comply with, he may not decide the extent of that co-operation or engagement. He cannot decide to disclose some information about some assets and unilaterally decide that this satisfies his obligations.”*

**31.** In a comprehensive analysis by Sanfey J. of the documentation and submissions made to the Court, he considered that the Statement of Affairs contained errors with regard to the Thai property; both as regards to Mr K.J.’s interest in it and to the fact that his interest was in negative equity owing to a mortgage, which appeared to fly in the face of Mr K.J.’s later assertions that within the Thai jurisdiction such a mortgage is not open to persons he describes as “foreigners”.

**32.** Arising from this the High Court concludes:

*“51. It is difficult to avoid the conclusion, on reviewing the correspondence with the bankrupt, that the bankrupt has avoided any kind of comprehensive and truthful review of the facts in relation to the Thai property, and has simply answered queries on an ad hoc basis, not with a view to imparting useful information, but in order to obfuscate the situation and make things less clear. The bankrupt has made little or no attempt to retrieve documentation which would clarify the position. That task has been left entirely up to the OA, who has had to devote time and resources to investigate the position when the bankrupt should have been in a position to clarify matters.”*

**33.** Sanfey J. goes on to consider what he describes as Mr K.J.’s ‘personal plight’ (para. 55) but emphasises that his response to the two issues under consideration “*do not constitute anything like adequate cooperation and disclosure*”.<sup>4</sup>

**34.** Sanfey J. accepted the OA’s submission that the Court, in determining whether it would grant Orders for an extension of bankruptcy, should focus upon s.85A(4)(i) of the

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<sup>4</sup> Para. 58

1988 Act that is for an Order of Extension of Bankruptcy up to the 8<sup>th</sup> anniversary of the adjudication date.

35. Within the criteria set out in s. 85A(4), he described Mr K.J.’s non-co-operation as ‘serious’ and in doing so emphasised that the duty to assist the OA is an important one. He noted that in this case it has been the OA “*who has had to devote time and resources to investigate the position when the bankrupt should have been in a position to clarify matters*”.<sup>5</sup>

36. Sanfey J. made an order pursuant to s.85A(4) of the 1988 Act, and in place of Mr K.J.’s discharge from bankruptcy as provided for in s.85 of the 1988 Act he held;

*“59. I regard the bankrupt’s non-cooperation and lack of disclosure as serious. I do not however regard it as trending towards the upper end of the eight-year spectrum. As against that, the integrity of the bankruptcy system requires that serious breaches of bankrupt’s duties attract a serious sanction. I consider that an extension to a mid-point of the maximum 7-year extension permitted under s.85A (4) (i) is appropriate in all the circumstances. I will therefore order that the bankruptcy shall stand discharged on 23 May 2026.”*

37. It is from this order that Mr K.J. appeals.

### **Application to adduce new evidence before the Court of Appeal**

38. On 16 June 2023, upon application by the OA, Costello J. granted leave to admit additional evidence (comprising nine specific documents relating primarily to the Thai

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<sup>5</sup> Para. 51

property and one relating to the inheritance issue). Mr K.J. did not appear before Costello J. but confirmed to this Court that her adjudication is the subject of an appeal to the Supreme Court. He did not seek to adjourn the hearing before this Court pending a ruling from the Supreme Court on his application for leave to appeal. The documents comprising the additional evidence ('the new evidence') were considered by this Court.

**39.** In respect of the Thai property, within para. 20 above, reference is made to shares in Ka-Nit which were in turn transferred to a company incorporated in the BVI on 10 March 2021. That company is called Ming Hin and the new evidence discloses that Ming Hin had, as of 30 September 2021, a sole Director namely Mr K.J. A company search report dated 6 February 2023 sets out its registered agent as Trident Trust Company (BVI) Limited ('Trident'), which had been incorporated on 5 January 2021. It further states that Ming Hin appears to have been recently struck off for non-payment of an annual fee. In submissions to this Court, Mr K.J. confirmed all of these matters as being factually correct.

### **The Appeal**

**40.** This Court followed the practice of the High Court in directing that this matter be heard in camera given that references were made to certain family law matters involving Mr K.J.

**41.** Within his Notice of Appeal the appellant raised a number of issues of a general nature with regard to the denial of his constitutional and other rights which were not pursued by him in oral submissions to the Court. He also sought, as he had in the High Court, to have his initial bankruptcy adjudication before Humphreys J. set aside. Any such application was clearly out of time and his appeal did not proceed on that ground. Within his Notice of

Appeal he also raised queries with regard to his entitlement to legal aid and submits that its absence leaves him at a considerable disadvantage.

42. The OA filed a cross appeal in which he invites this Court to exercise its discretion to further extend the period of extension of Mr K.J.'s bankruptcy. Elements of this cross appeal were in part overtaken by events arising within this Appeal with regard to the Thai property.

43. In considering the parameters of S.85A(4)(i) of the 1988 Act this Court adopted the issues highlighted by Sanfey J. in respect of Mr K.J.'s inheritance and his interest in the Thai property. This Court placed greater emphasis upon the outstanding issues surrounding the Thai property. The inheritance issue was, as in the High Court, of secondary importance and, in my view, has been largely resolved. I will deal with it first and then consider the Thai property.

### **Inheritance**

44. The OA was aware that Mr K.J.'s late parent died in October 2022, that he was a potential beneficiary of that estate. The OA then sought additional information. Initially, Mr K.J. stated he was unaware of the precise nature of his late parent's assets and who was to administer the estate. Before this Court, Mr K.J. explained that, as one of the nominated executors, he thought that was a role separate and distinct from the person administering an estate and had answered the OA's questions accordingly.

45. However, prior to the hearing of this Appeal, in my view the OA had been able to obtain appropriate clarification from the solicitors acting for the deceased's estate. Mr K.J. before this Court gave an indication of the assets within the estate and his entitlement to



them which appeared to tally with the OA's indicative estimate of his understanding of Mr K.J.'s potential entitlements.

46. I understand that as yet there is no grant of probate, which might clarify matters further, but it does now appear that the OA has a clear picture of this deceased's estate. Whilst the OA made certain complaints regarding dissembling by Mr K.J. in the High Court it does appear that matters have now been clarified.

### **The Thai Property**

47. Counsel for the OA sought to highlight Mr K.J.'s inconsistencies in the information he had furnished to the OA regarding the Thai property within the correspondence exhibited before the High Court, portions of the transcript and selected passages within Sanfey J.'s judgment. Within these areas, in seeking to show that Mr K.J. had changed his position regarding this property, the OA highlighted the following;

(A) In an email of 1 February 2022 addressed to Mr Larkin (the OA) Mr K.J. stated:

*“The timeshare in Thailand is owned by a Thai company where the majority of shares are owned by private Thai individuals whom I do not know, have never met and I have no way of contacting. It was an ill-advised investment...The property has had no income for about 8 years...I understand that the company which owns the villa is heavily in debt so I am not keen to claim any interest in that – just to disclose it to you in full disclosure”.*

(B) In a lengthy letter to Mr Kelleher of Clark Hill, solicitors for the OA, dated 30 November 2022, Mr K.J. states the following:

*“I again iterate (reiterate) that it is illegal for foreigners to own property in Thailand. It is also illegal for foreigners to have a controlling interests in a Thai*

*company. The property in question was owned by a group of Thai people I did not know and have never met. Effectively, they granted my family “access” to their property in return for a cash sum. The only “asset” ever held was a small minority shareholding in that company.”*

(C) In a letter to Mr Kelleher of 9 January 2023 Mr K.J. seeks to clarify the position further when he states:

*“For the better understanding of your client, it is illegal for non-Thai nationals to own property in Thailand. What I was provided with was a small blue rental book and a document claiming that I owned a one-eighth share in the company called Ka-Nit Ltd. That company in turn owned the land at...[name and location inserted]. That company was seven-eighths owned by a group of Thai nationals whom I do not know and have never met as is the norm in Thailand for foreigners.”*

Further in the same letter he states:

*“Manit Law<sup>6</sup> spoke to me in mid-2020 to say he was able to transfer ownership of my one-seventh share in the company to an investor and that I would receive €10,000. I mailed him the blue book and I was given to understand (understand) that I would also be permitted to use the property for a couple of weeks each year subject to the house being repaired by then and vacant on the dates I wanted...I felt that I had no choice but to agree to these terms and I declared my sale price income to your client as €10,000 in my original Statement of Affairs.”*

And later:

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<sup>6</sup> Described within this letter as a local solicitor.

*“I have no paperwork pertaining to the property as there was very little to begin with”.*

(D) In his submissions before Sanfey J. at the hearing on 23 January 2023, Mr K.J., after conceding that, he may not have been in a position to or had failed to answer the OA’s queries as best he could, but nevertheless considered that he had been honest and truthful in giving full answers to questions. He went on to state [p.39 of the Transcript, Line 27]:

*“I also apologise that I did not resign as a director from 2007 Thailand company. However, you know, I feel that the exhibit frankly that they got – now contrary to the assertion that they appear to be making actually prove that I don’t own that house albeit that the original company that owns it may remain still on record and I am a director of it. I don’t know if that company still even owns the house. I would imagine that whoever bought the property would have transferred the assets out of the old company to ensure that there are no skeletons in the – in the closet – and that again it is not something that I can follow anything other than an idea of. But I did not realise that my duty to resign as a director also included areas outside this jurisdiction and I should have been more diligent and I should have checked was I still a director of that and I apologise if that is the case.”*

(E) At p.44 of the transcript Mr K.J. states the following (referencing a conversation which he described he had with an individual not identified upon the recommendation of a neighbour in Thailand where he said):

*“...Oh, the best thing to do would be to get out of it because the creditors are going to come after you because now you have received the property from the Irish Courts. It is technically yours and you are responsible for all the debts that*

*your ex-wife has run up on it and he said I can get you somebody that might take it off your hands at a fire sale price and I would recommend you to do that. I said, how much? He said I can get you €10,000 and I'll see – I'll see if he will give you a couple of weeks a year where you can go in and use it, bring your kids over or whatever. But that will be dependent on whether first of all he does the house up or instead of demolishing it and secondly whether or not he had paying tenants in it at the time. ... I did my best to explain all that to the Official Assignee and I apologise for not having done so properly”.*

**48.** Subsequent to hearing Mr. K.J. on the appeal the matters of concern to the OA extended beyond its cross appeal and the additional evidence it was permitted to adduce before the Court. It arose from Mr K.J.’s submissions, where he made two specific assertions which appeared to contradict or certainly vary the information he had previously furnished, within written correspondence to the OA and in submissions to the High Court with regard to the Thai property.

**49.** In respect of both matters counsel for the OA stated that this information had not been disclosed previously and that both she and her client, the OA, were learning of it for the first time before this Court. Mr K.J. disclosed:

- (i) In respect of the Thai property he had requested that the Managing Agent, Trident, ensure that his interest was held by the BVI company Ming Hin on trust for his children.<sup>7</sup> He stated he has no documentation that might have assisted the court in ascertaining the position but further confirmed that he had a large

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<sup>7</sup> I understand the children are minors, although there is a suggestion one may now be 18.

bundle of documentation from Trident at his premises in Ireland which he had neither opened nor considered.

- (ii) As to the purported sale of his interest in the same property for €10,000 - in a somewhat convoluted explanation he stated that he had initially paid the €10,000 in order to ensure the transfer of the shareholding from Ka-Nit to Ming Hin, as to do so required the discharge of some form of compliance regulation required by Thai authorities (which is what the money was used for) or to make it appear that certain regulations had been complied with. Once the transfer had been completed the €10,000 was then refunded to him. Whatever the nuances of this transaction, which were frankly difficult to follow, it is in my view beyond doubt that Mr K.J. was no longer claiming that the property had been sold by him, or any company in which he had an interest, for €10,000, or at all.

**50.** Mr K.J. stated that he had been forthright in his dealings with the OA as he personally was not the owner of the Thai property but rather it was owned by a company. He stated that he had no intention of furnishing improper information, but his lack of legal representation meant that he did not properly appreciate the legal significance of the documentation he had received and the questions that were raised with regard to the Thai property.

**51.** I must also note that Mr K.J. stated to this Court that, whilst residing in Hong Kong and elsewhere, he had dealt with properties in Hong Kong, Australia and Singapore and that through these endeavours he states that, at one point, he had amassed significant financial assets.

**52.** In such circumstances it is difficult to envisage how Mr K.J., having dealt with properties in a number of countries, would be unaware of the concept of a corporate ownership of property in circumstances which clearly existed with regard to the Thai property, or to explain his interest in it. The question as to who owned the Thai property is not a complex one and when pressed and more importantly provided with relevant documentation by the OA Mr K.J. was able to confirm the correct position, albeit with ongoing subtle but important variations.

**53.** In any event, and in fairness to Mr K.J., he did not seek to disavow the OA's contention that what he had now told this Court differed from the information he had previously furnished. However, he again explained this by reason of his lack of legal representation and his failure to comprehend the matters he was now called upon to consider.

**54.** Of course the issue here is not seeking to arrive at a definitive conclusion as to the ownership of the Thai property but, as s.85A(4) requires, to examine whether Mr K.J. has failed to co-operate with the OA in his administration of his estate or has hidden or failed to disclose his assets.

**55.** Arising from this new disclosure and his reversal of his previous position regarding his sale of the Thai property, counsel for the OA confirmed her instructions that, as well as the reliefs sought within his cross-appeal for an additional extension of Mr K.J.'s bankruptcy within s.85A(4)(b)(i) of the 1988 Act of up to 8 years, the OA was now expanding the cross appeal to seek orders pursuant to s.85A(4)(b)(ii) for an extension of up to 15 years.

## **Discussion and Conclusions**

**56.** It is clear that Mr K.J. was, at best, economical with the truth in disclosing the true position with regard to the Thai property. It began with an assertion of his holding a one eighth share, to his having sold it for €10,000 with a time-share arrangement, to his being the principal shareholder in Ka-Nit who owned the property, to the transfer of that shareholding to a BVI registered company Ming Hin. It is noteworthy, in my view, that he was appointed as sole director of that company in September 2021 prior to his adjudication as a bankrupt in November of the same year. Finally, before this Court, he asserts for the first time, but without any supporting documentation, that Ming Hin owns the property on trust for his children.

**57.** I agree with Sanfey J. that the salient features as to Mr K.J.'s ownership of the Thai property were discovered by the OA upon its own enquiries, save for his submission to this Court.

**58.** As has been clearly established by Costello J. in *McFeely* and *Dunne* it is not for the bankrupt to decide which information (if any) he should disclose to the OA or, in this case, to engage upon a process of obfuscation with regard to the true ownership of the Thai property. As these cases highlight and as reinforced by Sanfey J. in the High Court, the administration of any estate in bankruptcy is to ultimately seek to benefit creditors.

**59.** Before the High Court and on appeal Mr K.J. had submitted that, had he been in a position to be legally represented, his position would be considerably improved and he could have dealt with the bankruptcy in a more straightforward fashion.

**60.** It is an unfortunate truism that, within the bankruptcy process, a number of persons adjudicated bankrupt are not in a financial position to obtain legal representation. However, the basic obligation on someone who is adjudicated bankrupt is to provide complete and honest information to the OA. Legal representation should not be necessary in order for a bankrupt to comply with that basic obligation. If it were only a question of the completeness of the information provided, the Court might have some sympathy for Mr. K.J. as a litigant in person. Unfortunately, in this case that is not the only problem as there are serious issues with the truthfulness of the information provided and the manner in which Mr. K.J.'s account repeatedly changed when information became available to the OA, often through other sources.

**61.** Mr K.J. failed to deal with one straightforward but important question - what is his interest in the Thai property. In my view the facts of this case, as clearly set out within Sanfey J.'s judgment, do not suggest that Mr K.J. failed to appreciate any legal complexities but rather he chose to be, at best, circumspect in his information to the OA and, with his transfer of his interest in the Thai property to a BVI registered company, had sought to potentially avoid discovery of this asset and his interest in it. Again, the existence of Ming Hin was discovered by enquiries instigated by the OA.

**62.** With regard to this single Thai property clearly Mr K.J. is best placed to furnish details as to its ownership. Absent that information, the OA has been obliged to expend additional time and effort in administering what should have been a straightforward bankruptcy estate.

**63.** Whilst events in the High Court were largely characterised by Mr K.J. altering his position as the OA furnished new information to him, on appeal his submissions as to the



ownership of the Thai property were varied, not on the basis of any information furnished by Mr K.J., the OA or anyone else, but because he advanced, without recourse to any documentation, a new variation as to the ownership of this property by the imposition of a trust.

**64.** There was a suggestion that additional answers might lie in documentation within Mr K.J.'s possession. At the conclusion of this appeal, Mr K.J. agreed to give an undertaking that this documentation would be passed to the OA together with any ongoing information that he received with regard to his late parent's estate and its ongoing administration.

**65.** In my view the evidence is clear that Mr K.J. has sought to obfuscate his interest in the Thai property. Indeed, the true ownership position of the Thai property remains unclear and it remains possible that further information may yet be disclosed or discovered that would alter matters yet again.

**66.** I am entirely satisfied that Sanfey J. carefully considered the evidence and was very assiduous and fair in examining Mr K.J.'s position. In doing so he was required to deal with a considerable volume of documentation in order to helpfully distil the issues that he then considered within his judgment.

**67.** Sanfey J.'s expertise in this area is well-known. In my view in considering both *McFeely* and *Dunne*, his comprehensive analysis of the affidavits and the submissions before the Court, he was correct in finding that the evidence disclosed that Mr K.J. had breached both the criteria within s. 85A(4) as to the failure to properly cooperate with the OA and his failure to properly disclose an asset to the OA which could be realised for the benefit of Mr

K.J.'s creditors. In doing so I agree that the time period he nominated for the extension of Mr K.J.'s bankruptcy was entirely appropriate to the position as known by him at that time.

**68.** Before this court Mr. K.J. has attempted to vary his submission concerning ownership of the Thai property and he has indicated that he is in possession of further documentation which he has not made available to the OA.

**69.** Counsel for the OA was very clear as to the matters that it learned for the first time before this Court and in the new documentation furnished to it. Of importance is the admission that there never was a sale of any interest held by Mr K.J. in the Thai property for €10,000. The position set out by Mr K.J. within his evidence to the High Court, as reflected in the detailed judgment of Sanfey J., was simply substituted on appeal by an unsubstantiated variation on the present ownership of the Thai property. I do not accept that this occurred due to any misunderstanding of any legal issue surrounding its ownership by Mr K.J. Nor can there be any excuse for withholding documentation.

**70.** Mr K.J. was courteous and polite in conducting his appeal. He clearly stated before this Court that he wished to retire to the Thai property, live in it and to raise his children there. He further stated that in his view the monies available within his bankruptcy estate, absent the Thai property, should be sufficient for the OA's purposes in discharging his indebtedness. Whether or not this is so, is not a matter for Mr. K.J., as a person adjudicated bankrupt, to make that decision. In my view that sentiment informs much of what has occurred regarding Mr K.J.'s submissions regarding this asset.

**71.** Upon his adjudication as a bankrupt all of his assets vested in the OA who is required to administer the estate in order to seek their realisation for the benefit of Mr K.J.'s creditors. As *McFeely* and *Dunne* make entirely clear, it is not for Mr K.J. to determine what assets he will retain.

**72.** The same applies to his assertion (made for the first time before this Court) that Mr K.J.'s interest in the Thai property was transferred to the BVI company, Ming Hin, on his specific directions that it is to be held on trust for his children. It is not known whether that is aspirational on the part of Mr K.J., in the sense that it is what he would wish to happen, or whether there is documentation that reflects the existence of a trust (which was not put before the Court) but, again, it reflects an entirely different picture than that previously understood by the OA and indeed Sanfey J.

**73.** The question for this Court, within the OA's cross appeal and its submission to this Court, is whether these additional matters (I do not consider any issue concerning his inheritance would warrant any further extension of his period of bankruptcy) necessitate the extension of his bankruptcy within s.85A(4)(b)(i) of the 1988 Act, or as now sought by the OA s.85A(4)(b)(ii) for a period of up to 15 years.

**74.** It is clear that the criteria within s. 85A(4) have been satisfied as Mr K.J. has clearly failed to co-operate with the OA and has sought to hide or not properly disclose assets and has not provided all potentially relevant documentation. The belated recognition of his shareholding in Ming Hin and his submission, made for the first time before this Court, of the imposition of a trust in favour of his children, without supporting documentation, again

highlights what can only be his ongoing attempts at obfuscation of all issues concerning the Thai property.

**75.** Whilst I acknowledge the importance of maintaining the integrity of the bankruptcy system, the new breaches of s.85 A(4) by Mr K.J. relate to the same issue that has bedevilled the administration of this estate; issues related to the Thai property. Mr K.J., pursuant to the Order of Sanfey J., has had his period of bankruptcy extended for a period of 4 ½ years from his initial adjudication in November 2021. Whilst in my view the additional matters that Mr K.J. only revealed before this Court must be noted and reflected within this appeal, I am of the view that they are not sufficient to invoke s.85A(4)(b)(ii) of the 1988 Act. Accordingly, in such circumstances this Court will make an Order pursuant to s.85(A)(4)(i) and order a further extension of 18 months (from 23 May 2026 the date nominated by Sanfey J.) and order that the bankrupt shall accordingly now stand discharged on 23 November 2027.

***Outcome of the appeal***

**76.** This appeal is dismissed. In respect of the cross appeal this Court orders that the bankruptcy of the appellant shall stand discharged on 23 November 2027.

***Costs***

**77.** As the OA has been entirely successful my provisional view is that he should be entitled to the costs of the appeal.

**78.** Within his cross appeal the OA initially sought an extension of Mr K.J.'s bankruptcy within s.85(A)(4)(i) and at the hearing, for the reasons set out within this judgment, then

sought an additional time extension pursuant to s.85(A)(4)(ii) of the 1988 Act. This later amendment to the OA's cross appeal arose as a direct consequence of Mr K.J.'s additional submissions which were at variance with those made before the High Court. However, in extending Mr K.J.'s period of bankruptcy, this Court ultimately only invoked s.85(A)(4)(i) of the 1988 Act. As the OA was unsuccessful in this portion of his cross appeal he is limited to 80% of his costs of the cross appeal.

**79.** All of the costs awarded to the OA are to be costs in the bankruptcy of Mr K.J.

**80.** Should the appellant wish to contest this order he may do so by filing written legal submissions (not to exceed 1,000 words) within 14 days of the date hereof and the respondent may reply by written legal submissions (also not to exceed 1,000 words) within 14 days thereafter. In default of any such notification the proposed orders will be made.

**81.** As this judgment is being delivered electronically Whelan & Butler JJ. have indicated their agreement with it and the Orders I have proposed.