

**THE HIGH COURT**

BANKRUPTCY

**IN THE MATTER OF SECTION 85 OF THE BANKRUPTCY ACT, 1988  
(AS AMENDED)**

**AND**

**IN THE MATTER OF JOHN HOEY, A BANKRUPT NO. 3512**

**BETWEEN**

**CHRISTOPHER D. LEHANE (AS OFFICIAL ASSIGNEE IN BANKRUPTCY IN THE ESTATE  
OF JOHN HOEY, A BANKRUPT)**

**APPLICANT**

**AND**

**JOHN HOEY**

**RESPONDENT**

**JUDGMENT of Ms. Justice Pilkington delivered on the 8th day of April, 2020**

1. This application, pursuant to s. 85A of the Bankruptcy Act, 1988 (as amended) (the "1988 Act") seeks an extension of the respondent's period of bankruptcy for a period of ten years, or such other period as this Honourable Court deems appropriate, based upon the two criteria within that section being:-

- (a) a failure to cooperate with the Official Assignee ("OA") in the realisation of the assets of the bankrupt;
- (b) hiding from or failing to disclose to the OA income or assets which could be realised for the benefit of the creditors of the bankrupt.

2. After the issue of the s.85A application and within that application Mr. Hoey, the respondent, issued a motion on the 11th day of April, 2018 seeking an order to cross-examine the OA, pursuant to RSC Order 40, r. 1.

3. Order 40, rule 1 of the Rules of the Superior Courts, simply states that:-

"Upon any petition, motion, or other application, evidence may be given by affidavit, but the Court may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit."

4. Accordingly, whilst that provides the genesis for this application, it gives no guidance as to how, in circumstances such as this, the cross-examination of the OA is to take place. However the caselaw, whilst limited, is instructive.

5. That motion, seeking reliefs pursuant to RSC 40 r.1 was heard by Costello J. who delivered judgment in respect of this discrete issue on 15th day of October, 2018.

6. In granting the order sought Costello J. quoted from the Court of Appeal judgment in *Sean Dunne, A Bankrupt* [2017] IECA 304, where Peart J. held as follows:-

*"The OA has given evidence of his belief or opinion which the High Court will be invited to take into account as relevant evidence and draw inferences adverse to the applicant. This may all culminate in findings which will have implications for the*

*duration of the bankruptcy and, for that matter, the bankrupt's ability to exit the bankruptcy process. As this evidence cannot effectively be challenged absent the right of cross-examination, in my view he ought as a matter of procedural fairness be entitled to cross-examine the OA in respect of basis for his beliefs or opinions."*

7. Costello J. continued:-

"However, an application brought pursuant to s. 85A is not a lis inter partes. It is not an invitation to a bankrupt to criticise the conduct of the bankruptcy and the administration of the estate by the Official Assignee and his officials. It is not concerned with the evidence which was presented before the court on previous applications during the course of the administration of the bankruptcy estate, such as applications for orders pursuant to either s. 21 or s. 28 of the Act.

In para. 5 of his affidavit sworn on the 11th April, 2018 to ground the application seeking to cross examine the Official Assignee, the bankrupt listed fourteen matters in respect of which he said cross examination of the Official Assignee was necessary. In fact, the matters set out are not in fact matters upon which the Official Assignee can be cross examined in the s. 85A motion which is yet to be heard by the court. Peart J. made it crystal clear that the cross examination of the Official Assignee which a bankrupt is permitted to conduct on the basis of a bankrupt's entitlement to fair procedures relates to the belief of the Official Assignee as referred to above. He is not entitled to a wide ranging cross examination of matters which are not directed towards that belief.

On this basis, I will order that the Official Assignee be available for cross examination on his two affidavits sworn in support of the motion brought pursuant to s. 85A of the Bankruptcy Act, 1988 as amended. The bankrupt must identify the particular passages or paragraphs in the two affidavits upon which he wishes to cross examine the Official Assignee. These must be confined to the belief of the Official Assignee as to the alleged wrong doing of the bankrupt in relation to the recovery of assets or the concealing of assets. In accordance with the ruling of the Court of Appeal in Sean Dunne, a bankrupt, the passages must be identified in advance of the hearing of the motion and he may not attempt to cross examine the Official Assignee on matters which fall outside the scope of these passages or which is not addressed to the belief of the Official Assignee as set out in s. 85A(1) of the Act."

8. The background to this matter is the adjudication of Mr. Hoey as a bankrupt on the 29th February, 2016. The present application issued on the 13th February, 2017 and, a number of affidavits have been sworn by each party; the OA on 13th February, 2017, Mr. Hoey in reply on the 2nd March, 2017, the supplemental affidavit of the OA on 21st April, 2017 and a second affidavit by Mr. Hoey on the 27th March, 2018.

9. By order dated 20th February, 2017, Mr. Hoey's bankruptcy period was, pursuant to s. 85A(3) extended up to 27th April, 2017 and, thereafter, the period of bankruptcy was extended pending the determination of this application.
10. Since the notice of motion to cross-examine was issued, there has been a further replying affidavit from Mr. Hoey on 2nd March, 2017 and a supplemental affidavit by the OA on 21st April, 2017. Thereafter, there were adjournments from time to time whilst the bankrupt indicated to the court that he was awaiting the outcome of his application for civil legal aid. On 22nd January, 2018, the bankrupt advised the court that this application had been unsuccessful and that he would be proceeding to represent himself.
11. In any event, he was represented in this application by senior and junior counsel.
12. Strictly speaking, in my view the Order of Costello J. only dealt with the affidavits that had been filed within this application up to that date. It was not prospective. However, as set out above, additional affidavits were subsequently filed by the OA (and Mr. Hoey) and the issues between the parties have, in my view, narrowed considerably over time. In such circumstances, I have considered this aspect of the matter on the basis of all of the affidavits which have been filed.
13. Before setting out or dealing with these matters in more detail, in seeking reliefs pursuant to s. 85A, it is necessary to identify the issues raised on the facts of this specific case.
14. Section 85A(1),(4),(5) and (6) states 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 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.*

...

(4) *Where the Court is 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, 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 on such later date*

- (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 (b) were hidden or not disclosed, or both, as the case may be.*

...

- (6) The making of an order under this section shall not prevent an application being made for discharge or annulment under section 85B."*

15. Counsel for the OA was explicit in identifying four specific grounds (and only four) upon which the application for the extension of time of this respondent's bankruptcy was sought. Counsel made it clear that this was in part against a background where a number of the allegations, with which the OA was concerned, were not matters that could be definitively adjudicated in an application such as this. In other words, the application had to be advanced on the basis of what the OA contended to be non-contested evidence, as this Court was not in a position to resolve any factual conflicts in evidence with regard to this respondent debtor's conduct. The four grounds will be examined in detail below
16. Two cases form the basis of the submissions on behalf of the OA; *Thomas McFeely, A Bankrupt* [2016] IEHC 299 ("*McFeely*") and the Supreme Court decision in *Killally v. The Official Assignee* [2014] IESC 76 ("*Killally*").
17. In *Killally*, the bankrupt had pleaded guilty to certain offences relating to the theft of property that should properly have been available to the OA in dealing with his estate. The High Court had ordered an additional year be added to his period of bankruptcy and Mr. Killally appealed to the Supreme Court. The issue in *Killally*, relevant to the issues in this case, is whether a postponement in any discharge of an individual's bankruptcy can only be ordered to enable further enquiries or actions to be taken by the OA. In analysing s. 85A, Clarke J. stated:-

"3.17 ...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.

3.18 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."

18. In conclusion, the court stated:-

"6.1 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."

19. In "*McFeely*", Costello J., having quoted ss. 19 and 20 of the 1988 Act, stated as follows:-

"It follows that the bankrupt was obliged to furnish the Official Assignee all of the documentation that he had in relation to his estate and insofar as there was documentation in the possession of third parties he was obliged to identify that documentation and the parties who had possession of the documentation to the Official Assignee. He was required to swear a statement of affairs which must disclose all of his assets. He was obliged to deliver up possession of all of his property to the Official Assignee. He was obliged to confirm his name and address. If during his bankruptcy he changes his address or leaves the jurisdiction, he is obliged to notify the Official Assignee."

20. The court also considered the issue of search warrants pursuant to s. 28 of the 1988 Act (which also figure on the facts of this case) and, in that regard, the court stated:-

"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 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.”

21. In *McFeely*, as in this case, the three matters were identified by the OA, as grounding an application pursuant to s. 85A were specifically set out and identified. The court, considered each in turn and continued:-
  - “17. The Official Assignee also advanced his application to court based upon the bankrupt’s failure to swear and file a statement of affairs but he placed less emphasis upon this failure than those discussed already. Nonetheless, he drew that failure to the attention of the court. In response, the bankrupt stated that he had furnished the Official Assignee with a copy of the statement of affairs which he had prepared for his English bankruptcy and which he had furnished to his trustee in bankruptcy in England. As a matter of principle, this does not and cannot amount to compliance with the statutory obligation under the regime in this jurisdiction. That obligation extends to disclosing all the property of a bankrupt of which the bankrupt is aware. Mr. McFeely was aware of his interest in the properties at issue in these proceedings... None of these properties are disclosed in the statement of affairs prepared for the English bankruptcy... Mr. McFeely has made no attempt to explain or excuse his failure for three and a half years to comply with this statutory obligation. This is in circumstances where he knew that the English statement of affairs did not disclose all his assets. It is a breach which stands proud of the three other complaints and applies whether or not the evidence obtained by the Official Assignee from the premises of... and applies whether or not the bankrupt has properly notified the Official Assignee of his address.”
22. On the basis that the court established a failure on the part of the bankrupt, in that he had hidden assets or failed to disclose them, as being a breach of his statutory obligations, including a failure to file a statement of affairs. On that basis, the court made an order pursuant to s. 85A extending the period of bankruptcy and, thereafter, considered the appropriate duration of such an extension.
23. The quotation from Clarke J. in *Killally* above, particularly highlighted the view of the court that an extension of an adjudication in bankruptcy can also be considered as one designed to discourage bankrupts from failing in the performance of their clear statutory

obligations, which is in turn linked to the maintenance and integrity of the bankruptcy process. In *McFeely*, the court held that the breach was at the very grave end of the spectrum and should be for the maximum period with slight reduction due to the age of the bankrupt.

24. In this case, in considering the possible period of extension, counsel for the Official Assignee opened case law with the analogous references to disqualification of a director. In that regard, the decision of Kelly J. (as he then was) in *The Director of Corporate Enforcement v. D'Arcy* [2005] IEHC 333, initially considered that there were grounds for disqualification, and derived, assistance from the observations of the English Court of Appeal in *In re Seven Oaks Stationers (Retail) Limited* [1991] Ch 164 in considering the rationale for the period of disqualification and quoted from that decision, by dividing a potential fifteen year disqualification into three discrete periods as follows:-

- "(i) *The top bracket of disqualification for periods over ten years should be reserved for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified yet again.*
- (ii) *The minimum bracket of two to five years' disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious.*
- (iii) *The middle bracket of disqualification for from six to ten years should apply for serious cases which do not merit the top bracket."*

25. By analogy, counsel for the Official Assignee submitted that the range of extension should be within a six to ten year limit, being not at the most egregious end of the scale (as in *McFeely*) but sufficiently serious to warrant a significant extension of Mr. Hoey's adjudication as a bankrupt.

**Section 21 of the 1988 Act**

26. Within his affidavit grounding his application to cross-examine the Official Assignee, Mr. Hoey seeks that he be given "leave to cross-examine the applicant on the totality of matters referred to in his affidavit as the best interests of justice can only be served in that manner and by the adoption of that process. No prejudice arises to the applicant as he has, by this time, destroyed my farm and properties and all that was on it".
27. As highlighted by Costello J. in *Killally*, this is precisely what an application to cross-examine the OA is not designed for. It cannot be that the Official Assignee is obliged to answer any and all matters relating to a complex and vexed bankruptcy estate.
28. I understand that there have now only been two occasions where the OA has been cross-examined pursuant to s. 21 (*Re: Dunne, a bankrupt*, [2018] IEHC 813 and these proceedings). In my view this procedure must be carefully monitored so that it is not used (incorrectly, in my view) to provide any person to a wide-ranging cross-examination upon all aspects of an examination of the bankrupt's estate.

29. The affidavits sworn by Mr. Hoey were wide-ranging and raised a number of instances and a series of complaints with regard to the administration of his estate. Numerous exhibits containing photographs with handwritten explanations were also furnished to the court. I appreciate that this bankruptcy or the administration of this bankrupt's estate has clearly been and remains difficult.
30. In his affidavit grounding the application to cross-examine the Official Assignee dated the 11th day of April, 2018, Mr. Hoey avers that he only very recently obtained the services of solicitor and counsel and sets out a number of examples (numbering 1 to 14) as to the potential issues requiring cross-examination.
31. In this case counsel for both parties thereafter, spent a considerable period of time seeking to narrow the issues. Ultimately the OA distilled the matter to four issues. In my view, if the OA states that these are the only issues upon which this court can accept or reject any extension of Mr. Hoey's adjudication as a bankrupt, then his cross examination must be restricted to those issues.

***Basis of the Application to extend the period of adjudication***

32. In this case the four specific grounds relied upon by the OA for an extension of Mr. Hoey's bankruptcy comprise;
- (a) That a substantial amount of our machinery was moved from the family farm into storage (hidden) within the grounds of a local hotel.
  - (b) The discovery of €12,000 in cash on the debtor's premises.
  - (c) The hiding of the Kepak money.
  - (d) The failure by Mr. Hoey throughout the entirety of the bankruptcy process to furnish a proper statement of affairs, to meet the OA's requirement and those of s.19 of the 1988 Act.
33. The first three grounds are advanced pursuant to the criteria within s.85A (1)(a), with the fourth ground being the pursuant to s.85A (1)(b). I shall consider each ground in turn.

***That a substantial amount of machinery was moved into storage at a local hotel.***

34. The OA avers in his affidavit sworn on the 13th day of February, 2017 that, pursuant to a search warrant (five search warrants in total were obtained by the OA in this matter), granted by Costello J. on 25th March, 2016, for a search and seizure of items at a premises known as the "Oasis Hotel", Kingscourt Road, Carrickmacross, the OA attended at the premises and seized items of farm machinery listed from subpara. (a) to (m) within his affidavit, which had previously been located at Anna Croft (the property of Mr. Hoey) and which were stated to all be his property and which accordingly vested in the OA by operation of law.
35. Mr. Hoey in his affidavit sworn the 2nd March, 2017, avers that the various items were not in his possession when he was made bankrupt, they were in possession of a Mr.

Eugene Sheridan and that Mr. Sheridan had informed the applicant of the situation and the location of the assets.

36. In reply, the Official Assignee in his supplemental affidavit sworn on the 31st day of April, 2017, re-iterating that the averments of Mr. Hoey set out above made no material difference to the substance of his complaint, avers that:-

- (a) There was farm machinery missing from Anna Croft which, it transpired, was concealed at the Oasis Hotel;
- (b) That the assets were properly seized as assets in the bankrupt's estate;
- (c) Contrary to any averments of Mr. Hoey, that the OA was informed by An Garda Síochána of potential items within the bankrupt's estate located at the Oasis Hotel which, in turn, necessitated the application for a search warrant and the discovery of the items above.

37. Mr. Hoey, in his affidavit, sworn on the 27th day of March, 2018 does not directly deal with these matters – the only averment which appears to relate to this aspect of the matter generally is at para. 4 and is set out below in its entirety:-

"4. All averments of the applicant relative to my character and to the perception held in the community of me are disavowed as if they were set forth herein and traversed seriatim and the respondent calls for actual evidence as opposed to the mere speculation relied upon and offered by the applicant to seek to persuade this Court that I am something that I am not. At all times throughout the initial destruction of my life by the applicant, he was surrounded by a group of bullyboys and thugs and, in particular, by one Eugene Sheridan, a man, and a supposed friend of mine who had a clear agenda relative to my property and to such an extent that he was deliberately caught out by me and my partner over a period of time by setting traps for him, all of which he fell into, took the bait and informed/provided the applicant with bogus information, all of which promoted a reaction at all times. I believe the expression to be to keep your friends close and your enemies closer. I did, but I did not conceal material/machinery or money, Sheridan did."

38. In the cross-examination of Mr. Lehane, aside from his being questioned with regard to a suggestion that the items were concealed or camouflaged, no other issue of substance was raised. All of the items were recovered and are now part of the bankrupt's estate vesting in the Official Assignee. Nevertheless, it is noteworthy and not disavowed that they were procured subsequent to a search warrant, moved to the property of a third party and the subsequent averments of Mr. Hoey do not provide any evidence before this Court that they were not properly estate assets that should have properly vested in the Official Assignee, from the outset and form part of Mr. Hoey's estate.

**€12000 held in cash.,**

39. Mr. Lehane at para. 31 of his affidavit sworn on the 13th day of February, 2017 avers that on the 22nd June, 2016, pursuant to a further search warrant, there was a search of Mr.

Hoey's property and approximately €12,000 in cash was discovered hidden behind a radiator. In evidence before this Court, Mr. Lehane confirmed that he had informed Mr. Hoey in advance that a sniffer dog was on the premises and that it was to be used to seek cash. Mr. Hoey disavowed that he had any significant items of cash on the premises. The search ensued and resulted in the recovery of the €12,000.

40. By way of reply, Mr. Hoey states that he kept the money in cash but it was part of a sum of some €57,539.85 arising from a cheque issued by Kepak (dealt with in the next category below) that he received prior to his bankruptcy on the 29th February, 2016 and that he had retained this money as he needed it to live on, as he had no income.

41. Mr. Lehane, in his affidavit sworn on 21st April, 2017, confirms that the cash was concealed in a plastic bag in a timber panel behind a radiator and was only discovered through the use of a specialised customs and excise sniffer dog. Equally, the OA made clear in his response to questions that all assets vested in him from the date of adjudication and it was not Mr. Hoey's entitlement to retain such monies as he might please. There are provisions within the bankruptcy code for the provision of reasonable living expenses and these do not extend to the concealment of monies in this debtor's house.

42. Finally, in his final affidavit, Mr. Hoey states as follows at para. 6:-

"It is indeed a curious thing that having had specialist sniffer dogs roam through my house and farm on more than one occasion, finding, it is claimed €12,000 behind a radiator contained within a bag that a further €5,000 was missed in the same search and allegedly found in one of the sheds, which had been searched on previous occasion several months later. The only logical conclusion that can be inferred from this supposed find, given the nature of the dog's specialty, is that the money was placed there. Not by me. The applicant is wrong in his bald assertion..."

43. I am satisfied that Mr. Hoey was given every opportunity to disclose, and indeed his obligation pursuant to s. 19 of the 1988 Act, was to disclose all of his assets, including this cash sum. It is also in turn linked to the disbursement of monies from a Kepak cheque which is dealt with below.

44. I am satisfied that an explanation was sought from him in August, 2016, that no proper explanation or accounting for this cash was forthcoming.

***The Kepak money.***

45. This matter is set out in the affidavit of Christopher Lehane at paragraph 33. Within that paragraph, he states that in the course of investigation, he became aware that Mr. Hoey had sold a significant number of animals by sending them for slaughter to Kepak in County Meath. Kepak confirmed in correspondence, which is exhibited, that cheques were paid over the period from 16th February, 2016 to 8th March, 2016 with the cheque on the 16th February, 2016 for the sum of €57,539.85 (the bankruptcy date is 29th February, 2016). Also exhibited are five subsequent cheques by Kepak to Mr. Hoey, all marked "A/C

Payee Only” – all were endorsed to different third party organisations, resulting in applications for Mareva injunctions to prevent the relevant banks disposing of the amounts held in the accounts of those third party entities. In respect of the monies paid to Mr. Hoey by Kepak, letters were sent both to Mr. Hoey and to his solicitor in the family law proceedings in August, 2016, requesting repayment of the monies. No response has been received.

46. With regard to these matters, Mr. Hoey in his replying affidavit at paras. 54 and 55 firstly says that all of the Kepak cheque monies have been recovered and that the first Kepak cheque dated 16th February, 2016 was cashed before he was made bankrupt and that the monies were used to pay various expenses, as he was trying to keep his business afloat prior to his bankruptcy.
47. Accordingly, Mr. Hoey avers that there is no loss to any creditors, all the monies have been located and, accordingly, everything is now in order.

***The absence of a statement of affairs.***

48. The Official Assignee avers that Mr. Hoey has never provided a statement of affairs. This has been the position up to and including this hearing. Mr. Lehane in his affidavit avers that he received a copy of a partial statement of affairs, which he obtained from a petitioning creditor, which had been utilised prior to Mr. Hoey’s adjudication as a bankrupt and a trust document, furnished by Mr. Hoey, which contained a schedule of assets which Mr. Hoey claimed were not any part of his bankruptcy estate but rather held pursuant to this purported trust.
49. In addition, Mr. Lehane gave evidence that the OA was obliged to apply to be joined as a notice party in respect of family law proceedings, involving Mr. Hoey and his former wife, in order to obtain additional information regarding his assets. Accordingly, there are three sources of information: the matters set out in the purported trust documentation, information pursuant to the family law proceedings (which required the OA to be joined as a party), and information provided from the petitioning creditor prior to Mr. Hoey’s adjudication as a bankrupt.
50. Mr. Hoey avers that a statement of affairs was hand delivered to the Examiner’s Office on 2nd November, 2015 and he was aware that the applicant received a copy provided to him by the creditor (of course, in advance of his bankruptcy). He also says he made full disclosure of his assets when he instructed his solicitor to provide him with a copy of his sworn affidavit of means and that of his ex-wife as part of their ongoing divorce proceedings. Mr. Lehane gave evidence (uncontroverted) that in fact, this documentation was procured once they were joined as a notice party to those proceedings. Reference is also made to the provision of a copy of the trust which Mr. Hoey states comprises a comprehensive list of his assets.
51. The trust document is unusual, but that is outside of the parameters of this application, but, for example, it does not deal at all with cash but rather land, specific machinery and farm implements. That is not to make any comment upon the efficacy or, indeed validity,

of the trust document or the matters contained within it, but I have simply viewed it to examine Mr. Hoey's contention that his assets are reflected within that document, which obviated the necessity to furnish a statement of affairs as required by the 1988 Act.

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

52. In response to questions in the course of cross-examination by counsel for Mr. Hoey, the OA stated that in his belief, there were significant cash assets remaining within this estate, but he was not in a position to verify this. He based this upon the fact that cash had been discovered on the farm and also, perhaps somewhat unusually in a farming/haulage enterprise, there were three cash machines on the property.
53. It is very clear that this bankrupt's affidavits are replete with numerous complaints regarding the OA's conduct of this estate – matters such as the treatment of cattle, their disposal, the manner in which his properties and other assets are subject to a caretaker's agreement on foot of no consideration, his rejection of any involvement in a sign erected on the lands being "No Sale Here RIP J Hoey". Mr. Hoey takes issue, at length with the agents retained by the OA, their conduct in dealing with the animals on the farm and their disposal and complaints with regard to certain vehicle assets and, in particular, Scania haulage vehicles, as to their registration and, indeed, whether they are owned by commercial entities in Northern Ireland or within this jurisdiction.
54. That this is clearly a difficult administration is clear from the evidence of Mr. Lehane, who stated that he was advised by Gardaí to be accompanied by an armed protection unit when he first visited the premises. There was a difficulty in retaining auctioneers and other professionals within the area to deal with this estate and, Mr. Hoey strongly objects to what he contends is having his name being blackened or besmirched in such circumstances. He claims that his rights under Article 81 of the European Convention of Human Rights has been breached and that he has lost any rights he had to privacy in his family life, his home and correspondence. He avers that he has had a gun license regularly renewed by the Gardaí and strongly denies that he in any sense presented any danger throughout the context of his bankruptcy. Mr. Lehane confirmed that throughout, he had no personal difficulty with Mr. Hoey and the two dealt with each other in a properly professional manner. However, he asserted that the Garda escort to the premises was as a result of advices received from the Gardaí and not at his instigation.
55. In total, five search warrants were issued to deal with items and matters relating to the property. Mr. Hoey, in turn, states that certain damage was occasioned to his lands and property, at all of which is denied by Mr. Lehane on behalf of the OA and those he retained to deal with this vexed estate.
56. Counsel for Mr. Hoey submitted that:-
- (a) There had already been a practical extension of Mr. Hoey's bankruptcy in that the order of adjudication had been made in excess of three years ago and, accordingly, that was the tripling of the normal time for any persons being in bankruptcy.

- (b) The infractions in *Killally* and *McFeely* were of a higher order than the allegations made in respect of Mr. Hoey.
  - (c) In essence, in respect of the bulk of the bankruptcy estate (although perhaps having some troublesome points), the assets had now largely been realised, the extent of the estate known and, accordingly, that there was now no reason to further extend the bankruptcy.
  - (d) Mr. Hoey deserved some credit for his limited cooperation and his sense of outrage and being aggrieved by some aspects of the ongoing administration of his estate have to be accepted.
  - (e) That the remaining assets being real property remained an asset within the bankruptcy in any event and did not therefore require any extension for the OA to now deal with them.
57. The Official Assignee did, in his evidence, confirm that a very substantial asset being the house and the significant yard and buildings was, essentially, the only significant assets that remained within this bankrupt's estate. He accepted that in this bankruptcy (as in others), the first nine to twelve months of the bankruptcy had revealed the bulk of the assets comprised within Mr. Hoey's estate.
58. However, the ongoing difficulty that the OA has is in relation to this bankruptcy is the absence of the filing of a proper statement of affairs. The OA is still having to use his expertise and to effectively "assess" Mr. Hoey's estate and his evidence confirmed this. There has been no proper statement of affairs filed by Mr. Hoey and, in my view, that is and remains significant.
59. In a letter from Reddy Charlton (solicitors for the OA) to JV Geary, solicitors for the respondent bankrupt was sent on the 27th February, 2020. The pertinent portion of which is as follows:-
- "...the primary remaining issue to be dealt with in our client's administration of this estate is the sale of Anna Croft. This application to extend Mr. Hoey's bankruptcy proceeds in part because of his conduct to date but also in part because the estate remains to be concluded and regulated.
- If your client confirms that he will cooperate in the sale of Anna Croft and its surrounding lands and will so undertake to the court on Tuesday, then our client is prepared to seek no further extension of his bankruptcy."
60. There has been no response to this letter and nor, more importantly, did counsel for the respondent debtor advert to it in any way in the course of the application.
61. In my view, I am satisfied, on the balance of probabilities, that Mr. Hoey had significant cash assets hidden on his property which were not disclosed to the OA, and in respect of which he failed to furnish any credible or proper explanation, other than it was needed for

living expenses. It is not the amount of the cash but its non-disclosure that is the issue. I have also had regard to his conduct with regard to the Kepak monies, the distribution of some of the proceeds by cheques made out in favour of various third parties, in turn necessitating applications for Mareva injunctions. I also note the moving of certain assets formerly on the Anna Croft property. In my view, considering all of the affidavits, the evidence arising from the cross examination of the OA and the legal submissions advanced, these matters constitute a sufficient basis for the finding of a failure by Mr. Hoey to cooperate with the Official Assignee in the realisation of his assets as required by s.85A (1)(a) of the 1988 Act.

62. In my view, the most troublesome feature of this case remains the failure of Mr. Hoey to cooperate with the OA in the filing of a statement of affairs. The requirement to file a statement of affairs is well known. The OA gave evidence that its absence constitutes an ongoing difficulty within this bankruptcy. There was never any suggestion or offer by Mr. Hoey that this defect would now be rectified. His position is that the information gleaned by the OA should be sufficient in all the circumstances. I do not understand the reluctance to co-operate with the OA in this regard, but the view of Mr. Hoey that he has submitted the information regarding his estate and that is an end of the matter and should be sufficient, suggests little short of obstinacy. The requirement of s.19 of the 1988 Act is clear and applies to all without exception. His blatant failure to fully disclose to the OA his income and/or assets, which of course are to be realised for the benefit of creditors, remains unexplained.
63. The Supreme Court in *Killally* accepted the comments of McGovern J. in the High Court and, indeed, reinforced them with their own, that the efficacy of the bankruptcy process should be properly protected. The basic requirement that, upon an adjudication of bankruptcy, a bankrupt is obliged to furnish a proper statement of affairs (and not documentation produced over time and often from investigations instituted by the OA), is not an overly rigorous or complex requirement. That it has never been produced does not reflect well upon this respondent bankrupt and, in my view, is a very significant infraction in his conduct within this bankruptcy process. His protestations in relation to other aspects of the conduct of this bankruptcy process must be viewed in contradistinction to his failure to properly cooperate within it. The failure to furnish a statement of affairs in my view, for the reasons set out above, constitutes a failure by Mr. Hoey to comply with s. 85A (1)(b) of the 1988 Act.
64. Having found that there has been a breach of ss. 85A (1) (a) & (b) of the 1988 Act, the remaining issue is to determine the period of extension, if any, of Mr. Hoey's bankruptcy.
65. As set out above Mr. Hoey was adjudicated bankrupt on 29th February 2016 and it has been contended by his counsel that his period of bankruptcy has already been extended significantly, in the events that have happened. Counsel for the OA seeks an extension within the range of six to ten years. I am not prepared to accept Mr. Hoey's period of extension to the present time as sufficient, as I particularly note that his infraction (particularly with regard to the statement of affairs) is ongoing. I accept that these

infractions are not at the same 'level' as in *McFeely*. Nevertheless, in my view, there has been a persistent and determined effort by Mr. Hoey not to co-operate with the OA, within the four issues or areas advanced by the OA and upon which this adjudication is based. Nothing advanced before the court led me to consider that that Mr. Hoey's co-operation with the OA in these matters has improved over time. Many of the items recovered for the ultimate benefit of the creditors arise from the diligence of the OA and not the co-operation of Mr. Hoey. I have also had regard to the comments of the Supreme Court in *Killally* as to the importance of maintaining the efficacy of the bankruptcy process.

66. Whilst in my view there are grounds under both criteria set out within s. 85A(1) (a) and (b) of the Bankruptcy Act, 1988 for extending the period of Mr. Hoey's bankruptcy, I would be happy to consider, having heard the parties, whether this matter should be adjourned for a short period of time to see if any further cooperation might arise, in which case this could well determine the extent of any bankruptcy extension concerning Mr. Hoey. This is particularly in light of the contents of the O.A's solicitor's letter of 27th February 2020 to Mr. Hoey's solicitor referred to above (para. 59).
67. 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. Hoey and in respect of the terms of any orders that are required to be made, including any orders as to costs.