

**THE HIGH COURT  
BANKRUPTCY**

[2021] IEHC 466

**[Bankruptcy No. 4342]**

**IN THE MATTER OF THE BANKRUPTCY ACT 1988 AS AMENDED AND IN THE MATTER OF  
JOHN TOBIN (A BANKRUPT)**

**(No. 2)**

**JUDGMENT of Humphreys J. delivered on Tuesday the 13th day of July, 2021**

1. On 13th November, 2017, the debtor was adjudicated bankrupt by Costello J. On foot of the first of many stay applications by the bankrupt here, the learned judge refused a stay on the bankruptcy order on the basis (with which I would respectfully entirely agree) that it was not generally appropriate to stay an order regarding a matter of personal status.
2. On 26th February, 2018, the Court of Appeal extended the time for appeal. In that forum the bankrupt made a second application for a stay on the order of adjudication, which was granted. That stay was granted without notice to the Official Assignee.
3. The Official Assignee then applied to the Court of Appeal and the stay was varied on 25th June, 2018. The debtor was to cooperate regarding disclosure of his assets and the Official Assignee was at liberty to investigate the debtor's estate, subject to not realising assets or taking irrevocable steps. There was liberty to apply to the High Court.
4. The appeal to the Court of Appeal was dismissed on 3rd March, 2020 (*Gladney v. Tobin* [2020] IECA 49, [2020] 3 JIC 0301 (Unreported, Court of Appeal, Collins J. (Donnelly and Haughton JJ. concurring), 3rd March, 2020)). Following that judgment, the bankrupt's pension was liquidated and given to his wife. That was worth approximately €67,000.
5. On 14th December, 2020, the bankrupt made a third stay application, which was granted, whereby the Court of Appeal stayed execution on foot of its order dismissing the appeal.
6. In addition to the dissipation of the pension, a further €53,118. 27 was collected from various debtors and tenants and dissipated by the bankrupt.
7. The Official Assignee then brought two motions in this court seeking permission to proceed with applications to extend the bankruptcy under s. 85A of the Bankruptcy Act 1988 and for a bankruptcy payment order under s. 85D of the 1988 Act (motion of 8<sup>th</sup> February, 2021), as well as liberty to get in and to protect assets or income of the bankruptcy estate (motion of 11<sup>th</sup> May, 2021). The motions were heard over two separate dates with the matter being adjourned to allow the second motion to be brought to address objections of the bankrupt, in effect.
8. On 17th May, 2021, I granted those reliefs and on 31st May, 2021 I gave reasons in a reserved judgment (*In Re Tobin (No. 1)* [2021] IEHC 368 (Unreported, High Court, 31st May, 2021)).
9. On 14th June, 2021, the Supreme Court gave leave to appeal against the Court of Appeal decision on the adjudication in bankruptcy (*Gladney v. Tobin* [2021] IESCDT 67 (Unreported, Supreme Court, 14th June, 2021)).

10. On 28th June, 2021, the bankrupt appealed to the Court of Appeal against my order varying the stay (Court of Appeal Record No. 2021/164). While an interlocutory stay is not sought in the notice of appeal, the appeal itself amounts in effect to a fourth stay application because its effect, if successful, would be to stay the entitlement of the Official Assignee to proceed. The bankrupt complained in the notice of appeal of not having had an adequate opportunity to address the two motions, although as noted above there were two rounds of submissions on two separate dates; the initial motion was not finalised at once but was adjourned, and the second motion was permitted in response to the first round of submissions.
11. The matter was listed again in this court on 5th July, 2021 on foot of the liberty given to the Official Assignee to proceed with the motions under ss. 85A and 85D of the 1988 Act.
12. Without prior notice (surprisingly perhaps given that the premise of the appeal is an alleged lack of notice), the bankrupt on that occasion made a fifth stay application, this time seeking a stay on the order of 17th May, 2021 pending the appeal, and having heard submissions I now deal with that issue.

**Whether the order varying the stay should itself be stayed**

13. The main reasons offered by the bankrupt as to why the order of 17th May, 2021 should be stayed were firstly, that the Official Assignee was not prejudiced, and secondly, that it was unfair to ask the bankrupt to fight on a third front given that he was already fighting in the Court of Appeal and the Supreme Court.
14. However, it is not valid to say there is not prejudice because the bankrupt has already dissipated assets. A further stay would only allow that process to continue. As regards fighting on multiple fronts, that is a feature of the legal situation that the bankrupt's indebtedness has caused or contributed to, and in itself is not a reason for a stay. On the contrary, there are multiple reasons why it is inappropriate to stay the entitlement of an Official Assignee to protect assets and to progress the bankruptcy.
15. The effect of granting a stay would be to entirely reverse the order of 17th May, 2021, so that seems inappropriate to begin with.
16. In addition, I made the point in the No. 1 judgment that stays in bankruptcy matters must be in limited circumstances having regard to the risk of dissipation of assets and the procedural mayhem that such stays in the bankruptcy context have the capacity to unleash. There is also the problem in principle of staying an order of personal status, although that does not specifically apply to the order of 17th May, 2021.
17. Whether to grant a stay is a matter of weighing the balance of justice and the respective prejudice of granting or not granting such an order. Refusing a stay *does* cause prejudice to the bankrupt, but it is not irremediable prejudice because in the event of the bankrupt winning the Supreme Court appeal and exiting from bankruptcy, then any steps can be reversed and money given back. Refusing a stay, however, runs the risk of creating irremediable prejudice to creditors because assets can be dissipated beyond recovery.

That is not a theoretical concern. As noted above €53,118.27 has disappeared from the bankrupt's bank accounts and a further €67,000 has been handed over to his wife.

18. There is a real risk of irremediable prejudice to creditors both in general and on the facts of this particular case. There is also the prejudice involved simply by the lapse of time because of the limited duration of a bankruptcy, which is one of the many elements that comes in under the heading of procedural mayhem caused by stays in the bankruptcy context, to which I referred earlier.
19. It is clearly significantly in the interests of creditors that there would not be a stay on the order of 17th May, 2021 if for no other reason than the effect of a stay would be to prevent the Official Assignee from properly protecting the assets that have vested in him.

**Order**

20. Accordingly, the order will be as follows:

- (i). the application for a stay on the order of 17th May, 2021 (varying the stay previously imposed in this case) is refused;
- (ii). the Official Assignee will have liberty to request the Examiner's Office to have the matter listed as and when necessary for the purposes of the ss. 85A or 85D motions or any other necessary applications.