

**THE HIGH COURT  
BANKRUPTCY**

[2021] IEHC 744  
[Bankruptcy No. 2505]

**BETWEEN**

**MICHEAL IAN LARKIN (BY ORDER)**

**APPLICANT**

**AND**

**WEALTH OPTIONS LIMITED AND BRIAN O'NEILL**

**RESPONDENTS**

**AND**

**THE REVENUE COMMISSIONERS**

**NOTICE PARTY**

**JUDGMENT of Humphreys J. delivered on Thursday the 2nd day of December, 2021**

1. The debtor here was adjudicated bankrupt on 22nd January, 2014. He was discharged from bankruptcy on 29th July, 2016.
2. The petitioning creditor, Marketspreads Ltd. (later renamed as Shelbourne Markets Ltd.) was dissolved on 28th December, 2017.
3. A notice of motion seeking directions in the bankruptcy was brought by Christopher Lehane, the former Official Assignee, on foot of an affidavit sworn on 16th January, 2019.
4. Section 169 of the Legal Services Regulation Act 2015 regarding costs came into operation on 7th October, 2019, and because that development post-dated the application here, the section does not apply to the costs of the present matter: see *M.S. (Afghanistan) v. Minister for Justice and Equality* [2021] IEHC 164, [2021] 3 JIC 1608 (Unreported, High Court, 16th March, 2021).
5. On 24th July, 2020, Mr. Lehane retired as Official Assignee. Mr. Michael Ian Larkin, the current incumbent, was appointed on 16th November, 2020.
6. On 29th January, 2021, Pilkington J. gave judgment on the motion (*Lehane v. Wealth Options Ltd.* (Uncirculated, High Court, 29th January, 2021)), answering a number of questions arising from the request for directions. She left over the question of costs for further submissions, but unfortunately subsequently became indisposed. As a result, the matter of costs and of the form of the order came before me on 15th November, 2021 for hearing. At the risk of stating the obvious, in such circumstances I have to take the judgment of Pilkington J. as a given, and seek to give effect to it as best I can in the context of dealing with the outstanding matters.

**Substitution of the Official Assignee**

7. The discharged bankrupt consented to the substitution of the current Official Assignee as applicant, so I am making that order without the necessity for the formality of a notice of motion. Obviously I can take judicial notice of the fact that Mr. Larkin is the current incumbent and I don't need an affidavit saying that, which would be pointless formalism.

### **Applicant's application for costs**

8. The general principle is that costs follow the event, and the event was predominantly in favour of the Official Assignee's proposed answers to the questions that arose on the application for directions. There can be special circumstances to depart from that, an example of which is *Corcoran v. Commissioner of An Garda Siochána* [2021] IEHC 11, [2020] 1 JIC 0401 (Unreported, High Court, Simons J., 4th January, 2021). One matter of relevance is that the subject-matter of the application was not entirely *terra incognita*, because Pilkington J. did derive some assistance from an earlier judgment in *Lehane v. Cody and Aviva Life & Pensions Ltd.* [2017] IEHC 653, [2017] 10 JIC 2504 (Unreported, High Court, Costello J., 25th October, 2017). That somewhat dilutes the argument that the case was completely ground-breaking and overarching in some way that would require a different order as to costs.
9. At para. 102 of her judgment Pilkington J. said, "I note that this matter does not come before this Court as a representative action or test case. It was not opened to the court on that basis but in respect of the case of Mr. O'Neill only." That also dilutes any argument that this case exceptionally warrants a departure from the principle of costs following the event. I would however accept for the purposes of this application that the issues decided were not in the end totally confined to this case and that there was some uncertainty in the law and also that the pension company also had some doubts about the legal position. It is also a fair point that it is hard to fault the discharged bankrupt for not cooperating on the handover of pension assets prior to a determination as to whether they were his property or the Official Assignee's.
10. However, it is not the law that there are no costs consequences for arguing about something that is unclear, or even something that needs to be determined at some stage. There would have to be some specific circumstances before the court would depart from the principle of costs following the event, and I think there is an insufficient case for the payment of the applicant's costs here, particularly having regard to the matters I have referred to above.

### **Official Assignee's costs**

11. The two options in relation to the Official Assignee's costs are to pay them out of the bankruptcy estate (which would impact on other creditors who are not before the court), or to make an order for costs *simpliciter*, which on balance seems the appropriate order in the circumstances having regard to the rights of such creditors.

### **Form of the order**

12. The Official Assignee helpfully proposed a draft order which was included at the end of the booklet of papers for the costs application and which was broadly acceptable subject to a few adjustments as follows:
  - (i). there is a typographical error in the statement of question 3;
  - (ii). the answer to question 3 does not fully reflect the judgment of Pilkington J. and requires a further qualification that it might be necessary to seek a specific direction in any individual case;

- (iii). I would propose to give liberty to issue a motion to seek such directions in this case should the need for that arise;
- (iv). I would also propose to give the parties an opportunity to consider whether their respective requests for a stay and for further co-operation can be reconciled by means of a stay on implementation of the realisation of pension assets on terms which would involve the discharged bankrupt providing all necessary information to the Official Assignee; and
- (v). needless to say the draft order will have to be amended to reflect the costs order as set out earlier in this judgment.

**Order**

13. Accordingly, the order will be:

- (i). that Michael Ian Larkin be substituted as applicant by consent;
- (ii). that there be no order as to the discharged bankrupt's costs.
- (iii). that there be an order for the Official Assignee's costs against the discharged bankrupt; and
- (iv). that the matter be adjourned for mention to 6th December, 2021 to enable the preparation of an updated draft order in the light of the foregoing judgment, ideally on an agreed basis if possible.