THE HIGH COURT
BANKRUPTCY

[Bankruptcy Record No. 5041]

IN THE MATTER OF SECTIONS 85 AND 85A OF THE BANKRUPTCY ACT 1988 AS AMENDED

BETWEEN
DENIS RYAN IN HIS CAPACITY AS DEPUTY OFFICIAL ASSIGNEE IN BANKRUPTCY
APPLICANT

AND
MICHAEL GRIMES (A BANKRUPT)
RESPONDENT

AND
THE HIGH COURT
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BETWEEN
DENIS RYAN IN HIS CAPACITY AS DEPUTY OFFICIAL ASSIGNEE IN BANKRUPTCY
APPLICANT

AND
CARMEL GRIMES (A BANKRUPT)
RESPONDENT

Judgment of Mr. Justice Richard Humphreys delivered on Thursday the 25th day of February, 2021

Applications before the court

1. The applications here concern two bankrupts, Michael Grimes and Carmel Grimes, who are husband and wife. The Official Assignee brought two applications in each case:

   (i). Firstly, an application substituting the name of the applicant to reflect the appointment of a new Official Assignee under O. 17, r. 4 RSC. I granted those applications *ex parte* on the basis of the affidavit in each case filed on behalf of the Official Assignee.

   (ii). Secondly, an application to extend the period of bankruptcy in each case for five years due to the non-cooperation of the bankrupts. On 19th October, 2020 O'Connor J. granted an interim extension of the bankruptcy in each case pending determination of these applications.

2. I wish to record my gratitude to Mr. Rudi Neuman B.L. for the Official Assignee for his assistance. The bankrupts were called, but there was no appearance from either of them. No correspondence was received from the second respondent, but an email was received from the first respondent purportedly on behalf of himself and his wife. Having heard the matter on 25th January, 2020, I announced the order being made and indicated that reasons would be given later.

Applications made by the first respondent by email

3. In a lengthy email submitted by the first respondent, he set out five applications that he wished to make:

(i). He sought an adjournment of the proceedings, but no basis for an adjournment has been established evidentially. I will deal further with that below.

(ii). He requested to be served with a copy of all the documents, but the motion papers have already been served as far back as October, 2020. He was also given a courtesy copy of the *ex parte* application.

(iii). He requested "free legal aid", but that is not something to be sought by motion in any given proceedings against the other party (see *Daly v. Lehane* [2021] IEHC 2 (Unreported, High Court, 21st January, 2021), para. 15). He has done nothing that I can see to progress any genuine application for legal aid in the appropriate manner with the Legal Aid Board.

(iv). He requests that his application to show cause against the adjudication in bankruptcy be re-entered, but that does not arise on the present motions.

(v). He requests the court to rule that "remote hearings are unconstitutional, null, void and of no effect and contrary to natural justice where the respondent cannot appear or do a remote hearing and particularly in this matter". The factual premise for that claim has not been established, as discussed further below.

4. As appeared from the materials before the court when deciding on the application to show cause (see *Grimes v. Danske Bank* [2021] IEHC 92 (Unreported, High Court, 25th February, 2021)), the first respondent was quite prepared to sit at a computer typing out emails as to why he did not want to attend, but he was unwilling to click a single link that would have brought him into the virtual courtroom. In relation to the present matter, he has embedded a picture in his email which includes the login details for the current application itself and has also cut and pasted material from www.courts.ie. But he claims, in effect, incapacity to click a single link to allow him to participate. In particular, while he seems to be claiming that he does not know how to join a remote hearing, he has not asked any questions as to how to do so. Mr. Neuman submits that "there seems to be a deliberate failure to take any steps to access the court" and compares being given the link but not trying to use it as being "like being dropped off on the Quays and not working out how to access the building". To take an analogue example, if a litigant was told the hearing was in Court 24, but didn't show up, it would not be accepted as an excuse if they limply said that they didn't know where Court 24 was, not having asked. Clearly the natural inference is that it suits the first respondent to see himself as a victim and to cry unfairness of procedure, rather than to have to face up to the merits of the matter.

5. The first respondent's email claims that he was under sedation on the occasion of the listing for showing cause against the adjudication, but that claim merely highlights the mutating nature of his adjournment applications. Sedation was not mentioned at the time and has not been backed up by a medical certificate either then or now. Nor was there any medical certificate for the hearing of the present matter on 25th January, 2021. Indeed, he does not seem to highlight any particular medical difficulties for that hearing - his complaints seem to be referable to the previous week. Even if there were any doubts

about the matter, which there aren't, the first respondent's pattern of claiming adjournments, either on medical grounds, or by crying unfairness, or both, is apparent if one overviews the entire history of his indebtedness and bankruptcy. I discuss this in more detail in the separate ruling on the show cause application (see *Grimes v. Danske Bank* [2021] IEHC 92 (Unreported, High Court, 25th February, 2021)). His present complaints don't look any more persuasive when set in that context.

6. Mr. Neuman submits that the application, which is in the interest of the creditors as private law actors, should not be postponed *ad infinitum* and that the right to a hearing within a reasonable time in the determination of civil rights and obligations under article 6 of the ECHR comes into play. I accept that submission. The legal system has to work for people who are prepared to play by the rules and to comply with the law, and here it is quite clear that the first respondent has shown no interest in engaging constructively with his legal obligations as a bankrupt, with the Official Assignee or with the court for the purposes of the present application. The second respondent hasn't engaged at all, constructively or otherwise.

7. In the present case there has been non-cooperation by both bankrupts, a failure to deliver a statement of affairs and complete non-disclosure contrary to their legal obligations. A five-year period of extension seems appropriate if not relatively modest having regard to a similar period in the case of a similar failure by a bankrupt to co-operate as determined by Costello J. in *In re Gaynor* [2017] IEHC 27 (Unreported, High Court, 23rd January, 2017). A lesser degree of non-cooperation warranted a four-year extension in *In re Farrell* [2016] IEHC 637 (Unreported, High Court, Costello J., 14th November, 2016). I didn't have to consider whether a longer extension would have been warranted here because five years was what was sought by the Official Assignee. One might perhaps be inclined to the view that the legislation is unduly inflexible in this regard in the sense that the rather questionable provisions of s. 85A(5) prevent an extended period from being extended further, even if there is serious and ongoing non-cooperation. That seems to incentivise obstruction and to facilitate a strategy of running down the clock, and it doesn't immediately strike one as properly balanced with the legal, constitutional, and ECHR rights of creditors. But further consideration of that point will have to await another day.

Order

8. Accordingly, the order made on 25th January, 2021 in each case was:

   (i). I granted the *ex parte* application to change the name of the applicant in the title of the proceedings to reflect the appointment of a new Official Assignee with no order as to costs;

   (ii). I ordered pursuant to s. 85A(4) of the Bankruptcy Act 1988 that the automatic discharge of the bankrupts would be barred and that their bankruptcy period would be extended to 5th November, 2025 being six years from the date of adjudication (that is the statutory one year plus an extended five-year period); and

(iii). costs of the motions to extend the bankruptcy were ordered to be costs in the bankruptcy.