

**THE HIGH COURT  
BANKRUPTCY**

[2021] IEHC 368

**[Bankruptcy No. 4342]**

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

**JUDGMENT of Humphreys J. delivered on Monday the 31st day of May, 2021**

1. This matter concerns two motions brought by the Official Assignee:
  - (i). a motion dated 8th February, 2021 seeking an order allowing the Official Assignee to proceed with motions to extend the bankruptcy under s. 85A of the Bankruptcy Act 1988 and to seek a bankruptcy payment order under s. 85D of the 1988 Act; and
  - (ii). a motion dated 11th May, 2021 seeking an order that the Official Assignee may get in and protect assets or income of the bankruptcy estate and, if necessary, an order varying the stay to allow that.
2. What the Official Assignee is asking to be allowed to look for would not be that unusual, but for the question of a stay. That has significantly complicated matters and I will do my best to unravel that complication here.

**Facts**

3. On 13th November, 2017, the debtor was adjudicated bankrupt by Costello J. She declined to grant a stay on the ground that matters of personal status were at issue. On that basis it was not appropriate to stay an order of adjudication in bankruptcy.
4. A notice of motion was brought to the Court of Appeal seeking an extension of time to appeal. On 26th February, 2018 the Court of Appeal extended the time for appeal and granted a stay on the order of 13th November, 2017 until further order. That stay seems to have been granted without notice to the Official Assignee and only on notice to the petitioning creditor, the Revenue Commissioners.
5. A second Court of Appeal order was made on 25th June, 2018 varying the stay after an intervention by the Official Assignee. The debtor was to cooperate as regards disclosing his assets. The Official Assignee was at liberty to investigate the debtor's estate subject to not realising assets or taking irrevocable steps and the parties were to have liberty to apply to the High Court in relation to "the motion" which clearly means the motion to vary or set aside the stay.
6. On 3rd March, 2020, the appeal was dismissed (*Gladney v. Tobin* [2020] IECA 49, [2020] 3 JIC 0301 (Unreported, Court of Appeal, Collins J. (Donnelly and Haughton JJ. concurring), 3rd March, 2020)). However, following that judgment, the debtor's pension was liquidated and given to his wife. That was worth approximately €67,000.
7. A third Court of Appeal order was made on 14th December, 2020 which stayed execution on foot of its order dismissing the appeal.

8. As of May 2021, the debtor has sought leave to appeal from the Supreme Court, although books have yet to be lodged.
9. As well as the €67,000 dissipated to the debtor's wife, a further €53,118.27 was collected from various debtors and tenants, and that money has also been spent (see letter to Insolvency Service of Ireland, 8th April, 2021).
10. On 17th May, 2021, having heard the matter I announced the order being made and I now give reasons.

**Stays are not generally appropriate on matters of personal status**

11. In relation to matters of personal status such as divorce, annulment or bankruptcy, a stay on the particular part of the order that determines the person's status is generally not appropriate. One is either bankrupt or not, divorced or not and so on. To endeavour to stay such orders unfortunately almost invariably produces tremendous procedural complication, as this case has illustrated.
12. In the bankruptcy context it also allows time for dissipation of assets, which this case has also unfortunately illustrated. There is a significant complication in staying bankruptcy in particular, where there is a detailed statutory framework under the 1988 Act for the duration of the adjudication itself (which is supposed to last twelve months unless extended) and the time limits for other subsequent steps. It is not totally clear to me that the Court of Appeal was given full argument on these matters when it granted the stay on adjudication originally.

**A stay granted after adjudication can logically only be on execution of the order not on the status of bankruptcy**

13. Leaving aside the truly exceptional situation where a stay is granted by the High Court when making the adjudication (which I think should be extremely rare if it happens at all) a debtor becomes bankrupt when adjudicated. Clearly the debtor here was bankrupt between November 2017 and February 2018. He cannot be said on any reasonable basis to have been "unbankrupted" by the subsequent Court of Appeal stay, as it was put by the Official Assignee. The subsequent stay, therefore, must be interpreted as a form of limitation on enforcement. The Supreme Court in *Farrell v. Governor of St. Patrick's Institution* [2014] IESC 30, [2014] 1 I.R. 699 at 713, referred to a stay as putting matters in a "holding pattern", but a holding pattern includes the debtor being a bankrupt.

**What stay is in operation?**

14. The third order of the Court of Appeal says that execution on foot of the order dismissing the appeal is stayed for 21 days unless a leave to appeal application is lodged in the meantime. However, the execution sought by the Official Assignee is not on foot of the Court of Appeal order dismissing the appeal. It is sought on foot of the adjudication in bankruptcy. That original order was stayed "pending the determination of the appeal" under the first Court of Appeal order, but that order was the one that the High Court had liberty to vary under the second Court of Appeal order.

15. My interpretation of the effect of the third Court of Appeal order is that the concept of "determination of the appeal" (which is referred to in the first Court of Appeal order) has not yet happened. Therefore, the second Court of Appeal order is still operative and the High Court is still being given an express jurisdiction to vary the stay.
16. The alternative literal interpretation would be that the appeal to the Court of Appeal has been determined. The first two Court of Appeal orders have lapsed insofar as the stay is concerned and that since execution on foot of the Court of Appeal order dismissing the appeal is not sought, but rather execution of the original High Court order, the third Court of Appeal order does not prevent full enforcement of the adjudication. On that logic there is no stay on the adjudication in being anyway. The stay in the third Court of Appeal order on "execution" would on that logic be a stay on execution of the costs order made by the Court of Appeal.
17. While I prefer a purposive to a literal interpretation of the Court of Appeal orders, a literal interpretation would not be any more favourable to the bankrupt. I do not think the notion that bankruptcy is "penal" requires adopting a strained interpretation of the Court of Appeal orders that would have the effect of precluding the High Court from addressing the dissipation of assets. The bankrupt's interpretation (which is that the first two orders have been replaced by the third which has no provision for variation by the High Court) would have the effect that the provision for variation of the stay which was sought by the Official Assignee, and which was contested, was somehow inadvertently vacated by the Court of Appeal, without the Official Assignee having been put on notice. That seems to be an unlikely interpretation.
18. If I am wrong about the foregoing, I think that given the new information regarding dissipation of assets, I would have jurisdiction, having regard to O. 86, r. 7 RSC, to reconsider the stay, especially on an urgent basis and at least pending any application to the Court of Appeal, based on the logic that variation of a stay in such urgent circumstances would be a matter that could be ventilated either in the High Court or the Court of Appeal.

**Whether the court can address the second motion**

19. Counsel for the bankrupt suggested that the relief sought in the second motion should only be addressed after the first motion had been disposed of. That is a misunderstanding. The liberty to bring the second motion was designed to enable all matters to be dealt with together.

**Whether variation of the stay is appropriate and if so to what extent**

20. On adjudication in bankruptcy, the debtor's assets vested in the Official Assignee. Thus, the debtor was not entitled to dissipate them. It goes without saying the dissipation of someone else's property gives rise to serious legal issues. That cannot be entirely explained by the subsequent stay because the assets were not the bankrupt's property at that point. Furthermore, the purpose of the stay was to keep matters in a "holding pattern", not to allow the bankrupt to dissipate assets. Perhaps that should be expressly spelled out if in future any court is considering any stay on an adjudication in bankruptcy,

although as noted above I consider that this should be only under extremely rare conditions if it happens at all. In all the circumstances here, particularly having regard to the evidence of dissipation, I would vary the stay as sought by the Official Assignee.

**Order**

21. Accordingly, the order made on 17th May, 2021 was that, pursuant to the order of the Court of Appeal of 25th June, 2018, or alternatively pursuant to O. 86, r. 7 RSC, the stay on the order of adjudication in bankruptcy be varied as sought in the notices of motion filed on behalf of the Official Assignee dated 8th February, 2021 and 11th May, 2021, with liberty to apply.