

**THE HIGH COURT
BANKRUPTCY**

[2021] IEHC 591
[Bankruptcy No. 5366]

**IN THE MATTER OF A PETITION FOR ADJUDICATION OF BANKRUPTCY
BETWEEN**

DERMOT O'ROURKE

APPLICANT

AND

BRENDAN O'ROURKE

RESPONDENT

JUDGMENT of Humphreys J. delivered on Thursday the 30th day of September, 2021

1. The debtor here was a plaintiff in proceedings against the creditor instituted in 2016: *O'Rourke v. O'Rourke* [2016 No. 10451 P]. By order of O'Hanlon J. on 5th December, 2018 those proceedings were dismissed and the plaintiff was required to pay costs including an interim payment of €255,040 to the second, third and fourth defendants.
2. The debtor appealed that order to the Court of Appeal (Court of Appeal Record No. 2018/481).
3. On 25th January, 2019, the debtor's motion seeking a stay on the costs order was heard by Irvine J. and refused. Thus proceedings on foot of the non-payment of costs could go ahead at High Court level, notwithstanding the appeal.
4. A bankruptcy summons was issued on 19th October, 2020 and served on 27th October, 2020. The affidavit of service was filed on 12th January, 2021 along with a petition seeking an adjudication in bankruptcy.
5. The petition was served on 8th February, 2021. The affidavit of service of the petition was filed on 1st April, 2021.
6. The matter was listed on 12th April, 2021 and adjourned to 17th May, 2021 for hearing.
7. On the morning of 17th May, 2021, Sanfey J. granted the debtor a protective certificate: *In Re O'Rourke* [2021 No. 000351]. The debt owing to the creditor here was acknowledged in the application form.
8. The petition was then adjourned to 26th July, 2021 being a date after the expiry of the protective certificate. On that date the debtor sought a further adjournment pending the outcome of the Court of Appeal proceedings which had been heard, but where a judgment was expected by Michaelmas 2021 if not before.
9. I heard and refused the adjournment applicant and, having heard submissions, adjudicated the debtor bankrupt. I am informed that the bankrupt has since appealed that order to the Court of Appeal (2021/214).
10. I now give reasons in order to assist the parties.

Whether the matter should be adjourned

11. Adjourning the petition seems inconsistent with the approach of the Court of Appeal which specifically refused a stay on the enforcement of the costs order. Also, adjournment of a petition is generally inappropriate given the balance of prejudice.
12. Speaking generally, the prejudice caused by dissipation of assets is something that is frequently irremediable, whereas any prejudice to a debtor by adjudication can be remedied by return of monies. Consequently, it seems to me that while in some legal contexts it is the default position that further steps are put on hold while the intermediate step is appealed, that would normally be a recipe for serious injustice and procedural mayhem in the bankruptcy context. Generally, the process must be allowed to continue, and certainly at least insofar as it requires the preservation of assets, which in turn is dependent on a debtor's adjudication. Undertakings are a poor substitute for actually securing assets and operating the statutory framework in a context such as this, if for no other reason than we only get to this point by reason of a debtor's failure to comply with previous court orders. Accordingly, it seemed to me that the adjournment application should be refused and I so ordered on 26th July, 2021.

Whether the debtor should be adjudicated bankrupt

13. The defence to the petition was relatively scanty and essentially involved the following contentions:
 - (i). The underlying objective of the petition was not debt recovery, but was for an ulterior motive. That most certainly has not been demonstrated. The fact that parties might be engaging in oppositional and heated stances in no way takes from the fundamental dynamic of the process as being one involving debt recovery.
 - (ii). The debt and its quantum is disputed and thus the petitioner is estopped from prosecuting the petition. That is a misunderstanding of estoppel. The existence of a dispute about something doesn't in itself create an estoppel. Nor does such a dispute in itself amount to a defence – an actual defence to the petition has to be made out at this stage, as opposed to being merely alleged. In this case, as far as the High Court is concerned, the quantum of the debt has already been formalised by order.
 - (iii). The sum demanded is incorrect and there is no indebtedness in excess of €20,000. Again, this contradicts the order of O'Hanlon J.
 - (iv). The matter is before the Court of Appeal. That is not a defence as such, albeit that of course if the debtor wins the appeal no doubt the Court of Appeal will make any necessary consequential orders.
 - (v). The debtor has engaged with a personal insolvency practitioner and has supplied a statement of affairs. Unfortunately, he has already been through that process and come out the other end, so there is nothing further in that point.

14. In fairness, the debtor indicated that the adjudication was not being opposed subject to the argument that the matter should be adjourned. In all of those circumstances it seemed to me that the criteria for adjudication had been satisfied.

Order

15. For those reasons, the order made on 26th July, 2021 was:

- (i). to refuse the adjournment sought; and
- (ii). to adjudicate the debtor bankrupt.