

**THE HIGH COURT**

**BANKRUPTCY**

[2023] IEHC 158

**IN THE MATTER OF SECTION 85A OF THE  
BANKRUPTCY ACT 1988 AS AMENDED**

**IN THE MATTER OF KENNETH JOYCE,  
A BANKRUPT – 5403**

**RULING of Mr Justice Mark Sanfey delivered on the 29<sup>th</sup> day of March 2023.**

1. On 3 February 2023, I delivered judgment in relation to the application by the Official Assignee in Bankruptcy ('the OA') for an order extending the bankruptcy of Kenneth Joyce ('the bankrupt') pursuant to s.85A(4) of the Bankruptcy Act 1988 as amended ('the Act'), and an application by the bankrupt, issued on 18 November 2022, for a number of reliefs. The judgment is reported at [2023] IEHC 55, and should be read in conjunction with this ruling.

2. In the event, I acceded to the OA's application and extended the bankruptcy. I indicated my intention to make an order dismissing the bankrupt's application. I also indicated at para. 67 of my judgment that I proposed to award the OA his costs of the

s.85(4A) application, and to make no order as to costs in relation to the bankrupt's application. I invited the parties to make short written submissions if they wished to contend for a different order.

3. Brief outline submissions were subsequently furnished on behalf of the OA. It was submitted that the OA would in the normal course be entitled to his costs of defending the bankrupt's motion as costs in the bankruptcy. The point was made that the OA was required to reply separately to the bankrupt's motion, which was heard on 5 December 2022, and that the bankrupt had subsequently "accepted that the various reliefs he had sought were either inappropriate or no longer appropriate ...", and that the application was ultimately dismissed.

4. I dealt with the substance of that application on 5 December 2022, although I did not make an order for costs on that date. The OA submitted an affidavit in the course of his opposition to the bankrupt's application. The bankrupt, who represented himself in respect of both applications, accepted that much of his application was misconceived and ultimately, as I remark at para. 64 of the substantive judgment, did not press his application.

5. The OA's position is that he incurred cost in relation to what was a separate application, albeit that it was addressed alongside his own application for extension of the bankruptcy, and that the normal order would be that he recover his costs in the bankruptcy, if not against the bankrupt personally.

6. The bankrupt's application was addressed by the court in conjunction with the OA's application. However, it cannot be said that it did not give rise to costs over and above those incurred in the course of the extension application. If I do not make an order in relation to the costs of the bankrupt's application, the OA will not be able to recover those separate costs. On reflection, it does not seem to me that the OA should

be put in this position, particularly as he was successful in his opposition to the bankrupt's application.

7. The difficulty is that, if I make an order that the OA is entitled to his costs in the bankruptcy, it is the creditors who will bear the costs of the bankrupt's unsuccessful application. However, I do not think there is any reality in making an order for costs against the bankrupt personally.

8. In truth, the bankrupt's application was a response to the extension application. In those circumstances, I consider that the costs of the bankrupt's application may appropriately be regarded as costs in relation to the extension application. I will therefore direct that the costs incurred by the OA in relation to the bankrupt's application be costs in the bankruptcy, and note that such costs were incurred in connection with the prosecution of the extension application. Such an order would be consistent with what I had indicated at para. 67 of my judgment. In any event, I trust that the OA's costs of resisting the bankrupt's application will be small, particularly given that counsel's attendance at the hearing of 5 December 2022 was necessitated in any event by the extension application listed also for that date.

9. To be clear, the orders I shall make will be:

- (1) An order awarding the OA his costs of the s.85(4A) application in the bankruptcy;
- (2) An order for the OA's costs of resisting the bankrupt's application in the bankruptcy, as costs incurred in connection with the prosecution of the extension application.