



# THE SUPREME COURT

**S:AP:IE:2020:000125**

**A:AP:IE:2019:000247**

**Bankruptcy No. 4549**

**O'Donnell J.**

**Dunne J.**

**Charleton J.**

**O'Malley J.**

**Baker J.**

**IN THE MATTER OF MICHAEL WYMES, A BANKRUPT**

**BETWEEN/**

**THE MINISTER FOR COMMUNICATIONS, ENERGY AND NATURAL**

**RESOURCES AND MICHAEL O'CONNELL**

**Petitioners/Respondents**

**- AND -**

**MICHAEL WYMES**

**Respondent/Appellant**

**COSTS RULING delivered on 14 day of September, 2021**

1. This is the Court's ruling on the costs of the appeal of Mr. Michael Wymes against the order of Pilkington J.: see [2021] IESC 40.

2. The question for consideration in the appeal was whether a debtor can in the light of the provisions of ss. 7(1)(g), 8(5) and 11(1)(c) of the Bankruptcy Act 1988 commit an act of bankruptcy when he or she has challenged the summons relied on by the creditor.
3. The decision of the Court was that an act of bankruptcy can occur notwithstanding that the debtor has made a statutory challenge to the summons, and the Court rejected the argument of the appellant that there was an ambiguity, inconsistency or confusion in the legislation.
4. The practical effect of the decision on the appeal was that the bankruptcy adjudication was not annulled.
5. The respondents have sought the costs of the appeal and argue that they have been “entirely successful” in the appeal within the meaning of s. 169(1) of the Legal Services Regulation Act 2015 and that no circumstances exist to displace the presumption that presumptive entitlement to costs.
6. The appellant argues that the Court ought to exercise its discretion to depart from the normal rule as the case was one of general public importance which clarified the law relating to the effect of challenge to a bankruptcy summons.
7. It is undoubtedly the case that the question considered in the appeal was a matter of general public importance, but that factor alone cannot be a basis on which a determination on liability for costs could be made, as most, if not all, appeals to this Court could be said to fall into that category by reason of the constitutional threshold for the grant of leave to appeal. Furthermore, the applicant by the appeal sought to overturn his own adjudication, and therefore he cannot argue that he was not seeking a private personal advantage. Accordingly, the appeal does not meet the test identified in cases such as *Dunne v. the Minister for the Environment* (No. 2) [2008] 2 IR 775, and is not therefore one which meets the test of the public interest litigation.

**8.** The point raised in the appeal was of some difficulty and had been identified in old authorities but not later clarified in legislation. While the Court received helpful assistance from the appellant's written and oral submissions, we do not consider that any basis exists to depart from the normal rule that costs follow the event, and in the circumstances will make an order that the respondent is entitled to the costs of the appeal.