

**THE HIGH COURT  
BANKRUPTCY**

[2021] IEHC 592

**[Bankruptcy No. 5126]**

**IN THE MATTER OF SECTION 85A OF THE BANKRUPTCY ACT 1988 AS AMENDED AND IN  
THE MATTER OF  
HAROLD MOORE, A BANKRUPT**

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

1. The debtor was adjudicated bankrupt on 17th February, 2020.
2. On 27th January, 2021, the Official Assignee filed a motion seeking relief under s. 85A(3) of the Bankruptcy Act 1988 which allows for extension of the term of bankruptcy due to non-co-operation or non-disclosure. The core reliefs were at para. 2 of the motion for an interim extension of the bankruptcy, and at para. 3 for an extension under s. 85A(4) for such period as the court might determine. I granted the interim extension on 8th February, 2021 in accordance with para. 2 of the motion. What is outstanding now is para. 3, the final extension.

**Facts**

3. The bankrupt says that on 9th February, 2012, the Revenue issued a notice of assessment for VAT for periods between 1st March, 2011 to 31st August, 2011. He said that his accountant failed to deal with this by way of appeal, despite instructions.
4. A late appeal application was refused by Revenue on 6th September, 2012. That was appealed to the Appeal Commissioners, but was refused on 16th July, 2013.
5. On 26th July, 2013, he sought a case stated, but that does not seem to have resolved the matter.
6. Also in 2013, assessments were issued for capital gains tax and income tax, but were not appealed.
7. In 2014, Revenue proceedings were instituted: *Gladney v. Moore* [2014 No. 240 R]. On 26th July, 2016 summary judgment was given in favour of Revenue. The debtor then sued his accountants: *Moore v. Carr* [2016 No. 7825 P].
8. As noted above the debtor was adjudicated bankrupt on 17th February, 2020 but failed to deliver a statement of personal information, a statement of affairs or an income assessment form despite six requests between 21st February, 2020 and 11th November, 2020.
9. In August 2020, the bankrupt suffered a heart attack and was admitted to hospital.
10. The grounding affidavit for the application to extend the duration of bankruptcy was sworn on 26th January, 2021.
11. There were five attempts at personal service between 29th to 30th January, 2021 but the summons server was refused access by a person in the bankrupt's dwelling.

12. I heard the motion on 19th April, 2021 but gave the bankrupt a further opportunity to put in information. That was not promptly taken up. I was told that the bankrupt had a car accident and was hospitalised in April 2021. But it took until May, 2021 to deliver a statement of affairs and an income assessment form, and until July, 2021 to deliver a statement of personal information.
13. Of notable importance is that none of this information was delivered during the normal one-year period of the bankruptcy. That fact is not scrubbed from legal relevance by the bankrupt coming up with information only after the motion to extend the term of the bankruptcy.

**Whether the bankruptcy should be extended**

14. Under s. 85A(4) the court can postpone the discharge of a bankrupt from bankruptcy if the bankrupt has failed to cooperate regarding the realisation of assets or hidden or failed to disclose income or assets which could be realised. It seems to me that there must be a presumption in favour of an extension if non-cooperation or non-disclosure has been established, and that is amply justified here. It is particularly significant that there was complete non-disclosure during the normal one-year period of the bankruptcy. That is not rendered legally irrelevant by late efforts at compliance.
15. Reliance was placed by the bankrupt on the European Convention on Human Rights and in particular the decision in *Grande Stevens v. Italy* Application Nos. 18640/10, 18647/10, 18663/10 and 18698/10 (European Court of Human Rights, 4th March, 2014). It was suggested that the current motion amounts to double jeopardy. However, *Grande Stevens* is about the imposition of an administrative penalty for an offence in addition to the bringing of criminal proceedings. Such a procedure can indeed create double jeopardy, but that doesn't apply here because the extension of bankruptcy is neither an administrative penalty nor criminal in nature. It is a civil consequence of the bankrupt's indebtedness and failure to co-operate. It was also suggested in submissions that s. 85A(4) may be unconstitutional, but I cannot address that in the absence of notice to the Attorney General under O. 60 RSC.
16. Strong arguments were also advanced that the adjudication, and indeed the whole series of problems that have been visited upon the bankrupt, are to be laid at the feet of his former accountant. Unfortunately, that is going back to an earlier stage of the process in a way that is not permissible under this procedure. Any complaints against the accountant can be litigated in the civil proceedings for damages and might possibly have been a basis to dispute the adjudication originally, but such problems do not remove the need for co-operation once the bankrupt has been adjudicated as such.
17. Reliance was also placed on the bankrupt's health, but the non-cooperation well precedes any health issues; and even the issues that he does have are not such as to preclude much greater and much earlier cooperation overall than he has supplied.

**The appropriate term of an extension**

18. The Official Assignee submitted that this was at the serious end of the spectrum and suggested an extension of eight years. In *In Re Killally* [2014] IESC 76, [2014] 4 I.R.

365, Clarke J. emphasised that the integrity of the process requires total co-operation. The maintenance of that integrity requires to be encouraged by the imposition of sanctions for breach. Costello J. in *In Re Gaynor* [2017] IEHC 27, [2017] 1 JIC 2303 (Unreported, High Court, 23rd January, 2017), said that the fact that prejudice cannot be proved or may be limited does not preclude the imposition of a lengthy term of an extension if there is the possibility of undisclosed assets. The law is clear that the bankrupt must “proactively disclose relevant information to the Official Assignee” (*In Re Daly* [2018] IEHC 579, [2018] 10 JIC 1506 (Unreported, High Court, Costello J., 15th October, 2018)). In that case, total and deliberate non-cooperation justified a period of ten years. That was upheld by the Court of Appeal in *In Re Daly* [2019] IECA 491, [2019] 12 JIC 1810 (Unreported, Court of Appeal, Birmingham P. (McCarthy and Kennedy JJ. concurring), 18th December, 2019), that court holding that the benefit of discharge “has to be earned by full and unqualified cooperation.”

19. Admittedly, the legislation is somewhat unsatisfactory in that it only allows a one-off extension and does not provide for the term to be further extended depending on the ongoing state of cooperation or otherwise. Thus, the court has to make a one-off assessment. That seems far too inflexible and possibly warrants review and examination by the Department of Justice. As the law is currently constituted, a non-co-operating bankrupt can simply sit out the purdah of the one-off extension and be then discharged even if she never co-operates. It’s hard to see how that strikes the right balance, especially bearing in mind the rights of creditors. The obvious solution (to me, but maybe I’m missing something) is to allow the court to further extend or amend the period on the making of an appropriate application. However pending consideration of any such amendment, the legislation is what it is, and I am required to make a one-off assessment based on what I have now.
20. But for the belated cooperation, I would have agreed with the Official Assignee on an eight-year extension. Allowing credit for that belated cooperation, I will extend the bankruptcy for seven years from the date of adjudication, which, for what it’s worth, is less than five and a half years from now.

**Order**

21. For those reasons the order will be an order under s. 85A(4) of the Bankruptcy Act 1988 postponing the date of discharge of the bankrupt to the seventh anniversary of the date of making of the adjudication order, or in other words midnight on 16th February, 2027.