

THE HIGH COURT

[2021] IEHC 331

BANKRUPTCY

[Bankruptcy No. 4009]

[Bankruptcy No. 4008]

IN THE MATTER OF SAMUEL SNODDY AND THOMAS C. SNODDY (DISCHARGED BANKRUPTS)

JUDGMENT of Humphreys J. delivered on Wednesday the 19th day of May, 2021

1. On 6th May, 2005, an agreement was entered into between Carlow County Council and Mr. Samuel Snoddy obliging the latter to transfer a road and bridge to the council following the completion of a construction project.
2. The project was duly completed in 2007 and consideration furnished to Mr. Snoddy. Thereafter he held only the legal, but not the equitable title. However, he declined to execute the transfer, claiming he was owed more monies.
3. He issued commercial proceedings [2012 No. 1900 P], but those were struck out by Kelly J. on 24th October, 2012.
4. Separately in 2013 Mr. David Mavroudis obtained judgment for a liquidated sum against Mr. Snoddy, and on foot of that, registered a judgment mortgage against the lands on which the road and bridge had been built.
5. Mr. Snoddy was adjudicated bankrupt on 6th February, 2017.
6. The council then issued proceedings in the Circuit Court (*Carlow County Council v. Lehane* 00154/2019) by way of Equity Civil Bill seeking specific performance of the May 2005 agreement.
7. Mr. Mavroudis then brought a motion in the Bankruptcy List which ultimately took an amended form in what is described as a "reconstituted motion" on 2nd February, 2021 seeking various reliefs. While the motion did not expressly seek that relief, he made an application for a stay on the Carlow Circuit Court proceedings on 22nd February, 2021, which I granted with liberty to the council to apply.
8. On 19th April, 2021, the council applied to discharge the stay on the Circuit Court proceedings. I granted that application and now take the opportunity to give reasons in order to assist the parties.

Whether the Circuit Court proceedings were in breach of s. 136 of the Bankruptcy Act 1988

9. Section 136(1) of the Bankruptcy Act 1988 provides as follows: "On the making of an order of adjudication, a creditor to whom the bankrupt is indebted for any debt provable in bankruptcy shall not have any remedy against the property or person of the bankrupt in respect of the debt apart from his rights under this Act, and he shall not commence any proceedings in respect of such debt unless with the leave of the Court and on such terms as the Court may impose."

10. However, this does not apply here for the simple reason that the Circuit Court proceedings are not proceedings by a creditor regarding any debt. They are equitable proceedings seeking declaratory relief and specific performance, determining an interest in land. Consequently, they fall outside s. 136 of the 1988 Act. Mr. Mavroudis' argument, therefore, about the priority of his debt does not arise in that context.

Whether other rights of the discharged bankrupt are such that the Circuit Court proceedings should be stayed

11. Mr. Mavroudis in effect sought to assert other rights of Mr. Snoddy, such as an alleged further right to be paid additional monies for the costs of construction of the road and bridge. However, the assertion of any such rights of a bankrupt (or discharged bankrupt in this case) is a matter for the Official Assignee, in the absence of any direction from the court. Thus, there is no compelling rationale for the Circuit Court proceedings to be stayed.
12. It is true that Mr. Mavroudis has sought such directions, but as of the date of the hearing of the stay discharge application, no such directions have been given, and it did not appear to me that there was a sufficiently weighty case that such directions might be granted as would outweigh the considerations in favour of allowing the Circuit Court proceedings to continue.

Order

13. Consequently, the order made on 19th April, 2021 was to discharge the stay on Carlow County Council progressing its equitable proceedings in Carlow Circuit Court.