[2019] IEHC 287

THE HIGH COURT

2015 No. 271 S

Between:

ALLIED IRISH BANKS PLC

Plaintiff

– and –

MICHAEL KING AND DENISE KING

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 3rd May, 2019.

1. On 12.07.2018, AIB obtained a debt judgment against the Kings. The relevant order came subject to a three-month stay on execution. On 3.08.2018, AIB wrote to the Kings seeking information concerning a particular land transfer. The Kings' solicitor replied by letter of 28.08.2018 that AIB was not entitled to the information sought, and noting the three-month stay. On 5.10.2018, *i.e*. within the three-month period, AIB issued a motion seeking relief under O.42, r.36, RSC. The Kings contend that the stay operated to prevent AIB from issuing that motion (which underpins this application). A key issue now presenting between the parties concerns the effect of an order of stay. The court has been referred, *inter alia*, to *White, Son & Pill v. Stennings* [1911] KB 418, *Sucden Financial Ltd v. Fluxo-Cane Overseas Ltd* [2009] EWHC 3555) and *AIB plc v. O'Reilly* [2015] IECA 209.

2. In *White*, the Court of Appeal held that execution by way of garnishee proceedings cannot be commenced on a judgment for payment of money before the time given by the judgment for payment has expired. In *Sucden*, the High Court made a distinction between steps which enable a judgment creditor to enforce a judgment, and action which is a species of execution. Consequently, it held that an English court rule which is the analog of O.42, r,36 was not part and parcel of the enforcement process. In *O'Reilly*, Finlay Geoghegan J. observes, at para.18, that *"A person who has obtained a judgment which the judgment debtor leaves unsatisfied appears to me* prima facie *entitled to orders which may be made pursuant to O.42, r.36".* This Court would but add in this regard that, for the period of a stay on execution, a judgment debtor who does not pay the judgment debt has not left the relevant judgment unsatisfied; s/he has been given the entirety of the three-month period as a 'breather' in which no satisfaction is required; and if I am not required to do something, I cannot properly be said to have left its doing undone.

3. *White* is patently concerned with commencement of execution (garnishee) proceedings. Sucden is a case that is more on point. However, the court is, respectfully, unpersuaded by the logic in *Sucden*. Yes, one can view an O.42, r.36 application/order as a preliminary to enforcement. However, once application is made under O.42, that application becomes a chain in the link of the post-judgment enforcement process, the very process in respect of which the court has granted a stay. Faced with the introduction of such a link it seems to the court to be entirely unrealistic that one would disregard that one link in what will be a continuous chain from the issuance of judgment through to the payment of the debt and pretend that that link in fact enjoys a separate un-linked existence. It is important also to recall the practicalities of when and why a stay on execution is granted. Typically it comes about because counsel stands up in court when summary judgment issues and offers a reason why her client needs a little time to get his affairs in order. For that 'breathing-space' to be interrupted by the commencement of an O.42, r.36 application seems to the court, certainly in the circumstances here presenting, to be the very opposite of what a stay on execution is intended to achieve.

4. Despite all of the foregoing, AIB's 'rush' to make application came, in truth, but seven days before the expiry of the period of the stay. Additionally, the said period has now long elapsed, and the factual position presenting is akin to that contemplated by Finlay Geoghegan J. in *O'Reilly*, para.18, rendering AIB *prima facie* entitled to (and the court considers that in all the circumstances now presenting it should and will be granted) the order it has come seeking.