

THE HIGH COURT

Record no. 2020/ 80 SP

**IN THE MATTER OF SECTIONS 25 and 26 OF THE TRUSTEE ACT 1893
ON THE APPLICATION OF:**

**CLARIANT AG AND
CLARIANT PLASTICS & COATINGS (IRELAND) LIMITED**

WRITTEN RULING of MR. JUSTICE DAVID BARNIVILLE delivered the 20th day of April 2020

1. This is my ruling on the Applicants' application to enter these proceedings in the Commercial List. In light of the COVID-19 pandemic restrictions I agreed to deal with the Applicants' entry application on the basis of the papers, in circumstances where there was no opposition to it.
2. The Applicants commenced these proceedings by way of special summons on 4 March 2020. The Applicants seek orders pursuant to section 25 and/or section 26 of the Trustee Act, 1893 in connection with a piece of property forming part of the property from which the second applicant operates its business of manufacturing plastics and coatings at Naas, County Kildare. The proceedings were served on the Minister for Finance and on the Chief State Solicitor on 5 March 2020 (see the affidavit of service of Paul Kelly sworn on 11 March 2020). The proceedings are grounded on an affidavit sworn by Andrew Lock on 9 March 2020.
3. The Applicants issued the motion seeking entry in the Commercial List and directions on 9 March 2020. That application was grounded on another affidavit sworn by Mr lock on 9 March 2020. The motion papers were served on the Minister for Finance and on the Chief State Solicitor on 12 March 2020 (see the further affidavit of service of Paul Kelly sworn on 18 March 2020).
4. The Applicants' entry application was supported by a certificate of Catherine Hayden, a solicitor in the firm of A & L Goodbody solicitors, dated 9 March 2020. The certificate was in the required format.
5. The motion had a return date of 30 March 2020. However, having regard to the current public health crisis and the restrictions in place, it was not possible for the motion to be heard and determined that day.
6. Following service of the motion papers, the Office of Public Works wrote to the Applicants' solicitors on 24 March 2020 confirming that the Minister for Finance would not be entering an appearance to, and would not be participating in, the proceedings. The letter confirmed that, on the basis that the Applicants would not be seeking any costs from the Minister, the Minister was not objecting to the reliefs being sought by the Applicants in the special summons.
7. Having considered the motion papers and, in particular, the affidavit of Andrew Lock sworn on 9 March 2020 and the certificate of Catherine Hayden dated the same date, I am satisfied that the proceedings are "commercial proceedings" within the meaning of

that term in Order 63A RSC. In particular, I am satisfied that these proceedings fall within Order 63A rule 1(b) in that they are proceedings in respect of a claim or counterclaim, which is not a claim or counterclaim for damages for personal injuries, which, having regard to the commercial and other aspects, are, in my view, appropriate for entry in the Commercial List.

8. I have reached that conclusion for the following reasons. I note the circumstances in which it is contended that the property in question was inadvertently omitted from a transfer of property by the liquidator of its former owner (another Clariant company) to the first applicant prior to the winding up of the former owner as part of an earlier reorganisation. I further note that the Applicants are very anxious to have the proceedings determined as expeditiously as possible in circumstances where the first applicant has been engaged in a reorganisation of its business with a view to conducting a share sale of the second applicant in 2020 (and that the company has a value which is a multiple of €1 million) . The difficulty with the property at issue emerged during the reorganisation of the business. I accept that any interested purchaser will, as part of its due diligence, raise queries in relation to the title of the second applicant to the property from which it conducts its operations and that it is, therefore, very important that the title to the property is perfected so that good and marketable title in respect of the property can be transferred to any prospective purchaser.
9. In the circumstances, I am satisfied that the proceedings are "commercial proceedings" and that it is appropriate to enter them in the Commercial List. On that basis, and having regard to the two undertakings required by Practice Direction HC85 which are contained in Ms Heyden's certificate, I will enter the proceedings in the List under Order 63A rule 1(b).
10. I will also treat this application as the initial directions hearing under order 63 Rule 4(5).
11. As regards further directions for the hearing of the substantive application, I note the willingness of the Applicants to have the substantive application dealt with on the basis of a remote hearing. However, the position in relation to remote hearings in the High Court is still somewhat uncertain. A number of trial or mock remote hearings of applications in the High Court were conducted over the past week. It is hoped that it will be possible to commence remote hearings of certain applications in the Commercial List within the next week or so. However it is likely that the number of cases which can be accommodated on the basis of a remote hearing will be relatively small, at this initial stage at least. It is not, therefore, possible to guarantee the Applicants a remote hearing in this case. However, on the basis that the proceedings are not being opposed, in light of the attitude adopted by the Minister for Finance, and having regard to the small numbers of persons who will be involved, it should be possible to accommodate a physical hearing of the substantive application on the basis of a very small number of persons attending court for the hearing and that the critical social distancing requirements are complied with. I would have thought that this should be possible in the present case on the basis that one or two counsel and one solicitor will appear in court for the hearing, with the client being

available by telephone, should the need for further instruction arise. Provided the Applicants' solicitors can confirm to the Registrar that they can comply with these requirements, I will be in a position to hear the substantive application on Tuesday, 28 April 2020 at 11 am.

12. In advance of that hearing, I direct that the papers for the application be lodged in the List Room of the Central Office (marked for the attention of my Judicial Assistant) or otherwise provided to my Judicial assistant by 4 pm on Friday, 24 April 2020 and that a written submission on behalf of the Applicants be emailed to the Registrar by 2pm on Monday, 27 April 2020 (together with PDF copies of the relevant authorities which the Applicants will seek to rely upon). Provided those requirements are complied with, I will list the substantive application for hearing at 11 am on Tuesday, 28 April 2020 on the basis that it will take no more than 30 minutes.
13. I will make no order for costs on the entry application. I will give liberty to apply by correspondence.
14. That concludes this written ruling.

Mr Justice David Barniville