

Between:**Allied Irish Banks plc****Plaintiff****– and –****Gerard Black****Defendant****JUDGMENT of Mr Justice Max Barrett delivered on 3rd April, 2019.**

1. This is an appeal from a decision of the Master of the High Court. The notice of motion seeks by way of principal relief "[a]n Order pursuant to Order 63, Rule 9 of the Rules of the Superior Courts setting aside the refusal of the Master on the 7th of February 2019 to transfer the motion for summary judgment had herein to the Judges' List for hearing."

2. On 7 February, AIB's counsel asked the Master to transfer the said motion for summary judgment to the Judges' List. Mr Black's counsel opposed this application and instead made application that the Master make a preliminary reference, under Art.267 TFEU, to the European Court of Justice on certain identified issues. Counsel for AIB invited the Master not 'to give any oxygen' to the preliminary reference application and argued that the Master had no competence to determine whether he was legally entitled to make such a reference. The Master proceeded on the basis that he did have competence to determine this issue, and he adjourned matters until 7 March 2019.

3. Notably, the Master did not, on 7 February, refuse to transfer AIB's motion for summary judgment to the Judges' List. So the bank's notice of motion when it refers to "*the refusal of the Master on the 7th of February 2019 to transfer the motion for summary judgment...to the Judges' List*" is wrong and its present application misconceived. Before granting the adjournment, the Master twice invited AIB's counsel to address him on the question of the Master's legal entitlement to make a preliminary reference. Twice AIB's counsel declined, arguing that the question of the Master's legal entitlement to make a preliminary reference was not a matter that the Master had capacity to determine. The adjournment was granted, inter alia, to allow AIB to make submissions on the application for a preliminary reference.

4. The adjournment granted on 7 February was not the first adjournment in these proceedings. However, as Mr Black's counsel noted at the hearing of this application, some of those previous adjournments were on consent, some were given when Mr Black was quite ill, and some were given because Mr Black wished to engage with AIB. It is, of course, possible that the cumulative effect of repeated adjournments by the Master for no lawful reason could conceivably yield a breach of O.37, r.6, RSC (considered hereafter). However, the court does not see anything of the like presenting here. In passing, the court understands that the Master's decision on whether he can make a reference under Art.267 was postponed to allow this appeal to proceed and will now issue on 9 May.

5. The most pertinent rule of court when it comes to this application is O.37, r.6, RSC. It provides, inter alia, that

"In contested cases, the Master shall transfer the case, when in order for hearing by the Court, to the Court list for hearing on the first opportunity; and, for this purpose, the Master may extend the time for filing affidavits and give such directions and adjourn the case before himself as he shall think fit."

6. This is a contested case. So was the adjournment granted on 7 February 2019, the sole adjournment impugned in the notice of motion, granted in breach of law, whether in breach of O.37, r.6, RSC, or otherwise? The court does not see that it was. The Master was presented with an application for a reference under Art. 267. There is no doubt that he has jurisdiction to determine his jurisdiction, i.e. his legal entitlement to make a particular determination or order, including whether or not he has competence to make a preliminary reference under Art. 267. The Master may be right or wrong in whatever conclusion he reaches as to his jurisdiction. If AIB considers him to be wrong it can in the future seek, e.g., an order of *certiorari* in judicial review proceedings. But AIB is, with respect, wrong in denying that the Master has in the first place the jurisdiction to make such determination and wrong in asserting that the Master erred in law in adjourning matters as he did on 7 February. The present roadblock to progressing to the Judges' List that Mr Black's application for a preliminary reference has thrown up may be irritating to AIB; however, once the issue of the Master's jurisdiction under Art.267 TFEU was raised, his decision to adjourn matters in order to undertake a considered assessment of this issue seems legally unobjectionable to the court, whether by reference to O.37, r.6, RSC, or otherwise.

7. For the reasons aforesaid, the court respectfully refuses the reliefs sought.