

**THE HIGH COURT**  
**(Commercial List 2013 No. 23 COM)**

**BETWEEN:**

**DANSKE BANK A/S (Trading as Danske Bank)**

**Plaintiff**

**-AND-**

**JOHN MEAGHER**

**Defendant**

**Record No. 2014 356 SP**

**THE HIGH COURT**

**BETWEEN:**

**HEALTH SERVICE EXECUTIVE**

**Applicant**

**-AND-**

**JOHN MEAGHER and DUBLIN CITY COUNCIL and DANSKE BANK A/S (TRADING AS DANSKE BANK)**

**Respondents**

**Judgment delivered by Mr. Justice Moriarty on Tuesday 10th February 2015**

*A. Overview*

1. In seeking to convey even the most rudimentary overview of this protracted and convoluted matter, it should be stated at the outset that the two main building blocks by way of prior litigation that have given rise to it are, firstly a summary and unsatisfied Commercial Court Judgment of Kelly J. of the 25th February, 2013 and costs in favour of Danske Bank, ("the Plaintiff") against Mr. John Meagher ("the Defendant") in the sum of €6,984,826.48. Secondly, a Judgment of Hogan J. in favour of the said Mr. Meagher of the 14th March, 2014 against the Health Service Executive, following a fragmented nine day hearing between March and July, 2013 in the sum of €106,640.36, inclusive of substantial interest, and with a discounted proportion of total costs incurred by Mr. Meagher only being allowed. It is as to who should benefit from that €106,640.36 award that Danske Bank, with its entirely unsatisfied default judgment, and Mr. Meagher, or more particularly his solicitors, Messrs. C.C.K. Law Firm, to whom he has assigned any entitlements he may establish, have staked their competing claims.

2. The final substantive involvement of Kelly J. in the matter was to make an Order of the 13th May 2013, in the context of attachment of the lesser Judgment to answer the greater, following a hearing at which neither Mr. Meagher nor his legal representatives were in attendance, but the full meaning and effect of that Order is in dispute, with the representatives of both Danske Bank and Mr. Meagher contending for opposing constructions favourable to each, and Danske Bank alternatively contending for an amendment in their favour, if necessary to resolve any ambiguity. Even though the sum now in issue is only a tiny proportion of the Bank's Judgment, the matter has been contested with an intensity and occasional prolixity that hovers towards *Jarndyce* proportions. Indeed I am the seventh High Court judge to address the matters in issue, in addition to which two Supreme Court hearings and determinations have already been made.

*B. Litigation history*

A brief precis of the notable profusion of proceedings which have been borne upon the present issues in contention, along with the principal outcomes which transpired, is apposite.

**2005**

3. On the 9th March 2005, Mr. Meagher instituted the Summary Summons proceedings which ultimately culminated in his 2014 Judgment from Hogan J. for €106,640.36 against the Health Service Executive, primarily relating to services rendered in relation to accommodation of asylum seekers in Dublin.

**2013**

4. On the 18th January 2013, the Summary Summons was issued in proceedings taken by Danske Bank against Mr. Meagher. The present application derives from the High Court Order of Kelly J. of the 25th of February 2013 in which a sum of €6,984,826.48 was awarded in summary judgment to the Plaintiffs for a breach of contract entered into between the parties. That Order in full may be

stated at this juncture:

**"IT IS ORDERED** pursuant to Order 45 Rule 1 of the Rules of the Superior Courts that the said sum of £70,000.00 be and the same is hereby attached without further Motion to answer an Order made in the High Court on 25 February 2013 ordering payment by the Defendant to the Plaintiff in the sum of £6,984,826.48.

And **IT IS ORDERED** that the Garnishee, Dublin City Council, do appear before this Court on Monday the 17th day of June 2013 at 2 o'clock in the afternoon to show cause why it should not pay to the Plaintiff the said sum of £70,000.00 due to the Defendant - this Order nisi to be served on the said Garnishee and on the Defendant.

And in so far as there are other monies which may become due arising out of the proceedings which are alluded to in the Notice of Motion,

**IT IS ORDERED** pursuant to Order 45 Rule 9 of the Rules of the Superior Courts that Ian Bell Solicitor of MacCarthy Johnston Solicitors be appointed Receiver by way of equitable execution (without salary or security) entitled to receive, on behalf of the Plaintiff, all sums that may be due the Defendant from Dublin City Council whether comprised of existing debts or any Judgment that the Defendant may obtain in proceedings entitled John Meagher trading as Sancta Maria Hostel v Dublin City Council and Northern Area Health Board, High Court Record Number 2005 No.336S."

The Plaintiffs Motion seeks to amend the Order to the following formula:

**"IT IS ORDERED** pursuant to Order 45 Rule 9 of the Rules of the Superior Courts that Ian Bell Solicitor of MacCarthy Johnston Solicitors be appointed receiver by way of equitable execution (without salary or security) entitled to receive, on behalf of the Plaintiff, all sums that maybe due to the Defendant from Dublin City Council whether comprised of existing debts or any judgment that the Defendant may obtain, or has obtained, in the proceedings entitled John Meagher trading as Santa Maria Hostel v Dublin City Council and Northern Area Health Board, High Court Record 2005 No. 336S."

5. On the 12th March 2013 the hearing began before Hogan J. in the Meagher proceedings. On the 13th of May 2013 Kelly J. made the attachment Order which is at the heart of the present proceedings, including the appointment of Mr. Ian Bell, Solicitor to Danske Bank, as receiver by way of equitable execution as aforesaid. In proceedings entitled *Martin Ferris v John Meagher & Echoforde Ltd* dated the 31st of July 2013, Birmingham J. awarded a prohibitory injunction to the plaintiffs which prevented the defendant from interfering with the process of repossessing the plaintiff's properties.

6. On the 17th July 2013 a notice of motion seeking relief pursuant to section 3 of the Legal Practitioners (Ireland) Act, 1876 brought by solicitors representing Mr. Meagher was adjourned with a return date of 22nd July 2013. On the 25th July 2013, the final day of hearing in the Meagher proceedings was heard before Hogan J. Then on the 4th of October 2013, Peart J. refused the defendant's application to set aside the judgment which was awarded on the 25th of February 2013. An application was then made by counsel for Mr. Meagher for a stay pending an appeal to be heard by the Supreme Court. This application was refused by the Supreme Court (Fennelly J.), with the substantive appeal against the Judgment of Peart J. deferred to full hearing. On the 1st November 2013, the defendant was awarded the sum of €106,640.36 in damages by Hogan J. in an action for a breach of covenant brought against the HSE which was entitled *John Meagher t/a Sancta Maria Hostel v Dublin City Council and Northern Area Health Board*. The judgment of Hogan J. was delivered in draft form on this date. On the 19th December 2013, Counsel for Mr. Meagher applied to the High Court to have the judgment reopened, which application was adjourned.

## 2014

7. On the 7th March 2014, the motion brought pursuant to Section 3 of the Legal Practitioners (Ireland) Act, 1876, by Mr. Meagher's Solicitors came before Hogan J. Concurrently, the hearing of the application to have the judgment in the 'Meagher proceedings' re-opened came before Hogan J., and necessitated a reserved judgment. Furthermore, on the same date, the costs applications in those proceedings were reserved by Hogan J. On the 14th March, 2014, the decisions in relation to the re opening application and the costs applications were made by Hogan J., along with the Order made in the Meagher proceedings. On the 28th May, 2014, the written judgment in relation to the Motion pursuant to section 3 of the 1876 Act was delivered, ruling against the solicitors representing Mr. Meagher. Further, on the 5th June, 2014, the Order of Hogan J. in the Meagher proceedings was perfected. The Defendant appealed the decision of Peart J. of 4th October 2013 to the Supreme Court. This appeal was dismissed by Laffoy J. on the 1st of April 2014.

8. On the 8th July 2014, Hogan J. issued his Order in relation to the section 3 Motion hearing. This Order was subsequently perfected on 22nd July 2014. In August 2014, DCC and the HSE refused to discharge the sum of €106,640.36 to the Defendant believing that there remained confusion as to whether he was entitled to receive such monies. On the 17th September, 2014, the HSE issued a Special Summons in the interpleader proceedings. By Order of the 18th September, 2014, McCarthy J. granted the Plaintiff *ex-parte* leave to serve proceedings upon CCK Solicitors for Mr. Meagher. On the 24th September, 2014, Barr J. transferred the matter to the Commercial Court List on the 30th September 2014, and granted an injunction restraining Mr. Meagher from enforcing judgment against the HSE until after 30th September, 2014.

9. On the 7th October Danske Bank issued a Notice of Motion to vary the Order of Kelly J. of the 13th May 2013. On the 30th October 2014, the hearing of the interpleader motion, along with that motion came before this Court. Thus the hearing for resolution of the conflicting claims to the benefit of the judgment award by Hogan J. then came on for hearing on that date with appearances on behalf of Danske Bank, Mr. Meagher, the Health Service Executive and Dublin City Council. Following some argument as to the sequence in which the competing applications should be heard, I took the view that the matter in its totality should be opened by Mr. Fanning, B.L. on behalf of Danske Bank, and the hearing proceeded for most of the day, with Judgment being reserved at its conclusion, and provision made for written submissions to be furnished.

### C. The parties' arguments

10. The Plaintiffs case, briefly stated, is that its Receiver Order, as granted by Kelly J. on the 13th May, 2013, *prima facie* entitles the Bank to all proceeds of the litigation between the Defendant and Dublin City Council. These proceeds, it may be recalled, total €106,640.36. Alternatively, the Plaintiff argues that the Receiver Order should be amended to ensure that any award payable by the Health Service Executive to the defendant will be applied towards discharging the Defendant's debts to the Plaintiff. These arguments are supported by the following points:

a. that the scope and intention of the third Order is clearly discernible from the initial condition which precedes it which states:-

*"in so far as there are other monies which may become due arising out of the proceedings alluded to in the Notice of Motion. "*

b. The ordinary and intended meaning of the words specifying the scope of the Order is centred upon the following section of the Kelly Order:-

*"...and be entitled to receive, on behalf of the Plaintiff: (a) all sums that may be due to the Defendant from Dublin City Council whether comprised of existing debts or (b) any judgment that the Defendant may obtain in proceedings entitled John Meagher trading as Sancta Maria Hostel v Dublin City Council and Northern Area Health Board."*

The Plaintiffs case is that the phrase "from Dublin City Council" conditions only the first element (a). Therefore, upon this reading, the second element of the clause, (b), is not qualified in this manner and clearly captures "any judgment" arising from the litigation, whether from Dublin City Council or the Health Service Executive.

11. If the Plaintiffs interpretation of the Order is deemed more persuasive, it would appear that the monies are caught by the Order and the monies must be paid to Danske. The Plaintiffs motion to vary and the Health Service Executive's interpleader action then become moot.

12. In contrast, the Defendant argues that on its face, the Receiver Order captures only awards made against Dublin City Council but not awards that are made against the Health Service Executive, and further that this interpretation is pursuant to the clear and literal reading of the Order of Kelly J. In addition, the Defendant argues that the High Court does not possess jurisdiction to amend the Receiver Order so that it will capture monies due from the Health Service Executive. In particular, the Defendant raises the argument that the clause "from Dublin City Council" effectively conditions the entire "Kelly Order".

#### *The interpleader application*

13. The interpleader motion has effectively been usurped by the Plaintiffs motion to vary the Order. The decision on the Motion to vary would seem likely to obviate the need to determine the interpleader.

14. The Health Service Executive's main points of argument have been stated by counsel during the hearing of this matter, and reference is also made to the affidavit of Pdraig Rehill, Hospital Manager of Cherry Orchard Hospital, Ballyfermot. Essentially, the Health Service Executive argues that the judgment of Hogan J. was awarded in favour of Mr. Meagher and that the Health Service Executive has no entitlement to such monies but does, however, claim indemnity from Dublin City Council in relation to the said award. In effect, Dublin City Council's position is that it will abide by an Order of this Court, which will deal with this matter finally.

#### *D. Varying the Order*

15. Delany and McGrath have dealt with this issue in their *Civil Procedure in the Civil Courts* (3rd Ed) of 2012. They state, at page 789, that in addition to Order 28 of the Rules of the Superior Courts, the courts possess a recognised right at common law to a "wider and more fundamental jurisdiction" which enables the court to amend an Order previously made and perfected.<sup>1</sup> Attention must also be drawn to the caveat issued by O'Higgins J. in *Limerick VEC v Carr*.<sup>2</sup> Having reviewed the authorities pertaining to this issue, O'Higgins J. stated:

*"In the light of these authorities it seems clear that there is a power in the court above and beyond the provisions of the slip rule to amend an order of a court. However, such power is to be exercised sparingly and only when the court finds that the judgment as drawn up does not correctly state what the court actually decided or intended. Apart from that, the court does not have jurisdiction to interfere with an order of the court which correctly expressed the decision of the court and which was not appealed."*<sup>3</sup>

It would appear from the foregoing, that a crucial prerequisite is that the original Order does not adequately reflect the clear intention of the ruling judge. Unless that element is present, it would appear that the court should be cautious in amending a final Order of the High Court.

16. This issue was also analysed in detail by the Supreme Court in *Belville Holdings Ltd v Revenue Commissioners*.<sup>4</sup> In this case, the appellant company appealed to the Supreme Court against a previous Order made in that case on the grounds that the learned trial judge had erred in law in acting ultra vires that court's jurisdiction. In the case before the learned trial judge, it was argued that the required facts to allow for such a discretion in amending the previous court Order were not present. On appeal to the Supreme Court, it was held by a panel comprising Finlay CJ, Blayney J. and Denham J. (as she then was) in allowing the appeal, that there is, *inter alia*, a wide and fundamental jurisdiction in a court to amend an order which it has previously made, even though that Order was final and had been perfected. However, when an Order had been made and was deemed to be final, it ought only to be altered in special or unusual circumstances.

17. Moreover, the Supreme Court in *Belville* approved the dicta of Romer J. in *Ainsworth v Wilding*, in which it was stated that the only cases in which an Order can be amended are the following:

*"(1) Where there has been an accidental slip in the judgment as drawn up, in which case the court has power to rectify it under Order 28, rule 11;*

*(2) When the court itself finds that the judgment as drawn up does not correctly state what the court actually decided and intended."*<sup>5</sup>

These principles are well-established in Irish law. In the more recent decision of *MeG v W* (No. 2) Denham J. stressed that the fundamental concern when applying these stated principles is to interpret the Order's intended meaning and to implement its intention.<sup>6</sup>

#### *E. Decision*

18. The crucial issue for decision is the interpretation of the Order of Kelly J. I have considered carefully the form of the Order, the entirety of the factual circumstances surrounding it, and the oral and written submissions made. In the ultimate, I am left in no realistic doubt that the interpretation contended for on behalf of Danske Bank is the correct one, and I find accordingly. I accept that the clear intention of Kelly J. was to ensure that the Bank would be the beneficiary of the entire proceeds of Mr. Meagher's litigation against Dublin City Council and the Health Service Executive, and that the Bank, in bringing its Motion and expressing the reliefs

sought, were seeking to attach the €70,000.00, which Dublin City Council had agreed to pay to Mr. Meagher on foot of that settlement, and also to appoint a Receiver in respect of any other monies owed to Mr. Meagher by Dublin City Council and any proceeds of his litigation, whether obtained from an Order against Dublin City Council or the Health Service Executive.

19. What tenable rationale could have motivated Kelly J. to have intended that the amount of the lesser Judgment should inure to Mr. Meagher's benefit? It was Kelly J. who had ordered the major default Judgment in favour of the Bank against Mr. Meagher, and he also had acceded to the Bank's attachment Motion in the absence of any appearance or submissions by or on behalf of Mr. Meagher. Yet Mr. Meagher now invites this Court to find that the effect and intent of the "Kelly Order" was to enrich him as the beneficiary of the amount of the lesser Judgment. It appears to me that the overall intent of the Order was demonstrably clear, even if the form in which it was drawn imported some limited element of ambivalence. If this were of such a degree as to be capable of remedy only by the amendment proposed on behalf of the Bank, I would accede to such a course, and believe the authorities referred to above would have entitled such a course, but I believe the position is in any event sufficiently clear to preclude the necessity for this. What took place was a quintessential instance of a Judgment creditor moving to attach a lesser entitlement that had accrued to its debtor, and the understandable emphasis in the Affidavit filed by the Bank's Solicitor, Mr. Ian Bell, on the nexus with their initial judgment, whereby Mr. Meagher's entitlement on foot of his judgment related to the very properties that the Bank had financed by unpaid loans that became the subject of the Bank's Judgment, only goes to emphasise the link between both proceedings, and the Bank's understandable intent to recoup even a small portion of its unsatisfied Judgment.

20. Further, while not a matter of interpretation *per se*, what is the Court to infer from what appears the utter unpreparedness of Mr. Meagher's legal advisors to accompany their colleagues in having this matter mentioned before Kelly J. in a context of seeking any necessary clarification? It was he who had granted the major default Judgment, then latterly made the Attachment Order, and he of course was the Judge in charge of the Commercial Court, and had been since its 2004 inception. It is difficult to divine a cogent reason for this reluctance, or indeed for what might be viewed as the unhelpful militancy shown on behalf of Mr. Meagher in the latter procedural stages, other than as surmised in the written and oral submissions made on behalf of the Bank. Given the clear view I have formed on the substantive matter, I have not found it necessary to consider every point made in the course of the hearing and submissions, but it is appropriate to state that I have no hesitation in rejecting the allegation of collusion made on behalf of Mr. Meagher against opposing parties. On even the most favourable view of what transpired from his standpoint, what emerges falls very short of "an agreement between two persons or more to defraud another of his or her rights, or to obtain something prohibited by law." Further, whilst not on the authorities of itself determinative, I incline towards the view advocated on behalf of the Bank that the contentious portion of the "Kelly Order", dealing as it did with the substantively interlocutory relief of attachment, was not of such finality as should impede any necessary amendment of the Order.

21. In all the circumstances, I find in favour of the Bank. Given the overlapping Health Service Executive application, and the other appearances at the hearing of both matters, it would seem prudent to defer the final form of Orders, and matters of costs, for a short period until the parties have had an opportunity to consider this Judgment.

<sup>1</sup>. Cregan v Rafter [1940] Ir. Jur. Rep. 80.

<sup>2</sup>. [2001] 3 I.R. 480.

<sup>3</sup>. [2001] 3 I.R. 480, 489.

<sup>4</sup>. [1994] 1 I.L.R.M. 29.

<sup>5</sup>. [1896] 1 Ch. 673, 677.

<sup>6</sup>. [2000] 4 I.R. 514, 527-28.