



THE COURT OF APPEAL

Neutral Citation Number: [2016] IECA 392

[2014 No. 17]

[2014 No. 192 SP]

The President

BETWEEN

AIB MORTGAGE BANK AND ALLIED IRISH BANKS PLC.

PLAINTIFFS/RESPONDENTS

AND

JOHN PHILIP QUEARNEY AND JEAN QUEARNEY

DEFENDANTS/APPELLANTS

JUDGMENT of the President delivered on 9th December 2016

1. This is an application brought by the defendants, Mr. and Ms. Quearney, pursuant to a notice of motion dated 29th August 2016 for a further extension of a stay that was imposed by this Court on an order for possession of mortgaged premises. The application is opposed by the plaintiff banks.
2. By order of this Court made on 2nd March 2015, the Quearneys' appeal against an order of the High Court declaring the plaintiff banks entitled to possession of premises at No. 13 North King Street was dismissed. The High Court order was affirmed accordingly. The Court of Appeal imposed a stay on execution of its order for a period of one year from the date of judgment, which means that the stay expired at the beginning of March 2016.
3. Mr. Quearney's grounding affidavit for the new stay is dated 29th August 2016. Describing it as an application for an extension of the stay is something of a misnomer in view of the delay from the expiration of the facility granted by the court. In his affidavit, Mr. Quearney says that the stay was based on the outcome of plenary proceedings brought by him against Allied Irish Banks plc, the second plaintiff. He says that the court, on making the order in March 2015, told him that he could return to court to seek a further stay if the bank was continuing to frustrate him in getting his case the hearing. He says that that is what happened; Allied Irish Banks plc. did continue to frustrate him and for that reason he is entitled to another stay, which is what the court had in mind when it first granted him the postponement.
4. Mr. Quearney goes into considerable detail about the wrongs that he alleges against Allied Irish Banks plc. in respect of his other proceedings. In particular, he states that the bank actually admitted that it made an error in sending information and documents relating to the account of a licensed regulated entity to a firm of auditors. The circumstances in which this happened and the consequences are evidently material issues in Mr. Quearney's case against the bank. Because of the bank's conduct generally, and in regard to the defence of his proceedings, Mr. Quearney maintains that he is entitled to a further stay on execution of the order for possession.
5. The responding affidavit on which the plaintiffs rely in resisting the stay application is sworn by Ms. Pamela Fitzpatrick on 15th September 2016. She is a solicitor at the firm representing the plaintiffs, but it is not acting for Allied Irish Banks plc. in the separate proceedings brought by Mr. Quearney. She has, however, obtained information from her colleagues who are conducting the defence on behalf of the bank. She suggests at the outset that much of the content of Mr. Quearney's affidavit is irrelevant to what is now before this Court.
6. Ms. Fitzpatrick gives a helpful chronology of the background events to the application. On 20th October 2014, the High Court granted the plaintiff banks possession of premises owned by the Quearneys at North King Street. The Quearneys appealed and the matter was heard on 2nd February 2015 and judgment was given on 2nd March 2015. In regard to the stay, Ms. Fitzpatrick says that she was present in court on the occasion. Mr. Justice Kelly said that the stay was being granted to afford Mr. Quearney a reasonable opportunity to bring his separate High Court proceedings against AIB to a conclusion. The judge also said that Mr. Quearney would have liberty to apply for an extension of the stay if the plenary proceedings were unduly delayed.
7. Ms. Fitzpatrick deposes that the Quearneys are not now entitled to a further stay because, first, there has been no undue delay on the part of AIB in Mr. Quearney's action, and indeed a significant part of his claim has been struck out by the High Court. Secondly, the Quearneys are in delay default in bringing this application and the banks are prejudiced by their continuing inability to execute the High Court order. Thirdly, Ms. Fitzpatrick alleges that Mr. Quearney has recently been in breach of a related injunction granted by the High Court in connection with the property in question in this case, a matter which is relevant to the exercise of this court's discretion. She then proceeds in further depositions to give details of these contentions.
8. The plenary proceedings were instituted on 8th July 2013 to which the bank entered an appearance on 15th July 2013. The statement of claim was delivered on 5th March 2014. The defence was delivered on 24th July 2014. Mr. Quearney served notice of trial together with a motion for discovery and seeking interrogatories. AIB brought a motion dated 20th February 2015, seeking to strike out the proceedings on grounds, including that they disclosed no reasonable cause of action and that they were frivolous and vexatious. That motion was the subject of judgment in the High Court on 18th December 2015, on which occasion McDermott J. struck out allegations of deceit, breach of statutory duty, loss of consortium, breaches of the Constitution and reckless lending, inter alia. The court permitted claims of negligence, breach of contract and negligent misstatement to stand. Mr. Quearney was ordered to deliver an amended statement of claim and there is currently a dispute as to the adequacy of that pleading. In the circumstances,

Ms. Fitzpatrick avers that delay in bringing on the proceedings is not attributable to AIB, but rather to the extravagant allegations made by Mr. Quearney.

9. Ms. Fitzpatrick emphasises that the instant proceedings have no connection with Mr. Quearney's action against AIB. She says that the Court of Appeal did not decide that execution of the High Court order had to await the outcome of Mr. Quearney's action. It granted the stay because of Mr. Quearney's complaint that AIB was unduly delaying the other action. Since her firm was not defending those proceedings for the bank, neither she nor Counsel was in a position to rebut the allegation of delay.

10. The deponent points to delay on Mr. Quearney's part in bringing this application. For some reason, he applied to the Master of the High Court which was dismissed on 21st July 2016, following which he brought this motion on 29th August 2016. The banks are unable to execute the High Court order. Mr. Quearney is indebted in the sum of approximately €1.3 million. These circumstances represent significant prejudice to the plaintiffs.

11. Ms. Fitzpatrick also alleges that Mr. Quearney has acted in breach of an injunction granted by the High Court on 4th September 2013, in which she was restrained from interfering with the activities of joint receivers appointed by the banks over a number of properties, including the one in North King Street. She refers to an altercation that happened at the premises on 23rd June 2016 involving security staff and a number of unauthorised occupants, including Mr. Quearney. In all the circumstances, Ms. Fitzpatrick proposes that the reliefs claimed by the Quearneys should be refused.

12. Mr. Quearney replies to Ms. Fitzpatrick's affidavit in his deposition of 30th September 2016. Referring to the proceedings before McDermott J. in the High Court on the bank's motion mentioned above, if I understand correctly, he claims that AIB made admissions in the course of the hearing which were based on documents in their possession and the contents of which they had not revealed. He suffered prejudice as a result, on his argument.

13. In respect of delay in bringing the application to extend the time, he explains that he had been trying to do so for some time, but was apparently mistaken in the office to which he went until ultimately he was directed to the correct place.

14. Mr. Quearney engages in a detailed rebuttal of the allegation of breach of the injunction granted by the High Court, explaining how he came to be in North King Street and to be communicating with occupants of the premises. There was indeed an altercation and Gardaí were sent for and an unpleasant confrontation occurred. However, it is obviously not possible to come to any conclusion as to whether Mr. Quearney was behaving contumeliously by deciding between affidavits.

15. The remainder of Mr. Quearney's replying affidavit is mostly occupied by detailed specific allegations concerning the case involving Moneycorp, which is his separate claim. This information confirms the validity of Ms. Fitzpatrick's contention that the two proceedings are wholly unconnected. This is not disputed by Mr. Quearney.

16. I think that certain features of this case are relevant and significant. The property in question is not a family home, but an investment by Mr. and Ms. Quearney. They have said in oral submission in court that they have something of a sentimental attachment, if that is the correct expression, because they have had the property for a long time. Nevertheless, this is a matter of business. The second point is obvious and agreed. That is the lack of any connection between this action and the other proceedings. Thirdly, the plaintiff banks have had orders made in their favour for possession of the premises by the High Court and the Court of Appeal. A long delay is not satisfactory from anybody's point of view. If Mr. Quearney succeeds in his claim against AIB, the second plaintiff, there is no suggestion that he will not be able to recover his award so he is not going to be prejudiced. Fourthly, it is a matter for Mr. Quearney to bring on his proceedings as expeditiously as possible. The matters of which he complains are not instances of delay in conducting the defence of the action, but rather facts that have come to light in the course of the proceedings, which is a different thing.

17. It seems to me that this application is now made a long time after the generous postponement allowance of one year was granted by the court. I cannot see how further delaying the enforcement by the plaintiffs of their declared rights can be justified. The events that have happened, and the disputes about the events that have happened demonstrate the perils that beset a decision in one case that depends on the progress of another and the attribution of fault or blame or responsibility for impediments to progress of the litigation.

18. Overall, I think that the Quearneys have been the beneficiaries of a liberal allowance of time granted by the court and a further postponement would necessarily represent a connection between the enforcement of the court order and the ultimate determination of the entirely separate proceedings, extending even to the outcome of an appeal. That would not be a proper balance of the rights of the parties in the interests of justice.

19. Accordingly, I refuse the application for a further stay.