



**THE COURT OF APPEAL**

**Irvine J.  
Baker J.  
Costello J.**

**Neutral Citation Number: [2018] IECA 403  
Record Numbers: 2017/17**

**BETWEEN/**

**JOHN HANRAHAN**

**APPELLANT**

**- AND -**

**MICHAEL GLADNEY AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**Record Numbers: 2017/22**

**BETWEEN/**

**JOHN HANRAHAN**

**APPELLANT**

**- AND -**

**THE MINISTER FOR AGRICULTURE FOOD AND MARINE**

**MICHAEL GLADNEY AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Ms. Justice Irvine delivered on the 19th day of December 2018**

1. This judgment concerns two appeals brought by Mr. John Hanrahan against orders of the High Court (Noonan J.) dated the 21st December 2016. Those orders were made in response to two applications made by Mr. Hanrahan in the High Court by notices of motion dated the 5th October 2015 and 12th October 2016, respectively.

2. In his notice of motion dated the 5th October 2015, which for convenience I will refer to as his stay application, (*Hanrahan v. Gladney & The Attorney General*, Record Number 2015/2299P) Mr. Hanrahan sought, *inter alia*:-

(i) an order "staying all Revenue matters" until he recovered from certain medical treatment; and

(ii) an order compelling Revenue to respond to correspondence dated the 14th September 2015 and "an abundance of correspondence to Revenue" dating back to March 2014.

3. The aforementioned relief was sought by Mr. Hanrahan in the context of proceedings commenced by him by plenary summons on the 23rd March 2015 and wherein he claimed, *inter alia*:-

(i) damages for trespass to goods and detinue;

(ii) aggravated damages for misfeasance of public office;

(iii) an order directing Revenue to return certain property;

(iv) an order prohibiting Revenue from taking any further steps in relation to his property; and

(v) a declaration that the defendants had acted in breach of the Tax Consolidation Act 1997.

4. The stay application was supported by an affidavit sworn by Mr. Hanrahan on the 5th November 2015. In that affidavit he referred, *inter alia*, to a final demand dated the 7th September 2015 sent by the Revenue Commissioners and to his notice of appeal forwarded with his letter of the 14th September 2015, against said demand. He complained that Revenue had not acknowledged his notice of appeal and had failed to reply to two letters written by his accountant, Mr. Michael O'Reilly on the 16th September 2015.

5. At para. 10 of his affidavit, Mr. Hanrahan stated that he asked Revenue to "adjourn matters" until after he had completed surgery for cancer or radium treatment and that a Mr. Ryan had advised him that nothing further would happen without him first being contacted. Notwithstanding that response, he felt it necessary to apply to the court for the relief the subject matter of his notice of motion.

6. In his replying affidavit Mr. James Ryan set out in significant detail much of the engagement between Revenue and Mr. Hanrahan in the years leading up to the service by Revenue of two final demands dated the 5th June 2015 and the 7th September 2015. He explained that it was not open to Mr Hanrahan to appeal against those demands as they had been raised on foot of P30 returns made by Mr. Hanrahan's accountant, Mr. O'Reilly on behalf of Mr Hanrahan. Mr. Ryan also explained how, in the course of a telephone conversation with Mr. O'Reilly, he had drawn his attention to the undertaking earlier given to the High Court by Mr. Hanrahan that he

would keep his tax affairs up to date, which included paying the tax due, and to the fact that he was in breach thereof.

7. In his affidavit Mr. Ryan also stated that whilst sympathetic to Mr. Hanrahan's medical status, Revenue was concerned that his latest proceedings were an attempt to delay or frustrate Revenue's efforts to use its powers of attachment to collect his tax liabilities. In particular, he referred to the fact that Mr. Hanrahan was due to be paid certain sums by the Department of Agriculture, Food and Marine in the near future and it was the concern of Revenue that any stay granted by the court would reduce its prospects of recovering from Mr. Hanrahan. Mr. Ryan also stated that he had informed Mr. Hanrahan that if he kept Revenue updated regarding his health status it would likely not proceed with enforcement whilst he was in hospital or without giving him advance notice.

8. In his second affidavit sworn on the 4th November 2015 Mr. Hanrahan stated that the returns made on his behalf by Mr. O'Reilly would have to be amended at some stage in the future when all of the legal proceedings currently before the court were concluded. At that point, all legal costs incurred and funds recovered would have to be deducted from his liabilities. Thus, Mr. Hanrahan maintained that Revenue could take no action on foot of the demands which it had issued as they were excessive and could not be finalised until the unspecified legal proceedings all concluded.

9. At para. 14 of his affidavit Mr. Hanrahan accepted that he had been unable to advise Revenue as to when he might be in a position to deal with his litigation having regard to his poor health. However, he stated that he was willing to keep the court and the defendants updated regarding his state of health and ongoing treatment. Mr. Hanrahan also denied that he had issued the proceedings to seek to frustrate Revenue.

10. In his notice of appeal Mr. Hanrahan maintains that Noonan J. erred in law and in fact in failing to grant his stay application and the other relief sought in his notice of motion. He did not, however, set out the basis for that assertion. Mr. Hanrahan further claims that the evidence required to properly adjudicate on the motion was not complete and for that reason the court should not have determined the motion.

11. In his notice of motion of the 12th October 2016, which I will refer to as his injunction application, (*Hanrahan v. Minister for Agriculture, Food and Marine, Gladney and the Attorney General*, Record Number 2016/9021P) Mr. Hanrahan sought (*inter alia*):-

(i) an injunction restraining the Minister from paying his Single Farm Payment for 2016 to Revenue or from otherwise enforcing an attachment order of the 27th September 2016 for the sum of €50,535.12;

(ii) an order striking out an attachment order of the 27th September 2016;

(iii) an order that his appeal, as provided for in a notice of appeal dated the 21st September 2016, be held by the Appeal Commissioner;

(iv) an order prohibiting Revenue from attaching the sum of €209,311.45 on foot of a final demand dated the 27th September 2016; and

(v) an order that his appeal, as provided for in a notice of appeal of the 4th October 2016, be heard by the Appeal Commissioner.

12. The relief sought in the aforementioned motion mirrors that sought by Mr. Hanrahan in his plenary summons dated 10th October 2016.

13. The injunction application was supported by an affidavit sworn by Mr. Hanrahan on the 12th October 2016. In that brief affidavit he stated that Revenue had repeated the "tactics" it had adopted in the previous year concerning the intended attachment of monies due to him from the Department. He referred to a notice of attachment which had issued in respect of the sum of €50,535.12 and to an intended notice of attachment in respect of the sum of €209,311.45. This action on the part of Revenue was, he claimed, an effort to obstruct the proceedings listed for hearing before the court on the 6th December 2016 (Record Number 2014/918SP) and wherein he sought to challenge an earlier notice of attachment for the sum of €340,456.55. That notice was later revoked on the basis of the undertaking referred to at para. 6 above.

14. In his replying affidavit sworn on the 1st November 2016 on behalf of Revenue, Mr. Joe McCormack, set out in significant detail the engagement between Revenue and Mr. Hanrahan dating back to the early 1990s. Much of this history is immaterial to the matters under consideration by the High Court judge on the 21st December 2016 and for that reason will not be repeated here.

15. Relevant to the injunction application, however, is the fact that Revenue served a final demand on Mr. Hanrahan on the 15th September 2016 for the sum of €47,888 in respect of estimates of arrears of tax for the periods therein set forth. On the 21st September 2016, Mr. Hanrahan wrote to Revenue enclosing a notice of appeal and a number of up to date medical reports. In his letter he asked that the proceedings due to be heard on the 6th December 2016 be adjourned until his treatment was concluded. By letter dated the 27th September 2016, Revenue sent to Mr. Hanrahan a notice of attachment for €50,535.12 and advised him that the notice had issued to the Department of Agriculture, Food and Marine in respect of the demand of the 15th September 2016. On the same date Revenue wrote to Mr. Hanrahan to acknowledge receipt of his letter of the 21st September 2016 and to inform him that an appeal did not lie in respect of the final demand of the 15th September 2016. Revenue also advised him that it was a matter for himself if he wished to apply for an adjournment of the proceedings listed for hearing on the 6th December 2016.

16. The final relevant exchange between Mr. Hanrahan and Revenue concerns a final demand in respect of arrears of tax in the sum of €209,311.45 dated the 27th September 2016. By letter dated the 4th October 2016, Mr. Hanrahan sent a notice of appeal to Revenue regarding this sum in which he claimed (i) that the tax returns upon which the demand had been made were incomplete because they had failed to take account of costs and certain legal proceedings pending before the court, (ii) Revenue had failed to respond to correspondence issued by his accountant and (iii) the final demand did not take account of credits and refunds of tax which had been taken from him illegally.

17. By letter dated the 6th October 2016 Mr. Hanrahan was advised by Revenue that his letter of the 4th October did not identify any valid ground of appeal and that if the arrears were not discharged Revenue would take action to recover the amount outstanding. In due course, summary summons proceedings were issued on the 11th November 2016, wherein Revenue claims an entitlement to recover judgment against Mr. Hanrahan for the sum of €303,773.77 (being €209,311.45 in respect of arrears of tax and €94,462.32 in respect of interest).

18. In his notice of appeal concerning the refusal of the injunction application, while Mr. Hanrahan maintains that the High Court judge

“erred in refusing the application” and erred “in determining matters” in circumstances where all of the evidence required for such a determination had not been adduced, he does not state the basis for either complaint.

### **General Observations**

19. It is regrettable that, notwithstanding the fact that the date for the hearing of these appeals was fixed as far back as the 27th July 2017, the books of appeal lodged by Mr. Hanrahan did not include, as required, either the transcript of the ruling of the High Court judge or an agreed note. In particular, this court was hindered in its ability to carry out its intended role as an appellate court due to the fact that Mr. Hanrahan refused to agree the content of a note prepared by Revenue concerning the ruling of the High Court judge. In other circumstances such default on the part of an appellant would run the risk that the appeal might have to be dismissed. Mr. Hanrahan is fortunate that, in circumstances where this Court has available to it all of the materials that were before the High Court judge, it is in a position to consider whether the order made by the High Court judge in respect of each of his motions was in accordance with the principles to be applied on such applications and amounted to a fair and just exercise of the court's discretion having regard to the evidence.

20. In relation to both appeals this Court has had the benefit of brief written submissions from Revenue and Mr. Hanrahan. In relation to the appeal against the refusal of the injunction sought, the Court has also received a brief submission filed on behalf of the first and third named respondents, namely the Minister for Agricultural Food and Marine and the Attorney General.

21. It is unfortunate that most of what was said by Mr. Hanrahan on the hearing of his appeals, in my view, was irrelevant to the issues to be determined by this court. I have no doubt that Mr. Hanrahan sincerely believes that he has been treated unfairly by Revenue for over two decades. Indeed, he made very serious allegations against Revenue and its officials in the course of his submissions to this Court. He used terms such as collusion, deceit and deception, language which can only be described as inflammatory. I would like to think that this conduct on the part of Mr. Hanrahan is at least in part due to his poor health and the overwhelming distress which he undoubtedly feels due to the circumstances in which he and his family find themselves by reason of his tax liabilities. It goes without saying that all such allegations of misconduct have been trenchantly denied by Revenue. Indeed, in the books of appeal, there is a letter of the 16th October 2008 authored by Ms. Sinéad McSherry, District Manager, indicating that she could not continue to tolerate the type of abuse which Mr. Hanrahan was visiting upon Revenue staff.

22. I will accordingly confine my summary of the submissions to those which I consider material to my decision on these appeals.

### **Submissions of Mr. Hanrahan.**

23. Mr. Hanrahan submits that:-

1. The High Court judge should have granted the injunction because the conduct of Revenue in seeking to attach €50,535.12 on foot of the notice of attachment of the 27th September 2016 and in threatening to attach or otherwise execute on foot of the final demand for €209,311.45 was an effort to close off his income stream;
2. When all of his legal proceedings were concluded it would become clear that the sums claimed by Revenue were excessive and would have to be reduced to take account of his legal costs and such damages as might be awarded in this favour. It was accordingly unjust that Revenue be permitted to execute on foot of any final demand or notice of attachment until such time as his true liability, having regard to all just credits and allowances, could be assessed;
3. His was in poor health at the time he brought his stay application. He was too weak for surgery with the result that the court should have restrained the Revenue taking any further action against him;
4. In all of the circumstances the High Court judge should have struck out the attachment order of the 27th September 2016 for the sum of €50,535.12 and directed that his appeals dated 21st September 2016 and 4th October 2016 be heard by the Appeal Commissioners.
5. The trial judge should not have refused his applications in circumstances where he did not have all of the evidence before him, which Mr. Hanrahan considered was necessary to dispose fairly of the applications.

### **Submissions of Revenue.**

24. Mr. Benedict Ó'Floinn, S.C. on behalf of Revenue submits:-

1. In relation to the injunction motion, Mr. Hanrahan had every opportunity to place all of the evidence he considered necessary before the High Court judge. No restriction was imposed upon him in terms of the evidence which he had sought to adduce. Further, he was permitted to make such legal arguments as he wished in support of his application.
2. The High Court judge had correctly applied the Campus Oil principles. Mr. Hanrahan had not established a fair issue to be tried. Given that Mr. Hanrahan can have no appeal against the sums the subject matter of the final demands issued by Revenue on 5th June 2015 and 7th of September 2015 and the final demands of the 15th and 27th of September 2016, the High Court judge was correct in law not to grant the injunction sought.
3. Persuasive and compelling evidence would have been required to convince a court that Mr. Hanrahan was entitled to impugn his own returns. Furthermore, he had not submitted any revised returns. It was wholly insufficient to maintain that at the end of the entire litigation process he might lawfully revisit the tax returns he had already made.
4. Revenue was under a statutory obligation to collect the tax on foot of the final demands and the court had no power to restrain Revenue from exercising its statutory powers. The amounts due by Mr. Hanrahan had to be determined within the confines of the statutory code and for that reason it would be inappropriate for a High Court to grant an injunction against Revenue to restrain it from exercising its statutory functions.
5. Even if Mr. Hanrahan had been in a position to establish that he had identified a fair question to be tried, the balance of convenience did not favour granting the relief sought. The High Court judge was correct as a matter of law to refuse a mandatory injunction requiring Revenue to entertain correspondence from a taxpayer and require that it be answered.
6. Finally, Mr. Hanrahan had not offered any undertaking as to damages in order to support his injunction application. This was to be contrasted with the ability of the Revenue to meet any award of damages that Mr. Hanrahan might obtain if he

was successful in this litigation.

### **Submissions of Minister and AG**

25. The position adopted by the Minister and the Attorney General is that they have always been prepared to abide by the outcome of the applications made by Mr. Hanrahan. They remain full respondents to the appeal in circumstances where on the hearing of the initial application for directions in this court, Mr. Hanrahan refused to agree that they should be allowed withdraw on their undertaking to be bound by the Court's order on each appeal. Thus, they have delivered a short written submission and made a brief oral submission on the appeal.

26. Insofar as Mr. Hanrahan maintains that the Minister had withheld his Single Farm Payment, the Minister had it all times acted in accordance with his statutory obligations. Once made aware of Mr. Hanrahan's challenge to the validity of the notice of attachment it had not paid over the money, the subject matter of that order, to Revenue, but had held the payment pending the outcome of the proceedings. In light of the Minister's statutory obligations he could not have paid the funds concerned to Mr. Hanrahan once served with the attachment notice.

### **Conclusions:**

#### **The stay application (Record Number 2015/2299P)**

27. I will deal with the appeals separately. I will first deal with Mr. Hanrahan's appeal against the refusal of the High Court judge to grant the relief sought on his stay application of the 5th October 2015. It is important, in relation to this motion, to reflect upon the scope and extent of the relief sought by Mr. Hanrahan. The order sought was one "staying all Revenue matters". If granted that order would have precluded Revenue from exercising all or any of its statutory obligations and functions insofar as they might impact upon Mr. Hanrahan. It would capture all proceedings which are in being involving Revenue and Mr. Hanrahan including the summary summons proceedings (Record Number 2016/246R) issued by Revenue against Mr. Hanrahan on the 11th November 2016 for the sum of €303,773.77. The order if granted, would also have precluded Revenue from taking any steps whatsoever against Mr. Hanrahan outside of the proceedings concerning his past or present tax liabilities. It is also relevant to note that in this motion he also sought an order that the court compel Revenue to respond to his correspondence of the 14th September 2015 and a swathe of earlier correspondence.

28. In terms of its jurisdiction to grant the relief sought by Mr. Hanrahan, the court undoubtedly enjoys a discretion to stay any proceedings pending before the court provided that it is just and fair in all of the circumstances. Courts often adjourn or place a stay on proceedings, albeit usually only for a limited period, where it is clear that it would be unjust to expect one of the parties, for example, because of an acute medical condition to deal with an upcoming hearing, particularly if that party is not legally represented. In such circumstances the court might postpone the proceedings for a number of weeks or months. But that was not the type of relief sought here. Mr. Hanrahan wanted to stay "all Revenue matters" for an indefinite period, namely until he recovered from surgery and treatment for cancer even though he produced no medical opinion advising as to when, if ever, he might be well enough to engage with the pending litigation or the "Revenue matters" to which the motion referred.

29. Whilst sympathetic to Mr. Hanrahan's circumstances in terms of his fragile health, in my view he failed to produce evidence of sufficient quality and clarity to warrant even the postponement of litigation which is currently pending; apart altogether from the much more expansive relief which sought to postpone "all Revenue matters".

30. Nobody would deny that, even for a person in good health, litigation is demanding and stressful particularly where a party does not have the benefit of legal representation. Nonetheless, litigation can be postponed on medical grounds for a period only when there is medical evidence to state that a particular litigant is simply unfit and incapable of dealing with the litigation. Furthermore, proceedings will only be adjourned if the court is satisfied that by adjourning the proceedings the litigant is likely to be in a position, in relatively early course, to resume the litigation.

31. In any case where a party applies for a stay the court must consider whether the balance of justice favours the granting of such an order. The court must be fair to both parties and, in a case such as this must have regard to the statutory obligations of Revenue in respect of the collection of tax. In circumstances where there was no indication as to when Mr. Hanrahan might be in a position to better deal with the litigation pending before various courts, and he had not been in a position to offer any undertaking as to the damage that might be sustained by Revenue as a result of the making of the order sought, in my view the High Court judge was correct to conclude, as he clearly did, that the balance of justice could not have favoured granting the type of relief sought.

32. Having considered all of the evidence that was before the High Court, in my view, the High court judge cannot be criticised for failing to grant the relief sought at para. 1 of Mr. Hanrahan's notice of motion of the 5th October 2015.

33. The reliefs sought in paras. 2 and 3 of the notice of motion which seek to compel the Revenue to respond to Mr. Hanrahan's letter of 14 September 2015 and "an abundance of other correspondence", was clearly a misguided application. Whilst a court can direct a party to proceedings to reply to any letter which might be considered to be a letter seeking particulars of their opponents pleading, the court cannot engage with applications to compel parties to respond to correspondence outside of the issues to be determined in the proceedings.

#### **The injunction application (Record Number 2016/9021P)**

34. As to the refusal of the injunction concerning the attachment orders of 27th September 2016 in the sum of €50,535.12 and the attachment order in respect of the demand for €209,311.45, the first matter of note is the reliefs sought at paras. 2, 3 and 5 of the notice of motion are what might be described as final orders, and as such could not lawfully have been granted by the High Court judge on an interlocutory application. Furthermore, the affidavit sworn by Mr. Hanrahan, identified no legal or evidential basis for the relief sought.

35. In relation to Mr Hanrahan's injunction application the principles to be applied by the High Court judge were those, as advised by Revenue in its submissions, which emerge from the decision of the Supreme Court in *Campus Oil Limited v. Minister for Energy* [1983] I.R. 88. Given that the court was not provided with the transcript of the ruling of the High Court judge, it is necessary to briefly review those principles in light of the evidence that was available to the High Court judge.

36. The onus was upon Mr. Hanrahan to first establish the existence of a fair issue to be tried at the hearing of the substantive proceedings. In other words, on the facts of the present case he was required to demonstrate that at the trial of the action he might establish that the sums referred to in his notice of motion were not lawfully due to Revenue such that attachment and/or execution

of those sums should be postponed. He was also obliged to establish that he was entitled to have that issue tried outside the confines of the statutory code.

37. Having regard to all that was said by Mr. Joe McCormack in his affidavit, it is difficult to see how the court on Mr. Hanrahan's application could have concluded that he had established a fair issue to be tried. Whilst Mr. Hanrahan maintained that he could challenge the lawfulness of the final demands made by Revenue, his evidence went no further than to state that he might be due credits from Revenue at some stage in the future as a result of orders that might be made in his favour in other legal proceedings. He did not explain how this could impact upon the final demands already made or how any such orders might entitle him to stop Revenue exercising its statutory obligations. Neither did he provide any basis for his contention that he was entitled to have his liabilities to Revenue determined beyond the appeals mechanism provided for in the statutory code.

38. While Mr Hanrahan complains bitterly about the approach of Revenue in relation to his tax liabilities, what he fails to understand is that Revenue is charged, pursuant to a complex statutory code, with the responsibility for collecting and securing the revenue required by government to fund state services. It is obliged to ensure that taxpayers and businesses meet their tax obligations. Furthermore, a taxpayer aggrieved by demands for the payment of tax may challenge those demands only within the statutory mechanisms. A taxpayer is not entitled to interfere with that process by seeking to restrain, by way of injunction application to the High Court, the actions taken by Revenue in pursuit of its statutory role. With the exception of the potential for a challenge by way of judicial review and/or the possibility of a case being stated for the opinion of the High Court, the role of the High Court in relation to the liability of a taxpayer for the payment of tax is limited. And, on the facts of the present case, I can see no valid role for Mr Hanrahan's engagement with the High Court in his injunction proceedings

39. Regrettably, Mr. Hanrahan does not appear to understand or, is reluctant to accept, that Revenue is required to carry out its functions in accordance with these statutory regimes and that if he wishes to challenge the final demands made by Revenue he must do so within the statutory code rather than by application to the High Court. Bearing in mind the Campus Oil principles and that the onus was on Mr Hanrahan to establish a fair issue to be tried, in my view he failed to beat that threshold either evidentially or by the advancement of any cogent legal argument.

40. Furthermore, even if Mr. Hanrahan had established a fair issue to be tried, the balance of convenience could never, in my view, have favoured granting the injunction sought. Revenue had clearly established that it would likely be prejudiced if the relief sought was granted. It would have been precluded from taking steps to protect its interests at a time when there were funds potentially available against which it might execute which might not be available at a later date. Also, it is to be inferred from the history of the litigation between the parties, as outlined in the affidavit of Mr. McCormack, that Mr. Hanrahan would likely not be a good mark for any loss that would accrue to the Revenue if the injunction were granted apart altogether from the fact that Mr. Hanrahan did not offer any undertaking as to damages in support of his application for the relief sought. By way of contrast, Revenue is well positioned to meet any award of damages as might be obtained by Mr. Hanrahan if he proves successful in the proceedings.

41. For the aforementioned reasons I satisfied that the High Court judge was correct in law and in fact when he refused the injunctions sought at paragraphs (i) and (iv) of Mr Hanrahan's notice of motion. I am also satisfied, for the reasons earlier stated, that the High Court judge had no jurisdiction to grant the reliefs sought at paragraphs (ii) and (iii) of the notice of motion.

42. For all of the aforementioned reasons I would dismiss both appeals.