

## THE HIGH COURT

[2008 No. 2471 S]

BETWEEN

ASHCOIN LTD. (IN CREDITORS VOLUNTARY LIQUIDATION)

PLAINTIFF

AND

MORIARTY HOLDINGS LTD.

DEFENDANT

## JUDGMENT of Mr. Justice Hogan delivered on the 31st July, 2012

1. Are the proceeds of a grant from a statutory agency capable of amounting to a book debt within the meaning of a particular debenture? This, essentially is the issue which the parties have agreed should be determined as a preliminary issue of law pursuant to O. 25, r. 1 RSC. The issue arises in this way.

2. In April 2007, Sustainable Energy Ireland agreed to make a grant payment to the defendant ("Moriarty Holdings") in respect of a housing development at Spicers Mill, Balbriggan, Co. Dublin. As the plaintiff company ("Ashcoin") had provided engineering solutions for heat efficient dwellings, it is contended that Moriarty Holdings agreed in June 2007 to share the proceeds of that grant with it on an equal basis. A grant of some €328,500 was paid to Moriarty Holdings by Sustainable Energy Ireland in June 2008, but the relevant moiety allegedly payable to Ashcoin remains in dispute and has not been paid.

3. The debenture in question was executed in December 2007. That deed charged all debts of Ashcoin (other than book debts) in favour of Ulster Bank Commercial Services Ltd. as well as creating a first floating charge over the property and assets of the company. On 20th June 2008, the debenture holder appointed Mr. Kieran Wallace as receiver over the assets of the company. Mr. Wallace now maintains these proceedings against Moriarty Holdings in that capacity. The latter company disputes his entitlement to do so on the grounds that if any monies are due to Ashcoin, they would constitute a book debt within the meaning of the December 2007 debenture and that Mr. Wallace accordingly has thus no standing to maintain these proceedings. It is agreed, therefore, that Mr. Wallace's entitlement to maintain these proceedings stands or falls on the question of whether the sums in question would constitute book debts for the purposes of the debenture.

4. In approaching this question I will assume simply for the purposes of resolving it that Ashcoin will be able to demonstrate that it has an entitlement to half the proceeds pursuant to the June, 2007 agreement. If, however, that were the case, would these proceeds constitute a book debt for this purpose?

5. To my mind, there is little doubt but that they would. While it must be recalled that we are here dealing with a contractual definition of the phrase "book debts", the definition in the debenture mirrors and reflects the conventional understanding of this term. The phrase "book debts" is thus defined by Clause 1.1 of the debenture as meaning:-

"All book and other debts of any nature whatsoever arising now or at any time hereinafter due, owing or incurred to the company, including, without limitation, all things in action due or owing or which may become due or owing to or purchased or otherwise acquired by the company, the benefit of all negotiable instruments, rights, encumbrances, guarantees and indemnities of any nature whatsoever now or at any time hereafter enjoyed or held by it in relation thereto."

6. Here the agreement (assuming, again, for present purposes, that there was such) is one which would classically constitute a book debt in as much Ashcoin doubtless treated the monies which were recoverable from Moriarty Holdings (and, by extension, Sustainable Energy Ireland) as a debt which had accrued in its favour arising from the course of its own trade. If I may venture to repeat the language which I used in *Response Engineering Ltd. v. Caherconlish Treatment Plant Ltd.* [2011] IEHC 345, [2012] 2 I.L.R.M. 67, 70, the term "book debts" means no more:-

"than future income which will accrue to the company by reason of the provision of goods and services to third parties by that company in the course of its trade or business."

7. Viewed in this light, the monies which Ashcoin claim to be entitled from Moriarty Holdings are plainly related to trading activities. While it is true that the monies were paid to Moriarty Holdings pursuant to a grant, in effect, the situation is as if Ashcoin had presented an invoice in respect of goods. Counsel for the receiver, Mr. O'Reilly, argued that what was at issue here related only to a contingent contract and did not form a debt until payment by Sustainable Energy Ireland. The fact is, however, that Sustainable Energy Ireland have paid the grant and the only question is what (if any) is the share of those monies to which Ashcoin are entitled.

8. Nor can it be an objection to say that there is an element of contingency in relation to the payment. That is of the very nature of a book debt. The term describes the goods and services which the company has supplied for which it expects to receive payment in the ordinary course of trade, but at the risk of stating the obvious, once payment is received it is no longer a book debt. As Buckley J. stated in *Independent Automatic Sales Ltd v. Knowles & Foster* [1962] 3 All E.R. 27,36:-

"It is not disputed that it is competent for anyone to whom book debts may accrue in the future to create an equitable charge on those book debts which will attach to them as soon as they come into existence. That such a charge can accurately be described as a charge on book debts does not appear to me to be open to question."

9. Perhaps the entire matter can be summarised thus. If Mr. Wallace qua receiver was to sue to recover the one half share moiety which he contends is due to Ashcoin as a result of the agreement to share the proceeds of the grant paid by Sustainable Energy Ireland, he would be suing to recover from Moriarty Holdings a book debt of that company. Yet, by virtue of the very terms of the

debenture by reference to which he was appointed, book debts fall outside its scope.

10. It follows, therefore, that, as matters stand, these proceedings are improperly constituted and Moriarty Holdings are entitled to say that in view of the terms of the debenture by which he was appointed, Mr. Wallace has no standing as receiver to recover these monies on behalf of Ashcoin. That, of course, is not to imply that other steps cannot be taken on behalf of Ashcoin to recover these monies, but it is rather to say that the receiver cannot maintain these proceedings in their present form.