

THE HIGH COURT

[2018 No. 132 COS]

IN THE MATTER OF ATELIER PROPERTY MANAGEMENT LIMITED

AND IN THE MATTER OF ATELIER PROPERTY ASSET MANAGEMENT LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2014

AND IN THE MATTER OF SECTION 212 OF THE COMPANIES ACT 2014

BETWEEN

JAMES PIKE AND LINDA PIKE

PETITIONERS

AND

MATTHEW MCADDEN, CATRIONA MCADDEN, JAMES MCADDEN, GLORIA MCADDEN, ATELIER PROPERTY GROUP LIMITED AND
ATELIER PROPERTY MANAGEMENT LIMITED AND ATELIER PROPERTY ASSET MANAGEMENT LIMITED

RESPONDENTS

EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 9th day of November, 2018

1. The affidavit of Eoin Cunneen, solicitor for the petitioners, sworn on 6th November, 2018, explains how the parties had entered into agreements following mediation dated 12th July, 2018, and 24th August, 2018, which entitle the petitioners to enter judgment against the respondents for €409,349, on a joint and several basis in default of payment by close of business last Wednesday week, 31st October, 2018.

2. No issue arises now about entering that judgment which, as a matter of law and noted by counsel for the respondents, Ms. Egan McGrath, entitles the petitioners to register that judgment also.

3. Further, there is no controversy that this Court has jurisdiction and power to order a stay on execution of that sum which the respondents seek.

4. Section 21 of the Enforcement of Court Orders Act 1926, provides that where a court is "*satisfied at the time of giving judgment—*

(a) that the debtor is unable to discharge by an immediate payment in full the said sum of money, and all costs payable by him under the said judgment; and

(b) that such inability as not occasioned by the debtor's own conduct or default; and

(c) that there is reasonable ground for granting an extension of time in which to pay the said sum of money and costs,

the court may stay execution of the judgment for such time and upon such conditions as shall appear to the court to be reasonable."

5. Kelly J. (as he then was) in *AIB v. Anthony O'Reilly & Ors* [2014] IEHC 326 ("*AIB v. O'Reilly*"), at paras. 60 – 62 summarises the law in relation to the applications for stay in general:-

"60. A creditor who has obtained a judgment has a strong prima facie entitlement to immediately execute on foot of it in whatever way the law permits. Whilst there is undoubtedly a jurisdiction in the court to suspend such an entitlement, the court should exercise particular care and caution before so doing. The grant of a stay is, in effect, a refusal to permit a judgment creditor to exercise legal rights obtained on satisfying a court as to the entitlement to judgment. The grant of a stay negates the entitlement of a judgment creditor to exercise the very rights which that creditor acquired by obtaining the judgment.

61. It would not be wise to attempt to set out, even in a general way, hard and fast rules which ought to apply to the exercise of the judicial discretion to grant a stay. The reason for that is simple. There are so many circumstances in respect of which the court may be asked to consider granting a stay that it is impossible to contemplate them all. They cover a vast range of circumstances and even, on occasions, issues of humanitarian concern. Whilst judicial sympathy and humanitarian concern do have a part to play, it is the duty of the court to uphold the law and to maintain a fair balance between litigants so as to achieve a fair result.

62. The court should approach an application for a stay with caution. It should exercise the discretion judiciously since the grant of a stay is a serious curtailment of legal rights."

6. In that case, he found that the grant of a stay would prejudice the plaintiff because the advantage of being the first creditor to obtain judgment against the defendants was identified. Furthermore, there has been a history of standstill agreements which show the substantial forbearance already given. He concluded:-

"The strong prima facie entitlement of the plaintiff to proceed to execution has not been displaced." (para. 70).

7. In *Murphy v. Kent & Ors* [2014] IEHC 468, Kelly J., while acknowledging the inhibition for the petitioner in that case by a stay, concluded that no real injustice will be done to him given the undertaking which was offered and the petitioner's contractual entitlement to interest in respect of delayed payments.

8. He was persuaded about the prospect of great damage being done and the likelihood of the settlement ever being implemented while also commenting on the extremely bitter background to the dispute.

9. The respondents' application is grounded upon the affidavit of the first named respondent sworn on 7th November, 2018, for which I gave leave to file in support of the notice of motion issued yesterday returnable to this morning. It is noteworthy that the petitioners had not had the opportunity to reply to that affidavit and in particular relating to certain facts averred to other than by way of submission by Mr. Butler, counsel for the petitioners.

10. The respondents averred to the unanticipated delay in generating sales of personal assets in the United Kingdom, notably three properties there, to meet their indebtedness. The economic consequences and uncertainty of the UK crashing out of the European Union is mentioned as holding up the sales. The respondents also anticipated the petitioner's concerns about not being able to rely on Brussels I Regulation (recast), that is Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), O.J. L351/1 20.12.2012, when they averred that that Regulation will continue to apply until the United Kingdom formally leaves the European Union.

11. An averment at para. 24 about enforcement having an adverse impact on the ability to meet obligations under the terms of settlement due to existing relations with the third party investors is also relied upon by counsel for the respondents. Lastly, there is the unanswered question about the particular prejudice which the petitioners will suffer as a result of a stay.

12. Mr. Butler emphasises the strong *prima facie* entitlement and the lack of candour on the part of the respondents prior to 31st October, 2018, and the failure to impart any information about the difficulties now outlined in Mr. McAdden's affidavit. It is clear that there is a serious lack of trust which has been exacerbated by the respondents' conduct.

Decision

13. This Court recognises that the petitioners have been taken advantage of by the short time given to them to consider the grounding affidavit of Mr. McAdden. Nevertheless, there are averments in that affidavit which indicate:-

(a) the respondents are unable to discharge the said judgment immediately;

(b) the respondents are not solely responsible for their inability to pay;

(c) there is a reasonable prospect that a stay on execution with the assurances and undertaking offered will allow for the judgment sum and interest to be discharged without the necessity for an application for bankruptcy or other means of execution may be pursued by the petitioners.

14. Furthermore, it is not the case, as in *AIB v. O'Reilly*, of previous standstill agreements having been entered into. There is no evidence, as in *AIB v. O'Reilly*, that there is a ring of competing creditors circling over the respondents. The sum of €22,657,432 is a great deal larger than the €409,349 judgment sought and granted here.

15. Having regard to the *prima facie* entitlement and the lack of opportunity for the petitioners to interrogate, investigate and reply to the averments as to fact about the economic consequences of Brexit and other matters, I will grant a stay on execution until Friday, 18th January, 2019. I will also adjourn the balance of the hearing of this motion to Friday, 18th January, 2019 at 10:45 with liberty to the petitioners to file and serve replying affidavits by Friday, 11th January, 2019 and any further supplemental affidavit for the respondents by 4pm on 15th January, 2019.

16. If the sums including interest due have been paid by 18th January, 2019, I will merely hear an application about the costs of this motion. To recap today, I order the petitioners be granted judgment against the respondents in the sum of €409,349 and will grant a stay on execution of that judgment until 18th January, 2019 or until further order of this Court.

17. I will also give the petitioners leave to apply to this Court to vary this order upon three clear days' notice to the solicitors on record for the respondents now before 18th January, 2019, if there are circumstances averred to on affidavit which they believe merit a variation of this order.