AN CHÚIRT UACHTARACH
THE SUPREME COURT

Supreme Court Record No. 2012/425
Court of Appeal Record No. 2014/602
High Court Record No. 2012/26S

O'Donnell J.
Dunne J.
O'Malley J.

BETWEEN/

BANK OF SCOTLAND PLC

PLAINTIFF/RESPONDENT

AND

JERRY BEADES

DEFENDANT/APPELLANT

Judgment of O'Donnell J. delivered the 10th day of December, 2019.

1. On the 20th of July, 2012, the High Court granted liberty to the plaintiff ("the Bank") to enter final judgment against the defendant ("Mr. Beades") in the sum of €9,684,987.04. Mr. Beades appealed against that judgment to this court. The case was initially transferred to the newly established Court of Appeal pursuant to Article 64 of the Constitution. However, in the light of the workload of the Court of Appeal in its initial years, Article 64 directions were cancelled in a number of cases to permit the appeals to proceed in the Supreme Court. This court duly heard Mr. Beades's appeal against the judgment of the High Court and, in a decision delivered on the 29th of July, 2019, dismissed the appeal.

2. The application for costs and any ancillary orders was adjourned, and listed for hearing on the 16th of October, 2019. On the day before the hearing, Mr. Beades sought to issue an application for a stay of the judgment. Such an application could not be issued since there was insufficient notice to the other party and no application was made for abridgment of time. Accordingly, the court heard argument on the 16th of October, 2019, on the question of costs and awarded the costs of the appeal to the successful respondent, but put a stay on both the judgment and the order of costs until the 24th of October, 2019, to permit the issuance of a motion seeking a stay on the judgment including the order for costs, and gave directions in relation to the delivery of any affidavits and the exchange of written submissions. The court has been furnished with succinct and helpful submissions.

3. The apparent basis upon which Mr. Beades seeks a stay on the judgment is that on the 27th of September, 2019, he lodged an application with the European Court of Human Rights ("ECtHR", with some authorities and submissions referring to such as the "ECHR") at Strasbourg through a lawyer practising there. In his grounding affidavit, he argued that the plaintiff would not be prejudiced by the grant of a stay because the "plaintiff/respondent had a valuation carried out on the property and the value attributed

to the property attributed to zero". He further states that if a stay was not granted it would jeopardise his business and the employees of the company. He acknowledged that the application was not standard, "if not even ground breaking". In the written submissions delivered, Mr. Beades appears to have adopted verbatim portions of the text of the judgment delivered by this court and argues, however, that the principles in respect of a stay of administrative proceedings enunciated in *Okunade v. Minister for Justice* [2012] IESC 49, [2012] 3 I.R. 152; and the principles applicable pending a reference to the European Court referred to in *Data Protection Commissioner v. Facebook* [2018] IEHC 236, (Unreported, High Court, Costello J., 2nd of May 2018) were applicable.

4. It must be said that it is rather difficult to follow the contentions by Mr. Beades in this regard. First, the judgment obtained was a judgment obtained against him personally, and, therefore, does not directly affect any property or company. Moreover, it is apparent that the application for a stay pending a resolution of complaint to the European Court of Human Rights raises formidable problems.

5. In the first place, the decision of the Supreme Court on any appeal is, by virtue of Article 34.5.6°, "in all cases final and conclusive". Accordingly, the principles applicable to the grant of stay pending the determination of proceedings or pending an appeal, or pending a reference to the Court of Justice of the European Union are not and cannot be applicable. Those principles are predicated on the possibility that proceedings or the appeal, as it may be, may be resolved in favour of the applicant for a stay, and thus a court must consider the balance of convenience in circumstances where the proceedings have not been finally resolved and may yet be resolved in favour of the applicant. Plainly, this is not possible once a final decision has been made by the Supreme Court. There is no further appeal or process which can set aside or overturn the decision which is final and conclusive subject only to the exceptional jurisdiction of the Supreme Court to set aside its own judgment (Re.: *Greendale Developments Ltd*. [2000] 2 I.R. 514) which, in any case, is not invoked here. See, in this regard, Practice Direction SC17 of the 9th of July, 2018.

6. A related point is that an application to the European Court of Human Rights is not an appeal against the decision of the Supreme Court. It is an application to the court established by the High Contracting Parties as members of the Council of Europe under Article 19 the European Convention of Human Rights ("the Convention") to determine claims that a Contracting Party is in breach of the Convention. Such a complaint can be made by other states or individuals, but the respondent is always a Contracting Party to the Convention. Even, therefore, if that complaint were resolved in Mr. Beades's favour, it would not, and could not, result in a reversal of the decision of the Supreme Court. It would, at best, result in relief against the State, but the judgment against Mr. Beades as and between the Bank of Scotland and Mr. Beades would still remain final, binding and conclusive as a matter of Irish law and neither the Supreme Court nor any other body could interfere with that judgment.

7. In the helpful submissions on behalf of the Bank, Mr. Stephen Byrne has drawn the court's attention to judgments of the High Court of England and Wales which have had to consider a similar issue. In *Locabail (U.K.) Ltd. v. Waldorf Investment Corporation (No. 4)* [2000] H.R.L.R. 623, Evans-Lombe L.J. stated, at p. 628:-

> "I do not accept, that if Mrs Emmanuel succeeds in the ECHR, the result will be to render the judgment of the deputy judge unlawful. The ECHR is not constituted [as] a further court of appeal from the courts of this country … Mrs Emmanuel's proceedings in the ECHR will be against the United Kingdom for failing to provide a court to decide her case which conformed to her rights as defined by Article 6(1). The ECHR will not determine what equitable rights (if any) [she] has in the two properties in question. Those issues were determined by the deputy judge and his decision has been effectively affirmed by the Court of Appeal so as to make it final. A favourable decision of the ECHR in favour of Mrs Emmanuel will have no effect on that judgment."

8. Similarly, in *Westminster City Council v. Porter* [2003] Ch. 436, an application was made akin to the application in this case to stay a monetary judgment entered against the applicant. In refusing the application, Hart J. stated at p. 449:-

> "So here, subject to any appeal from it, my judgment today will remain determinative of the obligations of the first defendant to the claimant. The fact that the first defendant may make a successful claim to the Court of Human Rights against the United Kingdom government will have no effect on that judgment. It would only, as it seems to me, be if this court could be presented with a real probability of the enactment of legislation by the United Kingdom parliament which would reverse the effects of my judgment today, that I should begin to consider the question of whether it would be right with that prospect in mind to stay enforcement in the meantime. However, nothing that has been urged on the first defendant's behalf persuades me that any such prospect exists."

9. Finally, in *Deutsche Bank A.G. v. Sebastian Holdings* [2017] EWHC 913, [2017] 6 Costs L.R. 1003, His Honour Judge Waksman, Q.C., sitting as a deputy judge of the High Court of England and Wales concluded, at 1007:-

> "It is therefore plain that in the usual course, the fact that there is a pending claim to the ECHR is not a basis for a stay of enforcement of the underlying judgment unless, at the very least, there is a real prospect of a change in legislation as a result of success in the ECHR which would directly affect the judgment in question."

These principles appear applicable to the present circumstances, save that it is doubtful that any legislation could reverse the outcome of a case finally decided, particularly a decision to which Article 34.5.6° applied.

10. Mr. Beades, for his part, has argued that a stay is appropriate because "the outcome of my application to the ECHR would directly affect the judgment as it would establish that I

had an arguable case and it should not have been dealt with summarily". This, however, is incorrect. The issue for the ECtHR, if the case is deemed admissible, would not involve a consideration of whether Mr. Beades had an arguable defence to the Bank's claim. It would, instead, involve consideration of whether Irish law was compatible with the Convention. In that regard, while the application appears to complain about the existence of a summary procedure for judgment, it is not entirely clear if it is contended that the existence of such a procedure is itself contrary to the Convention. However, Mr. Beades also referred to *Sparks v. Harland* [1997] 1 W.L.R. 143, where he argued the court "effectively" stayed or suspended the underlying order so as to await the outcome of an ECtHR claim. The claim there related to a contention that the plaintiff's claim was statute-barred and reference was made to separate proceedings (which were, in fact, the authority binding on the High Court judge that the claim was statute-barred) where a complaint had been made to the ECtHR and where under the then-applicable procedure the Commission had made a decision that the complaint was admissible and a decision from the ECtHR was imminent. It was argued that if the ECtHR upheld the complaint (and in the event it did not) that a consequence would be retroactive legislation which would, or could, have the effect of benefitting the plaintiff. Sedley J. observed that the Court had power to stay proceedings rather than strike them out, and did so. It does not appear that the case has established any principle. It is, moreover, apparent that this is a rather different scenario to the present: it is perhaps possible that a court may decide not to proceed to judgment where an issue is before the ECtHR where the outcome of that case might affect the domestic case where, for example, it was contended that a particular rule of law had to be interpreted compatibly with the Convention or where it is alleged that legislation is incompatible with the Convention. In such circumstances, depending on the view a court takes, it might adjourn the proceedings and refrain from entering a final judgment. However, that is only of limited assistance here where no Convention (or Constitutional) issue was raised in the proceedings, and a final decision has been made which is now *res judicata* as between the parties.

11. It is not necessary to hold that there are no circumstances in which a court could grant a stay on its judgment pending a complaint to the ECtHR. The fact is that the Supreme Court has general power to grant a stay and does so, for example, to allow the parties a short time to organise their affairs, but even that jurisdiction involves a consideration of what the parties would or could do during the period of the stay. It is apparent here, however, that the application is based on the misconception that the determination of the European Court of Human Rights would, itself, overturn the decision of this court. If, therefore, there is a jurisdiction to grant a stay in circumstances where an application has been made to the European Court of Human Rights, it must be in circumstances which can truly be said to be exceptional and unusual. It is accordingly necessary to briefly consider the terms of the complaint made to the European Court of Human Rights.

12. It is apparent from a perusal of that complaint that it raises different complaints in respect of two separate proceedings. The present proceedings form only part of the application made to the ECtHR. The essential complaint, as formulated, appears to be one relating to the procedure for the grant of summary judgment if it is determined that

there is no arguable defence, and secondly, that Mr. Beades appeared in these proceedings without legal assistance. It is also asserted that he raised a defence that "notwithstanding the written terms of the original loans" the agreement was "subject to the bank's undertaking to continue funding the development until the apartments would be completed" and that the Supreme Court "failed to give reasons concerning whether the defence was arguable or not. Indeed, it did not specify the basis of such defence as set out in the defendant's affidavit or in submissions to the court".

13. While this might be a matter for the ECtHR in due course, the judgment of the 29th of July, 2019, sets out and addressed what Mr. Beades had argued on the appeal. As observed, he studiously refused to acknowledge receipt of the loans, although that appears now to be admitted by him for the purposes of his application to the ECtHR. He also raised what was described as a "vestigial" counterclaim and conducted an extensive, if fruitless, examination of the transcripts of all the applications and hearings before the High Court. Finally, he raised certain procedural points which were determined. It is noteworthy that he did not raise any issue of fact in relation to legal aid or assistance, or raise any contention of law relating to the availability of legal aid or to the law relating to applications to enter final judgment, whether by reference to the Constitution of Ireland or to the European Convention of Human Rights Act 2003. It is not immediately apparent that Mr. Beades has raised any issue that casts doubt on the finality of the judgment. If, however, he were to succeed in the ECtHR, that court has power to grant him a remedy, which would by definition be a remedy for the breach which he now alleges, and therefore the existence of those proceedings is not in itself a good reason to take the exceptional step of imposing an indefinite stay on a judgment that is final and conclusive.

14. Finally, it is noteworthy that, consistent with the position of the European Court of Human Rights as a court which can entertain complaints made against Member States, that court has power to issue interim measures restraining action by the Member State pending a determination of an issue before the ECtHR. It does not appear that this jurisdiction was invoked in this case.

15. In all the circumstances, it is sufficient to conclude that the facts of this case do not reach the level where the court might have to consider whether, and exceptionally, a stay could be granted on a final and conclusive judgment because a party has made a complaint to the European Court of Human Rights. Accordingly, the application for a stay is dismissed. The Court will, however, grant a short stay to permit Mr. Beades to arrange his affairs, if that is possible, and address the consequences of the judgment. The Bank has not been particularly active in pressing this claim and, accordingly, it does not appear that a short stay could prejudice the Bank. Having regard, however, to the fact that the substantive judgment was delivered almost three months ago, a significant period has already elapsed, during which Mr. Beades could have taken any steps to put himself in a position to satisfy the judgment and/or negotiate with the Bank, and it is appropriate to grant a further 4-week stay as and from today's date.