

Social Events ...

Luncheon 7th March 2003

The Annual Members' Lunch was held on Friday, 7 March, 2003. This has become an important annual event in the social calendar of the Irish Branch. The guest of honour, the Hon. Mr. Justice Roderick Murphy, formerly a member of the ICC International Court of Arbitration and past chairman of the Irish Branch, delivered a most informative talk on the developing relationship between arbitration, ADR and the courts.

The Tea Rooms of the Clarence Hotel provided an elegant setting for the annual meeting of members. The full attendance ensured the success of the day and the Chairman particularly welcomed the members who travelled from Northern Ireland for the occasion.



The Hon. Mr. Justice Roderick Murphy and James Bridgeman

Golf Outing 2003

The Annual Golf Outing of the Chartered Institute of Arbitrators - Irish Branch - Golf Society will be held at Glen of the Downs Golf Club on Thursday, 3rd July, 2003. The first tee has been reserved from 12:30 to 14:30. Thus, approximately 36 golfers can be accommodated. The outing shall be followed by dinner at 8.00 p.m. and the cost per person is €85.00.

The Branch is grateful to Deloitte & Touche and McCann Fitzgerald for kindly sponsoring this event.

Legal Brief

NOTES ON CASES AND MATERIALS

Staying Court Proceedings under section 5, Arbitration Act 1980

Gleeson, Plaintiffs v. Grimes and McQuillan, Defendants

Finlay Geoghegan, J, High Court, 1 November, 2002

Background

The Arbitration Act 1980 provides in s.5 that parties to an arbitration agreement may apply to the High Court to stay court proceedings. The court shall make the relevant staying order under rule 2, order 56, Superior Courts rules, except in specified situations, including those where steps have been taken in the proceedings.

In this case, the Plaintiffs opposed the second named Defendants' application for a staying order, contending that a step had been taken in the proceedings. The alleged step was in the second Defendant's affidavit to the court which asserted that he Eugene McQuillan was wrongfully joined as a Defendant (a claim subsequently withdrawn). The second Defendant specifically stated in paragraph 7 of the affidavit that in consenting to the court deciding that issue, he did not waive his right to a stay under s.5 and that he was not taking any step in the proceedings.

Decision

The court held that the second Defendant in making the relevant averments in the affidavit grounding the application for a stay on the proceedings, could not be considered as having elected to abandon his right to a stay. Therefore, it was unnecessary to consider whether statements in the affidavit had the effect of invoking the court's jurisdiction as required to constitute a step in the proceedings.

Cases Mentioned

MacCormack v. Monaghan Co-op, 1988 Irish Reports, 304, O'Hanlon J., held that parties to arbitration may lose that route by taking steps that invoke the court's aid. Finlay Geoghegan, J. agreed with the principle in that case but did not consider that it assisted the plaintiffs in the current case.

Capital Trusts Investments Ltd., v. Radio Design & ors, 2001 3AER 756, Jacob J. affirmed on appeal at 2002 2 AER 159. Despite variations between the Irish and English statutes, those decisions of the English High Court and Court of Appeal assisted the Irish Court in the current case.

In summary, parties initiating an application for a stay pending arbitration have not taken a step in the proceedings, if they either simultaneously or subsequently, invoke or accept the court's jurisdiction provided it is done only conditionally on an application for a stay failing.

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Legal Brief (cont.../)

Cases Mentioned

Pattel v. Pattel, 2000 Queens Bench, 551, relied on by Jacob J. in the above Capital Trusts case, mentioned a passage from Mustill & Boyd, Commercial Arbitration, 2nd ed. 1989, p 474, which Woolf, MR, approved of in Pat-
tel v. Pattel. Reported cases are difficult to reconcile but on the nature of a step in the proceedings, two require-
ments must be satisfied: The applicant's conduct must demonstrate an election to abandon the right to a stay,
and the relevant step must have the effect of invoking the court's jurisdiction.

As explained in Merkin, Arbitration Law, 1991, an act which otherwise might be regarded as a step in the pro-
ceedings will not be treated as such if an applicant specifically states a clear intention to seek a stay. A right to
seek a stay will be lost if there is an express or implied representation that it is not intended to refer the dispute
to arbitration. The usual rules about estoppel apply.

Comment

The Irish High Court in this case, Gleeson, v. Grimes and McQuillan has clarified the law and procedures on what
constitutes a step in the proceedings in cases where a stay is sought under s.5 of the 1980 Act.

In re Via Net Works Ireland Ltd and the Companies Acts 1963-1999

Judgment of Keane, CJ, Supreme Court, 23 April 2002; Murphy J and McGuinness J did not dissent.

In the this appeal case, the Respondents named Fogarty, had sought relief in the High Court under s.205 (3),
Companies Act 1963 claiming that they were being oppressed as shareholders. A clause in the shareholders
agreement provided that relevant disputes should be resolved exclusively and finally by binding arbitration.

In the Supreme Court, various company law points were argued. With regard to arbitration, was submitted on be-
half of the Appellants:

That the High Court had erred in law in refusing to stay proceedings pursuant to s.5 (1), Arbitration Act 1980
which was mandatory if a dispute came within the scope of a valid arbitration clause and not excluded by excep-
tions. The fact that proceedings were brought under a statutory provision, in this case the Companies Acts, was
irrelevant because neither those Acts nor the Arbitration Act 1980 delimited the scope of an application under
statute.

The Respondents, however, argued that facts about oppression of shareholders could only be resolved by the
High Court at the hearing of the petition. It would be contrary to public policy to operate the arbitration clause to
deprive the Respondents of their statutory right to have oppression allegations determined by the High Court.

Decision

On the arbitration points, the Supreme Court held that :

The proceedings, even if properly instituted and not constituting an abuse of the process, should have been
stayed having regard to the arbitration clause. The High Court had inherent jurisdiction to stay the proceedings.
The Appeal was allowed and a substitute order was made striking out the petition about oppression.

Arbitration Cases Mentioned

Williams v. Artane Service Station [1991] ILRM 893 : Mandatory nature of staying procedures unless excluded by
exceptions.

Re Vocam Europe Ltd [1996] VCC 396 : Applicability of Arbitration Acts is not delimited in an application pursuant
to statute. The essence of an arbitration agreement is that parties expressly waive the right to litigate disputes
outside the arbitral tribunal. It is irrelevant whether the right of action arose at common law or by statute.

Channel Tunnel v. Balfour Beatty [1993] AC 334 : In Via Net Works, Keane CJ adopted as a correct statement of
law, Lord Mustill's affirmation of the arbitration procedure in the orderly regulation of commerce, at p 353 of that
report. Parties must show good reasons for departing from arbitration agreements. Courts have inherent jurisdic-
tion to stay proceedings where parties had agreed a method of resolving disputes.

Comment

The Supreme Court affirmed the importance of the arbitration law and procedures, including provisions for stay-
ing legal proceedings, where there is a valid arbitration agreement.

Ercus Stewart, SC and Rory White analysed this case for an article in Commercial Law Practitioner.

Thanks to colleagues, especially Ercus Stewart, SC, Cormac O Dulachain, SC, Rory White & and Charles Corcoran,
barristers, for their continuing co-operation in providing information on cases.

Anthony P. Quinn, Barrister, FCI Arb.

These notes are not intended as legal or other professional advice which should be obtained if considered necessary.