

THE HIGH COURT

2014 No. 337 R

BETWEEN:

MICHAEL GLADNEY

PLAINTIFF

– AND –

H

DEFENDANT

JUDGMENT of Mr Justice Max Barrett delivered on 30th October, 2019.

1. By Circuit Court Order of Stewart J. of 26.06.2012 following on family law proceedings brought pursuant to the Family Law (Divorce) Act 1996, the learned judge made an order, *inter alia*, re-affirming certain settlement terms between Mr H and Ms H.
2. In a further Circuit Court Order of 26.01.2015, made pursuant to a notice of re-entry, Sheahan J. notes that in respect of arrears owing on the maintenance order, Mr H “*will authorise his solicitor...to ensure that any or all [monies] that he receives in his defamation proceedings against [a named newspaper] will be held by...[that] solicitor and not dissipated until this matter [presumably the non-observance of the order of Stewart J.] is resolved*”. The solicitor was so authorised and gave a related undertaking.
3. The defamation proceedings were settled between the parties, pursuant to which Mr H became entitled to payment of a sum of money. The debt arising under the order of Stewart J. remains unpaid.
4. Separately, Mr H is a judgment debtor of the Revenue Commissioners for substantial amounts of money owing pursuant to judgments of 17.02.2017, 7.09.2017 and 27.11.2018 (the ‘Three Judgments’). The Revenue Commissioners followed the course of the defamation proceedings in the newspapers and kept a watching brief in court on the anticipated hearing dates. Following on the settlement of the defamation proceedings, the Revenue Commissioners have come seeking a garnishee order which would enable the payment of the settlement monies to them. Those proceedings were commenced by notice of motion of 23.05.2019.
5. As the court noted in its judgment in *AIB plc v. McGuigan* [2018] IEHC 67, to which it was referred in argument, at para.9:

“Among the matters to which a judgment creditor must aver in the affidavit evidence supporting its ex parte application [i.e. without the judgment debtor present] are that the debt to be attached does not belong to a third person and that no third person has an interest in it...The granting of a garnishee order is a discretionary matter. So even where the various necessary averments are made, the judge before whom application is made nonetheless has the power to refuse the relief. Examples of circumstances in which a garnishee order might be refused include but are not limited to where attachment would not leave a judgment debtor enough to support herself and any dependents”.

6. These proceedings have been brought on notice to the defendant; however, it seems to the court that the absence of interest, the discretionary nature of the relief, and the pointer as to the types of application in which a garnishee order might be refused all afford useful guidance to the court as to how it should treat with the within application.
7. It seems to the court that there are a number of reasons why the garnishee order now sought of it should be refused:
 - (i) it is clear from the order of the Circuit Court (Sheahan J.) that the proceedings before it are not concluded; Sheahan J. requires that any monies received in the defamation proceedings "*not [be] dissipated until this matter is resolved*"; the matter has not yet been resolved and the court does not see how it could properly intrude into unfinished Circuit Court proceedings in the circumstances presenting; and/or
 - (ii) although one cannot say that Ms H has an interest in the settlement monies, it does not seem correct to say that the debt is unclouded by any interest; absent the garnishee order the monies must be paid to Mr H's solicitor who is to hold them in his client account pending whatever direction the Circuit Court may give; and/or
 - (iii) given the ongoing Circuit Court proceedings, given that those are family law proceedings, and given that the apparent intention of the Circuit Court is to apply the monies in settlement of the debt outstanding under the judgment of Stewart J., it seems to the court that this would be and is an appropriate case in which, consistent with its observations in *McGuigan*, albeit that the circumstances of this case are not quite the same as those presenting there, it ought to and will exercise its discretion to refuse the relief sought at this time by the Revenue Commissioners. The court is buttressed in this last conclusion by the properly forthright averment of the solicitor who has sworn the grounding affidavit for the Revenue Commissioners that:

"I...have been advised by the Revenue Commissioners that the Defendant [Mr H] is possessed of certain assets within the jurisdiction which could be subject to a more ordinary process of execution. I say and believe that it would be (and indeed has been) possible to convert those Judgments into Judgment Mortgages and, thereafter, their registration as against certain lands and premises owned by the Defendant....In that regard, I do say and believe that the Plaintiff [the Revenue Commissioners] does hold security for the [Three Judgments]."
8. For the reasons aforesaid, all the reliefs sought are respectfully refused.