[2020] IEHC 327

THE HIGH COURT
CHANCERY

[2020 No. 708P]

BETWEEN

DONAL O'DONOVAN

PLAINTIFF

AND

OVER-C TECHNOLOGY LIMITED AND OVER-C LIMITED

DEFENDANTS

RULING of Mr Justice David Keane delivered on the 3rd July 2020

Introduction

1. On 12 June 2020, I gave judgment granting Mr O'Donovan an employment injunction against the defendants (whom I will refer to collectively as 'the Over-C companies'). This ruling should be read in conjunction with that judgment, which can be found under the neutral citation [2020] IEHC 291. In accordance with the joint statement made by the Chief Justice and the Presidents of each court jurisdiction on 24 March 2020 on the delivery of judgments during the Covid-19 pandemic, I invited the parties to seek agreement on any outstanding issues, including the costs of the application, failing which they were to file concise written submissions, which would then be ruled upon remotely unless a further oral hearing was required in the interests of justice.

2. Regrettably, there has been little direct engagement, and no agreement, between the parties. Consequently, they have each filed written submissions addressing a range of issues, including: the appropriate terms of the proposed interlocutory order; the appropriate directions to facilitate an early trial; the appropriate order on costs; and whether it is appropriate to grant a stay on the proposed interlocutory order pending appeal. Neither side has suggested that an oral hearing is required on any of those issues. Hence, this is my ruling on each of them.

The terms of the proposed order

i. a liquidated sum?

3. Mr O'Donovan submits that the interlocutory order I propose, which he refers to as a final order, should be modified to reflect what he describes as the precise sum due and owing to him under the judgment. That submission misunderstands the nature of the proposed order, the specific terms of which are set out at paragraph 67 of the judgment. It provides that the Over-C companies are to continue to pay Mr O'Donovan the salary – as well as any bonus or other benefit – due to him under his contract of employment for as long as they wish to assign any of the duties of CFO to him and, in any event, for no less than the period of six months from the end of January 2020 (*i.e*. the period of six months to the end of July 2020), on the provision by Mr O'Donovan of an undertaking to the court to carry out any such duties. It follows that, if and when Mr O'Donovan provides the necessary undertaking (preferably on affidavit, given the present circumstances), he will have an immediate entitlement to whatever arrears of salary and other benefits have accrued to him by that date, as well as a prospective entitlement to whatever salary and other benefits fall due to him from then on, either for as long as he is required to perform

any of the duties of CFO or until the end of July, whichever is later. That is not an order directing the payment of a liquidated sum, nor is it necessary to attempt to convert it into one, in whole or in part.

ii. the date from which the six-month payment period is to run

4. The Over-C companies submit that the six-month period covered by the proposed order should not run from the end of January 2020 but rather from 7 January, because that is the date upon which they purported to terminate Mr O'Donovan's employment, later paying him one month's salary from that date in lieu of notice.

5. Perhaps because of the reference in the judgment to the decision of the Supreme Court in *Fennelly v Assicurazioni Generali S.P.A*. (1985) 3 ILT 73, limiting the duration of the salary payments in that case to six months, the Over-C companies appear to argue either that six months should be considered as a general or inflexible limit on the duration of such payments or that the order proposed in the judgment was intended to apply a strict six-month limit to the duration of the payments that Mr O'Donovan was to receive in this case, mistakenly failing to take account of the payment that the Over-C companies made to Mr O'Donovan on 30 January to cover the period of one month from 7 January.

6. I do not accept that, in fixing the duration of the salary payments to be made by the employer in *Fennelly*, the Supreme Court was setting a general limit, or creating a specific and inflexible rule, on the appropriate duration of such payments in respect of all such orders. Hence, the order I propose is not intended to provide Mr O'Donovan with precisely six month's salary from the date of the purported termination of his employment. Rather, in identifying the least risk of injustice, I have judged it fair that Mr O'Donovan should continue to receive his salary (and any other benefits to which he is entitled under his contract of employment), during the further period of six months from the end of January 2020; that is, until the end of July 2020. In doing so, I have not overlooked the payment that the Over-C companies made to Mr O'Donovan on 30 January.

7. Any such salary payment is, of course, subject to the deduction of tax in the usual way by operation of law. Contrary to the submission made on behalf of Mr O'Donovan, I do not believe that it is necessary to include a recital to that effect in the proposed order.

8. In summary, since I am not persuaded by the arguments of either side for a different or modified form of order, I will grant an interlocutory injunction in the terms proposed at paragraph 67 of the judgment.

Directions to facilitate an early trial

9. Mr O'Donovan would like an early trial and submits that the court should give certain specific directions, and engage in general case management, to that end. However, he does not identify any grounds of urgency in support of that application.

10. As the judgment notes (at para. 68), Mr O'Donovan's claim is in reality one for a fair termination process rather than for reinstatement in the role of CFO. That is so for the

following reasons. First, in suing the Over-C companies for defamation and misrepresentation as well as wrongful dismissal, Mr O'Donovan effectively acknowledges that the employment relationship of mutual trust and confidence between them has irreparably broken down. Remember, the Over-C companies contend that Mr O'Donovan's employment as CFO was terminated for sub-standard performance during his probationary period and now also allege that, while in that position, he wrongly disclosed sensitive commercial information to a third party in breach of confidence. All of that is very different from the position in *Fennelly*, where Costello J noted that the parties retained the highest regard for one another and the reason relied on for the termination of the applicant's employment was a massive down-turn in the respondent employer's business. Second, it is common case that Mr O'Donovan's employment may be lawfully terminated by either party on one month's notice in the first year and on three months' notice thereafter. And third, Mr O'Donovan is thus effectively free to pursue other employment opportunities, while plainly under a legal duty to mitigate his loss. Although the Covid-19 pandemic may have adversely affected the job market, I do not see how that unfortunate circumstance can be laid at the door of the Over-C companies. It is against that background that, as part of the *Fennelly* type order that I propose to make, the Over-C companies will be released from their undertaking not to appoint a new CFO to replace Mr O'Donovan.

11. Hence, I fail to see any remaining circumstance of special urgency surrounding Mr O'Donovan's wrongful dismissal claim. Nor can I identify any special urgency attending his claims of defamation and misrepresentation that would require those claims to be effectively granted priority over others of the same kind by the provision of an expedited trial.

12. That is not to say that these proceedings should not proceed to trial with all reasonable dispatch – only that they should do so in accordance with the applicable rules of court rather than specific directions made as part of a case management process not generally available to other litigants pursuing comparable claims.

13. Thus, I do not propose to give directions or engage in case management.

The costs of the application

i. applicable rules and principles

14. Order 99, rule 2(3) of the Rules of the Superior Courts ('RSC'), as inserted by the Rules of the Superior Courts (Costs) 2019 (S.I. No. 584 of 2019), reproduces the former O. 99, r. 1(4A), which had been introduced by the Rules of the Superior Courts (Costs) 2008 (S.I No. 12 of 2008). That rule states in material part:

> 'The High Court ... upon determining any interlocutory application, shall make an award of costs save where it is not possible justly to adjudicate upon liability for costs on the basis of the interlocutory application.'

15. Order 99, rule 3(1) of the RSC provides in material part:

'The High Court, in considering the awarding of the costs of any action or step in any proceedings ... in respect of a claim or counterclaim, shall have regard to the matters set out in section 169(1) of the [Legal Services Regulation Act 2015], where applicable.'

16. Section 169(1) of the Act of 2015 states:

'A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including—

(a) conduct before and during the proceedings,
(b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,
(c) the manner in which the parties conducted all or any part of their cases,
(d) whether a successful party exaggerated his or her claim,
(e) whether a party made a payment into court and the date of that payment,
(f) whether a party made an offer to settle the matter the subject of the proceedings, and if so, the date, terms and circumstances of that offer, and
(g) where the parties were invited by the court to settle the claim (whether by mediation or otherwise) and the court considers that one or more than one of the parties was or were unreasonable in refusing to engage in the settlement discussions or in mediation.'

17. Thus, the rule is that the costs of an interlocutory application (including an interlocutory injunction application) must be awarded to the party who is successful against the party who is not successful, unless having regard to the nature and circumstances of the case and the conduct of the parties it is just to order otherwise, and an award of costs must be made unless it is not possible to do so justly at the interlocutory stage.

18. As Murray J explained in *Heffernan v Hibernia College Unlimited Company* [2020] IECA 121 (Unreported, Court of Appeal, 29 April 2020) (at para. 29), in respect of the former O. 99, r. 1(4A):

'That provision reflected both the preference articulated in the case law pre-dating [its introduction] that those bringing and defending interlocutory applications should face a costs risk in the event that the Court determines that the stance they adopted was wrong (*Allied Irish Banks v Diamond* (Unreported, High Court, 7 November 2011) at p. 6 of the transcript of the *ex tempore* judgment of Clarke J.), and the fact that there will be cases in which it is not possible to determine where the proper burden of the costs of an interlocutory application should lie without the benefit of discovery, a complete marshalling by the parties of relevant evidence and in some cases an oral hearing (*Dubcap Ltd v Microchip Ltd* (Ex tempore Unreported, Supreme Court, 9 December 1997 at p.4)).'

19. In the earlier Supreme Court decision in *ACC Bank plc v Hanrahan* [2014] 1 IR 1, Clarke J had elaborated on the basis for the introduction of O. 99, r. 1(4A) in the following terms (at 5-6):

> '[8] The reason for the introduction of that rule seems to me to be clear. While, historically, there had been a tendency to reserve the costs of most motions to the trial judge, a view has been taken that this can lead to injustice for, at least in very many cases, a judge who has heard a motion is in a better position than the trial judge to consider the justice of where the costs of that motion should lie. This will especially be so in cases where the trial court will not have to revisit the merits or otherwise of the precise issue that was raised by motion. For example, if there is a dispute over discovery then that dispute will have been resolved before the case comes to trial. Of course, discovered documents may well be relied on at the trial and, indeed, in some cases may turn out to be decisive. But, at least in the vast majority of cases, the fact that the documents, with the benefit of hindsight, have turned out to be either very useful or of very little use, will not add very much, if anything, to an assessment of whether the positions adopted by the parties on a discovery motion were reasonable or appropriate. A judge hearing a discovery motion will, therefore, in almost all cases, be in a better position than the trial judge to decide where the costs of such a motion should lie. Like considerations apply to many other cases such as motions for further and better particulars.
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> [9] It is, of course, the case that such motions are very much 'events' in themselves. There are issues as to the appropriate scope of discovery or particulars. They are decided once and for all on the motion. The merits of the results of those motions are not, in the vast majority of cases, in any way revisited at the trial.
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> [10] Slightly different considerations seem to me to apply in cases where, at least to a material extent, some of the issues which are before the court at an interlocutory stage arise or are likely to arise again at the trial in at least some form. As I noted in *Allied Irish Banks v. Diamond* [2011] IEHC 505, [2012] 3 I.R. 549 and as approved by Laffoy J. in *Tekenable Limited v. Morrissey & ors* [2012] IEHC 391, (Unreported, High Court, Laffoy J., 1st October, 2012) somewhat different considerations may apply in cases where the interlocutory application will, to use language which I used in *Allied Irish Banks v. Diamond* [2011] IEHC 505 and which Laffoy J. cited in *Tekenable Limited v. Morrissey & ors* [2012] IEHC 391'turn on aspects of the merits of the case which are based on the facts'. It is true that both of those cases concerned the costs of an interlocutory injunction. One of the issues which, of course, arises on an application for an interlocutory injunction is as to whether the plaintiff has established a fair issue to be tried and, indeed, whether the defendant has established an arguable defence. In many cases the argument for both plaintiff and defence on those questions is dependent on facts which will not be determined at the interlocutory stage save for the purposes of analysing whether the facts for which there is evidence give rise to an arguable case or an arguable defence.

[11] However, the point made in *Allied Irish Banks v. Diamond* [2011] IEHC 505, [2012] 3 I.R. 549 is that those facts may well be the subject of detailed analysis at trial resulting in a definitive ruling as to where the true facts lie. In substance a plaintiff may well secure an interlocutory injunction by putting forward evidence of facts which, if true, would give him an arguable case and by succeeding on the balance of convenience test thereafter. However, if the facts on which the plaintiff's claim is predicated are rejected at trial, then the justice of the case may well lead to the conclusion that the interlocutory injunction was wrongly sought. It may be that, on the basis of the evidence before the court at the interlocutory state, the injunction was properly granted. However, with the benefit of hindsight, and after the trial, it may transpire that the case for the granting of an interlocutory injunction was only sustained on the basis of an assertion that the facts were other than the true facts as finally determined by the court at trial. It follows that in such cases there may well be good grounds for not dealing with the costs at the interlocutory stage, for the trial court may be in a better position to assess the justice of the costs of an interlocutory hearing when it has been able to decide where the true facts lie. It is not necessarily just that a plaintiff who secures an interlocutory injunction on the basis of putting up false facts should get the costs of that interlocutory injunction even if it was fairly clear that an injunction would be granted on the basis of the facts as asserted.'

20. *In Glaxo Group Ltd v Rowex Ltd* [2015] 1 IR 185 (at 210), Barrett J neatly summarised the relevant distinction in the following terms (at 210):

> 'A distinction falls to be drawn between (a) cases where the decision on an interlocutory injunction application turns on issues in respect of which a different picture may emerge at trial and (b) cases where the application turns on matters such as adequacy of damages or balance of convenience which will not be addressed again at the trial. In the former category of cases, a risk of injustice may arise in determining costs at the stage of the interlocutory injunction application; in the latter the same risk may not arise (*Haughey v. Synnott* [2012] IEHC 403, (Unreported, High Court, Laffoy J., 8th October, 2012); *Allied Irish Banks v. Diamond* [2011] IEHC 505, [2012] 3 I.R. 549; *ACC Bank plc v. Hanrahan* [2014] IESC 40, [2014] 1 I.R. 1).'

ii. the event that costs should follow

21. Mr O'Donovan seeks an order for his costs of the interlocutory injunction application against the Over-C companies on the basis that he was successful in obtaining an employment injunction. The Over-C companies seek an order for their costs of the application against Mr O'Donovan on the basis that: (a) Mr O'Donovan made a different case at the hearing of the application than that flagged in his motion papers; and (b) Mr O'Donovan failed on several issues.

22. The interlocutory injunction application was dealt with in a single day. The sole issue was, in substance, whether Mr O'Donovan was entitled to an employment injunction

against the Over-C companies. On that issue, Mr O'Donovan has succeeded and the Over-C companies, who argued trenchantly that he was not, have failed.

23. The Over-C companies invoke *Veolia Water plc v Fingal County Council (No. 2)* [2007] 2 IR 81 in support of their position. In that case, in considering the proper identification of the 'event' that costs should follow, Clarke J drew a broad distinction between two different approaches.

24. The first approach is where, in the ordinary way, the successful party was required to bring or defend an application concerning a disputed entitlement, which dispute could only have been resolved in that way. That party will be regarded as having succeeded, even if not successful on every point raised. The prosecution or defence of the application will have been justified by the result; the result will be the event; and the party concerned will be entitled to the costs of the application.

25. The second approach is where the successful party has not succeeded on all the issues that were argued before the court. In that case the court should consider whether it is reasonable to assume that the costs of the parties in pursuing the set of issues before the court were increased by the successful party having raised additional issues on which that party was not successful. Where the court is satisfied that the costs were increased in that way, it should attempt to reflect that fact in its order for costs whether by disallowing, setting off, or awarding the costs attributable to witnesses called to address any such issue or issues; disallowing, setting off, or awarding any discrete item of expenditure incurred in doing so; disallowing, setting off, or awarding the costs of the portion of the hearing directed to any such issue or issues; or by combining some or all of those measures.

26. Clarke J concluded (at 87) that the second approach is appropriate in more complex litigation involving a variety of issues even where, in the overall sense, one party may be said to have succeeded and the other party may be said to have failed, while acknowledging that, in more straightforward litigation, the first approach is appropriate, even where some elements of a successful party's claim or defence have not succeeded, unless those elements have affected the overall costs of the litigation to a material extent.

27. I judge without hesitation that the first approach is the appropriate one in this case.

28. The Over-C companies rely on Mr O'Donovan's failure: (a) to make out a strong case that he had been dismissed on grounds of misconduct; and (b) to obtain an injunction directing either a fresh performance assessment of the provision of an appeal against the original assessment. Further, they point out that the employment injunction granted did not direct that Mr O'Donovan be permitted to resume the duties of CFO. Finally, they suggest that the absence of any reference in his letter before action to 'the issue of an appeal' implies that the Over-C companies were deprived of any prior opportunity to address that aspect of the dispute between the parties, and that, in consequence, Mr O'Donovan cannot establish that it was necessary or fair to bring the present application.

29. I am not persuaded by those arguments. The hearing of the application took just one day. I do not accept that it could properly be characterised as 'complex litigation involving a variety of issues' in the way that *Veolia* and the other cases referred to in that judgment were. I do not accept that Mr O'Donovan's failure to establish a strong case that he had been dismissed for misconduct added to the costs of the application in any material way, bearing in mind that he was successful in establishing a strong case that he had been dismissed for poor performance.

30. Similarly, I do not accept that the invitation to the court made by counsel for Mr O'Donovan at the hearing of the application to consider an injunction directing the Over-C companies to provide Mr O'Donovan with a fresh performance assessment or an appeal against the original performance assessment, as an alternative to an injunction directing his reinstatement as CFO, constituted a separate issue that materially added to the costs of the application. Further, the *Fennelly* type injunction that Mr O'Donovan has obtained does direct his reinstatement as CFO (which was, in effect, the principal relief that he sought), save that it does not require the Over-C companies to assign any duties to him in that role, nor does it preclude them from appointing another CFO, should they wish to do so. An order in such terms was, perhaps, inevitable in circumstances where it is common case that the relationship of mutual trust and confidence between the parties has broken down and where it has never been in dispute that the current absence of a CFO is causing ongoing prejudice to the Over-C companies. But it certainly cannot be suggested that Mr O'Donovan contested either of those propositions, much less that he did so in a way that added materially to the costs of the application.

31. Mr O'Donovan's letter before action of 24 January included a demand for his reinstatement as CFO and threatened proceedings for wrongful dismissal and an application for injunctive relief if that demand was not met. The Over-C companies' email response on 29 January stated that, entirely in accordance with the terms of his contract, Mr O'Donovan's probation had not been extended, leading to the lawful termination of his employment, and that the proposed proceedings would be 'vehemently' defended. Against that background, I am entirely unpersuaded by the suggestion that, before the issue of these proceedings and the application for injunctive relief, the Over-C companies were deprived of a fair opportunity to address Mr O'Donovan's asserted contractual entitlement to an appeal against the adverse performance assessment that led to his dismissal, not least because the Over-C companies did not offer or concede any such entitlement either in their response to Mr O'Donovan's letter before action or at the hearing of the injunction application.

32. Nor do I accept the Over-C companies' separate argument that Mr O'Donovan made a different case at the hearing of his interlocutory injunction application than he had in his proceedings and notice of motion, such that he should not be entitled to his costs. Among the reliefs claimed in the general indorsement of claim in the plenary summons that issued on behalf of Mr O'Donovan on 29 January are permanent injunctions restraining the Over-C companies from, among other things, terminating his contract of employment; repudiating that contract; or interfering with his discharge of the role and

functions of CFO. In the notice of motion that issued on his behalf of 31 January, interlocutory injunctions are sought in the same terms. In the affidavit that he swore on 30 January to ground the application for those injunctions, Mr O'Donovan avers over several paragraphs to the alleged breach of his asserted right of appeal, culminating in the averment (at para. 29) that an appeal was offered and withdrawn in direct breach of both his contract of employment and his entitlement to natural and constitutional justice.

33. Hence, I conclude that the event in this case was Mr O'Donovan's successful application for an employment injunction. Further, I can find nothing in the nature and circumstances of the case, or in the conduct of the proceedings by the parties, that would warrant a departure from the principle that the costs follow the event.

ii. the possibility of a just adjudication on the issue of costs.

34. The decision on this interlocutory injunction application turned very significantly on whether Mr O'Donovan had established a strong case that his dismissal was carried out in breach of the terms of his contract of employment. The nature and scope of the relevant terms of that contract and the question whether any such term was breached in the circumstances of Mr O'Donovan's dismissal must inevitably be central issues at trial, when a different picture may – or may not – emerge. That is a factor that strongly militates against the possibility of a just adjudication on the issue of the costs of the application at this – the interlocutory - stage.

35. The parties also joined issue on the separate question of the balance of convenience, or least risk of injustice, in granting or withholding an employment injunction. That question was resolved in favour of the grant an interlocutory injunction and the issue will not be revisited at trial.

36. For that reason, I conclude that I should make a similar order to the carefully calibrated one made by McDonald J in the recent case of *Paddy Burke (Builders) Limited (In liquidation and receivership) v Tullyvaraga Management Company Ltd* [2020] IEHC 199, (Unreported, High Court, 30 April 2020). That was a successful appeal against an interlocutory injunction that had been granted in the Circuit Court. The appeal succeeded on the basis that the respondent to it had failed to establish both that there was a serious question to be tried and that the balance of convenience favoured the grant of an interlocutory injunction. McDonald J concluded that, because a different picture might emerge on the first issue at trial, it would not be just to fix the unsuccessful respondent to the appeal with the costs of the interlocutory injunction application, but also that, because the balance of convenience issue could not be revisited at trial, only the costs of the successful appellant should be made costs in the cause.

35. As Mr O'Donovan succeeded before me in establishing both that he has a strong case to make at trial and that the balance of convenience favours the grant of an injunction, I will grant an order similar to that made in *Burke*, making only Mr O'Donovan's costs of the interlocutory injunction application, and not those of the Over-C companies, costs in the cause.

A stay on the interlocutory order pending appeal

36. The Over-C companies seek a stay on the interlocutory order I propose, pending an appeal to the Court of Criminal Appeal, should they decide to lodge one.

37. Of course, under Article 34.4.1° of the Constitution of Ireland, the Court of Appeal has a general appellate jurisdiction from all decisions of the High Court, subject only to such exceptions as are prescribed under that Article or otherwise by law. An appeal against the making or refusal of an interlocutory order falls within the category of appeals known as 'expedited appeals' under O. 86A, r. 7(1) of the RSC. Nonetheless, O. 86A, r. 5(1) provides that an appeal to the Court of Appeal does not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the High Court orders or, should such order be refused, so far as the Court of Appeal directs.

38. In *Redmond v Ireland* [1992] 2 IR 362 at 366, the Supreme Court (McCarthy J; Finlay CJ and Egan J concurring) expressed the view, in addressing the factors to be taken into account by an appellate court in considering an application for a stay pending appeal, that the overall consideration is to maintain a balance so that justice will not be denied to either party. *In Irish Press plc v Ingersoll Irish Publications* [1995] 1 ILRM 117 at 121, Finlay CJ posited, in effect, a two-stage test of (1) whether there is an arguable ground of appeal and, if so, (2) whether the balance of convenience favours a stay. In *Okunade v Minister for Justice* [2012] 3 IR 152 at 193 and, later, in *C.C. v Minister for Justice and Equality* [2016] 2 IR 680 at 695, Clarke J noted the common conceptual basis, and hence close similarity, between the principles governing the grant or refusal of an interlocutory injunction pending trial and those governing a stay pending appeal.

39. In seeking a stay on the proposed interlocutory injunction here, the Over-C companies have not identified the ground or grounds on which they would propose to appeal, submitting merely that the order 'should be subject to a stay in the event of an appeal to the Court of Appeal'. Hence, I cannot be satisfied that there is an arguable ground of appeal.

40. As McCarthy J pointed out in *Redmond* (at 366), in considering the balance of convenience on an application for a stay of execution pending appeal, it is necessary to consider, on the one hand, whether monies paid out on foot of an order may be irrecoverable and, on the other hand, whether the bringing of an appeal might, of itself, be damaging to the party who has the benefit of the order.

41. In this instance, the Over-C companies submit that the salary and other benefits they have been directed to pay for period of six months may prove irrecoverable in view of Mr O'Donovan's financial circumstances, which, they contend, have already been 'well-canvassed' in these proceedings. I infer that this is a reference to Mr O'Donovan's averment that, without remuneration pending trial, he will be unable to discharge his debts as they fall due, including his monthly mortgage payments, insurance premiums and the expenses associated with rearing a young family. Of course, Mr O'Donovan argues that his present – hopefully temporary – financial embarrassment is the direct result of the unlawful conduct of the Over-C companies. Whether those companies would

be unable to recover the equivalent of six months' salary from Mr O'Donovan (and, indeed, their costs of the proceedings) in the event of their successful defence of the action is difficult to say on the limited evidence available; just as it is difficult to say whether Mr O'Donovan would be able to recover damages and costs from the Over-C companies in the event that he is successful at trial. As matters stand, the uncontroverted, albeit untested, evidence before me is that Mr O'Donovan cannot discharge his household and living expenses without the benefit of the interlocutory order I propose. That tilts the balance of convenience decisively against placing a stay on that order pending appeal.

42. The application for a stay on the interlocutory order pending appeal is refused.

Order accordingly.