

High Court lifts stay on proceedings previously referred to Arbitration

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The High Court has lifted a stay, which it had previously placed on proceedings in order to allow the underlying dispute, relating to insurance coverage, be referred to arbitration.

In *Jephson & anor v Aviva Insurance Ireland DAC* [2024] IEHC 309, the High Court considered whether Article 8 of the Model Law (which governs arbitrations in Ireland) (**Article 8**) precluded it from lifting the stay and ending the arbitration process, in circumstances where the arbitration agreement was not null and

void, inoperative or incapable of being performed.

Background

Damage was caused to the foundations of a property when a portion of a cliff collapsed. A claim for indemnity was made under the policy of insurance but this was declined by the insurer on the basis that the alleged applicable wording excluded loss and damage to property caused by "*subsidence, landslip or heave*".

Proceedings against the insurer issued and it delivered '*points of defence*', which contained a full defence to the claim. Thereafter, the parties agreed an order referring the matter to





arbitration and staying the High Court proceedings (**Order**). The defendant's solicitor gave an undertaking that he would on behalf of his client "*participate in the arbitration in a timely and efficient fashion*", with the plaintiff having an entitlement to apply to the court to lift the stay in the event of non-compliance with the undertaking.

Agreed directions to progress the arbitration were also set out in the Order, which included a timetable for discovery.

Application to Lift the Stay

The plaintiff issued an application to lift the stay, arguing that unacceptable delay by the defendant was a breach of the undertaking given to the court. The plaintiff referred to the fact 17 months had passed since the agreed timeframe for the exchange of discovery had expired without the defendant having complied with its obligations. The defendant had also indicated an intention to bring an application to have the arbitrator consider a preliminary issue in relation to the policy but it had failed to progress this in the interim period.

The defendant argued that the court could only lift the stay and allow the arbitration to proceed if the underlying arbitration agreement was null and void, inoperative or incapable of being performed, as per the terms of Article 8. As this was not the case, the plaintiff should have raised any issues identified with the arbitrator, instead of bringing an application to the High Court to lift the stay.

Court's Decision

The High Court noted that the undertaking was effectively an assurance by the defendant's solicitor that he would be responsible for the defendant's conduct in the matter. The parties had expressly agreed that the stay on the proceedings was dependant on compliance with the undertaking. The court held that the defendant did not conduct the arbitration in a timely and efficient fashion and the undisputed delays justified the application by the plaintiff to lift the stay in line

with the agreed Order. While the plaintiff could have raised these issues with the arbitrator, he was entitled to avail of the process the parties had agreed.

Further, the court, with the consent of the parties, had exercised its inherent jurisdiction to stay the proceedings to allow for the arbitration, and so it follows that it must equally have the jurisdiction to lift that same stay.

Conclusion

While this case was determined on its own particular facts, it illustrates that a stay on proceedings to allow for arbitration does not definitively mean the end of the court's involvement in the dispute. Parties need to be mindful of the terms upon which proceedings are stayed as the court is entitled to lift a stay to give effect to its own previous order, if appropriate.

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