

## THE HIGH COURT

[2017 No. 252 S.P.]

BETWEEN

DAVID DULLY

PLAINTIFF

AND

ATHLONE TOWN STADIUM LIMITED

DEFENDANT

AND

FOOTBALL ASSOCIATION OF IRELAND

NOTICE PARTY

(No. 2)

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 16th day of April, 2018**

1. In *Dully v. Athlone Town Stadium* (No. 1) [2018] IEHC 209 I ordered that the defendant be replaced as a trustee of the trust at issue in the proceedings, directed it to convey the legal title to the trust property to the new trustee, and granted declaratory and other relief. Mr. Michael Forde S.C. for the defendant now applies for a stay on all orders to date, although principally on the order for the execution of the conveyance.

2. Mr. John Paul Shortt S.C. for the plaintiff submits this is another attempt to frustrate court orders and draws attention to the fact that Mr. Forde has already accepted the principle that the defendant would step down as a trustee, although the defendant was contending for an entitlement to be paid under the indemnity in the deed of trust. It seems to me that under those circumstances the court would have to lean against the stay anyway, but in addition, having regard to the question of the balance of convenience and the need for clean hands, under both headings there is a whole litany of breaches of duty by the defendant that make it inappropriate to grant a stay on the execution of the conveyance. Added to that is the defendant's failure to implement the court's order in the immediate aftermath of the judgment.

3. I do not accept that there is any prejudice to the defendant because the evidence of Mr. Neil McNelis, solicitor, as to tax implications is predicated upon there being a monetary value to the interest being conveyed by the defendant; whereas I found that that is not the case. All the defendant has is the bare legal title; the equitable interest is with the club and has been at all material times. So it does not seem to me that it has been shown that there are any tax implications for the transfer of such a bare legal title. The fact that it may incorrectly have a multi-million euro value on the defendant's books is not relevant to that issue.

4. The plaintiff, on the other hand, is clearly prejudiced because the club needs to show title for the purpose of progressing its AstroTurf pitch application.

5. So while at the present time I am refusing a stay in the form in which it has been sought and in particular on the order that the conveyance be executed I am not necessarily refusing a stay on all aspects of my orders in the case. I will reconsider any further aspect at any later stage if it can be shown that a stay on any particular element of the court's orders is appropriate as to any other aspect of the order. But in the meantime the existing order that the conveyance be executed will stand and to that effect I will give the following further specific directions:

(i) that prior to 3pm on the 16th April, 2018, the defendant and its directors, Mr. Molloy, Mr. Temple and Mr. McCaul, do execute the conveyance and seal it with the company seal,

(ii) that Mr. McNelis retain custody of the company seal thereafter pending further order of the court and that the conveyance as so duly executed be delivered to the plaintiff's solicitor prior to 3pm on the 16th April, 2018, and

(iii) that the matter be mentioned at 3pm on the 16th April, 2018 and that the three directors Mr. Molloy, Mr. McCaul and Mr. Temple and the three relevant solicitors Mr. McNelis, Mr. Egan and Mr. Hayden attend at that time. Any application for further orders including in terms of the handing over of documents of title and keys can be taken up at that point.