



**COURT OF APPEAL**

**Record No: 2020 149**  
**Neutral Citation: [2023] IECA 13**

**Donnelly J.**  
**Faherty J.**  
**Ní Raifeartaigh J.**

**Scotchstone Capital Fund Ltd**

**Appellant**

**AND**

**Piotr Skoczylas**

**Applicant/Appellant**

**AND**

**Ireland and the Attorney General**

**Respondents/Respondents**

**RULING of the Court delivered on the 30th day of January, 2023**

1. On 5 December 2022, this Court issued judgment on a motion brought by the above Applicant/Appellant, Mr. Skoczylas, in which the Court refused his application to vary/set/aside/correct its judgment of 31 January 2022. The Court also refused his application “to stay these proceedings and to stay any order striking out this case” pending the determination of other separate proceedings he was bringing in this jurisdiction.
2. On the 6 December 2022, Mr. Skoczylas sought to issue a further motion (“the intended motion”). In this intended motion, Mr. Skoczylas seeks two reliefs. The first is an order, pursuant to Order 28 RSC, or alternatively pursuant to the Court’s inherent jurisdiction, correcting mistakes in the judgment of the 5 December 2022. The second relief seeks “an order to stay these proceedings and to stay any order striking out this

case, pending the conclusion of the application for revision to the Court of Justice of the European Union, pursuant to Art. 44 of the Statute of the Court of Justice of the European Union, made on 6 December 2022 in the case rec. no. C-41/15 *Dowling e.a.*”

3. In his affidavit grounding that motion, Mr. Skoczylas says that the Court has made a mistake, “possibly an inadvertent mistake”, by stating in respect of the stay that “*No such application appears to have been made to the High Court.*” Mr. Skoczylas says that he made an application in the High Court on 16 April 2020, following the High Court judgment but prior to the High Court order, that there be a stay of execution, or of proceedings until, *inter alia*, the ultimate conclusion of the other proceedings he was bringing in this jurisdiction.
4. This Court is satisfied that where a party wishes to correct clerical mistakes in a judgment of this Court, calling in aid O. 28 r.11 or inherent jurisdiction, it is neither appropriate nor necessary that a motion be issued without first writing to the other party seeking consent to such a correction. In accordance with the procedures indicated by O. 28 r.11, which Mr. Skoczylas has invoked, such clerical mistakes can be corrected where the parties consent, and with the approval of the court, by the registrar to the court either:
  - (i) On the application to the registrar in writing of any party, to which a letter of consent to the correction from each other party shall be attached, or
  - (ii) On receipt by the registrar of a letter of consent from each party.

Where there is no consent, the court can correct the matter by motion on notice to the other party or on the listing of the proceedings before the court by the registrar on notice to each party. It follows therefore that consent should be sought before any motion is sought to be issued.

5. Therefore, Mr. Skoczylas ought to write to the relevant solicitor in the office of the Chief State Solicitor dealing with this matter, seeking the consent of the respondents to the suggested correction. The above procedure – reply dependent - ought thereafter to be followed should Mr. Skoczylas wish to progress his application. In those circumstances, it is premature to permit Mr. Skoczylas to issue this motion.
6. The second relief is a claim for a stay on either the proceedings or the order striking out the case. We are satisfied that this matter ought to be dismissed *in limine*. This Court ruled on the application for such a stay on 5 December 2022. This intended application is one which is characterised by Mr. Skoczylas as a fresh application for a stay and one that is not covered by the earlier application. He bases this contention upon the fact that this stay is sought pending a ruling by the CJEU for revision of its earlier judgment in *Dowling*, as distinct from the determination of the courts in this jurisdiction in his other proceedings.
7. We note that his application for revision of the earlier *Dowling* judgment to the CJEU was made on 6 December 2022; a day after we delivered judgment on the *Greendale* application. The objective of such an application is a clear attempt to find another route to overturn the judgment refusing him his stay delivered on 5 December 2022 and ultimately to overturn the final judgment of this Court delivered on 31 January 2022. This type of application seeking to overturn the finality of decisions is not permitted by the *Greendale* jurisprudence.
8. Mr. Skoczylas has engaged in continual email correspondence with the Court of Appeal office complaining that he has not been allowed to file documents, in particular, that he has not been permitted to file and issue this intended motion. What Mr. Skoczylas fails to understand, or does not accept, is that once final judgment has been delivered, there is no *right* to issue motions. Save for certain matters, mainly to do with applications

for costs/stay, the litigation is at an end. In the present case, the application for a stay was made and refused and the costs have yet to be determined. Mr. Skoczylas has no automatic right, however, to issue a motion unrelated to the issue of costs.

9. This Court directed, when sitting in a separate motion in respect of these proceedings on the morning of 8 December 2022, that the Motion and Affidavit be received by the Office forthwith. The Court said that this was not to say that the Motion has issued and that it would thereafter consider the appropriate next step. This direction was consistent with the Court requiring time to read and consider what can only be described as a most unusual application, on its face, to revisit the judgment of 5 December 2022, which itself was a post-final judgment decision. His complaint that this is outside the jurisdiction of the court to engage in such an *ex parte* process are entirely misplaced. This Court is fully entitled to enter into procedures which protect the court process. In particular, the Court is entitled to adopt procedures, where there is an absence in the rules or in practice directions, to address, in an appropriate fashion, any situation that arises before it.

10. The Court's conclusions are therefore as follows:

- i) Insofar as Mr. Skoczylas wishes to have a clerical error rectified in the judgment, he should comply with the procedure envisaged in O. 28 r11 and seek the consent of respondent; if same is forthcoming, there will be no need to issue a motion in this regard and the Court will correct the error; and,
- ii) Insofar as Mr. Skoczylas makes an application for a stay of the conclusion of the proceedings pending a ruling of the CJEU on his application for revision of its *Dowling* judgment, the Court refuses leave to issue a motion in this regard.

### **Addendum**

Since this ruling was drafted, and was notified to Mr. Skocyzlas and listed in the legal diary, he has engaged in further email correspondence with the Court of Appeal office objecting to the Court making any ruling on his intended motion. He also now wishes the Court to have regard to the exhibits referred to in his affidavit dated 6 December 2022 and has enclosed an internet based link to those exhibits. By email dated 9 December 2022, the Court requested that Mr. Skocyzlas forward the exhibits. He chose not to do on the basis of his complaint that the Court had no jurisdiction to deal with the matter *ex parte*. We view his current belated request to the Court to view the exhibits as an attempt to delay this ruling. In all the circumstances, we are satisfied that it is appropriate to proceed to give the above ruling.