THE COURT OF APPEAL
CIVIL

Neutral Citation Number [2020] IECA 216
Court of Appeal Record Nos. 2018/177
2018/365
High Court Record Nos. 2018/72 (COS) 2018 No. 33 (COM)

Baker J
Costello J
Collins J

IN THE MATTER OF PERMANENT TSB GROUP HOLDINGS PLC

AND

IN THE MATTER OF A PROPOSED CAPITAL REDUCTION PURSUANT TO SECTION 84 AND SECTION 85 OF THE COMPANIES ACT 2014 (AS AMENDED)

AND

IN THE MATTER OF THE COMPANIES ACT 2014 (AS AMENDED)

BETWEEN

PERMANENT TSB GROUP HOLDINGS PLC

APPLICANT/RESPONDENT

AND

PIOTR SKOCZYLAS

PARTY OPPOSING THE APPLICATION/APPELLANT

RULING of the Court delivered on 31 July 2020 (Costs of Stay Application)

1. This is the ruling of the Court on the costs of Mr Skoczylas' application for a stay on the order for costs made by the Court on 27 February 2020 ("*the Costs Order*"). The nature of the stay sought and the Court's reasons for refusing that stay are set out in detail in the Court's judgment of 10 June 2020: [2020] IECA 152 ("*the Stay Judgment*").

2. At the conclusion of the Stay Judgment, the Court expressed a provisional view that Permanent TSB ("*the Company*") was entitled to its costs of the application but gave Mr Skoczylas an opportunity to contend that some different costs order should be made: paragraph 100 of the judgment. Mr Skoczylas subsequently furnished submissions dated 20 June 2020, including a lengthy "*exhibit*" which was not provided for in the Court's

directions but which nonetheless it has reviewed. The Company furnished a replying submission dated 26 June and Mr Skoczylas furnished a further submission in response dated 3 July 2020. The Court has had regard to all these submissions in reaching its decision.

3. The default rule as regards costs is that costs should follow the event. The "*event*" here is clear – Mr Skoczylas' application was unsuccessful and *prima facie* he must pay the costs of the Company in successfully opposing that application.

4. In his submissions, Mr Skoczylas advances various complaints about the Stay Judgment. He also criticises the judgment of Collins J given on 21 January 2020 (with which the other members of the Court agreed[1]) determining the substantive appeals brought by Mr Skoczylas: [2020] IECA 1. In its Stay Judgment, the Court made it clear that it would not revisit the merits of its decision on the appeals: paragraph 51 of the judgment. As the Court explained, that decision is final and conclusive, subject only to the possibility of an appeal to the Supreme Court. The Stay Judgment is, equally, final and conclusive, subject to a possible appeal to the Supreme Court and this Court will not revisit it. Mr Skoczylas' criticisms of the Court's earlier judgments are of no relevance to the issue of costs now before the Court. When adjudicating on costs arising from a decision it has made, a court must necessarily proceed on the basis that such decision is correct and can have no regard to criticisms of its merits. Any such criticisms are a matter for appellate review.

5. Mr Skoczylas argues that the Company is "*responsible for generating all the respective costs herein*" and says that, in all the circumstances, it would be "*grossly unjust*" to award any further costs against him. He says that he had not intended to file formal motion papers, that he was not required to do so by the Rules and that he did so only at the request of the Company. That may be correct as far as it goes but it does not, in the Court's view, provide any basis for departing from the normal costs rule.

6. In the first place, it appears to the Court that it was necessary and appropriate for the stay application to be made by motion. In certain circumstances, an application for a stay may be dealt with briefly and informally. An example is the application made by Mr Skoczylas for a stay on the Costs Order pending his intended application to the Supreme Court for leave to appeal from this Court's judgment of 21 January 2020. The further stay sought by Mr Skoczylas was of a very different, and novel, nature and it was clear from an early stage that the application would be strongly opposed by the Company. It was important that the precise terms of the stay being sought, and the basis for it, should be set out. That is illustrated by the fact that the form of stay set out in the notice of motion issued by Mr Skoczylas differed from the stay that had been flagged in correspondence, as explained in paragraph 10 of the Stay Judgment. Further, it appears to the Court that some affidavit evidence was necessary in order to ground the application. More significantly, however, the fact is that the application was strongly opposed by the Company and it was therefore necessary that hearing time be allocated to it. That would

[1] Subject to the dissent of Costello J on one issue relating to the costs of the recusal issue in the High Court.

have been so even if a formal motion had never issued. The application was not one which could have been dealt with informally. In the Court's view, there is no basis for the suggestion that the costs of the hearing are attributable to the Company's request that Mr Skoczylas proceed by motion. The costs incurred by the Company in opposing – successfully – the application for a further stay would have been incurred to the same extent in any event.

7. The next point made by Mr Skoczylas relates to the length of the hearing on the stay application. He complains that, in his absence, the hearing extended to "*102 minutes*" (having been listed for one hour). As Mr Skoczylas is well aware (because he was provided with a transcript of the 11 May hearing on the same day), the length of the hearing is attributable to the fact that, precisely *because* of Mr Skoczylas' absence (resulting from his voluntary decision not to participate in the remote hearing), the Court considered it appropriate to test the position of the Company by reference to the written arguments made by Mr Skoczylas.

8. In the view of the Court, neither of the matters raised by Mr Skoczylas provides any basis for departing from the normal costs rule. Nor is the Court persuaded that it would be unjust to make a further order for costs against Mr Skoczylas. His application put the Company to further costs and, in the Court's view, it would be unjust to the Company (and its members) if, having succeeded in resisting Mr Skoczylas' application, it should not be permitted to recover its costs from him.

9. Accordingly, the Court orders Mr Skoczylas to pay the Company the costs of the stay application, such costs to be subject to adjudication in accordance with Part 10 of the Legal Services Regulation Act 2015 in default of agreement. There will be a stay on that order for costs in the same terms as the stay that is currently in place on the Costs Order.

10. One further matter remains to be addressed. In his submissions, Mr Skoczylas has referred to the fact that one of the members of the Court, Collins J, acted for the State in the Apple State Aid matter and that he worked on that case alongside Mr Gallagher SC – formerly leading Counsel for the Company and now Attorney General. Mr Skoczylas' submissions reference the sums paid by way of professional fees to Collins J in relation to the case and note that Collins J was appointed to this Court immediately following his involvement in the case. Mr Skoczylas relies on these circumstances – which he says ought to have been disclosed by Collins J – to assert objective bias on the part of Collins J.

11. The Court is satisfied that there is no merit or substance whatever in these submissions. While in practice at the Bar, Collins J acted for the State in the Apple State Aid matter. That has been a matter of public record for many years. As is commonly the position, he frequently acted both for and against the State, as did the other members of the Court while in practice. As is a normal feature of practice at the Bar, he frequently acted in cases with, and against, other counsel, including Mr Gallagher. That is true also of the other members of the Court. Mr Gallagher was also retained in the Apple State Aid matter. That too has long been a matter of public record. These are everyday incidents of

professional practice as a barrister in the State and any reasonable observer would be aware of them. In the opinion of the Court, the grounds relied on by Mr Skoczylas as a basis for suggesting any failure to disclose and/or any form of objective bias on the part of Collins J do not begin to approach the applicable threshold established in the jurisprudence. That jurisprudence was reviewed by Collins J in his judgment of 21 January 2020 and it is therefore not necessary to refer to it again.