



**THE COURT OF APPEAL
CIVIL**

NO REDACTION NEEDED

**Court of Appeal Record No.: 2020/67
High Court Record No.: 2019/16**

**Costello J.
Donnelly J.
Murray J.**

BETWEEN

CHARLES MCGUINNESS

APPELLANT

- AND -

**THE PROPERTY REGISTRATION AUTHORITY OF IRELAND AND ULSTER
BANK IRELAND DESIGNATED ACTIVITY COMPANY**

RESPONDENTS

JUDGMENT of Mr. Justice Murray delivered on the 10th day of March 2021

1. In my judgment delivered on 5 February ([2021] IECA 25), I rejected each of the arguments advanced by Mr. McGuinness in support of his appeal against the refusal by the High Court of his application for orders directing the first named respondent (the 'PRAI') to cancel entries of judgment mortgages registered on the application of the second named respondent on properties owned by him. I concluded the judgment (with which Costello J. and Donnelly J. agreed) by observing that the PRAI had been entirely successful in its defence of the appeal and that it was my provisional view that it was entitled to the costs of the appeal.

2. Mr. McGuinness has delivered a submission making four requests. First, he submits that no order for costs should be made. In this regard, he stresses:
 - (i) That costs were awarded against him in the High Court including the cost of the procurement of an affidavit from John O'Shea in which hearsay averments were contained;
 - (ii) That the PRAI could have referred the matter to the High Court but chose not to do so;
 - (iii) That there was a delay of over 3 and a half years from his correspondence dated 21 July 2015 to the respondent until the 30 January 2019, the latter being the date of the letter he received recording an intention to refuse his application;
 - (iv) That the second named respondent did not participate in the proceedings.

3. Mr. McGuinness does not dispute that the PRAI was '*entirely successful*' in the appeal. It follows from s. 169(1) of the Legal Services Regulation Act 2015 accordingly that the PRAI is presumptively entitled to its costs. The court has a discretion to order otherwise, that discretion being guided (but not exhausted) by the matters identified in that provision. I do not believe that the matters relied upon by Mr. McGuinness displace the *prima facie* entitlement of the PRAI to its costs. In particular, the PRAI was not under any legal obligation to refer the matter to the High Court, and that being so cannot be properly penalised by way of bearing its own costs for not adopting that course of action. It follows that the costs of the appeal will be ordered against Mr. McGuinness. Following the decision of the Court in *Allied Irish Banks v. Higgins* [2020] IECA 339 at para. 9 these will include the costs of this application.

4. Second, Mr. McGuinness asks that a stay be put on this order until the final determination of his application, including any final determination by the Court of Justice of the European Union in

relation to the matter. I believe that this application should be refused. This Court has made no Reference to the CJEU (see para. 47 of the first judgment) and subject to the next point, the issue of staying the proceedings until their final determination does not arise.

5. Third, a request is made that the order for costs be stayed until the final determination of his appeal to the Supreme Court subject to the appeal being made within 28 days from the date of perfection of any order in this Court. It is appropriate to grant such a stay and I would order accordingly.

6. Fourth, Mr. McGuinness seeks liberty to take up a copy of the DAR of the hearing of the appeal. I do not see that there is any reason that the DAR is required: the judgment of the Court was delivered electronically and a signed and approved version of it will shortly be available. Order 123(9)(4) makes it clear that in granting access to the DAR (or any part of a record of the proceedings held by the Court) the Court is concerned with whether it is '*in the interests of justice*' that an order be made. It follows that a party seeking such access must give some reason for seeking same (*Bank of Ireland v. Gormley* [2020] IECA 102 at para. 19). The record of what occurred in the course of the hearing is neither necessary, nor in this case of any evident relevance, to any application for leave to appeal that Mr. McGuinness might care to bring to the Supreme Court nor to any appeal that he might thereafter be permitted to proceed with.

7. Costello and Donnelly JJ. are in agreement with this ruling and the order I propose.