THE COURT OF APPEAL

Unapproved **No Redactions Needed**

Neutral Citation Number: [2022] IECA 13

Record Number: 2018/106, 2018/107 & 2020/209

High Court Record Number: 2017/225 COS

Haughton J.

Power J.

Collins J.

IN THE MATTER OF DECOBAKE LIMITED (IN LIQUIDATION)

AND IN THE MATTER OF THE COMPANIES ACT 2014

BETWEEN

PAUL COYLE

APPELLANT

-AND-

DECLAN DE LACY

RESPONDENT

Costs Judgment of the Court delivered on the 26th day of January, 2022.

Introduction

1. By its principal judgment delivered on 13 October 2021 (Haughton J. with Power and Collins JJ. concurring) ("the Principal Judgment") the court dismissed the appellant's three appeals and affirmed orders whereby the High Court fixed the remuneration payable to the respondent as provisional liquidator of Decobake Limited, refused the appellant's application for discovery, and refused the appellant's application to dismiss the fee approval application pending the resolution of related proceedings. This judgment relates to costs and is supplemental to and should be read in conjunction with the Principal Judgment.

2. In the High Court the liquidator was allowed the costs of his fee approval application as costs in the liquidation, and there was no order in relation to the appellant's

costs/expenses. In respect of the other two applications, the High Court ordered that the liquidator's costs be recovered as costs in the winding up, and, in the event that the respondent was unable to recover same in the winding up, ordered that the respondent recover the costs against Mr. Coyle. Neither party has asked this court to interfere with the costs orders made in the High Court.

Costs – the stance of the parties

3. In the Principal Judgment in respect of the costs of the appeals it was stated:

> "135. As the respondent has been entirely successful in these appeals, I would propose that he should be entitled to his costs of these appeals as costs in the winding up, and, in the event that the respondent is unable to recover such costs in the winding up, that he be entitled to recover such costs against the appellant. If either party wishes to seek different orders in respect of costs to that proposed they should so indicate in writing to the Office of the Court of Appeal within 14 days of electronic delivery of this judgment, and a short costs hearing will then be arranged."

4. Following communication from Mr. Coyle the court arranged a costs hearing which took place on 25 November 2021.

5. At the outset counsel for the respondent submitted that as the respondent was entirely successful he should be awarded the costs of the appeals in the first instance against Mr. Coyle personally, with any shortfall following execution to be borne by the liquidation as costs in the liquidation – a stance that is repeated in the respondent's written submissions.

6. Mr. Coyle, who appeared in person, opposed any award of costs against him personally and asked that the costs be costs in the liquidation. Alternatively, if costs were to be awarded against him, he sought a stay pending the resolution of the plenary proceedings

De Lacey v Paul Coyle and others Rec No. 2017/7252P which will address the ownership of intellectual property and certain products marketed and sold by the Company. He handed in a short written submission which the court considered.

Right to be heard

7. In the course of addressing the court Mr. Coyle became overwrought, making reference to a disability/medical condition (dyslexia) which he said puts him at a disadvantage in making oral submissions to the court. He left the courtroom abruptly in the course of making submissions and, as he left court, made a number of angry, intemperate and wholly inappropriate remarks. The hearing was briefly suspended to allow him to collect himself. On resumption Mr. Coyle apologised to the Court, an apology which the Court acknowledged. The Court had allocated a limited period of time for the hearing (a period which in the Court's view was ample, having regard to the fact that the only issue to be heard related to costs).[1] In ease of Mr Coyle, the Court decided to allow him an opportunity to make written submissions on the costs issue and gave directions for the exchange of such submissions by both parties. In the time remaining the Court then proceeded to hear further oral submissions from Mr. Coyle, and a brief response from counsel which was confined to stating that the liquidator denied all Mr. Coyle's allegations and suggestions of wrongdoing.

8. Following that hearing Outline Submissions on behalf of the respondent were filed on 26 November 2021, and Mr. Coyle filed his Submission on 20 December 2021, and furnished the authorities which he relies upon, and the respondent's further Reply Submission was filed some days late on 11 January 2022 but was accepted by the court.

[1] The costs hearing commenced at 09.30 and another appeal was scheduled to start at 10,.30. Mr. Coyle addressed the court in all for about 40 minutes, and the respondents, in short addresses at the start and end, for less than 10 minutes.

9. The court has had regard to all of the written Submissions, including that filed by Mr. Coyle at the hearing on 25 November 2021, and has also had regard to the relevant oral submissions made on that day. The court has also had regard to the authorities furnished by Mr. Coyle, insofar as it considered them relevant to the costs issue.

10. Certain broad complaints that have frequently been made by Mr. Coyle in this litigation, and which are repeated in one form or another in his submissions, are that he has fundamental rights, including a right to be heard, family rights and property (including intellectual property) rights, and a right to an effective remedy, and that because of his dyslexia the court has a duty to protect him. Mr. Coyle has never presented any medical evidence to the court to show that he suffers from dyslexia or the extent of the condition, or the manner in which it affects his ability to present his case in court, although he has explained that his attempts to obtain this have been frustrated due to the Covid pandemic. Aside from that, he has a history of attending and advocating before both the High Court and this Court in respect of these applications and appeals, and it is clear from his paperwork that he undertakes considerable preparation in advance of such hearings. In delivering oral submissions this Court observes that he has generally been fluent and he is characteristically robust in his delivery, and gets his points across.

11. In hearing both the present appeal, and his costs submissions, this Court has taken cognisance of what he has said about his condition, and the materials on dyslexia that he has furnished, and, notwithstanding the absence of any relevant medical evidence, has sought to accommodate Mr Coyle to the maximum extent practicable.. Although the court was at that stage generally hearing all appeals remotely due to the Covid-19 pandemic, it acceded to Mr Coyle's request for a physical hearing of his appeals. At that substantive hearing the court permitted Mr. Coyle to be assisted by not one, but two, 'McKenzie Friends'. He was afforded, in the court's view, ample time and opportunity

to prepare for the appeal hearing, and to make his oral submissions, in addition to written submissions. These were duly considered and addressed in detail in the Principal Judgment. Mr. Coyle was also afforded ample time to prepare for the costs hearing. At that hearing he certainly became upset, but when he resumed the court heard his further submissions, and in the circumstances took the unusual step of affording him the opportunity to make further submissions in writing.

12. This court fully respects Mr. Coyle's right to be heard, whether arising from the principles of natural and constitutional justice and/or Article 6 of the European Convention on Human Rights. In the manner in which he has been actually heard in the High Court, and in this Court on appeal, we are satisfied that his right to be heard (regardless of whether or not he technically has standing as a *legitimus contradictor*) has been fully respected, and this Court is of the view that it has gone out of its way to accommodate his claimed condition of dyslexia, while also seeking to respect the respondents' right to have the appeal, and the costs issue, dealt with within a reasonable timeframe. The decision of the ECJ (Fifth Chamber) in *Mukarubega* Case C-166/13 (5 November 2014) relied on by Mr. Coyle does not assist him and if anything points out permissible limits to the right to be heard. That case concerned a very different issue to the issues arising on the appeals here, namely the application to French domestic law of an EU Directive on standards and procedures within Member States for deporting third-country nationals, and on a preliminary reference the court found at para. 82:

> "The answer therefore to the first question is that, in circumstances such as those at issue in the main proceedings, the right to be heard in all proceedings, as it applies in the context of Directive 2008/115, and in particular Article 6 thereof, must be interpreted as meaning that a national authority is not precluded from failing to hear a third-country national specifically on the subject of a return decision where, after that

> authority has determined that the third-country national is staying illegally in the national territory on the conclusion of a procedure which fully respected that person's right to be heard, it is contemplating the adoption of such a decision in respect of that person, whether or not that return decision is the result of refusal of a residence permit."

The critical point was that French domestic law fully respected the Rwandan applicant's right to be heard in the asylum/deportation process that led finally to the return order which she sought to impugn. In the present matter this court has at all times respected Mr. Coyle's right to be heard, and has in fact heard him.

Any suggestion therefore that Mr. Coyle has been deprived of the right to be heard, or that somehow a more favourable costs order should be made on that account, must be firmly rejected.

The relevant costs legislation

13. It is important first to identify the legislative provisions that are relevant to this costs application. The provisional liquidator's fee approval application was determined under s.645 of the Companies Act 2014 which provides:

> "645.(1) A provisional liquidator is entitled to receive such remuneration as is fixed by the court.
>
> (2) Section 648 applies with respect to the fixing of such remuneration and otherwise supplements this section."

Section 648 for the most part consists of supplemental provisions relating to sections 646 and 647, which are entirely new provisions setting out the procedure for fixing a *liquidator's* entitlement to remuneration (i.e. the basis on which he/she can charge), and the entitlement of a *liquidator* to receive the remuneration, respectively, without applying

to the court. The only part of s.648 that applies to provisional liquidators' remuneration (and which also applies to a liquidator) is subsection (9), which largely restates the principles established in pre-2014 caselaw, setting out the matters which are to be taken into account, and for that reason it is a subsection that features prominently in the Principal Judgment. However, nothing in subsection (9) addresses how the court is to approach the costs of a creditor who opposes a remuneration application by a provisional liquidator, or appeals an order.

14. In contrast, the earlier subsections in s.648 allow for an aggrieved creditor *in a winding up* to apply to court to vary remuneration that has been agreed with creditors or fixed by an arbitrator – it in effect allows for an appeal/review by the court - and s.648(6)(a) expressly provides that on any such application if the terms of entitlement or the remuneration are not varied "…the applicant shall bear the costs, fees and expenses of the application"; and s.648(b) provides that if the court varies them in a manner less favourable to the liquidator the court "may make such order as it deems fit as to the costs, fees and expenses of the application".

15. It is somewhat surprising that there is no equivalent provision relating to applications for costs by provisional liquidators, or the costs of a party who unsuccessfully (or indeed successfully) opposes the application or appeals the remuneration order. This may be because s.645 mandates that the provisional liquidator apply to court, so that incurring costs is inevitable (both for the provisional liquidator and any creditor who appears). By way of contrast, in a winding up process, the policy of the legislature, as expressed in s.647 and s.648, is to encourage agreement over the terms on which a liquidator may be entitled to remuneration, and the agreement of remuneration entitlement with the creditors, and s.648 provides for the determination of remuneration by arbitration where the parties cannot agree. Nonetheless it is of note that in respect of a review by the court

in s.648(6)(a) the legislature chose to curtail the court's discretion in respect of costs, mandating that the costs and expenses must be borne by the unsuccessful applicant. The absence of a provision similar to s.648(6)(a) relating to appeals from an order made in respect of a *provisional* liquidator under s.645 may be an oversight.

16. The court is therefore thrown back on the general provisions in relation to the awarding of costs in civil proceedings contained in Part 11 of the Legal Services Regulation Act, 2015 ("the Act of 2015") headed 'Legal costs in civil proceedings'. Section 168 (1) is a general provision empowering any court, on application by a party, to award costs in civil proceedings. Subsection (3) has some relevance and reads:

> "(3) Nothing in this Part shall be construed as –
>
> (a) Restricting any right of action for the tort of maintenance, or
>
> (b) Restricting any right of a trustee, mortgagee or other person, existing on the day on which this section commences, to be paid costs out of a particular estate or fund to which he or she would be entitled under any rule of law or equity."

The term "Civil proceedings" is not defined, but appears to be used in contra-distinction to "criminal proceedings", and hence to refer to all court proceedings that are not criminal proceedings. Undoubtedly, it encompasses the present applications and appeals. In s.138 "legal costs" is defined to mean "fees, charges, disbursements, and other costs incurred or charged in relation to contentious or non-contentious business and includes – (a) the costs of or arising out of any cause or matter in any court". This broad terminology in our view extends to the costs incurred by the respondent in seeking to uphold the High Court orders in the present appeals.

17. Section 169(1) then provides, so far as relevant:

> "(1) A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders

otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including –

(a) Conduct before and during the proceedings,

(b) …(g)"

Factor (a) is in the only one relied on by Mr. Coyle. Subsections (b) to (g) set out six further factors, none of which are relied on or appear to be relevant to the present appeal.

18. As a result of the enactment of sections 168 and 169 of the 2015 Act it became necessary to amend Order 99 of the Rules of the Superior Courts, and rule 2, so far as relevant, now states:

"2. Subject to the provisions of statute (including sections 168 and 169 of the 2015 Act) and except as otherwise provided by these Rules:

(1) The costs of and incidental to every proceeding in the Superior Court shall be in the discretion of those courts respectively.

(2) …"

What was the 'normal rule' on costs, i.e. that costs should follow the event subject to the court's discretion to depart from the normal rule, is now replaced by s. 169 in all cases where a party has been "entirely successful".

19. Accordingly while Mr. Coyle asserts that the court "has a discretion to depart from the normal rules relating to costs…", and cites for this proposition the Supreme Court decision in *Grimes v Punchestown Developments Co. Ltd* [2002] 4 IR 515, the true position is that where s.169 of the 2015 Act applies, the starting position is that an entirely successful party is entitled to their costs *unless* the court, having regard to the nature and circumstances of the proceedings, and the conduct of the proceedings, and the other factors listed in s.169(1) determines otherwise.

Discussion and decision

20. The respondent was entirely successful in all three appeals. The starting position is therefore that he should be entitled in the first instance to his costs against Mr. Coyle, personally.

21. Counsel for the respondent further contends that there is no conceivable basis upon which this court should follow the approach taken to costs in the High Court, particularly having regard to the unjustifiable attacks made on the respondent's integrity on the basis of assertions that are baseless, repetitious, and irrelevant to the applications before the court. It is pointed out that if the respondent is ordered to first recover costs from the liquidation the creditors will be visited with costs incurred by the respondent as a result of the inappropriate and unmeritorious approach taken by Mr. Coyle to the fee approval application. It is submitted that an order for costs to be costs in the liquidation is generally premised on the costs being incurred on a matter which is properly litigated in the interests of the creditors, or of an orderly winding up. It is contended that Mr. Coyle sought to litigate matters which were irrelevant and contributed nothing to the interests of the creditors and did not assist the court in scrutinising the remuneration sought. This included disputing the respondent's appointment, attacking the validity of the provisional liquidator's Report ("PL Report"), objecting to the payment of any fees, and attacking the integrity of the respondent. It is contended that Mr. Coyle failed to engage with the critical evidence or applicable legal principles relating to the remuneration sought.

22. As a matter of principle, this court accepts these arguments. It does not consider that the creditors should be disadvantaged by an order that the respondent's costs of the appeals in the first instance be costs in the liquidation, rather than recoverable from Mr. Coyle, personally.

23. In his various written and oral submissions Mr. Coyle urges that no order be made against him, on the basis that he was a *legitimus contradictor*, and had a legal right to oppose the respondent in respect of his fee approval application and appeal. As the basis for this contention, he asserts that he is a creditor – "a superpreferential [sic] creditor and the owner of a fixed charge" – and a member of the Committee of Inspection, and that the respondent "has been trading the Company unlawfully with my Intellectual Property".

24. This submission must be rejected in the Court's view. Firstly, the respondent was entitled to reject the suggestion that Mr. Coyle was ever the holder of a fixed charge. Secondly, and assuming for present purposes that Mr. Coyle fell to be considered as a *legitimus contradictor,* while this might justify making no order as to costs against him at first instance, the same cannot be said to apply to an appeal; persons who are in the position of *legitimus contradictor* cannot enjoy the same expectation that no costs order will be made against them if they pursue an appeal that is unsuccessful. The reason for this is that while the fee approval application under s.645(1) was one that the respondent was obliged to make, and therefore one the costs of which the creditors had to anticipate would be paid out of the assets of the Company, the same could not be said of an appeal. Such an appeal is in the nature of a *lis inter partes* where the usual rules in relation to costs apply.

25. Thirdly, it cannot be said that Mr. Coyle in fact conducted himself as a *legitimus contradictor.* He did not dispute any of the evidence adduced by the respondent to support the fee approval application or make any argument about the quantum of fees or expenses, or in any way assist the court in its "vigilant scrutiny" of the sums sought in the exercise of its supervisory jurisdiction. Instead of focussing on issues such as the time recording by the respondent/his office, charge out rates, the level of staff carrying out particular tasks, the complexity/difficulty of the provisional liquidation, and the

effectiveness of the work undertaken by the respondent, Mr. Coyle improperly utilised the process for airing his grievances as a director and shareholder about the Company debts giving rise to the liquidation, for attacking the basis for the appointment of the respondent as provisional liquidator, and for attacking the conduct of the provisional liquidation.

26. Mr. Coyle also suggests that this court should not now determine costs because a further judgment of this court may impact on matters. However, the court accepts the respondent's submission that the Fee Approval Application and Mr. Coyle's responsive applications are free-standing from other litigation, arising as they do under s.645 of the Act of 2014, and that the court should determine the costs of this appeal without regard to other matters.

27. Mr. Coyle now claims he had "every right" to challenge the PL Report, and to criticise such matters as the (alleged) undervaluation of stock, and the loss of lucrative contracts. However, opposing the fee approval application, and pursuing the present appeals, were not the correct forums for such claims. The appeals were, as stated in the Principal Judgment, misconceived, and this was aggravated by Mr. Coyle's frequent and wholly unjustified attempts on affidavit and in his submissions to attack the integrity of the respondent.

28. Mr. Coyle refers to "several errors" in the Principal Judgment, but does not identify these other than alleging one minor and inconsequential error in para.21, and repeated in 53, relating to what prompted the respondent to canvass the views of the Dublin City Council and the Revenue Commissioners in relation to the level of his fees, leading to an agreed reduction of 7.5%. He also does not indicate how any such errors could be relevant to or impact on the issue of costs.

29. As to revisiting a judgment where errors are identified, it is in any case well established that the jurisdiction to review a judgment is exceptional, and the circumstances in which it may be exercised were summarised in *Launceston Property Finance DAC v Wright* [2020] IECA 146 in light of the jurisprudence of the Supreme Court as follows:

> "7. In summary, the jurisdiction:-
>
> (i) is wholly exceptional;
>
> (ii) it must engage an issue of constitutional justice;
>
> (iii) requires the applicant to discharge a very heavy onus;
>
> (iv) is not for the purpose of revisiting the merits of the decision;
>
> (v) alleged errors which have no consequence for the result do not meet the required threshold;
>
> (vi) cannot be invoked on the basis of the discovery of new evidence;
>
> (vii) requires the applicant objectively to demonstrate that there is a fundamental issue concerning a denial of justice, by which is meant some error which is so fundamental as to have an effect on result;
>
> (viii) cannot be used as a species of appeal where a party seeks to address, critically or otherwise, the judgment;
>
> (ix) is to be distinguished from the application of the Slip Rule in respect of errors of fact which have no bearing on the outcome."

Insofar as Mr. Coyle seeks to have the Principal Judgement reviewed, he has not satisfied *any* of these criteria.

30. The sole issue raised is therefore whether Mr. Coyle has satisfied the onus that rests on him to identify any "conduct before and during the proceedings" which would justify the Court in the exercise of its discretion ordering otherwise than ordering Mr. Coyle to pay the respondent's costs of the appeals in the first instance.

31. In his submissions Mr. Coyle raises a number of allegations in relation to the "conduct of the liquidator", but the court is satisfied that none of these constitute conduct on the part of the respondent that would justify the court ordering otherwise than that costs be awarded to the 'entirely successful' party.

32. The court has considered all of his submissions, and while it is not necessary to refer exhaustively to all matters raised by Mr. Coyle the following should be noted:

(i) Mr. Coyle alleges a failure by the respondent to inform the court the that alleged "stolen funds" were offered to him and to Dublin City Council to "satisfy the petition". This has no relevance to the entitlement of the provisional liquidator to remuneration to be assessed under s.645, and was not a matter that the respondent was required to disclose to the court.

(ii) He alleges a failure to put before the court materials which suggest that the landlord of the Clane premises (the largest unsecured creditor) was not a creditor of the Company, and that the Company was, arguably, solvent. This might have been relevant to an application to set aside the appointment of the respondent as provisional liquidator, such as that brought unsuccessfully before Gilligan J. by Mr. Maher solicitor on behalf of the Company on the day following the appointment. No such application or appeal was ever brought by Mr. Coyle. It is also noteworthy that this Court has already heard and rejected an appeal brought by Mr. Coyle against the appointment of the respondent as official liquidator, and agreed with the High Court that the Company was insolvent – see the judgment of Costello J. reported at [2019] IECA 169. The status of the Company as insolvent at the relevant time cannot be relitigated in a costs application but in any event the attempt by Mr. Coyle to once again raise this issue was not relevant to the fee approval application,

and the alleged non-disclosure of materials was not, therefore, relevant "*conduct*" in the context of this costs determination.

(iii) Mr. Coyle makes a similar complaint of non-disclosure in respect of "valuable IP held in the Company", which he claims rendered the Company solvent, and which he claims was excluded from the PL Report. This relates to matters which are the subject of significant dispute in the plenary proceedings. Those proceedings were not commenced until after the PL Report/the end of the provisional liquidation, and their existence cannot be relevant to the s.645 fee approval application. In any event, the High Court and this court were well aware of the plenary proceedings as they are a matter of public record and were brought to the court's attention by Mr. Coyle (if not by the respondent), and there is no question of the court having been misled before or during these applications/appeals.

(iv) Mr. Coyle refers to the rejection by the Companies Registration Office of three E4 returns filed by the respondent as liquidator in August 2019, and the failure by the respondent to make filings with appropriate statutory declarations. Apart from the fact that any such failings appear to have been rectified by the respondent when brought to his attention, this all post-dates the provisional liquidation, and the High Court judgment in the present applications, and is not "conduct" that relates to the present applications or appeals.

(v) Mr. Coyle suggests that he was denied the opportunity to demonstrate how he alleges the court, the Company and the creditors, were "failed" by the respondent during the period of the provisional liquidation. In para. 6 of his written submission he refers to his "express right to be heard" arising from his affected interests, including his right to work, his intellectual property rights and his reputation, and his position as a creditor of Company. This has been addressed earlier in this

judgment. To that should be added that Mr. Coyle availed of the opportunities open to him to file affidavits and put before the court the evidence that he wished to be considered on all three applications, and he was afforded reasonable time and opportunity to advocate before the High Court and this court. In so far as this is a complaint that he was not granted the adjournments sought in his Dismissal Application - until after the final determination of the plenary proceedings - that is an application that was considered and refused in the High Court, and Mr. Coyle was unsuccessful on appeal.

In so far as this is a complaint that he did not obtain the discovery that he sought, this was also addressed in the High Court, and refused, and it was refused on appeal by this court, and it is not a matter that can be reviewed/reopened on this costs application. The Principal Judgment in paras. 116-124 addresses why the discovery application was misconceived and was correctly refused by the High Court. Furthermore, it would be hard to envisage circumstances in which a court would be willing to entertain a discovery application at this stage, for the sole purpose of supporting a costs application, or defence of such an application, even if theoretically discovery might be possible.

(vi) In paras. 3-6 of his written submission, Mr. Coyle variously complains that this court failed to address his "main pleas of EU law", that he and his family have "carried an excessive burden in this Liquidation", that the court has failed to "hold their officer to account", that the PL Report is based only on hearsay/biased/misrepresents fact, and that he (Mr. Coyle) has been discriminated against and that there is no 'equality of arms', in breach of his fundamental rights under the Constitution and EU law.

These submissions effectively ask this court to reconsider issues raised by Mr. Coyle in the appeal, and already addressed in the Principal Judgment; they are unfounded and do not approach the high threshold required to persuade a court to review its own judgment. In particular, the power to award of costs against an unsuccessful party, which is now enshrined in s.168 and 169 of the 2015 Act, enjoys a presumption of constitutionality, and it is one that is of universal application in civil cases. The court cannot see how exercising its power to award costs against Mr. Coyle could be considered discriminatory, or contrary to fundamental right or any principle or rule of EU law. The argument that its exercise would in some way deprive Mr. Coyle of a fair trial, or an effective remedy, is illogical and incomprehensible. – Mr. Coyle chose to appeal, and must be taken to have been aware of the risk that if his appeals failed he could have costs awarded against him. Notwithstanding that he does not have legal representation he is an experienced litigant and is well aware that to fail in civil proceedings carries with it a risk, if not a probability, that costs will follow the event.

33. The court is satisfied that none of the matters raised by Mr. Coyle constitute "conduct before and during the proceedings" such that the court should order otherwise than ordering Mr. Coyle to pay the costs of the appeals.

Preliminary reference request

34. Mr. Coyle asks this court to make a preliminary reference to the European Court of Justice under Article 267 of the Treaty on the Functioning of the European Union on two questions.

35. The first question, in the context of the EU Insolvency Regulations, 2015, is whether "the actions of the Irish Court regard to the Companies Act 2014 and their approach to applications being summary and the Judgments against me where I have been denied the

right to fully participate in the proceedings to protect my interests, [is] in line with the Fundamental Charter of Fundamental Rights."

36. The second question in essence is in the following terms :

"Where the Provisional Liquidator produces a report for the Court and no other party is entitled to challenge the report, does it create [sic] a condition of bias and impartiality, where the Provisional Liquidator is appointed Liquidato

37. The Court notes that these issues are raised for the first time now. Even if they were potentially relevant to the Court's determination of the appeals (and the Court expresses no view on that issue) the fact is that the appeals have been determined by this Court. Subject only to the possibility of a further appeal to the Supreme Court, the decision of this Court on the appeals is final. The only issue remaining for determination by this Court now is that of costs. The issues already decided by the Court cannot be reopened or relitigated. The questions identified by Mr Coyle have no relevance to the issue of costs and it follows that it is not necessary for the Court to address those questions in order to give judgment on that issue. It follows from the terms of Article 267 TFEU that it is not appropriate to refer any of those questions to the CJEU.

Conclusion

38. The Court therefore orders the respondent's costs of all three appeals be awarded in the first instance against Mr. Coyle personally, with any shortfall following execution to be borne by the liquidation as costs in the liquidation, such costs to be adjudicated by a legal costs adjudicator. The Court refuses Mr. Coyle's application to have the respondent's costs of the appeal made costs in the liquidation *simpliciter.*

Stay

39. Mr. Coyle seeks a stay on any order awarding costs against him. He seeks a stay pending the determination of any preliminary reference, but this does not arise. Further he seeks

a stay pending determination of the plenary proceedings, which he argues are an intrinsically linked matter, and he submits that the respondent will not be prejudiced by a stay.

40. The Court refuses to grant any stay on the costs order. Mr. Coyle's opposition to the s.645 application, and his pursuit of his own motions, and the three appeals, were all misconceived, and added materially to the time and complexity of the proceedings. There is no good reason advanced for delaying – for an indefinite but potentially significant period - the ascertainment and recovery of the respondent's costs, and the Court is of the view that the respondent will suffer prejudice if there is further delay in the recovery of costs to which he has been found to be entitled. The decision of this Court in *In re Permanent TSB Group Holdings plc* [2020] IECA 152 suggests that there is a high threshold for granting a stay of the kind sought by Mr Coyle (a stay on costs in one proceedings pending the determination of other distinct proceedings) and nothing in the material before the Court would justify such an order here. Any such stay is discretionary in any event. In that context it is relevant that in the Principal Judgment the Court deprecated the manner in which Mr. Coyle has made repeated allegations of wrongdoing against the respondent, which were unsubstantiated, baseless and irrelevant, and said in para.136:

> "136. …. I do not accept any of the appellant's attempts to portray the respondent as less than honest, and the appellant's repeated refrains on affidavit and to the court that the respondent obtained injunctions fraudulently or otherwise acted improperly are unwarranted, irrelevant and scandalous."

This finding alone would be sufficient for the Court to mark its disapproval of the Mr. Coyle's conduct of these proceedings and appeals by exercising its discretion against

granting the stay sought. The reality is, however, that no basis on which any such stay could properly be granted has been identified.