

**APPROVED**  
**NO REDACTION REQUIRED**



**THE COURT OF APPEAL**  
**CIVIL**

**Neutral Citation: [2023] IECA 28**

**Appeal Number: 2021/298**

**Collins J.**  
**Whelan J.**  
**Allen J.**

**BETWEEN**

**GREENVILLE PRIMARY CARE LIMITED**

**PLAINTIFF/APPELLANT**

**AND**

**INFRASTRUCTURE INVESTMENT FUND ICAV**

**DEFENDANT/RESPONDENT**

**JUDGMENT of Mr. Justice Allen delivered on the 15<sup>th</sup> February, 2023**

1. This judgment is supplemental to a judgment delivered on 8<sup>th</sup> December, 2022 ([2022] IECA 281) in which the court concluded that an appeal by the appellant against an order of the High Court requiring the appellant to provide security for the respondent's costs of the action should be dismissed.

2. In that judgment the court expressed the provisional view that the respondent, having been entirely successful on the appeal, was entitled to an order for its costs of the appeal but allowed the appellant ten days within which to give notice of any wish to contend for any other order, in which case, it was said, the panel would reconvene to deal with the question of costs.

3. By letter dated 15<sup>th</sup> December, 2022 the appellant's solicitors indicated that the appellant did not oppose the making of an order for the respondent's costs of the appeal but asked that a stay be put on execution of the order for a period of twenty one days and, in the event of an application to the Supreme Court for leave to appeal, then until the determination by the Supreme Court of any such application. The appellant's solicitors indicated that the appellant was satisfied for the court to deal with the request for a stay without a hearing, if possible.

4. The respondent's solicitors replied promptly by letter dated 19<sup>th</sup> December, 2022. If they did not expressly agree that the application could be dealt with without an oral hearing, neither did they object or seek an oral hearing.

5. The respondent opposed the application for a stay.

6. The respondent's solicitors referred to the decision of this court in *Re Lobar Ltd.*

[2018] IECA 129 in which Irvine J. set out the principles to be applied on an application for a stay pending appeal:-

***“Principles***

*14. The principles to be applied by a court on an application for a stay pending appeal are not in dispute. Some of the better known authorities are the decisions of Clarke J. (as he then was) in Danske Bank t/a National Irish Bank v. McFadden [2010] IEHC 119; Irish Press plc. v. Ingersoll Irish Publications Ltd. [1995] 1*

*ILRM 117, and most recently, the decision of Clarke J. in Charles v. The Minister for Justice, Equality & Law Reform [2016] IESC 48.*

*15. The aforementioned authorities make clear that the court is bound to engage in what is often described as a two-stage test. First, the applicant must demonstrate that they have an arguable ground of appeal and is one which is bona fide rather than tactical.*

*16. If the court is not satisfied that the appellant has demonstrated an arguable ground of appeal, that is the end of the stay application. Assuming, however, the appellant demonstrates a bona fide and arguable ground of appeal, then the court must consider where the balance of justice is to be found. As is stated in many of the more recent authorities, a stay brings with it potential detriment to both sides. Thus, it is necessary for the court to consider where the greatest risk of injustice may arise. It must consider the likely effect that granting a stay would have on the respondent should the appeal fail, and must also consider the effect that refusing a stay may have on the appellant should it succeed on its appeal. In this context, the court may impose a stay on terms which can ameliorate the potential detriment of granting or refusing a stay.”*

**7.** The respondent’s solicitors make the point first, that the appellant has not engaged with these principles in any way and secondly, that in the event that no *bona fide* ground of appeal is demonstrated, that is the end of the stay application. For my own part, I would have made the second point first but whatever the order in which it is made, it is in my view, an unanswerable point.

**8.** The respondent’s solicitors also make the point that the availability of a further appeal to the Supreme Court is limited to decisions of the Court of Appeal which involve a matter of general public importance or in which a further appeal is necessary in the interests of justice.

Although the appellant had not engaged with the issue, the respondent's solicitors argued that it was readily apparent from the judgment of 8<sup>th</sup> December, 2022 that the appeal concerned the application of well-established principles concerning the provision of security for costs by a corporate plaintiff to the facts of the individual case. Reference was made to the determination of the Supreme Court in *Rayan Restaurant Ltd. v. Kean* [2016] IESCDET 78.

**9.** I am satisfied that the respondent's succinct and focussed objection is correct. The appellant has not identified an arguable ground of appeal and that is the end of the stay application.

**10.** In any event, I find it difficult to contemplate that the respondent might have its bill drawn and adjudicated before the Supreme Court might have determined any leave application.

**11.** The order will show that the appellant's appeal against the judgment and order of the High Court of 11<sup>th</sup> November, 2021 is dismissed; that the order of the High Court – including as to the costs of the respondent's motion for security for costs – is affirmed; that appellant should pay the respondent's costs of the appeal; that the appellant's application for a stay on execution of the order for the costs of the appeal pending a possible application to the Supreme Court for leave to appeal against the judgment and order of the Court of Appeal is refused; and that the appellant should pay the respondent's costs of its written submission on the stay application.

**12.** As this ruling is being delivered electronically, Collins and Whelan JJ. have authorised me to say that they agree with it.