

**THE HIGH COURT**

**Record Number: 2018/1517P**

**BETWEEN/**

**MARY BREIDEGAM**

**PLAINTIFF**

**- AND -**

**DANIEL J. REILLY**

**DEFENDANT**

**JUDGMENT of Ms. Justice Power delivered on the 27th day of May 2020**

**Background**

1. The defendant's application to the High Court to remit the within proceedings to the Circuit Court was heard on 5 February 2020.
2. Having considered the parties' oral submissions, judgment was delivered on 7 April 2020 ([2020] IEHC 186). The Court allowed the defendant's application and directed the remittal of the proceedings to the Circuit Court in accordance with s. 25 of the Courts of Justice Act 1924, as amended.
3. In the light of the COVID-19 pandemic and in accordance with the recent direction of the Chief Justice and the President of the High Court, the judgment was delivered to the parties, electronically, by way of email on the same day.

**Costs**

4. The parties were invited to communicate, electronically, with the Court in respect of any issues arising from the judgment, including, on the question of costs. If such issues arose and the agreement thereon was not reached, they were permitted to file, electronically, concise written submissions with the Office of the Court within 14 days of the delivery of the judgment, subject to any other direction given in the judgment.
5. By letter dated 7 April 2020, the defendant's solicitors wrote to the plaintiff seeking agreement on the precise form of the substantive order and on the issue of costs. They did not receive a reply from the solicitors for the plaintiff.
6. On 20 April 2020 the solicitors for the defendant filed their submissions on costs, electronically. They contended that it would not be appropriate to reserve costs in respect of the application to remit proceedings, having regard to the fact that the defendant was entirely successful. He had, therefore, been justified, in bringing the application. The general principle that 'costs follow the event' should be applied. They further submitted that even if the plaintiff were to be successful at the hearing of the action before the Circuit Court, a costs order in favour of the defendant would continue to be just and appropriate. This would remain the case, even in the 'very unlikely' event that the plaintiff was awarded damages in excess of the Circuit Court's monetary jurisdiction. The defendant submitted an award of costs in his favour should be made in respect of both the remittal and the costs application, as the preparation of written submissions in respect of the latter became necessary in the absence of a reply to the letter of 7 April

2020. The defendant had no objection to a stay on the execution of any costs order, pending the determination of the proceedings.

7. On 28 April 2020, an extension of time having been granted, submissions on costs were received from the solicitors for the plaintiff. They accepted that, ordinarily, costs follow the event and they acknowledged that the Court should, where possible, make a final determination regarding the costs of an interlocutory application. However, the solicitors for the plaintiff argued that the Court should reserve costs in this case in circumstances where there remains a possibility that damages in excess of €75,000 could be awarded by the Circuit Court. In the alternative, they submitted that a stay should be placed upon the execution of any order for costs in favour of the defendant.

### **Decision**

8. It is a well-established principle of law that, as a general rule, costs follow the event, unless, for special or unusual circumstances, the court considers it appropriate to direct otherwise. This was confirmed by Clarke J. (as he then was) in *Veolia Water UK plc v Fingal County Council (No. 2)* [2006] IEHC 240, 2007 2 I.R. 81. He described the approach to this principle in the following terms:

*"Parties who are required to bring a case to court in order to secure their rights are, prima facie, entitled to the reasonable costs of maintaining the proceedings. Parties who successfully defend proceedings are, again prima facie, entitled to the costs to which they have been put in defending what, at the end of the day, the court has found to be unmeritorious proceedings."*

9. Section 169 of the Legal Services Regulation Act 2015 provides as follows:

*"Costs to follow event*

169.(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."

10. Order 99, r. 2 of the Rules of the Superior Courts (as amended) states as follows:

*"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 Courts shall be in the discretion of those Courts respectively."*

11. Order 99, r. 3 provides as follows:

*"The High Court, the Court of Appeal or the Supreme Court, upon determining any interlocutory application, shall make an award of costs save where it is not possible*

*justly to adjudicate upon liability for costs on the basis of the interlocutory application.”*

12. I am satisfied that the defendant’s application to remit the proceedings is one in respect of which it is possible to adjudicate on the question of costs. The application was issued, appropriately, and it was successful. The Court held that the proceedings are to be remitted to the Circuit Court in accordance with s. 25 of the Courts of Justice Act 1924, as amended. The starting position, therefore, is that costs should follow the event. To the extent that an award of costs is, ultimately, a discretionary matter, a judge is not ‘*at large*’ in considering a costs application and, as MacMenamin J. observed, his or her discretion must be exercised within jurisdictional criteria established by law (see *Child and Family Agency v O.A.* [2015] 2 I.R. 718). A departure from the general principle is warranted only if the court is satisfied that it is appropriate to do so.
13. The plaintiff has submitted that costs should be reserved because there remains a possibility that damages in excess of €75,000 could be awarded by the Circuit Court (see para. 7). For the reasons set out in my judgment of 7 April 2020, I have found (at para. 60 thereof) that even taking the plaintiff’s claim at its highest, she could not ‘*reasonably contemplate*’ the recovery of damages beyond the jurisdiction of the Circuit Court (my emphasis). The possibility to which the plaintiff alludes is insufficient, to my mind, to constitute special or unusual circumstances such as would justify a departure from the general rule.
14. Therefore, I am satisfied that, having succeeded in his application, the defendant is, *prima facie*, entitled to recover the reasonable costs he has incurred in this regard. I am also satisfied that the reasonable costs of preparing written submissions for this application should be awarded (see para. 6).
15. I will, therefore, make an order for costs in favour of the defendant, such costs to be adjudicated in default of agreement.
16. I also direct a stay on the execution of the order for costs pending the resolution of the proceedings.