

THE HIGH COURT

[2021] IEHC 98

High Court Record No. 2018/488CA

Circuit Court Record No. EC008/2017

EASTERN CIRCUIT

BETWEEN

MICHAEL JEFFERS

PLAINTIFF

AND

**VOLKSWAGEN AKTIENGESELLSCHAFT,
VOLKSWAGEN GROUP IRELAND LIMITED,
BRIMBAY LIMITED T/A SHEEHY MOTORS (NAAS)
AND VOLKSWAGEN BANK GMBH**

DEFENDANTS

Ruling of Mr. Justice Heslin delivered on the 12th day of February 2021

1. This short ruling should be read in conjunction with the detailed decision given by me, on 16 December 2020, at the end of which in I requested the parties to correspond with each other on the appropriate form of order, including as to costs. My decision of 16 December last related to an appeal against an Order made by the Circuit Court which was made in respect of certain particulars sought from the plaintiff (the plaintiff being the respondent in the said appeal).
2. Order 61 of the Rules of the Superior Courts ("RSC") deals with "*Appeals from the Circuit Court*" and rule 12 provides as follows:-

"The costs of appeals, when referred for taxation, shall be taxed by the appropriate County Registrar (who shall for this purpose have all the powers of a Legal Costs Adjudicator). Such costs shall, subject to any special direction by the Court, be taxed on the scale applicable to an action or matter commenced or heard in the Circuit Court, with the addition of necessary outlay and the items set out in Part III of the scales of costs in Appendix W. Any application for the review of a taxation effected under this rule shall be by notice of motion to the High Court sitting in Dublin served on all parties affected by the application and lodged in the Central Office within ten days from the date of the certificate of taxation. The notice of motion shall specify the matters or items or parts thereof objected to and the grounds and reasons for such objection. A copy of the notice of motion shall be transmitted forthwith from the Central Office to the County Registrar for his report or observation thereon. In the taxation of costs under this rule, the County Registrar shall, in addition to the principles specified in Schedule 1 to the Legal Services Regulation Act 2015, have regard to the costs allowed or allowable in respect of the hearing of the case in the Circuit Court".

3. I have carefully considered the written submissions which were, very helpfully, furnished on behalf of the Plaintiff and for the first, second and fourth named defendants ("the Appellants") in circumstances where the parties did not reach agreement, in particular on the issue of costs. For the reasons given in my 16 December 2020 decision, I was satisfied that it was appropriate to direct that the Plaintiff provide replies to all the

particulars detailed in part 1 of the relevant Schedule to the Appellants' Notice of Appeal (being particulars 12, 13, 14, 17, 19, 22, 24, 28, 29 , 40 and 42 as per the 9 October 2019 Notice for Particulars) and I was also satisfied that the Appellants were entitled to replies to all particulars detailed in part 2 of the same Schedule (being particulars sought on 15 December 2017), the particulars set out in part 2 constituting a repeat of the particulars in part 1.

4. Insofar as the question of costs is concerned, it is fair to say that the Appellants have been entirely successful. The general rule is, of course, that "costs follow the event" and I am satisfied that the burden rests on the Respondent, being the unsuccessful party, to demonstrate why the general rule should not be followed in this case. In *Veolia Water UK plc -v- Fingal County Council* [2006] IEHC 240, Clarke J (as he then was) stated (at 2.5):-

"...the overriding starting position should remain that costs should follow the event. 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. Similarly it seems to me that the courts generally (and the Commercial Court in particular) should be prepared to deal with the costs of contested interlocutory applications on the basis of an analysis of whether there were proper grounds for bringing, on the one hand, or resisting, on the other hand, the relevant application."

5. I must also have regard to relevant provisions in the Legal Services Regulation Act, 2015 ("the 2015 Act"), Section 168 (1) of which provides that:-

"Subject to the provisions of this Part, a court may, on application by a party to civil proceedings, at any stage in, and from time to time during, those proceedings -

(a) order that a party to the proceedings pay the costs of or incidental to the proceedings of one or more other parties to the proceedings..."

6. Section 168 (2) of the 2015 Act goes on to provide that:-

"Without prejudice to subsection (1), the order may include and order that a party shall pay...

(c) costs relating to one or more particular steps in the proceedings".

7. Section 169 (1) of the 2015 Act provides that:

"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, including—

- (a) *conduct before and during the proceedings*
 - (b) *whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,*
 - (c) *the manner in which the parties conducted all or any part of their cases,*
 - (d) *whether a successful party exaggerated his or her claim,*
 - (e) *whether a party made a payment into court and the date of that payment,*
 - (f) *whether a party made an offer to settle the matter the subject of the proceedings, and if so, the date, terms and circumstances of that offer, and*
 - (g) *where the parties were invited by the court to settle the claim (whether by mediation or otherwise) and the court considers that one or more than one of the parties was or were unreasonable in refusing to engage in the settlement discussions or in mediation.*
- (2) *Where the court orders that a party who is entirely successful in civil proceedings is not entitled to an award of costs against a party who is not successful in those proceedings, it shall give reasons for that order."*

8. Order 99 of the RSC is also of relevance. Whereas Order 99, rule 2(1) makes clear that this court retains a discretion in relation to the issue of costs, Order 99, Rule 2(3) provides that "*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.*"
9. In light of the foregoing legal principles and legislative provisions, where a party is successful in an application, be that an interlocutory stage or otherwise, they will (subject to the provisions of s. 169 (1) of the 2015) be entitled to an award of costs unless, that is, it is not possible to justly adjudicate upon the issue of liability for costs until a full hearing has taken place. In the present case, I am entirely satisfied that it is possible, justly, to adjudicate on the question of costs given the absence of any doubt as to the fact that the Appellants have been entirely successful in the application which they brought and which was strenuously opposed by the Plaintiff, concerning particulars.
10. In reaching this decision on the issue of costs, I have also taken into account all factors urged on the Court in the submissions made on behalf of the Plaintiff, including that the Plaintiff did not "*ignore*" the requests for particulars and furnished certain replies and I have also taken into account the outcome of the relevant motion in the Circuit Court.
11. I have taken into account, too, the Plaintiff's submission to the effect that the case is, according to the Plaintiff "*a novel and unique case and not a straightforward one*". It is also submitted that "*this is a case that required a Court determination to set forth the*

ambit of the particulars that ought to be responded to not only in this case, but in similar cases going forward". I do not accept that the decision I made was one which it was necessary for this Court to make in the context of other cases going forward. As my decision made clear, it was concerned with the specific plea made by the Plaintiff in his claim alone and dealt with what particulars the Plaintiff should respond to, having regard to the range and nature of the pleas made in his Civil Bill. Nor do I accept that any truly novel or unique issue arose, insofar as determining what particulars the Plaintiff should be directed to deliver, having regard to the Plaintiff's claim.

12. It is the case, however, that the Appeal was fully and very skilfully opposed by Senior Counsel for the Plaintiff, by means of a range of submissions canvassed with reference to a range of legal authorities. Senior Counsel was also retained by the Appellants and, although the issues I had to decide could not be said to have broken new ground, the matter was not straightforward and undoubtedly benefited from the participation of very experienced and able Senior Counsel on both sides. The nature and sophistication with which the Appellants' case was opposed meant that the hearing before me took some considerable time and involved a range of arguments, as is evident from my judgment of 16 December last. In light of this, I am satisfied that it was appropriate that the costs of retaining Senior Counsel, in addition to those of Junior Counsel and the relevant instructing solicitors, are properly recoverable by the Appellants, subject to the normal rules of taxation/adjudication in default of agreement on the quantum of such costs, as per Order 61, rule 12 of the RSC and to the extent that it is necessary for me to certify for the costs of the Appellant's Senior Counsel, I do so.
13. Having taken all relevant factors into account and having regard to the legal principles and legislative provisions, I am satisfied that there is no basis which would justify a departure from the general rule. For the Respondents it is submitted that, in deciding the costs issue, this Court should also have regard to the Plaintiff's *conduct*, including the failure on the part of the Plaintiff to inform his legal advisors and the Court that he had sold the car in question further gave rise to the need for the Particulars sought. It is true that the Plaintiff did not inform his legal advisors or the Court of the sale, but it is not necessary to have regard to the Plaintiff's conduct in order for this Court to be satisfied that costs should follow the event as per the normal rule or general principle. I have, however, carefully considered the issue of the Plaintiff's conduct in the context of making a costs order which meets the justice of the situation, but I do not regard the Plaintiff's conduct as meriting any different order concerning costs than that detailed in this ruling. This is an order which follows the general principle that costs follow the event, with the costs of what was an appeal from Circuit Court to be dealt with as per Order 61, Rule 12 of the RSC, subject to my clarification that the costs of the Appellant's Senior Counsel are recoverable. As to the general principle, the Supreme Court (McKechnie J.) made clear in *Godsil -v- Ireland* [2015] IESC 103, (at para. 52.):

"Costs Follow the Event:

52. *The overriding start point on any question of contested costs is that the general principle applies that namely, costs follow the event. All of the other rules, practises*

and approaches are supplementary to this principle and are designed to further its application or to meet situations where such application is difficult, complex or indeed even impossible.”

14. To adjudicate, fairly, on the question of costs in the present matter involves no particular difficulty and I am very satisfied that it is safe to make an award, at this stage, and that doing so involves no risk of injustice, regardless of the ultimate outcome at a future trial of the proceedings themselves.
15. For these reasons, I am satisfied that the appropriate Order to make is to award costs in favour of the Appellants against the Plaintiff in respect of the appeal which I decided and in respect of the Circuit Court application which gave rise to the said appeal. In the manner explained earlier in this ruling, the foregoing costs award is to include the costs of the Appellants' Senior Counsel, subject to the prevailing rules governing taxation/adjudication. This is the only special direction I am making in the context of Order 61, rule 12 of the RSC.
16. Finally, I accept, for the reasons advanced on behalf of the Plaintiff, that a period of eight weeks from the date of the perfection of this Court's Order is a reasonable period within which the relevant replies to particulars should be delivered. In light of the current level-5 Covid-19 restrictions, eight weeks is the appropriate period to be specified in the Order.