



**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

S:AP:IE:2020:000011

**Clarke C.J.
O'Donnell J.
Dunne J.
Charleton J.
O'Malley J.**

Between/

GERALDINE CANTRELL

Appellant

AND

**ALLIED IRISH BANKS PLC, THE SECOND BELFRY PROPERTIES (U.K.) PLC,
TULLAMONA LIMITED, THE FOURTH BELFRY PROPERTIES (U.K.) PLC,
LEYALLY LIMITED, THE FIFTH BELFRY PROPERTIES (U.K.) PLC, MONSAL
LIMITED, ~~B.D.O (A FIRM)~~, SEAN HENNEBERRY, TONY KILDUFF, WILLIAM
LEDWIDGE, JOHN ROCKETT, JOHN ROGER WILKINSON, ~~ANN BLACKMORE~~
AND ESSEX TRUST LIMITED**

Respondents

and the following seven sets of proceedings:

1. bearing High Court Record Number 2014 No. 6899 P and entitled as between

LAURENCE MCMULLIN

Appellant

AND

ALLIED IRISH BANKS PLC AND OTHERS

Respondents

2. bearing High Court Record Number 2014 No. 6898 P and entitled as between

BERNADETTE GOODWIN

Appellant

AND

ALLIED IRISH BANKS PLC AND OTHERS

Respondents

3. bearing High Court Record Number 2014 No. 6913 P and entitled as between

MARY HONOHAN

Appellant

AND

ALLIED IRISH BANKS PLC AND OTHERS

Respondents

4. bearing High Court Record Number 2014 No. 6812 P and entitled as between

PETER TIERNEY

Appellant

AND

ALLIED IRISH BANKS PLC AND OTHERS

Respondents

5. bearing High Court Record Number 2014 No. 6979 P and entitled as between

BRIAN SPIERIN

Appellant

AND

ALLIED IRISH BANKS PLC AND OTHERS

Respondents

6. bearing High Court Record Number 2015 No. 4218 P and entitled as between

BRIAN O'REILLY

Appellant

AND

ALLIED IRISH BANKS PLC AND OTHERS

Respondents

7. bearing High Court Record Number 2014 No. 7166 P and entitled as between

EDWARD SHEEHAN AND EVELYN SHEEHAN

Appellant

AND

ALLIED IRISH BANKS PLC AND OTHERS

Respondents

RULING OF THE COURT ON COSTS DATED THE 12th DAY OF MARCH, 2021

1. These proceedings concern eight sets of proceedings in which the respective appellants are represented by the same legal team, and four different groups of respondents who are separately represented. This application concerns the costs in three courts of an application for the trial of a preliminary issue which was determined in the High Court, appealed to the Court of Appeal and then to this Court. The High Court held that the claim was, in significant respects, not statute-barred. The Court of Appeal reversed that decision and held that the proceedings were statute-barred, subject to an issue of fraudulent concealment then pending in the High Court. This Court reversed that decision in turn and restored the decision of the High Court. Notwithstanding these complexities, there is a substantial amount of agreement between the parties on the issue of costs.
2. First, it is accepted that the appellants are entitled to the costs of the appeals to the Court of Appeal and the Supreme Court, having succeeded in this Court. The respondents argue, however, that the costs should be limited to the *Cantrell* appeal together with outlay only for the other appellants' cases, on the basis that the same issue arose in each case and the appeals were argued by reference to the *Cantrell* case. The appellants argue that quantum is

a matter for the Legal Costs Adjudicator, and that the Court should simply order that all the appellants are entitled to the costs of the appeals in both the Court of Appeal and this Court.

3. The High Court had ordered that Allied Irish Banks plc (“AIB”) pay the appellants’ costs of the preliminary issue. The appellants had agreed with the remaining director respondents that each side would bear its own costs. The Court of Appeal had set aside the High Court order and ordered costs to be costs in the cause. The appellants argue that the High Court order should be restored. AIB and some of the director respondents appear to argue that the Court of Appeal order should be maintained.
4. All the defendants/respondents argue that any order for costs should be stayed pending the determination of the trial in this matter which is listed for hearing on the 29th of June of this year.
5. The appellants succeeded in this appeal and are *prima facie* entitled to the costs in this Court, to have the Court of Appeal order set aside, and to have costs in the Court of Appeal ordered in their favour. It follows that the High Court order should be restored, and particularly since an element of that order in respect of the costs as between the appellants and the director respondents was agreed by the parties.
6. The question of the costs to be recovered should not be left to taxation. The court hearing the appeals and applications is normally in a better position to judge whether it would be just to permit all of the appellants to recover all of their costs, or to treat the case as a single substantial case – in this case, the *Cantrell* case as the lead case – with recovery in the other cases only for additional outlay. In this case, the appeal was treated as a composite appeal, in that while some reference was made to the different fact situations in the different cases, the issue of law argued was the point at which time commenced to run in the case of an investment product. The case was a substantial one, and it is appropriate that costs should be recovered against the respondents jointly and severally and that the appellants should be

entitled to a full set of costs in the *Cantrell* proceedings, reflecting the fact that the case and the appeals were approached on a composite basis, and that the appellants should also recover the costs in the other cases, but not including a separate brief fee or instructions fee.

7. The question of the stay is influenced by the relative proximity of the trial date. In other circumstances, it might be appropriate not to order a stay given that the issue is a discrete one on which the appellants succeeded but here it is, on balance, appropriate to stay the order for costs in favour of the appellants. In the event that the defendants/respondents were successful in whole or in part at the trial and obtained an order for costs, it would normally be appropriate to set one order of costs against the other. That will not be possible if the appellants are able to execute their order for costs before the conclusion of the trial. It would be unjust if the respondents were to succeed in the High Court but find themselves unable to recover costs, even though they had previously paid costs to the same parties. On the other hand, the appellants will not suffer substantially if they succeed in the proceedings and recover costs. They will have been delayed somewhat in the recovery of these costs but in the scale of things, that delay is unlikely to be significant and it has not been suggested the appellants will suffer any hardship if they are not able to immediately tax their costs.