Neutral Citation Number: [2011] IEHC 499

THE HIGH COURT

2008 93 MCA

IN THE MATTER OF THE WASTE MANAGEMENT ACTS 1996 (AS AMENDED) AND THE PROTECTION OF THE ENVIRONMENT ACT 2003

AND IN THE MATTER OF SECTION 57 OF THE WASTE MANAGEMENT ACT 1996 AS AMENDED BY SECTION 48 OF THE PROTECTION OF THE ENVIRONMENT ACT 2003

AND IN THE MATTER OF SECTION 58 OF THE WASTE MANAGEMENT ACT 1996 AS AMENDED BY SECTION 49 OF THE PROTECTION OF THE ENVIRONMENT ACT 2003

BETWEEN:

JOHN RONAN AND SONS

APPLICANT

AND

CLEAN BUILD LIMITED (IN VOLUNTARY LIQUIDATION), LAURENCE MULLIN, JOHN CHARLES FARRELL, JAMES REDMOND, LIAM O'RUA AND GARY ROE

RESPONDENTS

AND

SOUTH DUBLIN COUNTY COUNCIL

NOTICE PARTY

THE HIGH COURT

2009 88 MCA

IN THE MATTER OF THE WASTE MANAGEMENT ACTS 1996 AND 2003

AND IN THE MATTER OF AN APPLICATION BY SOUTH DUBLIN COUNTY COUNCIL PURSUANT TO SECTION 57 OF THE WASTE MANAGEMENT ACT 1996 AS AMENDED BY SECTION 48 OF THE PROTECTION OF THE ENVIRONMENT ACT 2003

AND IN THE MATTER OF SECTION 58 OF THE WASTE MANAGEMENT ACT 1996 AS AMENDED BY SECTION 49 OF THE PROTECTION OF THE ENVIRONMENT ACT 2003

BETWEEN:

SOUTH DUBLIN COUNTY COUNCIL

APPLICANT

AND

KEN FENNELL (LIQUIDATOR), CLEAN BUILD LIMITED (IN VOLUNTARY LIQUIDATION), LIAM O'RUA, GARY ROE, JOHN RONAN AND SONS, LAURENCE MULLIN, JAMES REDMOND, AND JOHN CHARLES FARRELL

RESPONDENTS

THE HIGH COURT

2010 4806 S

BETWEEN:

SOUTH DUBLIN COUNTY COUNCIL

APPLICANT

AND

LIAM O'RUA, GARY ROE AND JOHN RONAN AND SONS

RESPONDENTS

JUDGMENT of Mr. Justice Clarke delivered the 21st December, 2011

1. Introduction

1.1 The substantive issues in this long running litigation have now been finally determined. See *John Ronan & Sons & Anor v. Clean Build Limited (in voluntary liquidation) & Ors* [2011] IEHC 350, together with *John Ronan & Sons & Anor v. Clean Build Limited (in voluntary liquidation) & Ors* (Unreported, High Court, Clarke J., 1st December, 2011). For convenience I will use the same defined terms here as in those judgments.

1.2 There were, in total, three sets of proceedings before the court. The Ronan proceedings and the South Dublin Council proceedings were brought under the provisions of the Waste Management Acts. Separately, South Dublin Council brought a case seeking to recover certain sums expended by them in remediating the site, the subject of these proceedings (namely *South Dublin County Council v O'Rua & Ors.* bearing record No. 2010 4806 S). That case was brought by summary summons placing reliance on the provisions of the Waste Managements Acts which permit sums so expended to be recovered, in an appropriate case, as a simple contract debt.

1.3 The detailed form of orders which were made under the Waste Management Acts (ss. 57 and 58) are set out in paras. 2.4 to 2.6 of the judgment of the 1st December. In substance, those orders require Mr. Mullin, Mr. Farrell, Mr. Redmond and Mr. O'Rua to enter into appropriate waste management contracts for remediation in accordance with what is described as the revised MEL report with the payments to be made in the proportions previously set out in the principal judgment. Provision is made for indemnities between the parties to the extent that any individual does not pay for a share in the cost of remediation for which another individual is jointly and severally responsible. Provision is also made for Ronan to act as a guarantor to the extent that any or all of the individuals found responsible fail to secure or pay for the requisite contract. Thus, in substance, the four named individuals were found responsible, to the extent set out in the principal judgment, for the waste and thus to be responsible for an appropriate proportion of the costs of remediation. Ronan was found to have a residual obligation to meet such costs but only to the extent that it should prove impossible for any of the named individuals to meet their obligations. For the reasons set out in the principal judgment, Mr. Roe was absolved from any liability.

1.4 Finally, so far as South Dublin Council's money claim is concerned, judgment was entered against Mr. O'Rua in the sum of €6,336.50. The extent of the liability, if any, of Ronan in respect of monies expended by South Dublin Council was remitted to plenary hearing. At a very broad level, the above describes the "event" in the sense of the result of the various proceedings. However, before going on to attempt to fashion a fair and just costs order, a number of general observations seem to me to be appropriate.

2. General Observations

2.1 Two particular aspects of the course of these proceedings do need to be noted even at this initial stage. First, when the Ronan proceedings were commenced initially, it seems to me to be fair to characterise those proceedings as being ones which were principally concerned with preventing the continuance of unlawful waste activity. The proceedings were successful in that regard. Undertakings were given to the court and, at least to a very significant extent, further unlawful waste activity ceased. It does have to be noted that, at the time the proceedings commenced, Mr. Farrell was no longer involved in Clean Build. Clean Build itself, of course, has since been dissolved. However, for the reasons explored in the principal judgment, I was satisfied that both Mr. Mullin and Mr. Redmond had personal responsibility. It seems to me, therefore, that Mr. Mullin and Mr. Redmond must be regarded as jointly and severally responsible for all of the initial costs incurred by Ronan in maintaining the Ronan proceedings up to the stage where the focus of the proceedings shifted from the prevention of unlawful waste activity to remediation. I will turn to the point where that shift occurred in due course.

2.2 The second general observation concerns the involvement of South Dublin Council. South Dublin Council was added as a notice party in the Ronan proceedings but also commenced its own separate proceedings. There can be little doubt but that there was a significant overlap between the reliefs claimed in the Ronan proceedings and the reliefs claimed in the South Dublin Council proceedings. At the hearing in relation to costs, complaint was made by all of the other parties in relation to what was said to have been the unnecessary duplication of matters which arose from the commencement of the South Dublin Council proceedings. It should, in that context, be noted that two issues arose in the South Dublin Council proceedings that did not arise in the Ronan proceedings. The first matter, obviously, was the potential liability of Ronan itself. The second was the extent of the remediation works which ought to be directed. It must be recalled that South Dublin Council put forward a remediation proposal which was significantly more expensive than that proposed by Ronan. None of the other parties to these connected proceedings took an active role on the question of the appropriate remediation save that each of the individual respondents, hardly surprisingly, supported the least expensive option. Those parties did not put forward any additional evidence or argument, however, on that issue.

2.3 Nevertheless, it does also need to be noted that all of these proceedings were, at all material times, at least since the South Dublin Council proceedings were commenced, managed and tried together. It seems to me that, in those circumstances, the fair course of action to adopt is to treat all costs of the parties as being costs of one set of proceedings for that represents the substance of what occurred. I, therefore, propose treating the costs of all of the parties from the time when the South Dublin Council proceedings were commenced as costs of a single set of proceedings. I will deal separately with South Dublin Council's summary proceedings.

2.4 The precise point in time when the focus of the Ronan proceedings shifted from a claim primarily concerned with preventing the continuance of unlawful waste activity to a claim more focused on remediation cannot be determined with absolute precision. South Dublin Council did apply to become a notice party in the Ronan proceedings for the purposes of asserting its own interests in the matter. In addition, South Dublin Council, of course, commenced its own separate proceedings. It seems to me that the focus of this litigation generally can reasonably be said to have shifted to remediation from the time when the South Dublin Council proceedings commenced. Therefore, the order to be made in favour of Ronan against Mr. Mullin and Mr. Redmond in respect of the costs of the earlier part of the proceedings will cover the conduct of the Ronan proceedings up to the time when the South Dublin Council proceedings were commenced. The costs of both the Ronan proceedings and the South Dublin Council proceedings from that time onwards are, for the reasons already set out, to be treated as the costs of a single set of proceedings.

2.5 Before leaving this topic I should, however, also note that the range of issues that the court had to consider were manifold, and that those issues were expanded by virtue of the additional matters raised by South Dublin Council in the South Dublin Council proceedings. The fact that I propose to deal with the South Dublin proceedings and the Ronan proceedings as a single set of proceedings does not, of course, mean that it will not be necessary to analyse the extent to which parties may have been successful on particular issues as part of an appropriate analysis of whether otherwise successful parties contributed to the overall cost of the proceedings by raising questions on which they lost. In that context it is appropriate to turn next to the general principles applicable to the award of costs in complex cases.

3. The Costs of Complex Cases

3.1 In the decision in *ACC Bank PLC v Johnston* (Unreported, High Court, Clarke J., 24th October, 2011), I was faced with questions on the correct approach to be taken in a complex case when making an award of costs. At para. 2.1 – 2.8, having considered the judgments in *Veolia Water UK Plc & Ors v. Fingal County Council* [2006] IEHC 240, *Kavanagh v. Ireland & Ors* [2007] IEHC 389, *Mennolly Homes Ltd. v. Appeal Commissioners* [2010] IEHC 56 and *McAleenan v. AIG (Europe) Ltd.* [2010] IEHC 279, I set out the principles to be applied which can shortly be paraphrased in the following terms:

> 1. First, in light of O. 99, r. 1(3) of the Rules of the Superior Courts, the overriding principle is that costs follow the event. This in turn begs the question of what precisely is the "event", which can, itself give rise to difficulties. O. 99, r. 1(4) speaks of the costs of every issue of fact or law following the event. It is, however, in that context, important to make one significant distinction. There is a very great difference between the different elements that go to make up a cause of action, on the one hand, and a series of entirely separate causes of action, potentially dependent on different facts, on the other hand. In between those two extremes, there may well be cases in the penumbra which require the court to identify what the event is or whether there are multiple events and in the case of the latter, then proceed to make any award of costs with reference to each individual "event". While s. 58(3)(b) of the 1996 Act empowers the court to make such an order so as to costs "as it considers appropriate" I am not satisfied that this provision materially alters the principles that apply generally to the award of the costs of litigation. Like considerations apply to s. 57(1)(c) of the same act which provides that the court may make such order as to costs "as the Court considers appropriate".
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> 2. Second, the jurisprudence has clearly established that the starting point is that the party who wins the event gets full costs.
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> 3. Third, the court should consider departing from awarding full costs to the party who wins the event where it is clear that that party, although generally victorious, materially added to the costs of the proceedings by raising additional grounds or arguments which the court found to be unmeritorious. In that context, it is important to emphasise that the exercise is not one of narrowly looking at the amount of time spent on each point, but rather taking a broad view as to whether it can fairly be said that the costs of the proceedings as a whole were materially increased. In that light, the court should make an appropriate order to reflect the fact not just that the winning party should not be awarded costs attributable specifically to an aspect of the case on which that winning party lost, but also to compensate the losing party for the fact that that party's costs has been increased by reason of the raising of the unmeritorious issues concerned. It should also be noted that there can, of course, be other factors that can be relevant to the award of costs. One example, which arose in *ACC Bank PLC v Johnston,* is the fact of a change in the nature of a claim brought or a defence made (particularly at a late stage by, for example, an amendment to the pleadings) which can lead the court to legitimately question whether in such circumstances costs should fully follow the event.
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> 4. Fourth, and finally, the substance of the event can be narrowed by a defendant making concessions in its pleadings, by lodgement or by a Calderbank letter (see *Calderbank v Calderbank* (1978) 3 All E.R. 333).

3.2 I propose applying the principles which have evolved in those cases to these proceedings. The starting point is to determine the event (or events). Costs ordinarily follow the event. However, where otherwise successful parties have led to the proceedings being more costly by reason of raising issues on which they failed then the court needs to deal, in an appropriate way in all the circumstances of the case in question, with that fact.

3.3 In addition to those general observations this case raises, perhaps, one additional matter of complexity that needs to be approached, at least initially, at the level of general principle. The issue concerns the appropriate way to deal with costs in litigation involving multiple parties.

3.4 It is, perhaps, appropriate to start by taking a simple case. A plaintiff claims damages against two defendants who are said to be jointly and severally liable. Either or both defendant(s) may deny any liability at all but may, in addition, claim a contribution or indemnity from its co-defendant. It may be convenient to try all issues together for the questions of fact and law which may determine each defendant's potential liability to the plaintiff may also be central to the determination of the contribution or indemnity issues which arise as and between the defendants. However, a consequence of a single trial of all issues will be that the plaintiff's case will take longer and thus cost more because the plaintiff will have to be present during those parts of the hearing which are primarily concerned with establishing the liability of the defendants between themselves. It should, of course, be noted that if the issues which determined the liability as and between the defendants were wholly separate from the issues which arose between the plaintiff and the defendants, then it might well be that separate trials would be more appropriate.

3.5 However, in circumstances where a single trial is the sensible course of action the plaintiff cannot be blamed for the fact that the case takes longer because of the need to explore the relative responsibilities of the defendants. In addition, and on the assumption that the plaintiff establishes that the defendants have a joint and several liability, it will be the case that it will have been reasonable for the plaintiff to bring a single set of proceedings against both defendants. In those circumstances it could hardly be doubted that the plaintiff, on succeeding against both defendants, would be entitled to its entire costs jointly and severally against both defendants. The extent to which either defendant might be entitled to a form of indemnity or contribution from the other in respect of the costs which that party might have to pay to the plaintiff would, of course, depend on the result of the substantive indemnity and contribution issue.

3.6 However, there are many variations on that simple theme. Instead of two defendants there might be a defendant and a third party. However, it might remain the case that it was just to try the third party issue at the same time as the proceedings between the plaintiff and the defendant for there might be a significant overlap in the relevant facts. In addition, a third party may have a legitimate interest in the defence put forward both on liability and on the quantum or remedy for the third party's exposure is limited to the orders made against the defendant.

3.7 A further variation might occur where the defendants, even though not jointly and severally liable, may have a common interest in the issues raised by the plaintiff against both of them. Where there are two separate acts of wrongdoing, each giving rise to separate damage there may, nonetheless, be a dispute between the defendants as to what damage was actually caused by which defendant. There is at least an element of such a situation in these proceedings. Part of the case made by each of the individual respondents sought to minimise the extent to which the unlawful waste which required remediation occurred, as at were, on their watch. Such a case, if successfully made by one defendant, necessarily involves a potential additional liability for some other defendant.

3.8 Doubtless, there can be other complications arising on the facts of particular cases. However, it seems to me to be important to note that it does not, therefore, necessarily follow that a court which finds defendants to be severally liability for separate elements

of damage must necessarily conclude that the costs of the action should, similarly, be severally awarded against each defendant in the same proportions. Just as it is not a plaintiff's fault that, in an appropriate case, the plaintiff has to be present while two defendants fight out their appropriate contribution in a joint and several liability case, so also it is not a plaintiff's fault that the plaintiff concerned must be present while two or more defendants fight out the extent to which they may be severally liable for a range of damage.

3.9 In the light of those general observations, it is necessary to turn to the issues which arise on the facts of this case.

4. Application to this Case

4.1 I propose to start with a consideration of the position of South Dublin Council. However, in order so to do it is necessary to give a brief outline of the issues which arose. It seems to me to be appropriate to divide the issues which arose in the proceedings generally into the following parts:-

(a) The issues raised by South Dublin Council against Ronan;

(b) the issues raised by both South Dublin Council and Ronan against the individual respondents;

(c) the issues as to the relative responsibility of the individual respondents;

(d) the issues concerning the appropriate means of remediation that the Court should direct; and

(e) legal issues concerning whether "fallback orders" could be made or the extent to which individual respondents might have any liability independent of fallback orders.

4.2 The position of South Dublin Council needs to be addressed under each of those headings. It does need to be noted that the case made by South Dublin Council against Ronan was based on two separate matters. The first concerned the fact that the scientific evidence disclosed that there were certain residual contaminants on the site which, as a matter of likelihood, stemmed from the time when Ronan was engaged in its tanning operation. However, for the reasons set out in the principal judgment, I came to the view that Ronan could have no obligation to engage in remediation deriving from that activity on the basis that, on the facts, I found it to have been lawful at the time when it was engaged in, and, on the law, I found that the waste management legislation did not permit the Court to direct remediation arising out of activity which was lawful at the time when it was carried out, even though that activity might have left its mark in a way which made dealing with the consequences of more recent (and, thus, actionable) unlawful waste activity by others more difficult or expensive to remediate.

4.3 The second contention on the part of South Dublin Council was that, in any event, Ronan had a residual responsibility as the landowner who was now in possession of the relevant waste, having regard to the fact that the Clean Build lease had terminated. However, I did not understand counsel for Ronan to significantly dispute the fact that Ronan might have such a residual responsibility in circumstances where it proved, in practice, impossible for Ronan to enforce the obligation of the individual respondents to engage in remediation. Certainly, the question of any such residual responsibility did not occupy any material time at the hearing. Therefore, insofar as time was spent at the hearing concerning the liability of Ronan, same was devoted to evidence and legal argument on which Ronan was successful and South Dublin Council was unsuccessful.

4.4 So far as the second set of issues are concerned, it seems to me to be fair to characterise the involvement of South Dublin Council, insofar as it was material in determining the liability of the individual respondents, as not having gone significantly beyond the case made by Ronan, save to the extent that evidence tendered by South Dublin Council was of some significance in determining the liability of Mr. O'Rua for the reasons set out in the principal judgment.

4.5 On those issues it seems reasonable to me to characterise the position of South Dublin Council as being one where they were entitled to be heard but where, save to the extent of tendering evidence material to the liability of Mr. O'Rua, their involvement did not, in truth, add significantly to the litigation. In that context it is of some relevance to recall the observations which I made in *Kalix Fund Ltd & Anor v HSBC Institutional Trust Services* [Ireland] Ltd & Anor [2009] IEHC 457 concerning the position of parties who, while entitled to be heard, do not add significantly to the overall picture. Such parties should not necessarily expect to be entitled to recover all (or in some cases any) of their costs simply by asserting an entitlement to be heard on an issue.

4.6 The third set of issues which concerned the responsibility of the various individual respondents as and between themselves was, of course, a matter which primarily involved those respondents and only involved both Ronan and South Dublin Council to the extent that those parties had a legitimate interest in ensuring that the entire costs of any necessary remediation were covered and visited upon the appropriate individual respondents.

4.7 So far as remediation is concerned, it is necessary to say something about the course which the trial took. The case was heard over a number of different periods and, as it happens, in both Cork and Dublin. Some of the cause of that disjoined hearing was purely logistical in that aspects of the trial took longer than expected and it was necessary to rearrange a continuation of the hearings at a later date. However, part of the reason for the disjointed nature of the hearing was the dispute which emerged between South Dublin Council and Ronan as to the appropriate remediation which should be applied. A number of points need to be made under this heading.

4.8 First, the proposal which ultimately found favour with the Court was the so-called revised MEL proposal put forward by Ronan. However, in fairness, it does need to be noted that that proposal emerged late in the day and would appear to have derived, at least in part, from entirely laudable and constructive discussions between the environmental experts instructed on behalf of, respectively, Ronan and South Dublin Council. As the body charged with responsibility for waste matters, South Dublin Council had, of course, a legitimate and important interest in ensuring that whatever remediation proposal was ordered by the Court was appropriate. The fact that the MEL proposal which ultimately found favour was adjusted to take into account at least some of the concerns expressed by South Dublin Council's environmental expert is a factor that needs to be taken into account.

4.9 A further factor urged on the Court on behalf of South Dublin Council under this heading was the fact that the remediation proposal initially put forward on behalf of South Dublin Council was one which, it was said, complied fully with the recommendations of the EPA and was, thus, it was argued, a reasonable proposal. However, it seems to me that a party, whether a private individual or company or a statutory body, who invokes the Waste Management Acts to seek mandatory orders from the Court, faces the same situation as any other litigant. The claim made needs to be judged in the light of the orders ultimately made by the Court. The event is the order made. To take an extreme example, if there had only been two proposals on the table, viz. the initial proposal made by MEL and the significantly more expensive proposal advanced by South Dublin Council, and if I had ultimately been satisfied that the MEL proposal was sufficient, it would not seem to me to be appropriate to attempt to assess the motivation of South Dublin Council in

putting forward its proposal. Rather, the issue of the appropriate remediation would have been won by Ronan. Any costs associated with that issue would, in those circumstances, properly be awarded to Ronan.

4.10 It is important that statutory agencies, no more than any other litigant, temper any claims placed before the Court to orders which the Court is likely to make. If the Court finds the claims to be too wide, and, in particular, where an opposing party puts forward a more limited regime which finds favour with the Court, then statutory bodies may well have to bear the costs of the Court hearing which determines the breadth of the orders that ought properly be made.

4.11 That having been said, this case is not as straightforward as the example which I have just given. The regime which found favour with the Court was not that which was originally put forward on behalf of Ronan, but rather, a revised version. In considering the two proposals I have had regard to:

> (a) the extent to which, in my view, the proposal ultimately found acceptable much more closely resembles the original MEL proposal advanced by Ronan than the proposal put forward by South Dublin Council;
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> (b) the fact that South Dublin Council maintained its proposal to the end, but giving all due credit to the constructive debate which occurred between the experts and the responsible position adopted by counsel for South Dublin Council who indicated that, while the Council still maintained its position, it accepted that the revised MEL proposal, if implemented, would not lead to any material risk of environmental damage;
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> (c) that some of the evidence which emerged in the course of the investigations carried out by South Dublin Council's environmental experts was of assistance both in MEL formulating its revised report and, indeed, in the court approaching the question of the relative responsibilities of the individual respondents; and
>
> (d) all other relevant factors.

On the basis of these, I have come to the view that it would be appropriate to treat Ronan as having been materially although not totally, successful on the remediation issue.

4.12 Finally, so far as the legal issues are concerned, for the reasons set out in the principal judgment, I did not find it necessary to come to a view as to whether fallback orders were permissible. I did not understand South Dublin Council to have adopted any different position to that of Ronan on either that question or on the question which ultimately determined the liability of the individual respondents.

4.13 Taking an overview, therefore, it is fair to summarise matters as follows. South Dublin Council substantively lost on the question of Ronan's responsibility (certainly to the extent of there being any direct responsibility); was successful so far as the responsibility of the individual respondents is concerned, but only in a way which, with the exception of the factual issue relating to Mr. O'Rua's responsibility, did not add to a material extent to the case made by Ronan; materially lost on the question of remediation; and succeeded on the question of individual responsibility, but again, not to an extent that went beyond the position of Ronan.

4.14 In the light of all of those factors, it is impossible to do anything other than take a broad-brush approach, having regard to my perception as to the extent to which the various issues contributed to the overall costs of the proceedings. I have come to the view that there is a broad equivalence between those questions and issues on which South Dublin Council succeeded (even though, in many cases, that success was no more than would, in any event, have been achieved by Ronan) and those issues on which South Dublin Council can be said to have lost (giving due credit for the extent to which the Council may have partially succeeded on, in particular, the mediation question). In coming to that broad view as to equivalence, I have had regard to the fact that less weight should be given to those issues on which South Dublin Council might be said to have succeeded where the issue concerned was one where the position of South Dublin Council did not materially differ from the position of Ronan.

4.15 It follows that the appropriate analysis leads to the conclusion that South Dublin Council ought, in principle, to be entitled to its costs for part of the hearing on the basis that it succeeded on that part, in the sense in which I have used that term, but that South Dublin Council also added to the costs of the hearing so far as each of the other parties was concerned by raising issues on which it lost, again in the sense in which I have used that term. Having regard to the broad equivalence between those two matters, it seems to me that it is appropriate to make no order for or against South Dublin Council on any aspect of the costs of these proceedings, save for the question of Mr. Roe to whom I will turn in due course.

4.16 It is then appropriate to turn to the position of Ronan vis-à-vis those individual respondents on whom liability was placed. I have already indicated that Mr. Mullin and Mr. Redmond must pay all of the costs, on a joint and several basis, up to the point when the South Dublin Council proceedings were commenced. This part of the judgment is, therefore, concerned with the costs arising out of the balance of the proceedings. It is also, for the reasons already set out, based on treating both of the proceedings as one.

4.17 As against those individual respondents against whom orders were made, it is clear that Ronan succeeded. Indeed, Ronan succeeded in full, in that the entire costs of the remediation proposal, as ultimately put forward by Ronan, are to be met by one or other of those individual respondents. There does not seem to me, therefore, to be any basis for suggesting that Ronan should not recover the full costs of its involvement in these proceedings against those individual respondents.

4.18 The only issue is as to whether those costs should be divided in the same way as the responsibility for the costs of remediation are to be divided. The argument in favour of such a division is that I came to the conclusion that various individuals or groups of individuals were severally, and therefore not jointly, liable for discrete elements of the remediation. To take, for example, the position of Mr. Farrell, my findings were to the effect that he was only responsible, jointly and severally, for ten percent of the problem. On that basis, it is argued on his behalf that he should only be liable for ten percent of the costs on the same joint and several basis. The counterargument is that at least some of the time at trial was taken up in dealing with arguments between the various individual respondents as to their respective responsibility.

4.19 It seems to me that this latter point is well made. Taking an overall view, I am satisfied that 25% of the time taken at the hearing and in the filing of affidavit evidence was concerned with disputes between the individual respondents per se as to how the boundaries between each group of individuals' responsibility should properly be delineated.

4.20 It seems to me that each of the individual respondents found to have a responsibility must be jointly and severally liable for 25% of that part of Ronan's costs currently under consideration to reflect that fact. The balance of 75% is to be divided in the same way as the responsibility of the individual respondents was determined in the principal judgment.

4.21 In summary, therefore, no order will be made in respect of the costs of South Dublin Council. Ronan is entitled to all of the costs of its proceedings up to the time when the South Dublin Council proceedings were commenced as against Mr. Mullin and Mr. Redmond on a joint and several basis. So far as the balance of Ronan's costs are concerned, 25% are ordered jointly and severally against Mr. Mullin, Mr. Farrell, Mr. Redmond and Mr. O'Rua, with the remaining 75% being divided in the manner set out at para. 12.2 of the principal judgment. All of these costs are based on treating both proceedings as one.

4.22 Three matters remain for consideration. The first is as to whether there should be any indemnity or contribution as and between the individual respondents in relation to the costs which I have directed they must pay to Ronan. The second concerns the position of Mr. Roe, who was absolved from all liability. The third relates to the costs of the South Dublin Council summary proceedings. I propose dealing with each in turn.

5. Contribution between the Individual Respondents?
5.1 So far as the joint and several liability of Mr. Mullin and Mr. Redmond for the costs up to the point when the South Dublin Council proceedings were commenced and the joint and several aspects of the subdivisions of 75% of the remaining costs are concerned, I think it is appropriate to do no more than to make like provision to that contained in the final sentence of para. 2.6 of the judgment of the 1st December, 2011. Each party is, of course, *prima facie*, liable to pay the entire amount of any relevant part of the costs for which that party is jointly and severally liable. Where, however, a party has to take up more than its proportionate share of any such part of the costs, that party will be entitled to an order over against any party not taking up such a proportionate share.

5.2 Somewhat different considerations seem to me to apply to the 25% of the costs which I have attributed to the dispute between the individual respondents as to the extent to which the waste problem can properly be attributed to the different timeframes within which different groups of respondents were in charge. As already pointed out, the reason why Ronan is entitled to all of the costs attributable to those issues jointly and severally against all of the individual respondents who were held responsible is that the relevant issues were primarily disputes between those individual respondents as to the amount of the waste which required remediation which could reasonably be attributed to the various time periods. It was not Ronan's fault hat it had to be present for the hearing of those disputes.

5.3 However, it seems to me that, on those issues, Mr. Farrell at one end of the timescale and Mr. O'Rua at the other end of the timescale, succeeded more than they lost. While it is true that both Mr. Farrell and Mr. O'Rua suggested that they should have no liability, nonetheless it is clear that the amount of waste which I attributed to the respective periods when they were involved at, in Mr. Farrell's case, the beginning of the timeframe and, in Mr. O'Rua's case, the end of the timeframe, were relatively small being 10% and 5% respectively. On that basis, and as and between themselves, it seems to me that the 25% of the costs of Ronan which have to be jointly and severally borne by all four relevant respondents should be met as to 5% by Mr. Farrell and 5% by Mr. O'Rua. For the avoidance of doubt, the reference to 5% is a reference to 5% of the 25% and thus to 1.25% of the total costs. To the extent that either or both of Mr. O'Farrell or Mr. O'Rua are required to pay more than 5% of that 25%, then they should have an order over, on a joint and several basis, against Mr. Mullin and Mr. Redmond for the excess. I next turn to the position of Mr. Roe.

6. The Position of Mr. Roe
6.1 Mr. Roe successfully defended the case against him. He is, therefore, entitled to the costs of defending those proceedings. However, it does need to be noted that Mr. Roe had joint representation with Mr. O'Rua. I, therefore, propose to award Mr. Roe his costs jointly and severally against South Dublin Council and Ronan but to direct that the costs be limited to such costs as can be said to have been reasonably additionally incurred by virtue of the fact that those representing Mr. O'Rua and Mr. Roe had to deal in addition and separately with the case against Mr. Roe. It will be for the Taxing Master to assess the reasonableness of any amounts claimed having regard to that criteria.

6.2 Under this heading I see no reason to distinguish between the position of Ronan and South Dublin Council so that they should both bear, *prima facie*, 50% of the costs awarded. To the extent, therefore, that either of those parties has to bear, in fact, more than 50% of the costs awarded under this heading, that party will be entitled to an order over for the excess against the other.

6.3 There will, therefore, be an order that Mr. Roe recover the costs of his involvement on the basis of a single action and subject to the limitation referred to above, such order to be joint and several against South Dublin Council and Ronan. As and between South Dublin Council and Ronan there will be an order over for any excess over 50% which either party has to meet. Finally, it is necessary to turn to South Dublin Council's summary proceedings.

7. South Dublin Council's Summary Proceedings
7.1 As already pointed out, South Dublin Council succeeded to a very limited extent against Mr. O'Rua with the balance of its claim being referred to plenary hearing as against Ronan. The proceedings against Mr. Roe were, necessarily, dismissed having regard to the finding in the principal judgment that Mr. Roe had no responsibility.

7.2 It does not seem to me that any additional costs were, to any material extent, incurred in respect of this question. The issue as to the overall responsibility of Mr. O'Rua was fully dealt with in the context of both of the proceedings brought under the Waste Management Acts. Once those matters had been determined, it was accepted on behalf of Mr. O'Rua that a judgment had to be entered against him for 5% of the total sum expended by South Dublin Council.

7.3 It is also clear that the amount awarded against Mr. O'Rua is within the jurisdiction of the District Court. Insofar as the costs of ascertaining the precise extent of Mr. O'Rua's responsibility for the waste generally are concerned, then those costs have already been addressed in the context of dealing with the costs of the litigation under the Waste Management Acts. Insofar as any additional costs needed to be incurred in order to obtain the money judgment against Mr. O'Rua, then it seems to me that those costs can fairly be met by awarding in favour of South Dublin Council and against Mr. O'Rua whatever costs would be incurred in obtaining an unopposed judgment in the District Court for the sum of €6,336.50.

8. Some Final Comments
8.1 I am more than mindful that the costs orders which I have made are, to a significant extent, complex. However, these proceedings were, in themselves, extremely complex not just in relation to the issues of substance which arose, but also in relation to the process which had to be followed. In that regard I refer again to the comments which I made in the principal judgment concerning the procedures which are mandated in relation to cases such as this.

8.2 In addition, and for the future, it seems to me that it would be prudent for parties, even in the absence of any formal procedure in that regard, to set out in advance of any trial of complex issues under the Waste Management Acts, the precise position which they say should obtain. If that is done then it is likely that the court would treat that position in much the same way as a court might treat a so called Calderbank letter written in advance of a trial without prejudice save as to costs. I am mindful of the fact that the

parties to these proceedings were faced with the procedural difficulties already referred to and with a complicated set of interlocking issues.

8.3 While the order for costs which I have sought to fashion may appear somewhat complicated, it seems to me that it is necessary to do justice to the parties. I am particularly mindful of the fact that the individual respondents have to face paying at least some of the costs of a lengthy court hearing. Against that background it is important to ensure that the exposure of any individual respondent to costs does not exceed the extent to which the law and the justice of the case requires. This is particularly so where the costs involved may be significantly greater than the sum involved in the substantive issues in the case. If such considerations require a complex and nuanced order then such complexity is justified.