



THE COURT OF APPEAL

Record Number: 2022/71

High Court Record Number: 2014/2455P

Neutral Citation Number: [2023] IECA 32

Noonan J.

Faherty J.

Pilkington J.

BETWEEN/

BRIAN EGAN

PLAINTIFF/APPELLANT

-AND-

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND

FIRST NAMED DEFENDANT

-AND-

**JOHN G. DILLON LEETCH AND ROBERT POTTER COGAN
FORMERLY PRACTICING UNDER THE STYLE AND TITLE OF
DILLON LEETCH & SONS SOLICITORS
NOW JOHN G. DILLON LEECH PRACTICING UNDER THE STYLE
AND TITLE OF DILLON LEETCH AND COMERFORD SOLICITORS**

SECOND NAMED DEFENDANT/RESPONDENT

-AND-

SEAN MOLONEY AND ASSOCIATES

THIRD NAMED DEFENDANT

COSTS RULING of Mr. Justice Noonan delivered on the 17th day of February, 2023

1. The principal judgment in this matter was delivered on the 20th December, 2022, ([2022] IECA 294). At para. 85 of the principal judgment, I expressed the provisional view that the respondent (“the Firm”) had been entirely successful in the appeal and was therefore entitled to its costs. The plaintiff/appellant was given liberty to contend for a different order by way of written submission and has now done so.

2. The plaintiff invites the court to consider two alternative possible orders. First, the plaintiff suggests that there should be no order as to costs or a reduced award of costs should be ordered. Second, the plaintiff contends that the costs should be reserved to the hearing of the action which continues against the third named defendant, the action having been dismissed against the Firm. The basis for the latter contention is that there is a surviving notice of indemnity and contribution between the Firm and the second defendant.

3. The latter point is also relied upon as offering a basis for a departure from the rule provided for in s. 169 of the Legal Services Regulation Act, 2015 to the effect that a party who is entirely successful is entitled to an award of costs against the unsuccessful party. The court has a discretion to order otherwise, for stated reasons, having regard to a non-exhaustive list of factors identified in the section. Those factors include the conduct of the relevant party before and during the proceedings and the manner in which the parties conducted all or any part of their case.

4. Two other grounds are relied upon by the plaintiff in support of his application, first that the Firm avoided service of the proceedings and delayed in delivering its defence, giving rise to a number of motions brought by the plaintiff. At paragraphs 58 and 59 of the principal judgment, I accepted that there was some validity to this criticism and was of the view that

in the approximately two-year period between the issuing of the proceedings and the delivering of the defence, about one year of that delay was attributable to culpable delay on the part of the Firm. However, it is clear from the judgment as a whole that the operative delay which led to the dismissal of the plaintiff's claim occurred after this time so that the former delays are not material to the question of the costs of this appeal. Further, the costs of the motions brought by the plaintiff were dealt with at the hearing of those applications.

5. The second ground relied upon by the plaintiff is the delay in bringing the motion to dismiss. However, it is precisely that period of delay for which this Court held the plaintiff to be responsible which led to the dismissal of the proceedings, and thus it seems to me that the plaintiff cannot now be heard to say that, in fact, the Firm is responsible for that same delay.

6. Finally, on the issue of the notice of indemnity, the plaintiff's claim against the Firm now stands dismissed and the fact that there may be notices of indemnity between the Firm and the remaining defendant is immaterial for two reasons. First, insofar as the Firm's participation in the proceedings were to continue, it could only so continue with the Firm in effect as a third party and a stranger to the plaintiff's claim. Second, without expressing any definitive view on the point, it would appear to me, as the Firm contends, that if the Firm were to remain in the proceedings in substance and effect as a third party, it would be entitled to argue that the effect of s. 35 of the Civil Liability Act, 1961 is to attribute any negligence alleged by the third defendant against the Firm to the plaintiff.

7. For those reasons, I am satisfied that the plaintiff has not established any basis which would justify this court in departing from the rule in s. 169. Accordingly, I would confirm the provisional view already expressed that the Firm is entitled to the costs of the appeal

against the plaintiff, which will include the costs of the written submissions on the costs issue.

8. As this ruling is delivered electronically, Faherty and Pilkington JJ have authorised me to record their agreement with it.