THE HIGH COURT

2008 No. 8389 P

Between:

NEIL HEALY

Plaintiff

– and –

ULSTER BANK IRELAND LIMITED AND PROMONTORIA (ARAN) LIMITED

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 21st February, 2018.

1. On 16th January, 2018, the court gave its principal judgment in the within proceedings ('the principal judgment'). These proceedings have been a long time running. They commenced in 2008. Dr Healy was initially unsuccessful before the High Court, with McGovern J. dismissing his claim on 17th July, 2009. Dr Healy successfully appealed that judgment to the Supreme Court, which, on 21st December, 2015, remitted the matter to the High Court for re-hearing. The matter was nine days before this Court last year and in the principal judgment, the court concluded that Dr Healy fell to lose his claim but that the defendants fell to succeed in their counterclaim. The court's judgment was long. However, the essential reason why Dr Healy failed in his claim was simple: although the court accepted as true certain evidence which had been rejected by McGovern J. at the first hearing, it nonetheless concluded, in effect, that, as a matter of law, Dr Healy has and had no cause of action against the defendants.

2. If there is no basis in law as to why a defendant should be sued, it follows as a matter of logic and justice that that defendant should not have an order of costs made against it when it succeeds in its defence. Dr Healy contends, however, that this is a case in which an order for costs should be made against the defendants. He relies, inter alia, on the judgment of Clarke J., as he then was, in *Veolia Water UK plc v. Fingal County Council (No 2)* [2007] 26 I.R. 81. Simply put, so far as relevant to the within application (and the judgment in Veolia is considerably more sophisticated than as hereafter stated), Clarke J. acknowledged that there could be complex cases in which a court would need to fashion an order for costs which did more than simply award costs to the winning side. The reason, however, that it is not necessary to consider *Veolia* or related case-law in great detail is because Clarke J. never suggests, indeed the court is not aware of any case which suggests, that where a defendant is found to have no good cause of action lying against it, that defendant could nonetheless be exposed to an order for costs when, as must be the case, it triumphs in its defence. If ever there was a decision that stood to open the proverbial floodgates to a flood of unmeritorious proceedings against the hapless, a decision that a defendant could be exposed to an order for costs even though there was no good cause of action against it would be just such a decision.

3. On what basis then does Dr Healy contend that an order for costs should be made against the defendants? First, he maintains that at the initial trial his evidence as to the meeting at the bank on 1st August, 2007, was not accepted by McGovern J., whereas it was accepted by this Court. Second, he maintains that the issue of ostensible authority was either conceded by the defendants or adjudicated upon in his favour by this Court. Third, he points to an issue that arose at hearing as to the late admission of evidence before the court, which issue was the subject of a separate ruling by the court. The issue as to whether or not to admit the evidence proved in the end to have no material impact on the costs of the litigation. Additionally, a related consideration by the court of certain un-redacted material which had previously been exhibited before the court in redacted form, and which belatedly fell to be admitted in a less (but still partly) redacted form, revealed that there was no wider issue presenting as regards such redactions as had initially been made. Fourth, mention was also made that apart from any incidental legal submissions made in the course of hearing, the legal submissions in this matter were done entirely by way of written submission and the great bulk of the hearing (and this is true) was concerned with establishing what happened at the meeting of 1st August, 2007, with Dr Healy, as mentioned, being successful in persuading this Court that his version of events was true.

4. Unfortunately for Dr Healy, all of the matters touched upon in the preceding paragraph are in any event entirely irrelevant when it comes to the issue of costs. This is because the principal judgment concluded not just that the defendants should succeed in their counterclaim, but that, when it came to Dr Healy's claim, in essence he had no cause of action against the defendants. No cause of action against a defendant means no order for costs against a defendant when its defence triumphs. Though the court is not without sympathy for Dr Healy as regards the scale of costs that he must now meet – the present cost of court proceedings is a continuing blight on our system of justice – it is coerced as a matter of law into ordering the costs of the proceedings (claim and counterclaim) against him.