



THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 287

Record Number: 2019/342

**Noonan J.
Haughton J.
Collins J.**

BETWEEN/

SIOBHAN KELLETT

APPELLANT

-AND-

**RCL CRUISES LIMITED, PANTHER ASSOCIATES LIMITED
T/A CRUISE HOLIDAYS AND PANTHER ASSOCIATES LIMITED
T/A TOUR AMERICA**

RESPONDENTS

COSTS RULING of the Court delivered on the 21st day of October, 2020

1. By order of this court made on the 21st May, 2020, the court dismissed the appellant's appeal. Three judgments were delivered by the court which unanimously determined that the appeal should be dismissed, though differing views were expressed in those judgments as to the legal principles to be applied in claims of this nature. Having regard to the outcome, the starting point therefore must be that the respondents are entitled to the costs of the appeal whether under the old dispensation that costs follow the event or under the new statutory regime under s. 169 of the Legal Services Regulation Act, 2015 that they have been entirely successful in these proceedings.
2. The court is invited by the appellant to depart from the normal rule on the basis that the net effect of the judgments delivered is to decide points of exceptional public importance and for the other reasons advanced in the appellant's written submissions. The court expresses no view as to whether it can properly be said that any point of exceptional public importance has been decided, particularly in relation to the standard by which the test of reasonable skill and care is to be judged in cases of this nature. Even were that so, it was not determinative of the appeal, as each member of the court considered that the appellant had failed to establish a breach of any relevant standard.

3. The court is further satisfied that it cannot be said that the appellant succeeded on any discrete issue such as would engage the principles discussed in *Veolia Water UK plc v. Fingal County Council (No. 2)* [2007] 2 IR 81 as considered by this court in *Chubb European Group SE v. The Health Insurance Authority* [2020] IECA 183. In the latter case, Murray J., giving the sole judgment with which the other members of the court agreed, explained (at para. 10) that the default position is that the successful party is entitled to its costs even where it has not prevailed on every issue in the case or succeeded in every argument it has advanced. The court explained that where the successful party has not prevailed on an identifiable issue which has materially increased the costs of the case, that might provide a basis for awarding the costs of that discrete issue to the party that won the issue. Murray J. however considered that such an order splitting costs should be viewed as very much the exception and should only be made where (a) the proceedings are complex involving multiple issues, and the raising of issues on which the otherwise successful party failed to prevail could have affected the overall costs of the litigation “in a material extent”; and (b) the court can readily separate and identify the costs so arising.
4. Accordingly, even if it could be said that the appellant here had prevailed on an identifiable issue of law – and it appears to the court that such would in fact be an over-statement of the position – there is nothing to suggest that a consideration of that issue affected the overall costs of this litigation in a material extent. It is accordingly the view of the court that there is no basis in the present case for a *Veolia* type order splitting costs. There is the further factor that this was a claim for damages for personal injuries brought by the appellant for – perfectly legitimate – personal benefit and is readily distinguishable from the line of authorities where some measure of costs have been awarded in favour of unsuccessful plaintiffs who brought claims which raised important and far reaching constitutional issues, which required to be determined to enable the court to reach its conclusion.
5. The court accordingly directs that this appeal stands dismissed with an order for the costs of the appeal in favour of the respondents.