Neutral Citation Number: [2011] IEHC 100

THE HIGH COURT

2010 7216 P

BETWEEN

MATTHEW O'DEA

PLAINTIFF

AND

DUBLIN CITY COUNCIL

DEFENDANT

Judgment of Miss Justice Laffoy delivered on the 4th day of March, 2011.

1. The issue

1.1 The issue with which the Court is concerned in this judgment is what, if any, order for costs should be made in circumstances where an application for an interlocutory injunction came on for hearing before the Court on Thursday, 16th December, 2010, but was not determined by the Court. Having been part heard, the application was adjourned until the following day and from thence to Tuesday, 21st December, 2010. On that day, the Court was informed by counsel for the plaintiff that the plaintiff would not be proceeding with the application for interlocutory relief. That was because the plaintiff had achieved an outcome to what he was seeking from the defendant which he considered satisfactory. In fact, the Court was told that, because of the outcome, the plaintiff would not be proceeding with the substantive action. The only outstanding matter between the parties was costs.

1.2 The position of the parties in relation to costs is that the plaintiff contends that he is entitled to an order for costs of the proceedings to the point at which they came to an end against the defendant, whereas the defendant contends that it is entitled to a similar order against the plaintiff. The Court has had the benefit of helpful outline written submissions from both parties.

2. Factual background

2.1 The plaintiff became a tenant of the defendant in a two bedroom flat in the north inner city area of Dublin (the original flat) in succession to his mother on 11th October, 2007. On succeeding to the tenancy, he was required to assume responsibility for arrears of rent in a sum in excess of €8,000 and he did so. Because he believed his life was in danger if he continued to reside in the original flat, the plaintiff had been seeking to be transferred by the defendant from the original flat to alternative accommodation for approximately a year and a half prior to the initiation of these proceedings.

2.2 The solicitors acting for the plaintiff in these proceedings had been in correspondence with the defendant and had been seeking that he be transferred to new accommodation since late February 2010. The position being adopted by the defendant at that stage was that the plaintiff had been awarded a welfare priority for transfer from his then current address to housing Area B (Darndale/Belcamp/Raheny/Kilbarrack). However, there were other applicants with similar priority status of longer standing than the plaintiff who had to be considered as vacancies arose. Further, it was not possible to consider the plaintiff's application while the issue of the arrears of rent, which had not been discharged, remained unresolved. It was explicitly stated in a letter of 3rd March, 2010 from the defendant to the plaintiff's solicitors that an offer by the plaintiff to endeavour to pay the rent arrears within twelve months if he was offered a transfer immediately was not a basis on which the transfer application could be approved. The plaintiff's solicitors wrote again to the defendant on 30th June, 2010, outlining recent incidents which gave rise to a deep concern on the part of the plaintiff that his life was threatened and his concerns for his partner and his three children were outlined. Proceedings in this Court seeking an injunction requiring immediate re-housing of the plaintiff in safe accommodation and away from the location of his original flat were threatened, if he was not transferred. It would seem that there was no response to that letter before proceedings were issued.

2.3 The plenary summons in these proceedings was issued on 27th July, 2010. Contemporaneously with the issuance of the plenary summons, short service was obtained for leave to issue a notice of motion returnable for 30th July, 2010 in which the plaintiff sought interlocutory relief. With the leave of the Court the proceedings were progressed during the long vacation by both parties. On 17th September, 2010 the principal replying affidavit to the plaintiff's application for an interlocutory injunction sworn by Aaron Bregazzi, the project estate officer of the defendant, was filed. While the defendant's perspective of the history of the plaintiff's tenancy and his dealings with the plaintiff were set out and certain factual matters were controverted, the position adopted by the defendant was that the concerns of the plaintiff were matters for An Garda Síochána. In relation to the plaintiff's listing for transfer on foot of his priority on "exceptional social grounds" of which the plaintiff had been apprised, it was averred that there was no suitable accommodation available to offer the plaintiff and the defendant was not in the position at the time to offer the plaintiff accommodation in his area of preference, meaning Area B. The position was summed up as that the applicant had been granted priority status and he was then on the waiting list awaiting suitable accommodation is his area of preference.

2.4 Correspondence between the plaintiff's solicitors and the defendant's law agent resumed on 23rd September, 2010. The plaintiff's solicitors' position was that the threats to the plaintiff had escalated. The plaintiff had left the original flat and was residing with friends and family. The defendant was called upon to exercise powers conferred on it under the Housing Acts 1966 to 2010 to deal with emergency situations to re-house the plaintiff. The response of the defendant was that the plaintiff was not homeless and would not be considered as homeless because he was a tenant of the defendant. It was reiterated that the plaintiff enjoyed priority and had not reached a position, presumably, meaning on the waiting list, where an allocation could be made for the appropriate area. There was no provision for a higher level of priority. Further information was sought as to the specific grounds on which it was alleged the plaintiff had a need for emergency accommodation and other matters. There was a comprehensive reply dated 28th September, 2010 from the solicitors for the plaintiff, the essence of which was that the plaintiff was asking for emergency accommodation or

financial resources to deal with his emergency until his long-term housing situation was resolved and, in particular, s. 10 of the Housing Act 1988 was referred to. It was commented that, while the plaintiff had been persistently told that rent arrears was a barrier to a transfer, that did not appear to be part of the defendant's "case on paper". In response to that comment, in a letter of 19th October, 2010 the defendant's law agent informed the plaintiff's solicitors that he had been instructed that the accumulated rent arrears of the plaintiff would, in the particular circumstances of the case, not impede the plaintiff's request for a transfer and could be carried forward to any new tenancy granted. However, apart from that, the defendant maintained its previous stance. It was stated that the plaintiff had been informed that he had been granted priority in Area B on exceptional social grounds but suitable premises fit for his housing needs had not become available. There were other persons on the list with priority and the plaintiff could not be allowed to ride roughshod over them.

2.5 In a further letter of 27th October, 2010 from the law agent to the plaintiff's solicitors, the position of the defendant was outlined again and it was pointed out that Area B was a high demand area. However, alternative options open to the plaintiff were suggested. For instance, if he were to change his area of preference and secure an appropriate priority he might reach the top of the list in Area P (which stretches from the Phoenix Park to Ormond Quay) at an earlier stage. If he required to avail of that option, he would have to go through the relative administrative procedures at the Allocation Section and at the Welfare Section of the defendant. An alternative option suggested was that the plaintiff should surrender his existing tenancy and apply to "the homeless services" for provision of accommodation, which would necessitate him going through the administrative procedures of the Homeless Persons Unit, which is run by the Health Service Executive (HSE). Once again it was asserted that it appeared that the plaintiff was "attempting to ride roughshod over the rights of others who have co-operated and fully complied with the reasonable administrative procedures of the Housing Authority". By letter of 12th November, 2010 the plaintiff's solicitors informed the law agent that the plaintiff was willing to consider Area P and, indeed, any area within or outside the functional area of the defendant but, in the interests of safety, would only consider an area far away from the original flat. In response, the defendant's law agent requested that the plaintiff indicate three areas, which might include Area B. By letter dated 6th December, 2010, the plaintiff's solicitors informed the defendant's law agent that the plaintiff would like to be considered for three areas in the following order of preference: Area B; Area E excluding two specified locations which were stated to be in close proximity to the original flat; and Area H, in relation to which the plaintiff could only consider one specified location which was not in close proximity to his original flat.

2.6 While the foregoing correspondence was passing between the parties, both the interlocutory application and the substantive proceedings were advancing procedurally. On 5th November, 2010 the plaintiff was given leave to amend the plenary summons, the statement of claim and the notice of motion for the interlocutory injunction.

3. The relief claimed on the interlocutory application

3.1 On the amended notice of motion the plaintiff sought the following reliefs, paragraph (3) being added on foot of the application to amend:

> (1) an order directing the defendant to immediately consider re-housing him in accommodation other than the like of which he then currently experienced;
>
> (2) an order directing the defendant to house the plaintiff in accommodation other than the original flat in a location outside the north inner city area in which the original flat is located and safely away from the original flat; and
>
> (3) an order directing the defendant to immediately consider the emergency situation of re-housing the plaintiff far away from the original flat and/or providing financial resources to the plaintiff for the purpose of re-housing until the plaintiff's long-term needs are met.

3.2 In broad terms, the amendments to the pleadings, as reflected in paragraph 3 of the notice of motion, centered on the invocation by the plaintiff of s. 10 of the Housing Act 1988, which confers on housing authorities additional provisions regarding accommodation for homeless persons. Sub-section (1) of s. 10 provides:

> "A housing authority may, subject to such regulations as may be made by the Minister under this section –
>
> (a) make arrangements, including financial arrangements, with a body approved of by the Minister for the purposes of section 5 for the provision by that body of accommodation for a homeless person,
>
> (b) provide a homeless person with such assistance, including financial assistance, as the authority consider appropriate, or
>
> (c) rent accommodation, arrange lodgings or contribute to the cost of such accommodation or lodgings for a homeless person."

The definition of a homeless person for the purposes of the Act of 1988 is to be found in s. 2 of that Act where it is provided that a person shall be regarded by a housing authority as being homeless for the purposes of the Act if, *inter alia*, there is no accommodation available which in the opinion of the housing authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of.

3.3 Before outlining what occurred during the week in which the interlocutory application was listed for hearing, it is convenient to set out the position of the defendant, as disclosed on the application for costs in relation to each of the reliefs sought on the notice of motion. As regards the reliefs sought in paragraphs 1 and 2, counsel for the defendant submitted that, at the time of the initiation of the proceedings, the defendant had considered re-housing the plaintiff and his re-housing needs were under active consideration, as he had been on a waiting list with the relevant priority under the Scheme of Letting Priorities. Counsel for the plaintiff took issue with that proposition on the basis that the plaintiff was not actively under consideration for re-housing until the concession in relation to the issue of the arrears of rent was communicated in the letter of 19th October, 2010. As regards the third relief, it was submitted on behalf of the defendant that the defendant does not provide financial assistance to persons in the plaintiff's position and has no statutory jurisdiction to do so. Any financial assistance would have to be sought from the HSE. The plaintiff was not homeless and had not surrendered his tenancy in the original flat. Counsel for the plaintiff also took issue with that proposition. It was submitted that the defendant is not limited to dealing with applications such as the plaintiff's application in accordance with the housing lists but has power under s. 10 to deal with emergency situations.

4. The hearing of the interlocutory application
4.1 On 13th December, 2010 the law agent of the defendant responded to the plaintiff's solicitors' letter of 6th December, 2010, enclosing a letter recording the decision of the Chief Welfare Officer of the defendant of the same date who recommended that the priority for suitable housing in Area B, including voluntary housing in Area B, which had been awarded to the plaintiff on 29th February, 2009 be amended to include Area E (excluding the locations stipulated by the plaintiff) and Area H to include only the location stipulated by the plaintiff and that the amendment be backdated to 29th February, 2009. The law agent went on to state that there were no premises suitable to the plaintiff's needs in the relevant areas at the time. However, it was intimated that, if the plaintiff were to opt for Area P, adjoining Area E, and subject to the Chief Welfare Officer extending the priority to that area, the plaintiff would take a sufficiently high place to receive an offer of accommodation in that area. However, it was indicated that any such allocation would be on condition that the plaintiff would accept full responsibility for the accrued arrears of rent and enter into an arrangement for the discharge of same. It was made clear in the letter that any proposed allocation would be as a result of the plaintiff's application to be housed in areas other than those originally stated by him, not as a result of these proceedings, and that the proposal was not to be seen as any form of admission of liability on the part of the defendant, the defendant asserting that the proceedings were misconceived and unnecessary. On 15th December, 2010 the law agent sent a reminder to the plaintiff's solicitors. The plaintiff's solicitors' response, which was dated 15th December, 2010, was that the plaintiff needed to be accommodated that night, nor merely placed on a list. He had always been willing to consider any offer in any area so long as it was not in the area of the original flat.

4.2 On 16th December, 2010 the law agent wrote to the plaintiff's solicitors informing them that the Chief Social Worker had extended the plaintiff's priority to cover Area P, in substitution for Area H, and that an apartment, which was identified, was available in Area H at some considerable distance from the original flat. It was made clear that the apartment was being offered subject to compliance with all necessary formalities for allocation of premises, and on condition that the plaintiff would accept full responsibility for the accrued arrears of rent, which would be transferred to the new rent account, and would surrender his existing tenancy in the original flat first.

4.3 As I stated at the outset, the interlocutory application was listed for hearing on Thursday, 16th December, 2010. After the application was called on, it was opened by counsel for the plaintiff on the basis of reliance on s. 10 of the Act of 1988. After some interchanges between the parties and the Court the matter was adjourned until the following day when, as I stated at the outset, it was adjourned again to Tuesday, 21st December, 2010.

4.4 On 17th December, 2010 the solicitors for the plaintiff wrote to the defendant's law agent intimating that "further to negotiations" they were confirming acceptance by the plaintiff of the apartment in Area P. By letter dated 20th December, 2010 the defendant's law agent disputed that the allocation to the plaintiff had been "further to negotiations" and stated that the plaintiff had become eligible for the allocation of the apartment when he opted to change his area of preference and his priority had been amended to include Area P. The plaintiff was requested to make arrangements to contact Mr. Bregazzi to make arrangements for the surrender of the original flat and the signing of the new tenancy agreement. It appears from what the Court was informed on the applications for costs that the formalities were completed on 6th January, 2011.

5. The law
5.1 The right to costs is governed by Order 99 of the Rules of the Superior Courts 1986 (the Rules). There are a number of fundamental rubrics embodied in rule 1: that costs shall be at the discretion of the Court; and, unless the Court otherwise orders, costs, shall follow the event. In the case of interlocutory applications a new rule, rule 1(4A), came into operation on 21st February, 2008 which provides:

> "The High Court or the Supreme Court, upon determining any interlocutory application, shall make an award of costs save where it is not possible justly to adjudicate upon liability for costs on the basis of the interlocutory application."

That amendment appears to remove the discretion of the Court in relation to the costs of interlocutory applications except in cases where it is not possible to justly adjudicate upon liability for costs, in which case, presumably, the costs should be reserved to the trial Judge on the basis that the determination of the substantive action will produce an "event". The Court was referred to two authorities in which the issue of costs was considered in circumstances where there was no "event", in the sense that there was no determination by the Court, because the moving party decided not to prosecute the proceedings any further.

5.2 The first, chronologically, was the ex-tempore judgment of Keane C.J. in the Supreme Court in *Callagy v. Minister for Education and Ors*. (Unreported, the Supreme Court, 23rd May, 2003). The primary relief sought in that case was a declaration that an education programme (the Exploring Masculinity Programme) prepared by the Minister for Education and Science was repugnant to the Constitution. Ancillary relief was claimed in the form of an injunction restraining the introduction or implementation of the programme to any school curriculum. Following service of a statement of claim, the defendants brought a motion to strike out the proceedings as disclosing no cause of action. In the course of that process, an affidavit was filed by the principal of the school which was attended by the plaintiff's son, in which it was confirmed that the programme was not then part of the school syllabus, nor was it intended to be and in which it was emphatically stated that no part or module of the programme would be taught in the foreseeable future in the school. As the Chief Justice pointed out, that was in contradiction to what the plaintiff had averred in his affidavit responding to the defendant's motion to strike out. When the defendant's motion came on for hearing, the plaintiff had decided that he would not continue with the proceedings, as Keane C.J. put it, "for whatever reason". It seems that at first instance both parties wanted both the motion and the proceedings struck out and that what was to happen in relation to costs was to be dealt with by the Judge. 5.3 In delivering judgment, having commented that the attitude of the Minister for Education and Science in the proceedings at all stages had been that there was no question of the programme being compulsory, rather it was entirely optional as regards both school and pupils, but that the Court was not concerned with that aspect of the matter, Keane C.J. continued:

> "It is sufficient to say that it is quite clear that the plaintiff could, at any stage before instituting these proceedings have ascertained the position in relation to the school. That he obviously did not do, since he committed himself to that statement in the affidavit to which I have referred, which having regard to Fr. Carroll's affidavit is clearly inaccurate. That being so, while he was perfectly entitled to discontinue the proceedings, in my view it must inevitably follow, as always follows in circumstances such as that, that a plaintiff who elects to begin proceedings and then abandons them for whatever reason must pay the defendant's costs. If he wants the defendant to pay the costs he must be prepared to go on the full length of the proceedings, obtain the relief that he sought and then invite the court to award costs in the ordinary way as following the event."

5.4 The second is the judgment of the High Court (Herbert J.) in *Garibov v. Minister for Justice, Equality and Law Reform and Ors.*

[2006] IEHC 371. The applicants in that case were seeking leave under Order 84, rule 20(1) of the Rules to apply for judicial review. The relief they were seeking was an order of *certiorari* quashing deportation notices issued on 17th October, 2003 pursuant to deportation orders made in August 2003. That relief was sought on a number of grounds, including the ground that the first named applicant was suffering from cancer of the vocal chords for which he was receiving treatment in the State and the enforcement of the deportation order against him would infringe his right to bodily integrity pursuant to the Constitution and the European Convention on Human Rights. The interaction between the applicants' solicitors and the respondents and their legal advisers after the initiation of the application on 24th October, 2003 is outlined in the judgment. Eventually, by letter dated 19th May, 2006, the applicants' solicitors were informed that the deportation orders had been revoked and that the applicants had been granted temporary leave to remain in the State on 14th March, 2006. As a result, the applicants decided to withdraw the application for leave, but it was argued on their behalf that they should be awarded the costs of the proceedings to date because they had succeeded in their claim which rendered further proceedings unnecessary. The application for costs was resisted by the respondents.

5.5 Herbert J. set out his view of the test which the Court had to apply in determining where the costs should lie as follows:

> "What is before the court is an application to seek judicial review. Without dealing with the application fully on its merits it would be impossible and, indeed improper for the court to endeavour to predict the outcome of the application. It appears to me that the question which the court must ask in considering this application for costs is, whether in the circumstances it was reasonable for the applicants to have commenced their application for leave to seek judicial review."

In applying that test, Herbert J. found that it was reasonable for the applicants in the particular circumstances of the case to have sought leave from the Court to apply for judicial review on 24th October, 2003 and thereafter at all times to have persisted in that application. He went on to find that, in the light of the events which occurred, the respondents could have rendered the application redundant in January or February 2004 rather than in March 2006. In the special circumstances, he awarded the applicants' costs against the respondents of the proceedings to date.

6. Conclusions

6.1 In applying the principles as to liability for costs set out in the Rules in this case, the first question the Court must consider is whether there has been an "event" and, if so, what it was. As I understand it, "event", as envisaged in the Rules, is a result which determines the dispute before the Court. Without expressing any definitive view on this point, in my view, what the Rules and the authorities envisage is a result brought about by a determination of the Court on the issues before the Court, rather than by some supervening event, such as an agreement of the parties in which the Court has not been involved. In this case, there has been no determination by the Court on the issues which came before it on 16th December, 2010. That being the case, the question which arises is what function the Court has in relation to liability for costs. The answer, in my view, is that it has none.

6.2 Before outlining the reasons for that conclusion, for completeness I would point out that, if the Court had a function in relation to costs where, as here, the "event" is brought about by the moving party accepting an offer of the respondent, on the basis of the history of the dealings between the parties, in my view, it would be difficult to conclude that the prosecution of the application for an interlocutory injunction was necessary to produce the outcome which has been achieved for the plaintiff, but, more particularly, that it was necessary to vindicate the legal rights of the plaintiff.

6.3 In analysing whether the Court does have a function in relation to costs here, it is necessary to identify what issues would have been before the Court for determination on 16th December, 2010, if the application had proceeded to conclusion. They would have been the issues which arose on the plaintiff's application for an interlocutory injunction and nothing else. In this case, as the plaintiff was seeking what was in effect a mandatory order, counsel for the defendant submitted that, on the authority of the judgment of the Supreme Court in *Maha Lingam v. Health Service Executive* [2005] IESC 89, it would have been necessary for the plaintiff to show at least that he had a strong case that he was likely to succeed at the hearing of the action. I did not understand counsel for the plaintiff to disagree with that proposition, but he contended that the plaintiff would have been in a position to make out a strong case for the relief he was seeking on the application, had it proceeded. The other issues would have been whether damages would have been an adequate remedy and whether the balance of convenience lay in favour of granting or refusing the injunction.

6.4 Therefore, if the application had proceeded, the first, and by far the most significant, hurdle which the plaintiff would have had to surmount would have been to establish a strong case that the defendant was under a duty, by virtue of s. 10 of the Act of 1988, to re-house him in the emergency situation in which it was contended he had found himself. The application of the "strong case" criterion, would unquestionably have raised a difficult, indeed probably a novel, mixed question of law and fact in the context of the defendant's denial of liability under s. 10, including its denial that the plaintiff was homeless having regard to the fact that he was in possession of the original flat as a tenant of the defendant. In order at this juncture to ascertain what the probable outcome of the plaintiff's application would have been, the Court would have to assess his case on the merits and, in doing so, reach a conclusion as to whether the plaintiff would have overcome the first hurdle. I am of the same view as Herbert J. was in the *Garibov* case that it would be improper for the Court to attempt to predict what the outcome would have been. The reality is that the parties have rendered the issues which were raised on the application for the interlocutory injunction moot, and it is invidious to expect the Court to speculate at this juncture on what would have been the outcome, if the matter had proceeded.

6.5 Even if, contrary to the view which I have just expressed, it were proper for the Court to pronounce on what the outcome of the application would have been, and even if it were to conclude that it would have been favourable to the plaintiff, in that the plaintiff would have been granted an interlocutory injunction in the terms which it sought, it would not have followed as a matter of course that the plaintiff would have been awarded the costs of the application against the defendant. It is true that the liability for costs would have fallen to be decided by reference to Order 99, rule 1(4A) under which the Court is mandated to exercise its discretion in relation to costs and make an order determining where liability lies, unless it finds that it is "not possible justly to adjudicate upon liability for costs". A large variety of interlocutory applications come with the ambit of rule 1(4A). Most, by their nature, are susceptible to a determination as to where liability for costs should lie, without giving rise to concern that an injustice or an unfairness may be perpetrated. In my view, an application for an interlocutory injunction is not in that category, as is illustrated by the course which was usually adopted in relation to the costs of an interlocutory injunction prior to the coming into operation of rule 1(4A) – that the costs were reserved for the trial Judge to determine at the conclusion of the substantive hearing. The rationale underlying that approach was explained by Keane J., as he then was, in *Dubcap Ltd. v. Microchip Ltd*. (Unreported, the Supreme Court, 9th December, 1997) as follows:

> "It is right to say, of course, that while there is no rule of court or even a practice to that effect, the normal procedure on the hearing of an interlocutory application is to reserve the costs to the trial judge. The reason for that is obvious: there may and very frequently will be matters which can only be resolved by the Court of Trial on oral evidence at a

> plenary hearing of the action and indeed matters may come to light by way of discovery or by way of new evidence not available to the parties at the time of the hearing of an interlocutory application which will bring about a result which seemed unlikely or improbable at the time of the hearing of the interlocutory application, so for that reason it is quite normal on the hearing of the interlocutory applications to reserve the costs."

6.6 The factors outlined in that passage, which informed the "normal procedure" prior to the coming into operation of rule 1(4A), are the very factors which a Court is likely to have regard to in considering whether, having decided whether to grant or refuse an application for an interlocutory injunction, it is possible to justly adjudicate at that stage on whom liability for the costs of the application should lie. Accordingly, even if the plaintiff's application had proceeded and even if the Court had granted an injunction in the terms which had been sought by the plaintiff, it is by no means certain that the plaintiff would have been successful in an application for the costs of the interlocutory application against the defendant at that stage of the process. It may well have been that the costs would have been reserved to the trial Judge.

6.7 When, as in this case, on an application for an interlocutory injunction, there has been a supervening event which renders it unnecessary for the Court to determine the issues on the application, such as an offer made to the moving party by the respondent being accepted, which results not only in the moving party's motion, but also the substantive action, being struck out, it is no function of the Court to determine where liability for costs incurred up to that point lies, when the Court has made no determination on the issues on the application for an interlocutory injunction or on the issues in the substantive action. If the parties have not reached agreement on where liability for costs lies, then, *prima facie*, the proper exercise of the Court's discretion is as was indicated by the Supreme Court in the *Callagy* case, namely, as happened there, that the plaintiff be ordered to pay the costs of the proceedings including the costs of the motion. I am conscious of the fact that the adoption of that approach may encourage a moving party applying for an interlocutory injunction to keep the substantive action alive in circumstances where it is not intended to prosecute it. However, in that situation, there are other remedies which may be availed of by the respondent.

6.8 As is clear in the passage from the judgment of Keane C.J. in the *Callagy* case which I have quoted earlier, in every case the Court has discretion on the issue of costs, but it is a discretion which must be exercised properly. Having regard to the history of these proceedings and the manner in which the Court was relieved of the function of deciding whether the interlocutory injunction should be granted or not, but was left in the position of having to address the applications for costs by both parties, I consider that the situation here is distinguishable from the situation which arose in the *Callagy* case, where the Supreme Court directed the plaintiff to pay the costs of the proceedings, including the costs of the motion to strike out. While reiterating that, if the Court had to address the issue, it would be difficult to conclude that what the plaintiff achieved by the defendant's offer of alternative accommodation on 16th December, 2010 and his acceptance of the offer must be ascribed to his prosecution of these proceedings and to nothing else and the proceedings were necessary to vindicate the plaintiff's rights, the plaintiff's problem was resolved by agreement of the parties, but it was an agreement in which both parties failed to address the costs issue. Both parties sought to impose on the Court a task which is not its function in a context where the proceedings are effectively concluded and the Court does not have the option of reserving the costs of the interlocutory application to the trial Judge. Apart from that, taking a pragmatic view of the matter, the plaintiff obviously is not a "mark" for costs.

6.9 Accordingly, for the foregoing reasons, I have come to the conclusion that the proper manner in which to deal with the issue of liability for costs is to make no order for costs, so that each party bears his or its own costs.

7. Order

7.1 As I understand that the parties are in agreement that the application for the interlocutory injunction and the proceedings should be struck out, I will make that order. There will be no order for costs. There will be liberty to each party to apply, lest any relevant matter is not covered in this judgment.