



**Neutral Citation Number: [2020] IECA 147**

**Record Number: 2019/226**

**Costello J.  
Noonan J.  
Murray J.**

**BETWEEN/**

**RECORDED ARTISTS ACTORS PERFORMERS LIMITED**

**PLAINTIFF/  
APPELLANT**

**- AND -**

**PHONOGRAPHIC PERFORMANCE (IRELAND) LIMITED**

**DEFENDANT/  
RESPONDENT**

**COSTS JUDGMENT of the Court delivered by Ms. Justice Costello on the 5th day of June, 2020**

1. On 3 April 2020, the court delivered judgment on an appeal in respect of a trial on two preliminary issues which the High Court had directed to be so tried. It did so in circumstances where no facts were agreed or evidence adduced. The parties have each submitted that they are entitled to the costs of both the appeal and of the court below on the basis that they were largely successful on the appeal. Neither party invoked the provisions of the Legal Services Regulations Act 2015, s. 169, which came into effect after the notice of appeal issued. The submissions were based upon the provisions of Order 99 of the RSC and the well-established jurisprudence relating to costs.
2. It is the view of the court that neither party could be considered to have been entirely successful on the appeal.
3. On the first preliminary issue, each had maintained that the statutory obligation to determine the payments to be made by way of equitable remuneration to performers lay with them. The court rejected the arguments of both parties and held that the question was not capable of a binary decision. Thus, neither side was successful on this aspect of the appeal.
4. On the second preliminary issue, the main point urged by RAAP – that it was deemed to represent all performers, even in circumstances where the performer had not authorised RAAP to represent them – was rejected by the court. At the same time, however, RAAP

was successful in its argument that the trial judge erred in holding that RAAP must be authorised by an express assignment of rights, and that alternative means of authorisation did not comply with the provisions of s.281. The court held that a CMO may be authorised by “other contractual arrangements” to represent performers and an assignment of rights is not required. This was an important aspect of the appeal, and it was determined in favour of RAAP.

5. PPI argued that this was never contested by it, that the issue was raised by the trial judge, and that it was not the main point on the second issue. Thus, PPI contends that, notwithstanding RAAP’s success on this part of the appeal, RAAP did not prevail overall in its appeal on the second issue.
6. There might have been some merit in this argument had PPI conceded this point on the appeal and indicated to the court that this part of the judgment and order of the High Court could be varied by consent. Instead, following the decision of the High Court, PPI immediately resiled from its previous position and insisted that RAAP could only represent those performers who had actually assigned their rights to RAAP or licenced it to act on their behalf. In so doing, it unequivocally embraced the error of the High Court, despite the fact that it reflected a position contrary to that common to both parties up to that date.
7. It seems to the court, therefore, that it would be unjust to approach the issue of costs on the basis that PPI had been successful on the second issue without having regard to the important question of the means by which RAAP is authorised to represent performers, particularly as this reflects the scheme established in the Directive. Thus, there should be an award of costs in favour of PPI, but it should be reduced to reflect this consideration.
8. The court is of the view that the two preliminary issues were closely interlinked and that, in lieu of a *Veolia Water* type order, the fairer approach is to award PPI 1/3 of the overall costs in the High Court and of the appeal, to include the costs of the submissions and hearing on costs on 29 May 2020.