



THE COURT OF APPEAL

CIVIL

Neutral Citation Number [2020] IECA 291

Court of Appeal Record No 2019/198

The President

Costello J

Collins J

BETWEEN

ALLIED IRISH BANK PLC

Plaintiff/Respondent

AND

SEAN CUDDY

Defendant/Appellant

RULING OF THE COURT DELIVERED ON 28 OCTOBER, 2020

1. On 30 July last the Court unanimously allowed Mr Cuddy's appeal to the extent that it was persuaded that he had demonstrated an arguable defence to the Bank's claim for summary judgment on one of the grounds relied on by him, namely the Limited Recourse Ground: [2020] IECA 211. The Court rejected the other ground relied on

by Mr Cuddy, the Limitation Ground. The Court therefore made an order pursuant to Order 37, Rule 7 of the Rules of the Superior Courts adjourning the Bank's claim to plenary hearing and giving Mr Cuddy leave to defend that claim limited to the Limited Recourse Ground.

2. The parties have since delivered written submissions addressing what consequential orders are to be made.

Pleadings

3. The Bank proposes that it should deliver Points of Claim within 3 weeks and that Mr Cuddy should deliver Points of Defence within a further 3 weeks. Mr Cuddy has no objection to that proposal or the suggested timetable and, in the circumstances, the Court will so direct.

Costs

4. There is a dispute as to costs. Mr Cuddy says that he was successful in his appeal and that the costs of the appeal should follow that "*event*". As regards the costs of the High Court, Mr Cuddy seeks those costs also, arguing that the Bank acted unreasonably in failing to agree to remit its claim to plenary hearing in light of the affidavits that had been filed, relying in that context on the Supreme Court's decision in *ACC Bank plc v Hanrahan* [2014] IESC 40, [2014] 1 IR 1. If that argument does

not find favour with the Court, Mr Cuddy suggests in the alternative that the costs of the High Court be made costs in the cause.

5. The Bank argues that the costs of both the High Court and this Court should be made costs in the cause. It too relies on *ACC Bank plc v Hanrahan* and says that, in light of this Court's findings on appeal, it is evident that it did not act unreasonably in maintaining that it was entitled to summary judgment either before the High Court or before this Court on appeal.

6. The Court considers that the costs of the High Court should be costs in the cause. *ACC Bank plc v Hanrahan* indicates that such an order is presumptively the appropriate one in a case such as this (absent any particular circumstances that might make it more appropriate to reserve the costs and there are none here). *ACC Bank plc v Hanrahan* allows for a different approach "*where the court remitting the matter to plenary hearing is satisfied that a plaintiff has acted in a particularly unreasonable manner in not agreeing to the matter going to plenary hearing*" and it is on this basis that Mr Cuddy seeks his costs. In the Court's opinion, however, it cannot be said that the Bank acted in a "*particularly unreasonable manner*" in not agreeing to a plenary hearing. The Bank's approach was not unreasonable in all the circumstances. While the Court has directed such a hearing (limited to one only of the grounds relied on by Mr Cuddy), it will be evident from the judgments given by each of the members of the Court that the outcome was finely-balanced and, in the circumstances, the Court sees no basis for departing from the general approach identified in *ACC Bank plc v Hanrahan* in respect of the costs of the High Court.

7. As to the costs of this Court, the Court sees no reason to adopt a different approach to those costs in the circumstances here and therefore considers that those costs should also be made costs in the cause. In his submissions, Mr Cuddy observes that it is not clear that the test set out in *ACC Bank plc v Hanrahan* would apply equally to appeal of a summary judgment application to this Court. By way of illustration, it is said that there may be circumstances where the Court might be satisfied that a plaintiff acted reasonably in pursuing a claim for summary judgment but acted unreasonably in defending an appeal. That may well be so. Certainly, where an application for summary judgment is *refused* in the High Court and the plaintiff appeals unsuccessfully to this Court, they may well be at risk of the costs of the appeal being awarded against them, even if the general rule in *ACC Bank plc v Hanrahan* is considered to apply in respect of the costs of the High Court. But that is not the position here.

8. It is not necessary for the Court to decide whether the approach taken in *ACC Bank plc v Hanrahan* applies, or applies in precisely the same way, to the costs of an appeal. Here, the Bank obtained judgment in the High Court and, as will be apparent from the discussion above, the Court does not consider that it was unreasonable for the Bank to seek to defend that judgment on appeal. No final determination on the Limited Recourse Ground has been made by this Court and the issue may ultimately be decided in favour of the Bank. Separately – and, in the Court’s view, significantly – the Limitation issue was decided in favour of the Bank. Mr Cuddy elected to agitate that issue again on appeal and in fact sought to advance entirely new arguments in

support of that ground before this Court. His submissions on costs notably fail to engage with the fact that that aspect of his defence was rejected.

9. In these circumstances, the Court considers that it would not be just to award any part of the costs of the appeal to Mr Cuddy and, in its view, the appropriate order is that those costs should also be made costs in the cause, with the result that they will be recoverable by the party that ultimately succeeds in these proceedings.

10. Accordingly, in addition to adjourning the Bank's claim to plenary hearing and giving Mr Cuddy leave to defend that claim limited to the Limited Recourse Ground, the Court:

(1) Directs the delivery by the Bank of Points of Claim within 3 weeks

(2) Directs the delivery by Mr Cuddy of Points of Defence within a further period of 3 weeks

(3) Sets aside the order of the High Court relating to costs and directs that the costs of the High Court be costs in the cause and

(4) Directs that the costs of the appeal before this Court also be costs in the cause.