



THE COURT OF APPEAL
CIVIL

Neutral Citation Number [2021] IECA 105
RECORD NOS. 2017/000490
2017/000191

BETWEEN/

ARNAUD D GAULTIER

PLAINTIFF/APPELLANT

- AND -

**THE REVENUE COMMISSIONERS, THE MINISTER FOR FINANCE,
THE COURTS SERVICE, THE MINISTER FOR JUSTICE AND EQUALITY,
IRELAND AND THE ATTORNEY GENERAL**

DEFENDANTS/RESPONDENTS

- AND -

**THE COMPTROLLER AND AUDITOR GENERAL AND LOIRE VALLEY
LIMITED**

NOTICE PARTIES

JUDGMENT of Ms. Justice Costello delivered on the 8th day of April 2021

1. On 21 February 2020 the first named respondent issued a motion seeking to have the appeal in these proceedings struck out by reason of the failure of the appellant to file submissions in accordance with directions given on 26 January 2018. The appeal was then listed for hearing on 3 April 2020. On 6 March 2020 McGovern J made an Unless Order and adjourned the motion to 13 March 2020, as the appellant had issued a motion which was returnable for that date.

2. The appellant issued a motion returnable for 13 March 2020 seeking various reliefs (as set out in my written judgment of 7 April 2020), including the adjournment of the appeal on

the basis of a want of jurisdiction to hear the appeal and the membership of the court and an Order granting him leave to take up the DAR of the assignment of the case to Noonan J.

3. The appellant ultimately delivered his written submissions in compliance with the Order of McGovern J. and the motion did not proceed, as the first named respondent was satisfied with the Unless Order made by McGovern J. and the delivery of the written submissions. The first named respondent applied for the costs of the motion against the appellant.

4. The appellant's motion was dismissed for the reasons set out in a written judgment delivered on 7 April 2020. He failed to obtain any relief. As I set out in my written judgment, he could never have obtained two of the reliefs sought and I rejected the remaining reliefs. The respondents have applied for their costs of this motion.

5. The parties were invited to make written submissions addressing the costs of the motions. The appellant filed submissions which largely failed to engage with the principles relevant to awarding of costs. Insofar as he did, he said that *“any application for an order for Costs seems premature. Indeed, it first seems that both motions have not been heard fully or at all. The Costs of these Motions as well as the motions themselves (or part thereof) will have to be adjudicated by a properly formed Court once the relief sought at paragraph 5 is dully answered”*.

6. The court is required to rule on the costs of any motion if it is a position so to do. I am not satisfied that it is premature to rule on the costs of these motions. The appellant's motion has been heard and dismissed. No relief is pending. The two reliefs which were not discussed in detail in the judgment were dismissed as they could never have been granted. The balance of the reliefs sought were refused after as full hearing. It is appropriate that the issue of the costs of the two motions be ruled.

7. The normal rule is that costs follow the event unless there are grounds advanced upon which the court could exercise its discretion to depart from this rule. This long-standing rule of practice has now been given statutory support by s. 169 of the Legal Services Regulation Act 2015. From the authorities, it is clear that there would have to be something “special or unusual” or “exceptional” if the court is to depart from the normal rule. The appellant has advanced no grounds which would justify a departure from the normal rule in respect of either motion.

8. In relation to the appellant’s motion the respondents are entitled to their costs of the motion to be adjudicated in default of agreement.

9. The appellant has not expressly addressed the costs of the motion of the first named respondent in his submissions. The first named respondent says that it was required to bring the motion in order to secure compliance with the directions (given more than two years previously) so that the appeal listed for hearing on 3 April 2020 could proceed. McGovern J clearly agreed when he made his Unless Order. The appellant complied with the Unless Order and thus it was not necessary for the court to hear the motion. The first named respondent substantially achieved the result it sought by issuing the motion when the appellant was in egregious default. In the circumstances there are no special or exceptional circumstances and it follows that the first named respondent is entitled to the costs of the motion against the appellant to be adjudicated in default of agreement.