



**THE COURT OF APPEAL**

**Civil**

**APPROVED**

**Court of Appeal Record Number: 2023/171**

**Neutral Citation Number [2024] IECA 55**

**Whelan J.  
Noonan J.  
Meenan J.**

**BETWEEN/**

**BRIAN MCDONAGH, MAURICE MCDONAGH AND KENNETH MCDONAGH**

**APPELLANTS**

**- AND -**

**ULSTER BANK IRELAND DAC, NORMAN GINNELLY, PAUL MCCANN,  
PATRICK DILLON, CBRE, PROMONTORIA ARAN, LINK ASI LIMITED,  
CONOR MAHER AND ALAN MONAGHAN**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 7th day of March 2024**

1. On 18 January 2024 this Court delivered its judgment dismissing the appellants' appeal against a judgment of the High Court (Quinn J.) which held that the appellants' claim against the fifth named defendant ("CBRE") was barred pursuant to the provisions of s. 11 of the Statute of Limitations Act 1957 (as amended).

2. At the conclusion of the judgment the court expressed its provisional view that, as the respondent had been entirely successful, an order for costs ought to be made against the

appellants. If the appellants wished to oppose this order, they could do so by furnishing written legal submissions (not exceeding 1,500 words) within 14 days from the date of the delivery of the judgment and the respondent could reply to such submissions (also not exceeding 1,500 words) within 14 days thereafter.

3. The appellants delivered their submissions seeking to oppose the costs order on 30 January 2024 and the respondent replied on 15 February 2024. In their submissions, the appellants stated that a costs order “*will be a further injustice against the McDonagh family*” and sought a stay on any costs order pending an application for appeal to the Supreme Court.

**Costs: -**

4. The awarding of costs by a court is now governed by the provisions of ss. 168 and 169 of the Legal Services Regulation Act 2015. Section 169 provides as follows: -

*“169(1)– A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, the conduct of the proceedings by the parties, including -*

- (a) conduct before and during the proceedings,*
- (b) whether it was reasonable for a party to raise, pursue or contest one or more of the issues in the proceedings,*
- (c) the manner in which the parties conducted all or any part of their cases,*
- (d) whether a successful party exaggerated his or her claim,*
- (e) whether a party made a payment into court and the date of that payment,*
- (f) whether a party made an offer to settle the matter the subject of the proceedings, and if so, the date, terms and circumstances of that offer, and*
- (g) where the parties were invited by the court to settle the claim (whether by mediation or otherwise) and the court considers that one or more than one*

*of the parties was or were unreasonable in refusing to engage in the settlement discussions or in mediation.”*

5. It is clear from the foregoing statutory provision that the respondent, having been “*entirely successful*” in opposing the appeal, is entitled to an award of its costs against the appellants unless the appellants can identify any particular circumstance or bring themselves within any of the grounds in (a) to (g) above (though this is not an exhaustive list).

6. The written submissions filed by the appellants make no attempt to bring themselves within any of the “*exceptions*” in s. 169 or otherwise, so as to avoid the respondent being awarded its costs. Simply stating that an award of costs would be “unjust” comes nowhere close to establishing a reason why costs should not be awarded against them for their failed appeal.

**Stay: -**

7. The appellants seek a stay on the order for costs pending an application for leave to appeal to the Supreme Court. The principles which a court should apply on an application for a stay are well-settled. In a decision of this Court involving the appellants in other proceedings, *Ulster Bank DAC v McDonagh* [2020] IECA 322, Costello J. set out the principles: -

*“12. The principles the court should apply on an application for a stay in respect of an appeal are not in dispute. In C.C. v. Minister for Justice [2016] 2 I.R. 680 Clarke J. referred to the decision of the Supreme Court in Redmond v. Ireland [1992] 2 I.R. 362:-*

*‘McCarthy J. held that a heavy responsibility lay on the legal advisers of the party seeking a stay to assist the court on the reality of an appeal and further noted that appeals had previously been brought for tactical rather than bona fide reasons. As McCarthy J. held in Redmond v. Ireland [1992] 2 I.R. 362, the*

*fundamental consideration is that the courts maintain a balance so that justice is not denied to either party ... .*

*It is clear that the court must, therefore, form some view of the potential outcome of such an appeal.’”*

and: -

*“14. The decision of the Court of Appeal in Lobar Limited v. Gladney [2018] IECA 129 was a decision of Irvine J. on an application to extend the stay granted in the High Court. At paras. 15 and 16 of the judgment she held:-*

*‘15. The aforementioned authorities make clear that the court is bound to engage in what is often described as a two-stage test. First, the applicant must demonstrate that they have an arguable ground of appeal and is one which is bona fide rather than tactical.*

*16. If the court is not satisfied that the appellant has demonstrated an arguable ground of appeal, that is the end of the stay application...’”*

**8.** In their submissions seeking a stay, the appellants purport to attempt to introduce certain documents which they maintain *“will undoubtedly convince the Supreme Court to overturn the Court of Appeals decision”*. It is not permissible to seek to introduce further documentation (if that is what it is), without leave of the court, in the course of submissions on costs following delivery of the judgment by the court. This documentation cannot be considered as establishing an arguable ground of appeal.

**9.** The appellants are also critical of the judgment in that the *“Compromise Agreement”* was mentioned in the judgment under the heading *“Background”*. It is difficult to understand how this could be considered to be an arguable ground of appeal, let alone a ground of appeal at all.

**Conclusion: -**

**10.** By reason of the foregoing, the respondent is entitled to an order for its costs of the appeal, to include any reserved costs, to be adjudicated in default of agreement. The appellants' application for a stay on such order is refused.

**11.** As this judgment is being delivered electronically, Whelan and Noonan JJ. have authorised me to state that they agree with it.