



**UNAPPROVED  
THE COURT OF APPEAL  
CIVIL**

Neutral Citation Number [2021] IECA 60  
Appeal Number: 2019/381

**Faherty J.  
Ní Raifeartaigh J.  
Power J.**

**BETWEEN/**

**HEATHERRIDGE ASSOCIATES LIMITED (IN MEMBERS VOLUNTARY  
LIQUIDATION**

**PLAINTIFF/  
APPELLANT**

**- AND -**

**HUGH CURRAN, LATTERIDGE LIMITED, HARDING HOTEL LIMITED,  
YARTON LIMITED, THE COACH LIMITED AND APPLE GLADE LIMITED**

**DEFENDANTS/  
RESPONDENTS**

**Ruling of Faherty J. dated the 3<sup>rd</sup> day of March 2021**

1. On 27 July 2020 the Court delivered its judgement in the above matter dismissing the plaintiff's appeal from the Order of the High Court:

- Granting the plaintiff only €187,579.92 of an asserted claim in excess of €1.1m plus VAT;
- Awarding the plaintiff costs up to November 2018 (the date of the defendants' lodgement) but limited to 50% of such costs, to be taxed in default of agreement;

- Directing the plaintiff to pay the defendants' costs as and from 2 November 2018 (the date of the lodgement), to be taxed in default of agreement; and
  - Directing no order as to costs in respect of proceedings entitled *Heatherridge Associates Limited v. Cos. Act 2018/409 COS*.
2. The Court dismissed the plaintiff's appeal.
  3. The defendants had cross-appealed the award by the High Court to the plaintiff of 50% of its pre-lodgement costs. The Court also dismissed that appeal.
  4. At para. 101 of its judgment, the Court proposed an order dismissing the appeal and the cross-appeal and that costs would normally follow the event. The parties were advised of the Court's intention to so order fourteen days from the date of judgment unless either party applied within that time to request that the Court should otherwise order.
  5. Both parties duly filed submissions on costs.
  6. In their submissions, the defendants contend that they successfully resisted the appeal and are thus entitled to the costs of the appeal. With regard to the cross-appeal, they assert that no order as to costs should be made. They contend that the portion of their legal submissions dedicated to the issue of the cross-appeal was some 47 out of 5,682 words, with the balance of the written submissions being directed to resisting the plaintiff's assertion that the trial judge erred in awarding it only 50% of the costs of the proceedings up to 2 November 2018. It is submitted that the cross-appeal took up only minimal time at the hearing of the appeal, with no more than two minutes of court time dedicated to submissions on the issue. It is submitted that the cross-appeal did not increase the costs of the litigation to any material extent.
  7. In its written submissions on costs, the plaintiff asserts that its notice of appeal and subsequent submissions (written and oral) as made in the course of the appeal hearing raised significant issues of concern which had not been addressed by the High Court and

which, accordingly, fell to be determined by this Court by way of a more detailed analysis than had taken place in the High Court.

8. In particular, the plaintiff contends that the Court addressed and clarified the following issues which had not formed part of the written judgment of the High Court:

- The *quantum meruit* claim;
- The March 2010 Agreement in sufficient detail to ground the decision of the High Court;
- The Declaration of Solvency issue which had caused the trial judge to make certain remarks about how Mr Ennis' evidence should be treated. It is submitted that this Court conducted and arrived at a more nuanced analysis of the matter than was the case in the High Court.
- The pre-lodgment costs and the basis of the apportionment determined by the High Court;
- The post lodgment costs and whether there was any "special cause" for the trial judge to depart from Order 22, rule 6, RSC;
- The costs in the proceedings entitled *Hugh Curran v. Heatherridge Associates Limited (In Members Voluntary Liquidation)*-Record No. 2018/409 which had been reserved by Regan J. to the trial of the action in the within proceedings and in respect of which the trial judge had made no order.

9. All this, the plaintiff contends, should lead this Court to have regard to the principles enunciated by Clarke J. in *Veolia Water UK plc v. Fingal County Council (No.2)* [2007] 2 IR 81 and thus adopt a "nuanced" approach to the award of costs in respect of the appeal, in like manner to the Court's more "nuanced" approach to the issues between the parties than that adopted by the High Court. The plaintiff does not spell out what order it wishes

the Court to make regarding the appeal costs but I surmise that what is being contended for is no order as to costs.

**10.** With regard to the cross-appeal, the plaintiff submits that the Court conducted a similar detailed analysis in respect of the cross-appeal and concluded that there was no basis for the Court to interfere with the trial judge's ruling on the pre-lodgment costs. In those circumstances, the plaintiff asserts that it should be awarded the costs of the cross-appeal.

### **Discussion**

**11.** As regards the costs of the appeal, I am satisfied that the defendants have been "*entirely successful*" for the purposes of s.169(1) of the Legal Services Regulation Act 2015 ("the 2015 Act"). As provided by s.169(1), the successful party "*is entitled to an award of costs unless the court orders otherwise*". While there is provision in the s. 169(1) for the Court to "order otherwise" by having regard to the matters (including the conduct of the parties) set out in s. 169(1), I agree with the defendants' submission that the plaintiff has not identified any principled reason (whether by reference to conduct or otherwise) why the Court should depart from its stated intention to award the costs of the appeal to the defendants as the successful parties. In view of the findings made by this Court, which resulted in the dismissal of the plaintiff's appeal, the mere assertion by the plaintiff that this Court adopted a more "nuanced" approach to the matters in issue between the parties than the High Court cannot serve to displace the requirements of s.169 that the successful party "*is entitled to an award of costs unless the court orders otherwise*".

**12.** I am also satisfied that in circumstances where the cross-appeal occupied little time at the appeal hearing, and where the pursuit of the cross-appeal did not affect the overall costs of the litigation to any material extent, the appropriate order is no order as to costs in

relation to the cross-appeal. This approach is consistent with the guidelines laid down by Clarke J. (as he then was) in *Veolia Water UK Plc v. Fingal County Council*.

**13.** In their respective submissions, both parties address the request made by the Court at the conclusion of the appeal hearing that it be furnished with extracts from the transcripts of the High Court hearing dealing with issues concerning the Declaration of Solvency sworn by the directors of the plaintiff on 26 November 2010.

**14.** The defendants complain about the manner in which the plaintiff complied with the Court's request. They say that the plaintiff failed to engage with them with a view to the parties providing the Court with an agreed joint booklet. It is submitted that the correspondence exchanged between the parties on the issue generated a not insignificant amount of work for the plaintiffs after the hearing, resulting in the incurring of increased costs. On the other hand, the plaintiff contends that the parties were unable to agree on the submission of a single booklet and that its solicitors duly apprised the defendants of what the plaintiff proposed submitting to the Court. The plaintiff asserts that the defendants have mischaracterised the efforts of its solicitors in that regard.

**15.** Irrespective of the difference of opinion that arises between the parties as to how the Court's request for transcripts relating to the Declaration of Solvency issue was dealt with, I am not satisfied that anything put forward by the defendants warrants the Court awarding them post-appeal costs.

**16.** The order of the Court is that the defendants are entitled to the costs of the appeal, with no order for costs in relation to the cross-appeal.

**17.** Ní Raifeartaigh J. and Power J. have confirmed their agreement with this ruling.