



THE COURT OF APPEAL

Record Number: 2023/33

High Court Record Number: 2006/2002P

Noonan J.

Neutral Citation Number [2023] IECA 130

Haughton J.

Allen J.

BETWEEN/

KEVIN TRACEY T/A ENGINEERING DESIGN AND MANAGEMENT

PLAINTIFF/APPELLANT

-AND-

**MICHAEL BURTON AND ANNE O'CONNOR AS PERSONAL
REPRESENTATIVES OF THE LATE CHARLES O'CONNOR AND
BURTON & O'CONNOR LIMITED AND FPQ CONSULTING ENGINEERS**

DEFENDANTS/RESPONDENTS

COSTS RULING of the Court delivered on the 25th day of May, 2023

1. The principal judgment of the Court ([2023] IECA 106) dismissed the appeal of the plaintiff. At paragraph 29 of the judgment, the Court expressed the provisional view that as the defendants had been entirely successful, they should be entitled to the costs of the appeal. The plaintiff was given liberty to deliver a written submission if he wished to contend for an alternative form of order and he has now done so. The defendants have delivered submissions in response.

2. The plaintiff in his written submissions seeks to reagitate the merits of the appeal, makes complaints of bias against a member of the panel and seeks to have the judgment set aside. None of these matters have any relevance to the question of costs, which is the only question with which the Court is now concerned. The only reference to costs in the plaintiff's submissions is a claim that he should not be penalised with costs for seeking his constitutional rights to a fair trial. This statement, without more, is of no assistance to the Court in relation to the proper allocation of costs in this appeal.

3. In their submissions, the defendants contend that the provisional view of the court is correct and that they have been entirely successful within the meaning of s. 169(1) of the Legal Services Regulation Act, 2015. They submit the plaintiff has identified no factor which justifies a departure from the default position identified in the foregoing section. They also point to the fact that the plaintiff persisted in bringing this appeal notwithstanding first, clear jurisprudence indicating that it was likely to be unstateable, which was drawn to the plaintiff's attention in advance of the hearing, and secondly, that the plaintiff persisted with the appeal despite the fact that the case management order under appeal was modified by the trial judge in advance of the appeal hearing, thereby rendering the appeal largely moot.

4. The Court considers the defendants' submissions in this regard to be well-founded and that there is no circumstance arising in this case which could justify a departure from the normal rule.

5. Accordingly, the defendants are entitled to the costs of this appeal.