



**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

Supreme Court Record No: 2022/64

**Charleton J.
O'Malley J.
Woulfe J.
Hogan J.
Murray J.**

Between

EUGENE McCOOL (SUBSTITUTED AS PLAINTIFF FOR McCOOL CONTROLS

AND ENGINEERING LIMITED BY ORDER OF THE MASTER OF 8TH

NOVEMBER, 2017)

Plaintiff/Appellant

AND

HONEYWELL CONTROL SYSTEMS LIMITED

Defendant/Respondent

RULING of the Court as to Costs delivered on the 22nd day of April, 2024

1. This is the ruling of the Court in relation to costs arising from the substantive appeal judgments delivered by this Court on the 27th February 2024. The Court (Charleton J. dissenting) allowed the appellant's appeal and held that an assignee of a company's interest in litigation may in principle be permitted to pursue the action by being substituted as plaintiff in lieu of that company.
2. On the same date the Court directed that, if there was no agreement on the terms of final costs orders to be made, the parties should file written submissions setting out their

respective positions. The appellant subsequently filed written submissions dated the 11th March, 2024, and the respondent replied by written submissions dated the 12th March, 2024.

3. In his written submissions the appellant raised two matters regarding costs. Firstly, he submitted that he is entitled to an order for the costs of the appeal before this Court, pursuant to the general rule that costs should follow the event. The respondent accepts in his submissions that the appellant is entitled to those costs.
4. Secondly, the appellant submitted that the costs orders which the respondent obtained against him in the High Court and the Court of Appeal should be varied, such that there be no order as to costs in the courts below.
5. The appellant accepts that the proceedings in the lower courts involved consideration of other issues which did not ultimately form part of the appeal before this Court. However, it is submitted that the central issue throughout the substitution application was that ultimately determined in favour of the appellant on appeal, *i.e.* the decision of this Court goes directly to the key finding of the High Court, as subsequently upheld in the Court of Appeal, that the assignment at issue was invalid as it was a device designed to circumvent the rule in *Battle*.
6. The appellant refers to the costs ruling of this Court in *UCC v. ESB* [2021] IESC 47 (“*UCC*”), where the Court considered the question of costs before the Court below, where the plaintiff/appellant had succeeded on appeal before the Supreme Court. The Court held as follows (at para. 6.1):

“The appropriate way to approach the costs in respect of the hearing before the Court of Appeal is to consider what would have been the appropriate order for that Court to have made in the event that that Court had reached the same conclusions as this Court has done...”.

7. The appellant contends that, applying the same approach to the present case, it would have been entirely appropriate for the lower courts, having “reached the same conclusions” as this Court, to make no order as to costs in the substitution application, for the following reasons:
- (i) the costs orders made in the High Court and Court of Appeal were predicated, to a significant degree, on the finding that the appellant had improperly sought to utilise assignment and substitution as a device to circumvent the rule in *Battle*;
 - (ii) the appellant would arguably have been “partly successful” in defeating a key argument of the respondent, to the effect that a future assignment might still be valid if, *inter alia*, it did not fall foul of the law on champerty; and
 - (iii) the appellant was acting at all times before the lower courts as a litigant in person.
8. The respondent maintains that the costs orders which it obtained in the courts below must remain undisturbed, as both substitution applications in the courts below were unmeritorious. It is said to be indisputable that the respondent was, and remains following the appeal to this Court, the successful party in the High Court and the Court of Appeal. The appellant’s substitution applications were dismissed and remain dismissed, on the basis that the two purported assignments were found to be invalid, and these findings stand.
9. It is submitted by the respondent that it is a singular feature of this appeal that the effect of the narrow basis on which leave was granted was that, irrespective of the result, the substantive outcome in the Court of Appeal would remain undisturbed, and it is contended that each of the four judgments delivered in this Court acknowledge this.

- 10.** The respondent notes that the appellant has contended in correspondence that there should be no order as to costs in the courts below because the “central issue on the substitution application” was “whether an assignment of the plaintiff company’s claim was an illegitimate device to circumvent the rule in *Battle*”. However, the respondent submits, the appellant sought to be substituted on foot of two assignments that were invalid *ab initio*. Accordingly, the appellant’s two substitution applications were both doomed from the outset, and they should never have been brought, and nothing in the judgment of this Court changes that fact. It is submitted that it follows that the respondent must be entitled to the costs of defending these two applications in the courts below.
- 11.** The respondent states that three further points merit mention. First, the fact that criticisms of the appellant’s conduct in this litigation were regarded as significant by the courts below on the question of costs, and these matters were not considered by this Court. Secondly, that as Simons J. decided the second substitution application on the basis of issue estoppel/*res judicata* and found the application to be wholly without merit, it would be unjust to deprive them of their costs order before Simons J.. Thirdly, it is suggested that the fact that the appellant was represented by solicitor and counsel before this Court, under the Court’s lay litigant representation scheme, ought not to be a consideration when determining the appropriate costs order.
- 12.** The Court’s ruling on the two costs matters arising is as follows.
- 13.** Firstly, the appellant was successful in the appeal to this Court, on the narrow ground on which leave to appeal was granted, and the respondent accepts that he is entitled to an order for the costs of the appeal. The Court will make that order such costs to be adjudicated in default of agreement.

- 14.** Secondly, the Court does not consider it appropriate to vary any of the costs orders made in the courts below. The appellant's two substitution applications were dismissed for a number of reasons, over and above the issue of whether the assignment was a device to circumvent the rule in *Battle*. The findings of the courts below that the two purported assignments were invalid, on separate grounds, remain undisturbed.
- 15.** The appellant's application to vary the costs orders made in the High Court and the Court of Appeal is therefore refused.