APPROVED
NO REDACTION REQUIRED

THE COURT OF APPEAL

Record Number: 2025/26
Neutral Citation Number [2026] IECA 153

Faherty J.
Hyland J.
Collins J.

BETWEEN/

THOMAS FARRELL AND THOMAS FARRELL AND SONS (GARAGES) LIMITED

PLAINTIFFS/ APPELLANT

- AND -

THE REVENUE COMMISSIONERS, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS/ RESPONDENT

Ruling (Costs) of Ms. Justice Faherty dated the 30th day of July 2026

1. The substantive judgment in this appeal was delivered on 25 February 2026 ([2026] IECA 20). The first respondent (*"Revenue"*) was entirely successful in resisting Mr. Thomas Farrell's (*"the appellant"*) appeal against the judgment ([2024] IEHC 553) of the High Court and the consequent High Court Order dated 31 October 2024 refusing the relief sought in the plaintiffs' notice of motion. That notice of motion issued on 1 August 2023, and it sought *"an order of direction and guidance from the High Court that this matter is not statute barred and may proceed to trial"*.

2. The *"matter"* referred to in the motion were the within plenary proceedings instituted by the appellant and Thomas Farrell and Sons (Garages) Limited seeking, *inter alia*, an order of rescission setting aside two settlement agreements entered into between the plaintiffs and Revenue on or about 9 October 1995 following the instigation in 1994 of a tax audit by Revenue. The plaintiffs also sought the return and restitution of sums of IR £136,533 and IR £364,812 paid on foot of the settlement agreements, together with interest, damages for negligence, negligent misstatement, breach of duty, misrepresentation, breach of contract and, if necessary, a declaration that s. 865 of the Taxes Consolidation Act 1997, as amended, was invalid and repugnant to the Constitution.

3. For the reasons set out in the substantive judgment, this Court dismissed the appeal. In its judgment, the Court indicated that Revenue was presumptively entitled to its costs in respect of the appeal. The substantive judgment may be read in conjunction with the within ruling on costs.

4. The statutory and procedural position on costs is governed by sections 168 and 169(1) of the Legal Services Regulation Act 2015 (*"the 2015 Act"*) and Order 99, rr. 2 and 3 of the Rules of the Superior Courts 1986 (as amended).

5. The default position is that *"costs follow the event"* where a party has been *"entirely successful"* unless the court orders otherwise *"having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties"*, including matters set out at (a) to (g) in section 169(1) of the 2015 Act. The burden rests with the unsuccessful party to satisfy the court that a valid legal basis exists which warrants deviating from the presumptive position as to entitlement to costs as provided under the legislation.

6. This Court (Murray J.) considered the statutory provisions in *Chubb European Group SE v Health Insurance Authority* [2020] IECA 183. At para. 19 of his judgment the following general principles were set out: -

> *"(a) The general discretion of the Court in connection with the ordering of costs is preserved (s.168(1)(a) and O.99, r.2(1)).*
>
> *(b) In considering the awarding of costs of any action, the Court should 'have regard to' the provisions of s.169(1) [(O.99, r.3(1))].*
>
> *(c) In a case where the party seeking costs has been 'entirely successful in those proceedings', the party so succeeding 'is entitled' to an award of costs against the unsuccessful party unless the court orders otherwise (s.169(1)).*
>
> *(d) In determining whether to 'order otherwise' the court should have regard to the 'nature and circumstances of the case' and 'the conduct of the proceedings by the parties' (s.169(1)).*
>
> *(e) Further, the matters to which the court shall have regard in deciding whether to so order otherwise include the conduct of the parties before and during the proceedings, and whether it was reasonable for a party to raise, pursue or contest one or more issues (s. 169(1)(a) and (b)).*
>
> *(f) The Court, in the exercise of its discretion may also make an order that where a party is 'partially successful' in the proceedings, it should recover costs relating to the successful element or elements of the proceedings (s.168(2)(d)).*

(g) Even where a party has not been 'entirely successful' the court should still have regard to the matters referred to in s.169(1)(a)-(g) when deciding whether to award costs (O.99, r.3(1)).

(h) In the exercise of its discretion, the Court may order the payment of a portion of a party's costs, or costs from or until a specified date (s.168(2)(a))."

The argument

7. Whilst he acknowledges, at para. 3 of his written submissions, that as Revenue was the successful party in the appeal, *"it would seem to follow that it should be awarded its costs"*, the appellant nevertheless relies upon s. 169(1)(a) -(c) of the 2015 Act in aid of his submission that an *"alteration"* should be made in respect of the proposed costs order by way of a 30% reduction in the costs payable by the appellant to the respondent. Section 169(1)(a)-(c) embrace: (a) conduct before and during the proceedings, (b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings and (c) the manner in which the parties conducted all or any part of their cases.

8. In reliance on those provisions, what in fact the appellant appears to contend for is either a 30% or 50% (depending on how one reads his submissions) reduction in the costs otherwise recoverable by Revenue, said by the appellant to be merited by reason of the following:

- Alleged failure by Revenue to furnish a file (said by the appellant to merit a 15% reduction).
- Revenue's mischaracterisation of the Notice of Appeal as lacking a ground based on *"fraudulent concealment"* (said to merit a 10% reduction).

- Revenue's failure to ventilate the question of whether the proceedings were statute-barred by calling for a trial of a preliminary issue, thereby leaving it to the appellant to do so, all of which, the appellant says, calls for a reduction of a 10% (para. 23 of the appellant's submissions) and a 15% reduction (para. 24 of the appellant's submissions) on the basis of this Court having noted Revenue's *"failure"* to agree a statement of facts.

Revenue's position is that as the appellant was wholly unsuccessful in his appeal and it was entirely successful costs fall to be awarded in its favour in accordance with s. 169(1) of the 2015 Act.

<u>Discussion and Decision</u>

Alleged failure to furnish a file

9. At paras. 14 and 16 of his submissions, the appellant repeats a claim he made at the appeal hearing (when addressing delay for the purposes of the Statute of Limitations, 1957) that it was only in 2018 that Revenue furnished him with documents he had sought in the period 1995-2001. It is this *"curious behaviour"* on the part of Revenue that the appellant says warrants a 15% reduction in the proposed costs order against him.

10. The appellant's argument in this regard is entirely misconceived. As Revenue points out in its submissions, this Court, at paras. 89-92 of the substantive judgment, explicitly rejected the argument that it was only in 2018 that the appellant became aware of the true position regarding the accounts in question.

The Notice of Appeal issue

11. The appellant seeks a 10% reduction in the proposed costs order on the basis that Revenue wrongly contended at the appeal hearing that the Notice of Appeal did not contain a ground based on *"fraudulent concealment"* such that that issue was therefore not properly part of the appeal. He points out that the Court was satisfied that he had in fact appealed against the High Court's findings on fraudulent concealment.

12. Whilst it is the case that the Court (at para. 53 of the substantive judgment) determined that the Notice of Appeal *"just about"* encapsulated the appellant's *"fraudulent concealment"* argument, this is not something from which the appellant can draw any comfort for costs purposes, given what is said at paras. 105-106 of the substantive judgment, where the Court emphatically rejected his contention of fraudulent concealment on the part of Revenue. More pertinently, for present purposes, it cannot be said that Revenue's preliminary observation that the appeal grounds did not encompass the fraudulent concealment issue had any great bearing on the length of the appeal hearing, given that the hearing was largely concerned with the substance of the appellant's argument rather than any pleading point raised by Revenue. As noted in *Meta Platforms Ireland Ltd v. Data Protection Commission* [2025] IECA 97, even where a party does not prevail on a discrete issue, this does not disturb the conclusion that a party has been entirely successful. This is apposite here not only in relation to Revenue's unsuccessful contention but also in circumstances where the appellant did not prevail on any issue of significance. All such issues were resolved against the appellant and in favour of Revenue.

The failure on the part of Revenue to unilaterally seek to have the question of whether the proceedings were statute-barred tried as a preliminary issue

13. It is common case that it was the appellant who, by notice of motion dated 1 August 2023, first ventilated the question of whether the proceedings were statute-barred. This in turn led to Revenue issuing its own motion which sought orders striking out or staying the proceedings on grounds, *inter alia*, that they were statute-barred. At para. 23 of his submissions on costs, the appellant contends that Revenue should be subjected to a 10% reduction in any costs in its favour considering its *"curious behaviour"* in failing to unilaterally have the question of whether the proceedings were statute-barred determined by way of trial of a preliminary issue. At para. 24 of his submissions, he contends that this Court, at para. 82 of the substantive judgment, *"noted the respondents' failure to seek to establish an agreed statement of facts"* which the appellant says warrants a 15% reduction in any order for costs in favour of Revenue.

14. As regards the latter submission, the first observation to be made is that the Court did not note any *"failure"* on the part of Revenue to seek to establish an agreed statement of facts. It simply opined that in the absence of an agreed statement of facts, the High Court judge was required to approach the matter through the prism of the pleaded and particularised case, which is what the judge did, and that Revenue did not demur that this was what had been required. Contrary to what is said at para. 26 of the appellant's costs submissions, Revenue did not, therefore, *"[fail] in this aspect of their defence to the appeal"*.

15. As to the appellant's reliance on the fact that Revenue had not initiated the trial of the preliminary issue of whether the proceedings were statute-barred, there is absolutely no merit in the argument that this has a bearing on costs. The appellant's litigation strategy in raising the issue was entirely a matter for himself. Furthermore, as Revenue correctly points out, the fact that it was the appellant who initiated the trial of the preliminary issue does not reflect negatively on Revenue. Nor did Revenue's failure to be first out of the blocks on the issue add to the length of the appeal hearing or otherwise derail that hearing.

16. Regarding the absence of an agreed statement of facts, as Revenue also points out, as the moving party on the issue of the Statute, it was open to the appellant to submit a draft statement of facts, but he did not do so. In any event, he suffered no prejudice in this regard, as his motion was determined on the basis of the facts pleaded and particularised by him.

<u>Summary</u>

17. For the reasons set out above, there is no basis upon which it can be said that Revenue is not entitled to its costs as the party who has been *"entirely successful"* on the appeal. Contrary to the appellant's submissions, none of the matters set out at s. 169(1)(a) - (c) of the 2015 Act is engaged here. Nor is there any basis for the Court to invoke the jurisdiction envisaged in *Veolia Water UK plc v. Fingal County Council* [2006] IEHC 137: there was no issue improperly or unnecessarily raised by Revenue with which a portion of the appeal hearing was unnecessarily taken up.

18. In short, the appellant has not advanced any reasonable basis for the Court to depart from its indicative order. Accordingly, the Court awards Revenue the costs of the appeal, including the costs of the submissions on the costs, to be adjudicated in default of agreement.

19. As this ruling is being delivered electronically, Hyland J. and Collins J. have indicated their agreement therewith and the order I have proposed.