



**THE COURT OF APPEAL
CIVIL**

**Court of Appeal Record Nos. 2019/491, 2020/174 & 2020/175
Neutral Citation No. [2022] IECA 121**

**UNAPPROVED
NO REDACTION NEEDED**

**Murray J.
Collins J.
Pilkington J.**

BETWEEN

ULSTER BANK IRELAND LIMITED, PAUL MCCANN

AND PATRICK DILLON

PLAINTIFFS/RESPONDENTS

AND

BRIAN MCDONAGH, KENNETH MCDONAGH

AND MAURICE MCDONAGH

DEFENDANTS/APPELLANTS

RULING OF THE COURT

(costs)

1. At para. 246 of their joint judgment of 6 April 2022 ([2022] IECA 87), Murray and Collins JJ. expressed the provisional view that the unsuccessful appellants should bear the respondents' costs of the proceedings in this court and the High Court. Submissions were invited. Mr. Brian McDonagh delivered submissions on his own behalf and, purportedly, on behalf also of Mr. Kenneth McDonagh and Mr. Maurice McDonagh. The court sees no basis on which one personal litigant (as all three defendants now are) can represent the others.

2. In any event it matters not insofar as this application is concerned, as Mr. McDonagh has identified no plausible basis on which any of the defendants should be released from the consequences that would otherwise follow from being entirely unsuccessful in their defence of these proceedings and in this appeal. The points he makes, and our conclusion in relation to each, are as follows:
 - (i) *'None of the McDonagh Brothers accept that there are any financial liabilities due and owing to the Plaintiffs by the Defendants in the within proceedings'*. It is unclear whether this is presented as a general observation or a ground for resisting costs. In either event, the statement is irrelevant to the defendants' liability for costs having regard to the conclusions reached by the court in its principal judgment.

 - (ii) *'There were substantive errors made within the Judgement delivered on 6th April 2022 which will need consideration by a Higher Court than the Court of Appeal'*. The alleged errors in the judgment (which are not identified) do not afford any basis for resisting an order for costs. They are (as the quoted

comment comprehends) a matter for the Supreme Court (should it grant leave to appeal).

(iii) *‘The Civil Liabilities [sic] Act issues ... related to matters that were of public interest and of National Importance’*. In this case the fact that *some* of the issues in this appeal may be of significance in other proceedings does not afford a basis for refusing to order costs against the defendants. The issues around the Civil Liability Act 1961 were not the only issues in the case, and they were agitated by the defendants in the protection of their own financial interests and not in the public interest. They presented an issue of statutory construction, not of constitutional law or European law and the defendants comprehensively lost each and every aspect of the asserted application of that Statute.

3. In these circumstances, the court is not persuaded that any basis has been identified for departing from the norm envisaged by the Legal Services Regulation Act 2015, and an order will be made in accordance with para. 246 of the substantive judgment of Murray and Collins JJ..