

**THE HIGH COURT  
COMMERCIAL**

**2019/7845P**

**BETWEEN**

**DOWNES AND HOWARD LIMITED, WAYMILL LIMITED, LAPOVO LIMITED, NIALL  
HOWARD, ROBERT HOWARD AND PJ HOWARD**

**PLAINTIFFS**

**AND**

**EVERYDAY FINANCE DESIGNATED ACTIVITY COMPANY**

**DEFENDANT**

**Costs and Directions following judgment delivered on the 19th day of June, 2020 by  
Quinn J.**

1. The plaintiffs applied for an injunction to restrain the appointment of receivers over a portfolio of properties on which the defendant holds mortgages and charges, and for an injunction directing the defendant to remove receivers already appointed.
2. In my judgment delivered on 19 June, 2020, I determined that on the evidence before the court on the interlocutory application, the plaintiffs had not established a fair *bona fide* question to be tried as to the existence of a certain amended settlement agreement relied on by them to ground their proceedings and I refused the injunction.
3. Following delivery of the judgment, the parties were invited to make submissions as to costs and as to the form of order.

**In relation to costs**

4. A submission was received from the plaintiffs only.
5. Order 63A, r. 30 provides as follows: -

*"Upon the determination of any interlocutory application by a Judge, the Judge shall make an award of costs save where it is not possible justly to adjudicate upon liability for costs on the basis of the interlocutory application."*

6. In their submissions as to costs, the plaintiffs submitted that the court should exercise its discretion by reserving the costs of the application to the trial judge at the hearing of the action.
7. The plaintiffs referred the court to relevant case law concerning the costs of a failed interlocutory injunction application including *Haughey v Synnott* [2012] IEHC 403, *Allied Irish Banks Plc v. Diamond* [2012] 3 IR 549 and *Glaxo Group Ltd v Rowex Ltd* [2015] IEHC 467, [2015] 1 IR 185.
8. It is clear from these cases that, notwithstanding Order 63A, rule 30, I have discretion to award, refuse or reserve costs. In *Allied Irish Banks Plc v. Diamond* (op. cit.), the court identified that in a case where the result of the injunction application turns on issues relating to the merits of the proceedings, as distinct from adequacy of damages or balance of convenience, there is a risk of injustice in determining costs at the interlocutory stage. My decision on the interlocutory injunction was based principally on a

finding that the plaintiffs had not established a fair *bona fide* issue to be tried, which clearly relates to the merits of the action. No application has been made by the defendant in respect of the costs of the interlocutory application. Accordingly, I shall reserve the costs.

**Directions**

9. On the interlocutory application, leave was sought to amend the plenary summons and the statement of claim to reflect the fact of the appointment of the receiver. The defendant made no objection to these amendments and, accordingly, an order will be made granting leave to deliver an amended summons and statement of claim in accordance with the form exhibited on this application.
10. In their submissions, the plaintiffs have suggested that they be given a period of three days from the date of perfection of the order of this Court to file and serve their amended plenary summons and amended statement of claim. They have submitted that the defendant be allowed a period of two weeks from the date of delivery of the amended pleadings to deliver its amended defence.
11. I shall make an order in these terms and the matter will be listed for further directions in the Commercial list on Monday, 12 October, 2020.

28 July, 2020.