

THE HIGH COURT

[2018/221 P]

BETWEEN

VODAFONE IRELAND LIMITED

PLAINTIFF

AND

RIGNEY DOLPHIN LIMITED

DEFENDANT

Judgment of Mr. Justice Mark Sanfey delivered on the 18th day of December, 2020.

1. On 30th October, 2020, I gave judgment in the above matter in relation to a stay sought by the defendant on the proceedings until determination of other proceedings entitled "*Richard Wilson v. Vodafone Ireland Ltd*, High Court Record No. 2013/5473P" ('The Wilson proceedings'). The citation for that judgment is [2020] IEHC 556.
2. The plaintiff opposed the application. However, in all the circumstances, I considered it appropriate to make the order sought for the reasons set out in my judgment. I also ordered that the defendant should deliver its defence which was to be delivered within three weeks of my ruling. With that exception, the stay was to apply to any further conduct of the proceedings until after the determination, either by this court or an appeal, of the *Wilson* proceedings, or until further order of the court.
3. I invited brief written submissions within seven days of the judgment in relation to any issue arising out of the orders I had indicated in the judgment I proposed to make, including the question of costs. The parties duly made written submissions, and this ruling is directed towards the final orders to be made, and in particular the issue of costs.
4. The defendant seeks its costs on the basis that it was successful in the application, and that the court's rationale for the judgment followed the grounds upon which the defendant urged the court to accede to the application.
5. The defendant submits that there are no exceptional circumstances which would justify the departure from the requirement of O.99 that, in the normal course, costs should follow the event.
6. The defendant says that it wrote to the plaintiff's solicitors indicating its intention to apply to court to have the proceedings stayed. The plaintiff's solicitors did not reply to this, but by letter of 25th November, 2019, sought the defendant's consent to have the proceedings listed together with the *Wilson* proceedings. Ultimately, by letter of 18th February, 2020, the defendant's solicitors set out their position "as advanced in the application for a stay".
7. The plaintiff argues that the costs should be reserved to the trial of the action. The written submissions of the plaintiff recite the provisions of s.168(1) and s. 169(1) of the Legal Services Regulation Act, 2015, and O.99 r.2 of the Rules of the Superior Courts as amended by S.I. 584 of 2019, which requires this court to have regard to the matters set out in s.169(1) "...in considering the awarding of the costs of any action or step in any

proceedings". The plaintiff then cites some of the dicta from cases addressing the exercise of the court's discretion regarding costs.

8. The plaintiff argues that the defendant was not entirely successful in that the defendant sought an order staying the proceedings forthwith, whereas I ordered that the defendant should deliver its defence, after which the stay would apply. Also, the plaintiff submits that the proceedings will eventually require determination and will not become moot, so that the trial judge when ultimately determining the proceedings would be in a better position to decide on the costs of the present application.
9. The defendant applied for a stay of the present proceedings pending the determination of the *Wilson* proceedings. In doing so, the defendant was asking the court to engage its inherent jurisdiction which, as O.63C (4) of the Rules of the Superior Courts sets out, is exercised "*...as appears convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings*".
10. It should be emphasised that the discretion to stay is entirely a matter for the court. Even if the parties had agreed that a stay were appropriate, it would still have been necessary to apply to court to request the exercise of the court's discretion to stay the proceedings in accordance with the wishes of the parties. There is no guarantee that a court would always agree that the expressed wish of the parties was appropriate.
11. The request of the defendant in correspondence for the plaintiff to agree to a stay was not akin to requesting compliance with some procedural step which the other party is bound to implement, such as delivery of a defence or replies to particulars. An application by the defendant for a stay on the plaintiff's proceedings was always going to be necessary, and in my view the plaintiff was entitled to come before the court and set out the reasons why it considered that its normal right to progress its proceedings in accordance with the Rules of the Superior Courts should not be impeded, albeit that its arguments in this regard were ultimately unsuccessful. I do not consider that the defendant was "*entirely successful*" in the sense of procuring an order to enforce an entitlement in the proceedings. Both sides appeared before me and expressed their views as to how I should exercise my discretion as to the management of the case. I preferred the view of the defendant. However, I do not consider that the plaintiff should be penalised in circumstances where it is not suggested that it is presently in default of any pleadings in the matter, and merely wants to proceed with its case.
12. In the circumstances, I will make an order reserving the costs of the application to the trial judge. Other than the order indicated in my previous judgment in relation to the substantive application, it does not appear to me that any further order is necessary at the moment.