THE HIGH COURT

[2024] IEHC 466

[Record No. 2019/107COS]

IN THE MATTER OF CLADDAGH JEWELLERS LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2014

AND

IN THE MATTER OF SECTION 212 OF THE COMPANIES 2014

BETWEEN

ANDREW FRIED

APPLICANT

AND

PHILIP FRIED

RESPONDENT

AND

FELICITY FRIED

NOTICE PARTY

JUDGMENT of Mr Justice Kennedy delivered on the 24th day of July 2024 .

1. My 12 June 2024 judgment ("the Judgment") dealt with 3 applications issued by the Respondent in these proceedings; one seeking injunctive relief against the Notice Party and 2 seeking the Defendants' attachment and committal (the Committal Motions). I granted injunctive relief and refused the Committal Motions. This decision should be read with the

Judgment. It uses the same definitions and concerns the cost of those motions and of the related application for injunctive relief against the Applicant, which was granted on consent by Heslin J. on 6 September 2023.

2. In short, the Respondent sought to enforce provisions in a settlement agreement and consent order which were designed to ensure the agreed transfer of a home (the Villa) for the benefit of the Original Parties' elderly parents by a family company (the Spanish Company) in which it was vested. Although the Agreement stipulated that the Villa would be transferred, the transfer has still not happened nearly 42 months later. The issues canvassed on the applications included: (a) the extent to which the Notice Party was bound by the Settlement; (b) the parties' obligations and the consequences of any breach; (c) whether either Defendant breached such obligations (which included an assessment of any constraints to which they may be subject); and (d) whether the criteria for injunctive relief or for Contempt Applications were met. The Respondent claimed that the Defendants (and their representatives) directly or indirectly breached the Agreement and Order by, *inter alia*: (i) failing to ensure that the transfer was effected; (ii) causing the water supply to the property to be (and to remain) disconnected; (iii) threatening or seeking to evict the Parents; and (iv) taking other steps in relation to the Spanish Company to frustrate the performance of the Agreement. Various developments had occurred with the Spanish Company since the Settlement which, according to the Respondent, were designed to frustrate the Defendants' commitments under the Agreement. These included the commencement of eviction proceedings against the Parents in November 2021 (under cover of an eviction notice signed by the Applicant as its administrator, notwithstanding his obligations under Clause 28 of the Agreement) and controversial changes of the Spanish Company's administrator. The Defendants denied the Respondent's factual and legal claims.

3. The Judgment largely upheld the Respondent's interpretation of the contractual provisions and also rejected the Notice Party's submissions that she had not authorised and was

not bound by the relevant provisions. It determined that the Respondent was entitled to injunctive relief against the Notice Party in terms similar to those which Heslin J. previously granted (on consent) in respect of the Applicant. However, both Committal Motions were dismissed, because of an issue with regard to the service of the penal notice on the Notice Party and also because the provisions apparently breached by the Defendants formed part of the settlement agreement – the Defendants were not in breach of the Order which concluded the proceedings (which annexed the Agreement and repeated some, but not all of its terms, while providing for its enforcement if necessary). The Respondent was entitled to seek enforcement orders to enforce the Agreement and a future breach of any such enforcement orders could found a future contempt application. However, a breach of the Agreement's provisions was not sufficient to ground immediate committal applications because no Court order had been breached at that point.

4. The Judgment also noted concerns as to aspects of the evidence and, also, that some issues could only be resolved with cross examination. The latter points included whether the Defendants had sought to frustrate the Agreement and whether they were truly unable to comply with the Agreement. However, the Judgment concluded that there was a strong *prima facie* case that the intention or effect of the Defendants' acts or omissions - particularly the Applicant's – was to frustrate the commitment to transfer the Villa and that the Defendants were in breach of the provisions. The Judgment also noted the strong grounds for doubting the *bona fides* of the Applicant's transfer of shares to his children months before the Settlement (which the Defendants relied upon as preventing them from complying with the settlement agreement).

Legal Principles

5. The parties largely agreed as to the legal principles. The default position under Order 99 of the Rules of the Superior Courts ("RSC") and sections 168 and 169 of the Legal Services Regulation Act 2015 ("the LSRA") is that the winner is generally entitled to their costs.

6. Sections 168 and 169 of the LRSA codify the Court's statutory jurisdiction to award costs. Section 168 deals with such awards while proceedings are ongoing:

> "*(1) Subject to the provisions of this Part, a court may… at any stage in, and from time to time during, those proceedings—*
>
> > *(a) order that a party to the proceedings pay the costs of or incidental to the proceedings of one or more other parties to the proceedings…*
>
> *(2) Without prejudice to subsection (1), the order may include an order that a party shall pay—*
>
> > *(a) a portion of another party's costs,*
> >
> > *(b) costs from or until a specified date, including a date before the proceedings were commenced,*
> >
> > *(c) costs relating to one or more particular steps in the proceedings,*
> >
> > *(d) where a party is partially successful in the proceedings, costs relating to the successful element or elements of the proceedings, and*
> >
> > *(e) interest on costs from or until a specified date, including a date before the judgment.*"

7. Section 169 provides that:

> "*(1) A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, 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—*
>
> > *(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,*
> >
> > *(c) the manner in which the parties conducted all or any part of their cases….*"

8. Order 99, rule 2(3) states:

"*The … Court, upon determining any interlocutory application, 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*."

9. Order 99, rule 3(1) further provides:

"*The High Court, in considering the awarding of the costs of any action or step in any proceedings…shall have regard to the matters set out in section 169(1) of the 2015 Act, where applicable*."

10. In *Daly v Ardstone Capital Limited* [2020] IEHC 345, Murray J. noted the principles:

"*14. Section 169, in introducing a definitive expression into primary legislation of the rule that costs should be awarded to the successful party, has limited that principle to both the costs of civil proceedings as a whole (as opposed to costs of a step in such proceedings and thus of interlocutory applications, McFadden v Muckross Hotels Ltd [2020] IECA 110 at para. 30) and to a party who has been 'entirely successful' in such proceedings (a phrase the effect of which may not in every case be entirely clear). However, in relation to the application with which I am concerned here [a discovery application], the combined effect of the new O.99 Rules 2(1) and (3) (replicating respectively the old Order 99 Rules 1(1) and 1(4A)), and of s.168(2)(c) and (d) and s.169(1)(a) and (b) (to which Order 99 Rule 3(1) requires regard to be had in determining the costs of any step in proceedings) to achieve, the same essential consequence as the pre-2015 Act regime.*

15. In particular, these provisions combine to present the following principles insofar as costs of an interlocutory application are concerned:

> *(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) The Court should, unless it cannot justly do so, make an order for costs upon the disposition of an interlocutory application (O.99 Rule 2(3)).*
>
> *(c) In so doing, it should 'have regard to' the provisions of s.169(1) (O.99 Rule 3(1)):*
>
> *(d) Therefore – at least in a case where the party seeking costs has been 'entirely successful' – it should lean towards ordering costs to follow the event (s.169(1)):*

> *(e) In determining whether to order that costs follow the event the Court should have regard to the non-exhaustive list of matters specified in s.169(1)(a)–(g) (O.99 R.3(1)):*
>
> *(f) Those matters 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)).*"

11. In *Higgins v Irish Aviation Authority* [2020] IECA 277 ("*Higgins*"), Murray J. discussed the determination as to whether a party has been "*entirely*" or "*partially successful*", observing at paras. 9-10 that sections 168 and 169, when viewed in the light of O. 99, r. 3(1), required the Court to address four questions:

> "*9…*
>
> *(a) Has either party … been 'entirely successful' … as that phrase is used in s.169(1)?*
>
> *(b) If so, is there any reason why, having regard to the matters specified in s.169(1)(a) – (g), all of the costs should not be ordered in favour of that party?*
>
> *(c) If neither party has been 'entirely successful' have one or more parties been 'partially successful' within the meaning of s.168(2)?*
>
> *(d) If one or more parties have been 'partially successful' and having regard to the factors outlined in s.169(1)(a)-(g) should some of the costs be ordered in favour of the party or parties that were 'partially successful' and, if so, what should those costs be?*
>
> *10. In answering these questions, it is particularly important to bear in mind that whether a party is 'entirely successful' is primarily relevant to where the burden lies within process of deciding how costs should be allocated. If a party is 'entirely successful' all of the costs follow unless the Court exercises its discretion to direct otherwise having regard to the factors enumerated in s.169(1). If 'partially successful' the costs of that part on which the party has succeeded may be awarded in its favour, bearing in mind those same factors. Indeed, having regard to the general discretion in s.168(1)(a) and O.99 R.2(1) a party who is 'partially successful' may still succeed in obtaining all of his costs, in an appropriate case.*"

12. Clarke J. (as he then was) outlined key principles in *Veolia v Water UK plc and Ors v Fingal County Council* [2007] 1 IR 690 ("*Veolia*") as to how the Court should deal with costs when a party had been successful (at the trial of a preliminary issue) on some, but not all issues:

> "*In the ordinary way, if the moving party required to bring ... a particular interlocutory application (where these costs are involved) in order to secure a substantive or procedural entitlement, which could not be obtained without the hearing concerned, then that party will be regarded as having succeeded even if not successful on every point. The ... relevant application ... will have been justified by the result. Where the winning party has not succeeded on all issues which were argued before the court then it seems to me that, ordinarily, the court should consider whether it is reasonable to assume that the costs of the parties in pursuing the set of issues before the court were increased by virtue of the successful party having raised additional issues upon which it was not successful.*"

13. Clarke J. added that:

> "*Where it is clear that the length of the trial of whatever issues were before the court was increased by virtue of the raising of issues upon which the party who was successful in an overall sense, failed, then the court should, again ordinarily, award to the successful party and amount of costs which reflects not only that that party should be refused costs attributable to any such elongated hearing, but should also have to, in effect, take cost to the unsuccessful party in relation to whatever portion of the hearing the court assesses was attributable to the issue upon which the winning party was unsuccessful…The fact that such an additional issue was raised should only affect costs if the raising of the issue could, reasonably, be said to have effected* [*sic*] *the overall costs of the litigation to a material extent.*"

14. In *ACC Bank plc v Johnston* [2011] IEHC 500, Clarke J. noted that separate causes of action between the same parties might give rise to separate events, each carrying its own costs, but would not do so where there was a substantial overlap in the causes of action and the facts from which they were based, observing that:

> "*the court should consider departing from awarding full costs to the party who…materially added to the costs of proceedings by raising additional grounds or*

arguments which the court found to be unmeritorious. In that context, it is important to emphasise that the exercise is not one of narrowly looking at the time spent on each point, but rather taking a broad view as to whether it can fairly be said that the costs of the proceedings as a whole were materially increased".

15. In *Connelly v An Bord Pleanála* [2018] IESC 36, Clarke C.J. noted the need to determine whether the plaintiff had been compelled to come to court to achieve something he could not otherwise have achieved or whether the defendant had resisted a claim found to be unmeritorious.

16. I have also had regard to the judgment of Murray J. in *Chubb v Health Insurance Authority* [2022] 2 IR 734. *Delany & McGrath on Civil Procedure* (5th ed., Round Hall, 2023), Chapter 24 also provides a typically helpful summary of the authorities and principles.

17. In the past, the costs of interlocutory applications, particularly for injunctions, were generally reserved. However, for many years the practice has generally been to award the costs of interlocutory application where it was possible to justly adjudicate responsibility for such costs. That practice was reinforced by the provisions of the LSRA and the latest iteration of Order 99. While the traditional default (reserving the costs of interlocutory injunction applications) is a thing of the past, the Courts will still reserve the costs of interlocutory injunctions in appropriate cases, where it is just to do so. The traditional rationale for doing so was expressed by Keane J. (as he was) in *Dubcap Ltd v Microchip Ltd* (Unrep., Supreme Court, 9 December 1997) and cited by Laffoy J. in *O'Dea v Dublin City Council* [2011] IEHC 100. Sections 168 and 169 preserve the Court's ultimate discretion in relation to costs and thus allow continuing regard to such issues, as does Order 99, which provides an express exception to the obligation to determine the costs of interlocutory proceedings where it is not possible to justly adjudicate upon liability for such costs on the basis of the interlocutory application.

18. The authorities confirm that the appropriateness of awarding or reserving interlocutory injunction costs may depend on the grounds upon which the applications were granted or

refused. If the outcome depended on the provisional assessment of the merits (to demonstrate a mere arguable case), which might result in a different outcome at trial, a costs award could be unjust (if the claim was found to be without substance at trial) and it might be more prudent to reserve the costs:

a. In *ACC Bank plc v Hanrahan* [2014] 1 IR 1, Clarke J. noted that, whereas some motions are very much "*events*" in themselves, being finally decided at interlocutory stage, others raise issues which will be dealt with on an "arguable case" basis and will be revisited at trial. He stated at p. 6:

> "*... if the facts on which the plaintiff's claim is predicated are rejected at trial, then the justice of the case may well lead to the conclusion that the interlocutory injunction was wrongly sought. It may be that, on the basis of the evidence before the court at the interlocutory state* [*sic*]*, the injunction was properly granted. However, with the benefit of hindsight, and after the trial, it may transpire that the case for the granting of an interlocutory injunction was only sustained on the basis of an assertion that the facts were other than the true facts as finally determined by the court at trial. It follows that in such cases there may well be good grounds for not dealing with the costs at the interlocutory stage, for the trial court may be in a better position to assess the justice of the costs of an interlocutory hearing when it has been able to decide where the true facts lie. It is not necessarily just that a plaintiff who secures an interlocutory injunction on the basis of putting up false facts should get the costs of that interlocutory injunction even if it was fairly clear that an injunction would be granted on the basis of the facts as asserted.*"

b. Likewise, in *Glaxo Group Ltd v Rowex* Ltd [2015] 1 IR 185, at p. 209, Barrett J. explained that the question as to whether to award or reserve interlocutory costs turns on whether a different picture may emerge at trial:

> "*A distinction falls to be drawn between (a) cases where the decision on an interlocutory injunction application turns on issues in respect of which a different picture may emerge at trial and (b) cases where the application turns on matters*

such as adequacy of damages or balance of convenience which will not be addressed again at the trial."

c. See also the decisions of Keane and McDonald JJ. in *Hafeez v. CPM Consulting Ltd* [2020] IEHC 583 and *Paddy Burke (Builders) Limited (In liquidation and in receivership) v Tullyvaraga Management Company Ltd* [2020] IEHC 199.

19. *Pepper Finance Corporation (Ireland) Ltd v Macken & Anor* [2021] IECA 15 ("*Macken*") is an example of the Court's exercise of its discretion to take a party's conduct into account when determining who should be responsible for the costs of the proceedings.

Submissions

20. Although the Applicant was on notice, he did not appear at the costs hearing, but oral and written submissions were furnished on behalf of the Respondent and the Notice Party. The Respondent's submissions were to the following effect:

a. The Respondent did not bring these proceedings for personal gain but to safeguard his elderly parents. The applications were required to prevent the eviction of them from their home in breach of the agreed terms.

b. The Court should also consider the Defendants' conduct before and during the proceedings. The Court has found that there is a strong *prima facie* case that the Defendants were in breach of the terms of Settlement.

c. It was reasonable for the Respondent to issue the motions, including the Committal Motions, in the circumstances, including the attempted eviction of his parents in breach of the terms of Settlement.

d. Although the Committal Motions were unsuccessful, the Respondent had been "*partially successful*" in the applications as a whole and, citing *Higgins,* he should be awarded costs on all four applications having regard to the factors outlined in section

169(1)(a)-(g), including the nature and circumstances of the Agreement, including the urgent need to prevent the Parents' eviction in breach of the Agreement. In particular, the Court was entitled to have regard to the conduct of the parties in that regard (under section 169(1)(d)).

e. The applications should be viewed together, as a necessary and appropriate step to enforce the Agreement. It was not appropriate to reserve costs or to treat costs as purely interlocutory matters in circumstances in which it was not clear that there would in fact be a further hearing.

21. The Notice Party argued that she should be awarded costs of the Committal Motion against her, whereas the costs of the (successful) injunction application should be reserved:

a. Whereas the Respondent sought to treat the applications as a single event, in respect of which costs might be considered globally, there were two discrete applications concerning the Notice Party and, applying O. 99, r. 2(3) RSC, the costs of each application should be considered separately.

b. The Notice Party won the committal application. Accordingly, applying general principles, she is entitled to her costs on that application.

c. The Committal Motion was a very serious application which should not have been brought. The Respondent chose to bring that discrete application. It was determined against him. The Notice Party was required to defend that unmeritorious application. The High Court directed that she should personally attend the hearing, a direction which would have been less likely if purely injunctive relief had been sought, requiring the Notice Party to travel from London. She should not have been put to that trouble and expense and she was entitled to her costs.

d. However, the cost of the injunction application should be reserved, notwithstanding the Respondent's success in obtaining such an order for this stage of

the proceedings. The Court has been unable to conclusively determine certain issues without an oral hearing. Since a different outcome might be arrived at through a full hearing, those costs should be reserved.

e. Whilst a Court will ordinarily award interlocutory costs to the winner when a particular issue has been determined, courts generally recognise that issues provisionally assessed on the grant or refusal of a permanent injunction may be decided differently at the trial (after they have been fully ventilated). The award of interlocutory costs risks the Court awarding costs to a party who may not ultimately be vindicated on such issues.

f. The Notice Party also raised two related matters. Firstly, the Respondent argued that the Applicant could transfer the property alone, without input from the Notice Party. Secondly, there was (inconclusive) evidence that, under Spanish law, the Defendants could not direct the company's administrator to transfer the Villa. If either proposition was borne out at a full hearing, it would vindicate the Notice Party's submission that an injunction against was unnecessary. She might also succeed on the issue as to the extent to which she was bound by the Settlement. Accordingly, the injunction costs should be reserved because an award of costs cannot be made at this stage without the risk of an injustice.

22. While acknowledging the Court's undoubted entitlement when dealing with costs to signal its disapproval of the way a party has conducted proceedings, the Notice Party submitted that no such award was appropriate in this case, distinguishing *Macken*, on the basis that that decision reflected concerns as to the way the Plaintiff had presented an application and appeal (seeking to substitute parties without disclosing material facts as to the true beneficial ownership) but that no such considerations arise here. The Notice Party argued that there had been no finding by which the Court disapproved of the conduct of the Notice Party in

connection with the manner in which she addressed the motions brought against her. In reality, the Court was being asked to show its disapproval over elements of its findings of fact and law, which are necessarily provisional. Furthermore, the Notice Party maintained that she had done everything in her power to try to assist in having the property in Spain transferred to the Parents. Finally, she submitted that the criticism of her was provisional, the facts having yet to be determined, whereas the Respondent has dealt with the applications in certain respects in ways which met with the disapproval of the Court. Accordingly, it was submitted, if disapproval was to be a factor in the determination on costs, it would count against the Respondent.

Discussion

23. The parties disagreed on the application of the legal principles, rather than in respect of the well-established principles themselves, which were largely common ground. While costs are discretionary, they should generally follow the event, subject to section 169 factors. I also need to determine whether the applications should be considered collectively or as discrete events and whether it is possible to deal with the costs justly at this stage.

24. I will deal firstly with the two motions against the Notice Party. I consider that they should be considered as a single "event". Although two notices of motions were brought, both were grounded on the same affidavit evidence on both sides and most of the submissions, hearings and the Judgment were directed at issues which were common to both applications, issues on which the Respondent was generally successful. Apart from the requirement that the Notice Party attend the hearing, there was no suggestion from either side that the combined costs (by virtue of both motions having been issued) were materially greater than the costs which would have been incurred if only one of the two motions had been issued, nor was it suggested that the Court should be influenced by the issuance of two notices of motion (as opposed to one notice claiming alternative reliefs). In the circumstances it would be artificial

to treat the two motions as discrete events because of the substantial factual and legal overlap – they were both, in essence, elements of an attempt to enforce against the Notice Party. It would also be unfair and artificial to deal with the two motions independently of each other or to reserve the costs of one but not the other.

25. Viewing the two motions together, the Respondent has been partially (but not completely) successful against the Notice Party. It was necessary and appropriate for her to issue enforcement applications. Even leaving aside the issues as to the correct interpretation of the Agreement and the extent to which the Notice Party was bound by it (which I have dealt with in the Judgment), in view of the conflict of evidence as to the Notice Party's alleged acts or omissions (and notwithstanding the reservations I have expressed as to the positions adopted to date by the parties in that regard), it is not appropriate to take account of the conduct of the parties when dealing with the costs of the applications if, by that, it is suggested that, for example, I should adopt a punitive approach in response to the apparent breach of the Agreement or the attempt to evict the Parents. Those issues will be litigated further if necessary. I think the nature and circumstances of the case and the conduct of the parties are primarily relevant to the extent that they justify the Respondent's decisions to take enforcement action against the Notice Party.

26. For present purposes, it is sufficient to note that: (i) it was appropriate for the Respondent to take enforcement action against the Notice Party; (ii) many factual and legal arguments she has raised and which took up most time at the hearing have been found to be unsustainable (although at least some factual issues may be ventilated further with oral evidence and discovery, if necessary); (iii) the Respondent has been partially successful. I do not accept the submission that the motions were unnecessary because the Notice Party claims to have done everything she could to prevent the eviction and preserve the status quo. Even leaving aside the serious doubt as to whether the Notice Party's position in that regard is

factually or legally well founded, I note that, during or immediately after the hearing, the Notice Party emailed the administrator of the Spanish Company to request the suspension of the eviction proceedings and the preservation of the status quo (while reiterating that she had no power to direct him). If the Notice Party had committed to do everything within her power at the outset, then the injunction hearing may not have been required, if suitable undertakings or a consent order could be agreed (as with the injunction application in respect of the Applicant). However, the Notice Party chose to contest the Respondent's entitlement to injunctive relief. The grounds on which she did so were found to be unjustified. I am satisfied that I am in a position to adjudicate justly on the costs in that regard. Furthermore, reserving the costs to the trial itself is not a solution, since we are dealing with enforcement rather than interlocutory measures. All things being equal – and contrary to the expectation which the *Merck Sharp & Dohme Corporation Ltd v Clonmel Healthcare Ltd* [2020] 2 IR 1 criteria identify as a fundamental consideration in determining whether to grant interlocutory relief – there is no necessity for the matter to go to trial. That was not the basis for the injunction application. The parties' entitlements have already been determined in the proceedings (by the settlement agreement and consent order). Accordingly, it makes little sense to reserve the costs for future determination in circumstances in which there may not be (and hopefully will not be) a further opportunity for the Court to deal with such issues.

27. I have concluded that, having been partially (and, indeed, substantially) successful, that the Respondent is entitled to his costs and that the two motions were so closely connected that it would be wrong to make separate costs orders on each application, since the evidence and submissions on each side were so closely entwined, and they must be viewed as a single and largely (but not entirely) justified enforcement initiative which was required to prevent the ongoing breach of the Agreement by the Notice Party, and to protect the Parents from eviction.

28. That said, I do not agree with the Respondent that it follows that he should be awarded the entirety of his costs against the Notice Party on both motions. He was entitled to seek injunctive relief against the Notice Party. Although she vigorously contested that application, most of her grounds for doing so were unsuccessful. However, the committal application was flawed for the reasons explained in the Judgment. Seeking that additional relief put increased pressure on the Notice Party and subjected her to the burden of being required to travel to Ireland to attend the hearing in person. Accordingly, it would be unfair to award the Respondent all of his costs on both motions. In cases discussing the *Veolia* principles, the Courts have made clear the inappropriateness of trying to parse the time spent on issues and submissions to distinguish between the costs of issues in respect of which a party was or was not successful (and such issues have generally arisen in the context of trial, rather than interlocutory, costs). I have formed a broad view based on the various factors I have referenced. These include the necessity for enforcement action, the nature and the circumstances of the proceedings, including the need to prevent the threatened eviction in breach of the Agreement, but also the fact that the committal application was unsuccessful and that, although it did not greatly increase the length of the hearing or the legal costs, it did put the Notice Party to the stress, inconvenience and expense of having to attend the hearing, making the enforcement action more significant than if purely injunctive relief had been sought.

29. In view of all of the forgoing factors, I consider that the Respondent has been partially successful, and that the justice of the situation will be met by awarding him 75% of his costs of each of the applications against the Notice Party. Since I see the applications as a single event, it is appropriate to deal with them on that basis. If I had viewed the applications as discrete events, I would have awarded the Respondent all of his costs on the injunction application which, in my view was necessarily and appropriately brought, including the costs in respect of the affidavits, submissions and hearings before me. The costs were not materially

increased by reason of the committal application so I would not have made any order of costs in respect of the committal application, save to direct the Respondent to reimburse the Notice Party (by way of set off against such cost orders) for the full indemnity costs of any reasonable out of pocket travel or other expenses she incurred by virtue of the need to attend the hearing. I believe that the formula which I propose to adopt is more favourable to the Notice Party than the alternative I have just described.

30. Turning to the Respondent's cost application against the Applicant, the consent order before Heslin J. did not expressly reserve costs, but I consider that it is still open to me to deal with the costs of the applications because that order, on its face, does not appear to have been intended to be the final order on the applications – to the contrary, on its face, it gave directions and adjourned them, meaning that various issues, including costs, remained to be resolved. I also note that certain factual and legal points heavily relied upon by the Notice Party (albeit disputed by the Respondent) are not available to the Applicant. Furthermore, having consented to the injunction application, he played no part thereafter, save for, somewhat curiously, filing his final affidavit. The hearings before me were essentially between the Respondent and the Notice Party. In the circumstances, my analysis is essentially the same as with regard to the Notice Party, and for similar reasons I will direct the Applicant to pay the Respondent 75% of his costs (on a party and party basis) on both motions, to be adjudicated in default of agreement, but such costs to be calculated up to the date of the hearing before Mr Justice Heslin.

Conclusion

31. The Notice Party will be directed to pay the Respondent 75% of his costs (on a party and party basis) on both motions against her.

32. The Applicant will likewise be directed to pay the Respondent 75% of his costs (on a party and party basis) on both motions against him up to the date of the hearing before Mr Justice Heslin, to be adjudicated in default of agreement.