THE SUPREME COURT

[Supreme Court Appeal No.10/2020]

Clarke C.J.

O'Donnell J.

CharletonJ.

O'Malley J.

Baker J.

BETWEEN

RONALD KRIKKE, PIA UMANS, SEAN HARRIS, CATHERINE HARRIS, PATRICK KENNEALLY, CAROLINE KENNEALLY, KENNETH GEARY

APPELLANTS

-AND-

BARRANAFADDOCK SUSTAINABILITY ELECTRICITY LTD.

RESPONDENT

Ruling of the Court on costs

Introduction

1. In this case the appellants succeeded in obtaining relief in the High Court under s.160 of the Planning and Development Act 2000. Part of the order made in that Court directed the respondent developer to cease operating certain turbines on its wind farm.

2. On an application by the respondent, the Court of Appeal decided to stay the High Court order pending the determination of the respondent's substantive appeal against it. That decision was the subject of the appeal to this Court.

3. Judgments were delivered in the matter by O'Donnell and O'Malley JJ. on the 17th of July 2020 (see *Krikke & ors. v. Barranafaddock Sustainability Electricity Limited* [2020] IESC 42). In brief, the Court considered that the stay should not have been granted. However, for the reasons identified in the judgments, the Court declined to lift the stay. The substantive appeal against the High Court decision remains to be determined by the Court of Appeal.

4. The appellants now seek an order awarding them their costs in this Court and the costs of the stay application before the Court of Appeal. In summary, they argue that the reasons for not lifting the stay had nothing to do with them, that the Court found that the stay should not have been granted, and that in so doing it upheld their contention that the Court of Appeal had placed too little weight on the statutory importance of s.160 of the Planning and Development Act 2000. They say that in these special circumstances the interests of justice entitle them to their costs.

5. The respondent submits that there should be no order as to the costs. Some reliance is placed on the provisions of ss. 3 and 4 of the Environmental (Miscellaneous Provisions) Act 2011, as amended, for the purpose of submitting that this is the default position in litigation of this type.

6. Reference is made to the terms of s.169 of the Legal Services Regulation Act 2015, which sets out as a general principle that a party will be entitled to an award of costs if "entirely successful" unless the court considers that particular specified factors apply. The respondent says that the appellants were unsuccessful in their argument that the Court of Appeal should not have applied the *Okunade* criteria in deciding that a stay was appropriate. It is submitted that both parties were partially successful in this appeal, but that ultimately the appellants have obtained no relief while the respondent has been successful in its contention that the stay should remain in place.

Decision

7. Firstly, the Court does not consider that it would be appropriate to make any order as to the costs in the Court of Appeal, given that at least some part of the costs associated with the stay application have been reserved pending the final decision of that Court on the substantive issues.

8. As far as the costs of this appeal are concerned, the Court notes that the precise implications for interlocutory matters such as this of ss.3 and 4 of the Environmental (Miscellaneous Provisions) Act 2011 as amended, s.50B of the Planning and Development Act 2000 as amended and s.169 of the Legal Services Regulation Act 2015 have yet to be fully addressed. In any event the Court remains of the view that the appellants have succeeded in principle, although one of their lines of argument failed and although, having regard to specified factors, it decided not to interfere with the stay. In those circumstances it considers that it is in the interests of justice to award the appellants two-thirds of the costs of this appeal.