



THE SUPREME COURT

[RECORD NO.: 217/2019]

**Clarke C.J.
O'Donnell J.
MacMenamin J.
Dunne J.
Charleton J.**

BETWEEN:

JOHN GIBBONS

PLAINTIFF/APPELLANT

AND

DANIEL DOHERTY AND ADT INVESTMENTS LIMITED

DEFENDANTS/RESPONDENTS

**Ruling on Costs by Mr. Justice John MacMenamin dated the 30th day of
July, 2021**

1. This is a ruling on costs in the above entitled appeal to this Court (Record No. 217/2019). In 2006, the appellant, Mr. Gibbons, signed a contract to sell three lots of lands in Donegal. The first-named respondent, Mr. Doherty, later formed a company, ADT Investments Limited, for the purposes of acquiring the lands. The details of the transaction as it was performed in subsequent years are set out in the main judgment, and do not require repetition.

2. The appellant, Mr. Gibbons, sued for specific performance of the sale of the third lot of land. His claim was dismissed in the High Court and Court of Appeal. The respondent, Mr. Doherty, was successful in resisting the claim for specific performance in both courts, although that success was based on a misinterpretation of the effect of Condition 30 of the Law Society General Conditions of Sale. This Court held that Condition 30 did not permit the first-named respondent, Mr. Doherty, to escape liability, but that the appellant, by his own conduct in accepting ADT as purchaser was debarred from obtaining a decree of specific performance against Mr. Doherty.

3. By the time it came to making submissions on costs, the appellant had discharged his counsel who had ably represented him in the appeal. The appellant's submissions on costs primarily focused on his criticisms of, and his concerns as to what this Court held in its judgment. Mr. Gibbons argued that he should not be liable to any costs, as he believed that ADT, the second-named respondent, being an unsuccessful litigant, should bear the costs.

4. The first-named respondent, Mr. Doherty, submits that costs should follow the event. He submits he was successful on three issues in this Court. These issues were acceptance by the appellant of ADT as a purchaser, the indivisibility of the contract, and that the appellant ought to be barred by his conduct from enforcing the contract against the respondent. He submits that, a consideration of the issue regarding the meaning and interpretation of Condition 30, did not add any significant length of time or cost to the appeal, and that, although this Court overturned part of the decision of the Court of Appeal as to the meaning of General Condition 30, this had no effect on the outcome of the case.

5. The first-named respondent also draws attention to the fact that, in addition to the instant proceedings, the appellant issued further proceedings against the same defendants, seeking a declaration that he was the beneficial owner of the lands in Lots 1 and 2, referred to in the judgment of this Court. These were dismissed as an abuse of process in the High Court. The appellant appealed against that determination. In 2019, three years after those proceedings were first issued, the appellant withdrew that appeal. The first-named respondent submits that he was put to trouble and expense of defending those proceedings.

6. The judgment of this Court set out the correct interpretation of Condition 30; but, ultimately, the appeal was determined not on that question, but, rather, on the question of the appellant's own conduct. It was that conduct, in accepting ADT as a purchaser, which resulted in him being debarred from being able to seek specific performance. The appellant was unsuccessful in the appeal.

7. In the circumstances, therefore, the Court should apply the normal principle, as set out in O.99 of the Rules of the Superior Court, and s.169(1) of the Legal Services Regulation Act, 2015. The overall result of this appeal was that, despite any issue regarding Condition 30, the first-named respondent was entirely successful in this Court, as he was in both the High Court and the Court of Appeal. The “event” in each court was that the first-named respondent succeeded. The Court is not persuaded that there should be an exception made in this instance to that general principle. Accordingly, this Court will award the costs of the appeal to the first-named respondent, and will not interfere with the costs orders made by the High Court and the Court of Appeal.