

APPROVED

NO REDACTION NEEDED

**THE COURT OF APPEAL
CIVIL**

**Neutral Citation Number [2024] IECA 177
Court of Appeal Record Numbers: 2022/222
2022/223
2022/224**

**High Court Record Number: 2020/625P
2020/628P
2020/5354P**

**Costello J.
Noonan J.
Butler J.**

BETWEEN/

DONAL HURLEY

**PLAINTIFF/
APPELLANT**

- AND -

**PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY
COMPANY**

**DEFENDANT/
RESPONDENT**

BETWEEN/

SHANE MOONEY AND BARBARA MOONEY (NEE O'CONNOR)

**PLAINTIFFS/
APPELLANTS**

-AND-

**PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY
COMPANY**

**DEFENDANT/
RESPONDENT**

BETWEEN/

SIMON KELLEHER

**PLAINTIFF/
APPELLANT**

-AND-

**PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY
COMPANY**

**DEFENDANT/
RESPONDENT**

COSTS RULING of Ms. Justice Butler delivered on the 05th day of July 2024

1. In a judgment delivered on 18 April 2024 ([2024] IECA 80, (Butler J., Costello and Noonan JJ., concurring) the appellants' appeals were dismissed. At paragraph 76 of that judgement, it was indicated that the Court's preliminary view was that the respondent should be entitled to an order for the costs of the appeals. However, as the circumstances of each of the 3 appeals were identical, the pleadings almost identical and the 3 appeals were heard together, it was proposed that the respondent should get the costs of the paperwork associated with each appeal but a single set of costs in respect of the written legal submissions and the hearing with the latter elements of the costs to be taxed jointly and severally against all of the appellants. If either party wished to contend for a different order, they had liberty to file written submissions as to the appropriate order.
2. In the event, submissions were filed on behalf of the appellants on 11 June 2024 to which the respondent replied on 25 June 2024. This is the Court's ruling on costs.

3. To briefly recap, the appeals concerned a question of statutory interpretation as to whether loans advanced by the respondent to the appellants were “housing loans” within the meaning of section 2 of the Consumer Credit Act 1995 such as to render them exempt from the obligations under section 30(2) of that Act. It was common case that the provisions of section 30(2) (which required the lender to furnish notice in writing of a 10 day “cooling off” period) had not been complied with. If the loans were not housing loans, they would have been unenforceable by reason of such non-compliance.
4. The point came before the High Court on foot of a motion brought by the respondent seeking to strike out the proceedings on the basis that they did not disclose a reasonable cause of action and were bound to fail. The only basis upon which it was contended that the appellants’ proceedings did not disclose reasonable cause of action or were bound to fail was that on a correct interpretation of the 1995 Act the loans were housing loans and consequently section 30(2) did not apply. This issue was decided against the appellants in the High Court and also on the appeal.
5. The appellants have filed a submission in which they ask the Court to make no order for costs essentially for 3 reasons. First, their proceedings raised a net point of statutory interpretation which the Court accepted was a serious issue. Secondly, the proceedings had been prosecuted by the appellants in a *bona fide* manner and they had not sought to delay or obfuscate in any way. Thirdly, the respondent’s motion seeking to strike out the proceedings had been brought at a very late stage and at a time when the proceedings were already listed for trial. Each of these points is mentioned in the judgment in a manner which might be broadly characterised as favourable to the appellants.
6. The respondents oppose this application and ask the court to make an order for costs in the terms proposed at paragraph 76 of the judgment. It points to section 169 of the Legal Services Regulation Act 2015 and the principle set out therein to the effect that a party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful unless, having regard to the nature and circumstances of the case, the court orders otherwise. The section proceeds to identify on a non-exhaustive basis the type of matters a court might consider when deciding whether to depart from the basic principle that cost should be awarded to the successful party.

7. The appellants have not expressly identified any matter within the scope of section 169(1) which would justify the Court departing from the usual practice of making an order for costs in favour of the successful respondent. The fact that the proceedings raised a serious legal issue and were prosecuted in a *bona fide* manner does not of itself provide a basis for excusing an unsuccessful party from the liability for costs that would normally follow. Whilst the appellants may be correct in their characterisation of the legal issue raised by them as one which required the interpretation of the court ‘*as a matter of consumer public interest*’, the level of public interest involved was not such as to merit a departure from the usual rules as to costs. In addition, the litigation was brought by them, as consumers, to protect their property rights and financial interests and not simply for the benefit of the public generally.
8. Equally, the fact that the respondent’s application was brought at the point in the proceedings which was later than might usually be expected does not disentitle the respondent as the successful party to an order for costs. Indeed, the judgment held that whilst the timing of the application was unusual, it was permissible under order 19 rule 28. I note that the respondent in its submission on costs indicates that by bringing a preliminary application they saved the appellants the greater costs of a plenary trial. For clarity, I should point out that notwithstanding that notice of trial had been served by the appellants, the costs of the proceedings which follow the making of an order striking out the proceedings do not in this case include trial costs.
9. The costs order suggested at paragraph 76 of the judgment was framed in ease of the appellants so as to reduce the costs burden that each of them would bear. That was felt to be appropriate in circumstances where the issue raised in the proceedings was serious and the proceedings have been prosecuted by the appellants *bona fide*. Apart from the clarification in the preceding paragraph, a costs order will be made in the terms proposed at paragraph 76 of the original general judgment.
10. Costello and Noonan JJ. have read this ruling in advance of its delivery and indicated their agreement with it.