

Neutral Citation No: [2017] NICA 34

Ref: McB10322

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 07/06/2017

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ULSTER METAL REFINERS LTD

Appellant/ Respondent;

-v-

COMMISSIONERS OF HMRC

Respondent.

COSTS JUDGMENT

McBRIDE J

Introduction

[1] On 9 May 2017 the court granted the appellant's appeal against the decision of the Upper Tribunal, which affirmed the decision of the First Tier Tribunal.

[2] The court after giving judgment permitted the parties the opportunity to make written submissions in respect of costs. The respondent and appellant filed written submissions on 23 May 2017.

[3] The respondent accepted that the appellant was entitled to reasonable costs in respect of the Court of Appeal proceedings but raised issues in respect of the amount of costs and the enforcement of any costs order.

[4] The respondent submitted that as the appeal to the Court of Appeal related to 'Irwin deals' and 'non-Irwin deals' the appellant should not be awarded costs for the preparation and presentation of arguments relating to the 'non-Irwin deals' and the

respondent's costs for the preparation and presentation of the 'non-Irwin deals' in the Court of Appeal should be off-set against any costs due to the appellant.

[5] Secondly the respondent submitted that the appellant should not be entitled to costs for proceedings before the UT and FTT as the appeal was allowed because of procedural unfairness by the FTT which the UT affirmed.

[6] Finally the respondent submitted that any costs order should be stayed until the FTT heard the remitted appeal so that any costs order it may order against the appellant, could be recovered more easily by the respondent.

[7] The appellant submitted that costs should follow the event as the respondents had failed to provide any justification for departing from this general rule.

Consideration

[8] Order 63(2) Rule 3(3) provides:

“If the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the court shall order the costs to follow the event, except when it appears to the court that in the circumstances of the case some other order should be made as to the whole or any part of the clause.”

[9] The proceedings before this Court were necessary as the respondent failed to plead its case properly before the FTT and then resisted the appeal before the UT and Court of Appeal. In these circumstances we see no reason to depart from the general rule that costs follow the event and accordingly we condemn the respondent in costs above and below.

[10] The difference between 'Irwin' and 'non-Irwin deals' played no part in the proceedings before the Court of Appeal which dealt only with the issue of procedural unfairness and therefore we see no reasons to apportion costs in the manner sought by the respondent. Accordingly we condemn the respondent in the full costs of the Court of Appeal.

[11] The FTT and UT both made orders, at the respondent's request, condemning the appellant in costs which were to be paid without any stay in enforcement notwithstanding the fact the appellant was appealing the decisions. We see no reason to adopt a different approach and therefore refuse the application to stay the order for costs until the FTT has heard the remitted appeal.