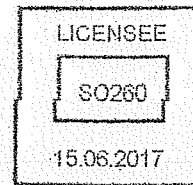




50753100
10000



SUPREME COURT

Application for Leave and Notice of Appeal

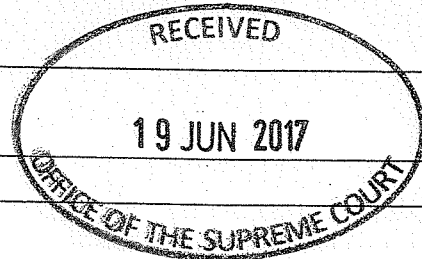
For Office use

| | |
|--|--|
| Supreme Court record number of this appeal | |
| Subject matter for indexing | |

| | |
|---|---|
| Leave is sought to appeal from | |
| <input checked="" type="checkbox"/> The Court of Appeal | <input type="checkbox"/> The High Court |

[Title and record number as per the High Court proceedings]

| | | |
|---|----------------------------|---------------------------|
| Eugene McCool | V | Colin Monaghan |
| High Court Record Nr | 2015/75SA | Court of Appeal Record Nr |
| Date of filing | 15 th June 2017 | |
| Name(s) of Applicant(s)/Appellant(s) | Eugene McCool | |
| Solicitors for Applicant(s)/Appellant(s) | N/A | |
| Name of Respondent(s) | Colin Monaghan | |
| Respondent's solicitors | Arthur Cox | |
| Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| If yes, give [Supreme Court] record number(s) | | |



| | | |
|--|---|-----------------------------|
| Are you applying for an extension of time to apply for leave to appeal? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| If Yes, please explain why – Incorrect advice/information on making application. Very heavy work schedule during last 2 weeks | | |
| Paid fees and tried to file on 15 th June but errors advised by Courts Service, corrected application and issued by email on 16 th June, to be lodged in the office on Monday 19 th June 2017 | | |

1. Decision that it is sought to appeal

| | |
|------------------------------------|--|
| Name(s) of Judge(s) | The Honourable Mr Justice Peart The Honourable Ms Justice Irvine The Honourable Mr Justice Hogan |
| Date of order/ Judgment | Order made on 4 th May 2017 and perfected on 18 th May 2017 |

2. Applicant/Appellant Details

Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

| | |
|------------------------------|---------------|
| Appellant's full name | Eugene McCool |
|------------------------------|---------------|

Original status

| | |
|-------------------------------------|------------|
| <input checked="" type="checkbox"/> | Plaintiff |
| <input type="checkbox"/> | Applicant |
| <input type="checkbox"/> | Prosecutor |
| <input type="checkbox"/> | Petitioner |

| | |
|--------------------------|--------------|
| <input type="checkbox"/> | Defendant |
| <input type="checkbox"/> | Respondent |
| <input type="checkbox"/> | Notice Party |

| | | | |
|----------------------|--|------------------------------|-----|
| Solicitor N/A | | | |
| Name of firm | | | |
| Email | | | |
| Address | | Telephone no. | |
| | | Document Exchange no. | N/A |
| Postcode | | Ref. | |

How would you prefer us to communicate with you?

Document Exchange
 Post

E-mail
 Other (please specify)

| | | | |
|--------------------|--|------------------------------|--|
| Counsel N/A | | | |
| Name | | | |
| Email | | | |
| Address | | Telephone no. | |
| | | Document Exchange no. | |
| Postcode | | | |

| | | | |
|----------|---------------|-----|--|
| Counsel | | N/A | |
| Name | | | |
| Email | | | |
| Address | Telephone no. | | |
| | Document | | |
| | Exchange no. | | |
| Postcode | | | |

If the Applicant / Appellant is not legally represented please complete the following

| | |
|------------------------|---|
| Current postal address | 207 Mount Prospect Avenue, Clontarf, Dublin 3 |
| e-mail address | fmccool@mccoolcontrols.ie |
| Telephone no. | 086 2580472 |

| | | | |
|--|----------|-------------------------------------|------------------------|
| How would you prefer us to communicate with you? | | | |
| <input type="checkbox"/> | Document | <input checked="" type="checkbox"/> | E-mail |
| <input type="checkbox"/> | Exchange | <input type="checkbox"/> | Other (please specify) |
| <input type="checkbox"/> | Post | <input type="checkbox"/> | |

3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

| | |
|------------------------|----------------|
| Respondent's full name | Colin Monaghan |
|------------------------|----------------|

| | | | | | |
|-----------------|--------------------------|------------|-------------------------------------|--------------|--|
| Original status | <input type="checkbox"/> | Plaintiff | <input checked="" type="checkbox"/> | Defendant | Is this party being served with this Notice of Application for leave? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| | <input type="checkbox"/> | Applicant | <input type="checkbox"/> | Respondent | |
| | <input type="checkbox"/> | Prosecutor | <input type="checkbox"/> | Notice Party | |
| | <input type="checkbox"/> | Petitioner | <input type="checkbox"/> | | |

| | | | | |
|--------------|------------------------------|--|-----------------------|---------------|
| Solicitor | Colin Monaghan | | | |
| Name of firm | Arthur Cox | | | |
| Email | colin.monaghan@arthurcox.com | | | |
| Address | 10 Earlsfort Terrace | | Telephone no. | (01) 920 1000 |
| | Saint Kevin's | | Document Exchange no. | |
| | Dublin 2 | | Ref. | |
| Postcode | DO2 T380 | | | |

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

| | | | |
|--------------------------|-------------------|-------------------------------------|------------------------|
| <input type="checkbox"/> | Document Exchange | <input checked="" type="checkbox"/> | E-mail |
| <input type="checkbox"/> | Post | <input type="checkbox"/> | Other (please specify) |

| | | | |
|-----------------|--------------------|------------------------------|--|
| Counsel | | | |
| Name | Maurice Collins SC | | |
| Email | | | |
| Address | | Telephone no. | |
| | | Document Exchange no. | |
| Postcode | | | |

| | | | |
|-----------------|--------------------|------------------------------|--|
| Counsel | | | |
| Name | Caren Geoghegan BL | | |
| Email | | | |
| Address | | Telephone no. | |
| | | Document Exchange no. | |
| Postcode | | | |

If the Respondent is not legally represented please complete the following

| | |
|-------------------------------|-----|
| Current postal address | N/A |
| e-mail address | |
| Telephone no. | |

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

| | | | |
|--------------------------|-------------------|-------------------------------------|------------------------|
| <input type="checkbox"/> | Document Exchange | <input checked="" type="checkbox"/> | E-mail |
| <input type="checkbox"/> | Post | <input type="checkbox"/> | Other (please specify) |

4. Information about the decision that it is sought to appeal

Please set out below:

Whether it is sought to appeal from (a) the entire decision or (b) a part or parts of the decision and if (b) the specific part or parts of the decision concerned

The Appellant is seeking to appeal the Order of the Court of Appeal in its entirety.

- (a) A concise statement of the facts found by the trial court (in chronological sequence) relevant to the issue(s) identified in Section 5 below and on which you rely (include where relevant if certain facts are contested)

Factual background

- 1 This matter arises from a High Court case taken by the Appellant's company, McCool Controls and Engineering Limited ("MCC") against a US Multinational company called Honeywell Control Systems Limited, ("HW"), Case No. 2005/2747P, arising from a breach of contract in 2001 when MCC was the exclusive agent for HW in Ireland. MCC tried to resolve the matter with HW, but this proved futile and in August 2005, MCC, reluctantly, were forced to issue proceedings.
- 2 HW have no defence against MCC's claim and instead resorted to a campaign to defeat MCC's case financially by years of delay and obstructive abuse of the legal system, in an attempt to force the financial collapse of MCC. The Respondent is the Solicitor with Arthur Cox who represent HW.
- 3 MCC was made aware by its then Solicitors, William Fry, (Fry), in early 2011 of the new Order 56A, (SI 502 of 2010), Alternative Dispute Resolution process of Mediation, Conciliation or another dispute resolution process approved by the Court, but does not include Arbitration. MCC saw this as the ideal mechanism to counter the strategy of HW to force the collapse of MCC through delays and high costs and instructed Fry to take an ADR motion on the case.
- 4 MCC encountered opposition and difficulties in having the ADR motion set down but this eventually was listed for hearing on the 23rd July 2012, using McGeehin Toale Solicitors. (MGT). It was the events that occurred during the period when the Motion was for hearing, 23rd July to the 31st July 2012, that led to the complaint to the Solicitors Disciplinary Tribunal about the Respondent in July 2014.

Solicitors Disciplinary Tribunal (SDT)

- 5 The Appellant presented evidence of events that occurred at various times of the hearing between 23rd and 31st July 2012, supported by 2 senior members of MCC's staff and by evidence from the Courts Service. The Respondent supplied limited evidence in relation to the 30th and 31st July 2012 only, yet the SDT found that there was no Prima Facie case against the Respondent. This decision was appealed to the President's Court

The President's Court (High Court)

- 6 The President's Court agreed with the decision of the SDT. In a departure from the norm, the Court awarded costs against the Appellant who then appealed to the Court of Appeal (COA)

The Court of Appeal (COA)

- 7 The Court of Appeal agreed with the decision of the High Court
- 8 An oral copy of the COA hearing on the 7th April 2017, will show this appellate Court, how the COA hearing was conducted and will support my claim that I was unfairly treated at that hearing and was unable to properly present the essential points of my case to the COA. Mary O'Donnell and Eoin McCool of MCC, were present at

the COA hearing as they had been present during the events of July 2012, and we all felt the COA was hostile to my position, whereas the Respondent's side was not subjected to this and were allowed to make their legal presentation in full. I believe the Oral DAR for the COA hearing will demonstrate this.

(b) In the case where it is sought to appeal in criminal proceedings please provide a concise statement of the facts that are not in dispute. N/A

The relevant orders and findings made in the High Court and/or in the Court of Appeal

5. Reasons why the Supreme Court should grant leave to appeal

In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal) —

Please list (as 1, 2, 3, etc) concisely the reasons in law why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

General Public Importance

- 1 The law should apply equally to all, irrespective of rank, position or status. The Judgment of the Court of Appeal prefers the evidence of the Respondent, a prominent Solicitor, in a very large legal firm, but does not explain why this is preferred to that of the Appellant.
- 2 The COA hearing was not conducted in a fair and impartial manner and I ask that the Court order an oral Copy of the DAR for the hearing on the 7th April 2017 to show how this hearing was conducted. I was accused of making serious allegations against a Solicitor and a member of the Bar at this hearing and at the costs hearing. I was not given time to present my legal submission and was subjected to an intense round of questioning for approx. 1 hour, which was in contrast to the facility given to the Respondents side. It is in the public interest that all such cases are conducted in a fair and impartial manner.

- 3 The requirement of the SDT, High Court and Court of Appeal was to determine if there was a Prima Facie case for the Respondent to answer. The Appellant's evidence was material and significant, supported by sworn affidavits of 2 senior members of MCC's staff, file records and the Courts Service, whereas the Respondent's evidence was limited to an email that requires authentication by a technical report and a claim of a phone call which is denied by the Courts Office, yet the Appellant's evidence has been totally ignored and rejected. It is in the public interest that the basis of determining what constitutes a Prima Facie status needs to be defined and clarified. It is of a matter of public importance that this ambiguity is resolved by the Supreme Court.
- 4 The High Court unjustly awarded costs against the Appellant and a review of these cases over a 10-year period showed that costs are not normally awarded. This review also showed that the President's Court has refused all appeals by lay people against solicitors. This is a major concern and needs to be addressed by the Supreme Court in the interest of impartiality and fairness.
- 5 ADR 56A and the associated Costs Order 99 1B, are particularly important to both the general public and the operation of the Courts system. It is an open secret that there is opposition to the use of ADR in legal circles and this has been a factor in the events during our ADR application. The ADR 56A rules were amended some 5 weeks after the ADR hearing in July 2012 and the reference to the costs penalty, Rule 99 1B, was removed from Order 56A. This is a matter of public importance as the costs penalty is a fundamental element to the use of Order 56A. In the McCool V Honeywell case, the use of ADR 56A would have provided a more level playing field and allowed this case to be resolved in a reasonable timeframe and at reasonable cost. The loss of that facility has caused considerable damage to MCC and in turn has put a further burden on the Courts system, who have this case still in the Courts list for the 5 years since the collapse of the ADR initiative in July 2012, to the enormous benefit of the Respondent and his client. This case may be the catalyst for the Courts to actively promote the wider use of ADR and the Supreme Court should speak on the reinstatement of the facility of Rule 99 1B, in Order 56A of the Court Rules.
- 6 The loss of the use of ADR has left MCC in a position that the financially powerful Defendant, HW, through the Respondent, has continued its campaign to financially destroy MCC and hence overcome the case against it. The legal system provides no protection against this form of behaviour. Even though I am the founder ((MCC commenced trading in 1992), the 100% shareholder and Managing Director, of this small family firm, I am not allowed to protect the company against the activities of the Defendant and Respondent. The law views the company as a separate entity to me, even though I created, control and manage the company and the company is totally dependent on me for its survival. The

legal system does not protect the company and allows these abuses to be carried out with impunity. To compound the problem, I am not allowed to represent the company in Court, I am not allowed to get Litigation Finance to protect the company in these proceedings, legal firms will not represent the company without funding. This present system allows large financially strong companies to exploit these anomalies to defeat their opponents in Court but this is unfair and unjust. This is major issue in the Irish Legal System that the Supreme Court needs to consider and address in the public interest.

Interests of Justice

- 7 The Court of Appeal failed to engage with a significant element of evidence presented by the Appellant
- 8 The Court of Appeal failed to test and fully examine all the evidence that had been presented by the Appellant.
- 9 The COA judgment contains serious errors of fact in relation to the events of the week of the ADR and a full hearing is required to determine the true facts of the events.
- 10 Paragraph 14 of the COA judgment incorrectly states that the confusion of the timing of the hearing on the 31st July 2012 was the essential subject of the complaint. This is incorrect and this very serious error was specifically clarified in paragraphs 2 and 13 of my legal submission issued to the COA.
- 11 The Appellant was refused the facility to have an independent technical assessment of the Respondent's email evidence carried out, but this is the core issue of the Respondent's evidence and is essential to the resolution of this case.
- 12 The Court of Appeal has made serious errors in its assessment of the hearing of the ADR Motion on the 31st July 2012, as detailed in paragraph's 11 of the COA judgment. That hearing was flawed and MCC's case was not put before the Court nor was the misinformation in the HW affidavit corrected. The Court did not have a proper understanding of ADR56A and the associated costs Order 99 1B and the Court's ruling was based on an incorrect assessment of the ADR rules. MCC's position was seriously prejudiced and MCC suffered considerable damage as a result
- 13 I had shown to the COA that the respondent had misled his client, HW, when he alleged that he had been in Court on the first morning of the hearing, the 23rd July 2012. The records show that the Respondent was not in Court that morning. The Respondent did appear eventually, when called by our solicitor MGT, but did not enter the Court. This email is heavily redacted and I believe that in the interests of justice, the respondent should be required to issue a full copy of this email for hearing of this matter
- 14 If this application for leave to appeal is refused, the Appellant will suffer a considerable Injustice.
- 15 Statements referring to my loss of perspective, sense of judgment, distorted thinking, are

unhelpful, inappropriate and unwarranted.

In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court) —

Please list (as 1, 2, 3, etc) concisely the reasons in law:

- i. why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court and
- ii. why there are exceptional circumstances warranting a direct appeal to the Supreme Court

6. Ground(s) of appeal which will be relied on if leave to appeal is granted

Please list (as 1, 2, 3, etc) concisely:

1. the specific ground(s) of appeal and the error(s) of law related to each numbered ground
2. the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom
3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely
4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

Ground 1: The learned Court erred in law and/or fact by failing to take account of all elements of the Appellant's evidence placed before the Court. This evidence did prove that there was a Prima Facie case requiring the SDT to conduct a full enquiry into the Appellant's complaint. The COA erred in law when it failed to find that a Prima Facie case requirement had been established

Ground 2: The learned Court erred in law by limiting its verdict to the events on the dates of the 30th and 31st July 2012 and relied on the Respondent's evidence only

The learned Court offered an opinion on what motivated the Appellant to make an appeal when deciding its judgment and deviated from the principle of basing its finding on the facts of the matter.

The learned Court failed to explain why it preferred the Respondent's evidence over the evidence of the Appellant, his colleagues and the Courts staff.

Ground 3: The learned Court failed to take account the importance of the costs Order facility, Rule 99 1B, when detailing its background of the complaint, which was an essential element of the Appellant's ADR application, the loss of which was very important to the Appellant's complaint to the SDT.

Ground 4: The learned Court failed to test and thoroughly examine the Appellant's evidence

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:

Appellant in Person

7. Other relevant information

Neutral citation of the judgment appealed against *e.g.* Court of Appeal [2015] IECA 1 or High Court [2009] IEHC 608

Court of Appeal [2017] IECA 129

References to Law Report in which any relevant judgment is reported

Healy V Ulster Bank [2015] IESC 106

Hay V O'Grady [1992] IR 210

Doyle V Banville [2012] IESC 25

8. Order(s) sought

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

Order that the Court of Appeal Order be set aside

Order of High Court be set aside

Solicitors Disciplinary Tribunal to be required to conduct a full enquiry into the Appellant's complaint

My Costs for the Court of Appeal

My Costs for the High Court

My Costs for the Solicitors Disciplinary Tribunal
Any further Order that this Court deems applicable

What order are you seeking if successful?

Order being appealed: set aside vary/substitute

Original order: set aside restore vary/substitute

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution

N/A

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

N/A

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions? Yes No

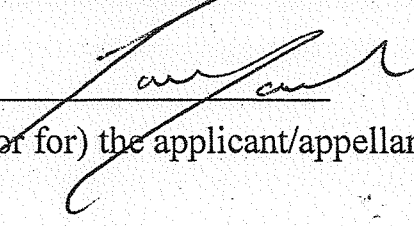
If Yes, please give details below:

make a reference to the Court of Justice of the European Union? Yes No

If Yes, please give details below:

Will you request a priority hearing? Yes No

If Yes, please give reasons below:

Signed: 

(Solicitor for) the applicant/appellant in person

Please submit your completed form to:

The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin

together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.

Dated this 15th day of June 2017

**Eugene McCool
207 Mount Prospect Avenue
Clontarf
Dublin 3**

**To: The Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin 7**

**And: Mr. Colin Monaghan
Arthur Cox Solicitors
10 Earlsfort Terrace
Saint Kevin's
Dublin 2**