



SUPREME COURT
Respondent's Notice

Supreme Court record number | 2017/099

IN THE MATTER OF MR COLIN MONAGHAN A SOLICITOR AND IN THE MATTER OF AN APPLICATION BY MR EUGENE MCCOOL TO THE SOLICITORS DISCIPLINARY TRIBUNAL WITH RECORD NUMBER 9831/DT91/14 AND IN THE MATTER OF THE SOLICITORS ACTS 1954 TO 2011

High Court Record No. 2015/75SA
Court of Appeal Record No. 2016/0005

Eugene McCool v Colin Monaghan
Applicant Respondent

Date of filing	4 July 2017
Name of respondent	Colin Monaghan
Respondent's solicitors	Arthur Cox
Name of appellant	Eugene McCool
Appellant's solicitors	Litigant in Person

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name | N/A

The respondent was served with the application for leave to appeal and notice of appeal on date
21 June 2017

The respondent intends :

to oppose the application for an extension of time to apply for leave to appeal

not to oppose the application for an extension of time to apply for leave to appeal

to oppose the application for leave to appeal

not to oppose the application for leave to appeal

to ask the Supreme Court to dismiss the appeal

to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:	<input type="checkbox"/>
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Respondent's Representation

Solicitor: Donogh Crowley			
Name of firm	Arthur Cox		
Email	donogh.crowley@arthurcox.com		
Address	Ten Earlsfort Terrace, Dublin 2,	Telephone no.	01 9201000
		Document Exchange no.	
Postcode	D02 T380	Ref.	
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Maurice G. Collins SC		
Email	maurice@mauricegcollins.ie		
Address	2 Arran Square Dublin 7	Telephone no.	01 8729533
		Document Exchange no.	
Postcode			

Counsel			
Name	Caren Geoghegan		
Email	cgeoghegan@lawlibrary.ie		
Address	Distillery Building 145/151 Church Street Dublin 7	Telephone no.	01 8176727
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

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

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused:

The applicant has not satisfied the test for an extension of time as set out in *Éire Continental Trading Company Limited v Clonmel Foods Limited*. In particular, the applicant's application for leave and notice of appeal fails, for the reasons set out below, to disclose any arguable grounds for an entitlement for leave to appeal (Section 5) and/or any arguable grounds of appeal (Section 6) and accordingly the extension should be refused.

In addition, the application fails to disclose any or any adequate explanation for the applicant's failure to make that application within the time prescribed by Order 58. Reference is made to "incorrect advice/information" without any attempt being made to explain what that advice/information related to or who was responsible for it. The applicant's "very heavy work schedule" does not provide a basis for an extension of time.

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

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

The respondent disputes the account entitled "*Factual background*" set out at section 4 of the applicant's Notice of Appeal. The purported "*facts*" there set out do not properly relate to the decision of the Court of Appeal and, in any event, remain in dispute in the 2005 High Court proceedings that are referred to in this section 4. Accordingly, the respondent has set out below a correct statement of facts:

1. Contrary to what is stated at paragraph 1 of this section entitled "*Factual background*", the within proceedings concerned an appeal to the High Court of a determination by the Solicitors Disciplinary Tribunal ("**the Tribunal**") that there was no prima facie case of misconduct on the part of the respondent in respect of the complaint made by the applicant to the Tribunal.
2. The complaints which were made before the Tribunal were in respect of the hearing of an application under Order 56A by the plaintiff for ADR in the course of High Court proceedings entitled "*McCool Controls and Engineering Limited v Honeywell Control Systems Limited*" with High Court Record No. 2005/2747P ("**the Honeywell proceedings**"). The respondent's firm, Arthur Cox, are the solicitors on record for the defendant in those proceedings and the respondent is the solicitor dealing with the matter. The applicant is the Managing Director of the plaintiff company in those proceedings.
3. In essence, the applicant's complaints before the tribunal related to the adjournment of a motion in the Honeywell proceedings issued by the plaintiff company on 22 June 2012 returnable to 23 July 2012 seeking an Order pursuant to Order 56A of the Rules of the Superior Courts adjourning the proceedings to allow the dispute between the

parties to be dealt with by way of Alternative Dispute Resolution (“**the ADR Motion**”). The motion was adjourned between 23 July 2012 and 31 July 2012 on which date it was ultimately heard and refused by Gilligan J. The applicant’s essential complaint before the Tribunal was an allegation that the respondent misled the plaintiff company’s solicitor and the Court in relation to the time at which the ADR Motion was scheduled to be heard by the Court.

4. In the High Court, Kearns P., having considered all of the affidavits and exhibits was satisfied that there was nothing unusual or suspicious about the manner in which the motion was adjourned and accepted the finding of the Tribunal that there was no *prima facie* evidence of misconduct on the part of the respondent.
5. The Court of Appeal dismissed the appeal of the decision of the High Court. Hogan J. at para. 18 of the judgment noted that very serious allegations had been made against the respondent and stated “*it is only fair that I should make the point – if needs be with some emphasis – that there is simply no evidence at all which has been adduced on the material before us upon which a complaint of this seriousness could properly be grounded.*”
6. Contrary to what is stated in Section 4 of the applicant’s Notice, the applicant was given every opportunity to present his appeal to the Court of Appeal at the hearing on 7 April 2017. The Court had before it all of the extensive materials submitted by the applicant. The suggestion that the applicant did not get a chance to make a proper presentation of his case or was unfairly treated is a serious and fundamental misrepresentation of what occurred before the Court of Appeal.

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

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)-

1. The proposed appeal involves no matter of general public importance.

1.1 The proposed appeal involves no matter of general public importance unless it is a point of law of such importance. No such point of law arises here.

1.2 Further and without prejudice to the foregoing, for the avoidance of doubt:

- (a) Paragraph 1 does not identify any matter of general public importance arising from the decision of the Court of Appeal; that decision was not made on the basis of preferring the evidence of the respondent on the basis that he was a solicitor or in consideration of any issue of the status of the parties. The evidence before the Court was clear and the Court fully explained its conclusions.
- (b) The description of the hearing in the Court of Appeal at paragraph 2 and the suggestion that the applicant was not given time to present his legal submission is a fundamental misrepresentation of what occurred in the Court of Appeal at which hearing the applicant was given every opportunity to present his case. There is no basis whatever for the suggestion that the hearing Court of Appeal was not conducted in a fair and impartial manner and the respondent notes that the applicant made similarly unfounded complaints regarding the proceedings before the Tribunal and before the President of the High Court.
- (c) The suggestion at paragraph 3 that there is an ambiguity as to what constitutes "*a prima facie case*" is without any basis. Firstly, it was never suggested in either the High Court or the Court of Appeal that there was any dispute about the threshold of prima facie case nor did the applicant ever suggest prior to now that there was any ambiguity in relation to same. In the circumstances there could be no basis for an appeal on this ground. Secondly, and in any event, the meaning of a prima facie case is well settled and no point of law of public importance arises in relation to same.
- (d) Costs were awarded against the applicant in both the High Court and Court of Appeal on the basis of the application of the normal rule that costs follow the event. No point of law of public importance arises in relation to same.
- (e) As regards the matters set out at paragraphs 5 and 6 in relation to Order 56A and the Rules of the Superior Courts and the use of alternative dispute resolution, these are matters which manifestly do not form any part of these proceedings and which could not and do not properly arise as part of any appeal. As is clear

from paragraphs 5 and 6 the applicant's assertions relate to the separate Honeywell proceedings.

In any event none of the matters at paragraphs 1 – 6 inclusive of Section 5 of the applicant's notice of appeal establish that the decision of the Court of Appeal involves a matter of general public importance.

2. Nor do the interests of justice demand that there be an appeal. None of the matters set out at paragraph 7 to 15 of Section 5 of the applicant's notice establish that it is necessary in the interests of justice that there be an appeal of the Court of Appeal's decision. Without prejudice to the foregoing:
- (a) This application turned on the facts, which facts were exhaustively ventilated on affidavits which both the High Court and Court of Appeal fully considered.
 - (b) In the circumstances, the applicant has been afforded a very full opportunity to present his respective case and his submissions have been carefully considered and adjudicated upon by both the High Court and the Court of Appeal. There is no demand of justice to warrant a further re-hearing.
 - (c) There is no basis for the contentions at paragraph 7 and 8 that the Court of Appeal failed to engage with a significant element of evidence presented by the Appellant or examine all of the evidence that had been presented by the Appellant. It is clear from the Court's judgment that it had fully considered the evidence before it.
 - (d) It is simply wrong for the applicant to state that the Court of Appeal's judgment contains errors of fact.
 - (e) It is further wrong for the applicant to state that he was refused the facility to have an independent technical assessment of the respondent's email evidence carried out. No such application was ever made or refused.
 - (f) The applicant is further mistaken in stating that there are errors in the assessment by the Court of Appeal of the hearing on 31 July 2012. As is noted at paragraph 11 of the Court of Appeal's judgment, it was not in dispute that the motion for ADR in the Honeywell proceedings ultimately went ahead at 12.30 p.m. that day before Gilligan J. Both sides were represented by Senior Counsel and there was no suggestion that there had been any prejudice or disadvantage to either side by reason of the earlier confusion regarding the time for the hearing of the motion.
 - (g) The applicant persists in making serious allegations which have no evidential basis whatever and which have been emphatically rejected by the Tribunal, the High Court and the Court of Appeal in circumstances where the applicant has

had repeated opportunities to present his case and accordingly it is submitted that, so far from a further appeal being in the interests of justice, it would in fact be contrary to the interests of justice, and contrary to the legitimate interests of the respondent, to allow the applicant leave to appeal in such circumstances.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc. in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. Response to the Grounds of Appeal

- 1.1 The grounds set out at Section 6 of the applicant's notice to not disclose any arguable ground of appeal. The responses below are without prejudice to this contention.
- 1.2 The Court of Appeal did not err in law. There was in fact no issue of law in dispute in the Appeal at all. The Court of Appeal did not err in fact or fail to take proper account of all the evidence put forward by the applicant and made no error in concluding (as the Tribunal and the President of the High Court had previously concluded) that no *prima facie* case of misconduct had been established.
- 1.3 The Court of Appeal did not err as alleged at ground 2. As is clear from paragraph 14 – 17 of the Court of Appeal's judgment, having considered all of the evidence before it, the Court was satisfied that it could find nothing which could suggest that either the respondent or Mr Woods (who was at the time a trainee in Arthur Cox and who had contacted the Court Service) had acted with anything other than complete propriety in this matter. No evidence to the contrary was before the Court, whether from the applicant, his colleagues or the Courts Service and the suggestion to the contrary is premised on a mischaracterisation of the evidence.
- 1.4 The Court of Appeal did not err in failing to take account of Order 99 Rule 1B as alleged at Ground 3. Order 99 Rule 1B had no relevance to the issues the subject of the appeal. Further, and in any event, the ADR application (which was an application brought by Honeywell rather than the applicant) was not "lost" as a result of any alleged act or omission of the respondent; rather it was heard and refused by the High Court (whose decision was not appealed).
- 1.5 The Court of Appeal did not fail to test or examine the applicant's evidence as alleged at ground 4. As is clear from the judgment of the Court of Appeal, it considered all evidence that was put before it.
- 1.6 The Court of Appeal was correct in dismissing the appeal and in finding that there was

no evidence at all adduced upon which a complaint of misconduct against the respondent could be properly grounded.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Caren Geoghegan BL
Maurice G. Collins SC

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

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:

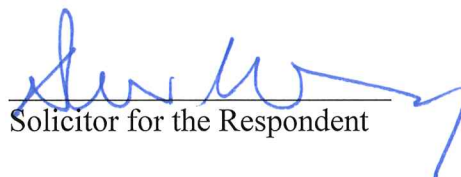
make a reference to the Court of Justice of the European Union? Yes No

If Yes, please give details below:

Will you request a priority hearing? Yes No

If Yes, please give reasons below:

Signed:


Solicitor for the Respondent

Please submit your completed form to:

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

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.