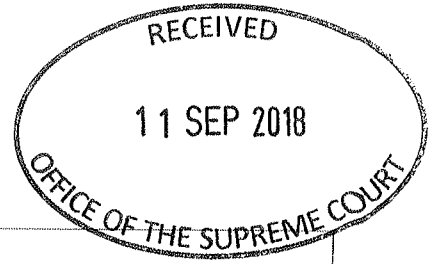


**SUPREME COURT**  
Respondent's Notice



Supreme Court record number	S	AP:IE:2018:000132
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[Title and record number as per the High Court proceedings]

Finbar Tolan	V	Connaught Gold Co-Operative Society Ltd
High Court Record No. 2012 12005P		

Date of filing	11-9-2018
Name of respondent	Connaught Gold Co-Operative Society Ltd
Respondent's solicitors	Rochford Gallagher & Co Solicitors Tubbercurry, County Sligo
Name of appellant	Finbar Tolan
Appellant's solicitors	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	Connaught Gold Co-Operative Society Ltd
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The respondent was served with the application for leave to appeal and notice of appeal on date	29 <sup>th</sup> August 2018
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The respondent intends :	
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<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
--------------------------	---

<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
--------------------------	---

<input checked="" type="checkbox"/>	to oppose the application for leave to appeal
-------------------------------------	---

<input type="checkbox"/>	not to oppose the application for leave to appeal
--------------------------	---

<input type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
--------------------------	--

<input type="checkbox"/>	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
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<input type="checkbox"/>	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			
Name of firm	Rochford Gallagher & Co		
Email	tubbercurry@rochford-gallagher.com		
Address	Tubbercurry County Sligo	Telephone no.	071 91 85011
		Document Exchange no.	236001 Tubbercurry
Postcode	F91 AHE9	Ref.	TC2061
How would you prefer us to communicate with you?			
<input checked="" type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Kenneth Fogarty S.C.		
Email	fogartyken@gmail.com		
Address	Law Library Four Courts	Telephone no.	01 817 4495
		Document Exchange no.	816572
Postcode	Dublin 7		

Counsel			
Name	Keith O'Grady B.L.		
Email	keithogradey@gmail.com		
Address	Chapel Street Sligo	Telephone no.	071 91 32475
		Document Exchange no.	5015 Sligo
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	n/a
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

n/a

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:**

None

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)-*

- \* the decision in respect of which leave to appeal is sought does not involve a matter of general public importance
- \* it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court

The reasons why the Respondent respectively submits that the decision in respect of which leave to appeal is sought does not involve a matter of general public importance are as follows:

- (a) At paragraph 21 of his decision, Justice Noonan states "*the Plaintiff does not allege, as one might expect in such circumstances, that the trial judge was biased against him because of some connection or link to the defendant. Rather, the plaintiff complains of the trial judge's relationship with the plaintiff's own solicitor. Applying the test in Bula Limited ~v~ Tara Mines Limited (No. 6), quite apart from the issue of whether this Court could have any jurisdiction to intervene in this matter, I cannot envisage how the mere fact alone that the trial judge is related by marriage to the plaintiff's solicitor could conceivably give rise to an ordinary reasonable member of the public having a reasonable apprehension that the plaintiff would not have a fair hearing from an impartial judge*". At paragraph 22, Mr Justice Noonan states "*Even if that were to give rise to any legitimate cause for complaint, one would have thought it could only be on the part of the defendant. In that regard, I must of course bear in mind that the defendant is entirely uninvolved in any of the matters of which the plaintiff complains and the prejudice to it must be considered. The legal test of bias already described is predicated on the assumption that a reasonable person might reasonably apprehend bias on the part of a judge in favour of the party with whom the judge has a connection. It would make no sense to suggest that a reasonable person would have a reasonable apprehension that a judge would be biased against the party with whom the Judge has such connection. Logically therefore, it is difficult to see how the test could be satisfied in circumstances such as arise here*". On the basis of the foregoing, it is respectfully submitted that the issue advanced by the Appellant before Mr. Justice Noonan, the Court of Appeal and now in the within application for leave is unique to the case between the parties herein and does not involve a matter of general public importance.

- (b) Insofar as the Appellant alleges that the trial judge had discussed the case directly with the Appellant's solicitor in advance of the hearing, reliance is placed upon paragraph 23 of the aforesaid decision of Mr. Justice Noonan (as referred to at paragraphs 27 and 28 of the decision of the Court of Appeal). In that regard, Mr. Justice Noonan states "*had such a thing occurred, it would of course have been quite improper but there is in my view no admissible evidence that establishes that fact. What is key however is that even if it had occurred, the plaintiff himself was well aware of it long in advance of the trial of his action and yet took no objection to the President hearing the case. Nor, having lost the case before the President, did he raise it as an issue in the appeal*". On that basis, Mr. Justice Noonan concluded that there was no conceivable basis upon which he would be justified in interfering with the final Orders and judgments already pronounced in the proceedings. As is confirmed at paragraph 28 of the decision of the Court of Appeal, Mr. Justice Noonan also considered it material that the Respondent was quite blameless in relation to the matters complained of. In such circumstances, it is again respectfully submitted that the aforesaid allegation maintained by the Appellant in both the High Court and the Court of Appeal, which was rejected by both Courts, is an issue unique to the Appellant's case and does not involve a matter of general public importance.
- (c) The Respondent herein further places reliance upon the grounds of appeal advanced by the Appellant, as set out and referred to at paragraph 29 of the decision of the Court of Appeal. Each of the grounds referred to makes complaint about the manner in which Mr. Justice Noonan arrived at his decision. Again, the matters raised relate solely to the Appellant's own case. The complaints were rejected by Mr. Justice Noonan and, on appeal, by the Court of Appeal. It is respectfully submitted that there is nothing in any of the twelve grounds referred to at paragraph 29 of the decision of the Court of Appeal that in any way involve matters of general public importance.
- (d) Insofar as the Court of Appeal has summarised the Appellant's case at paragraph 30 of its judgment, the Respondent relies upon that and, specifically, the complaints made by the Appellant in relation to the former President of the High Court improperly taking seisin of his case and the failure on the part of the former President to disclose a family relationship and recuse himself from any involvement with the case. The complaints made, which have now been rejected in two Courts, are clearly matters which relate only to the Appellant's case and do not involve matters of general public importance.
- (e) Insofar as the Appellant makes complaint in relation to the manner in which the Solicitors retained by the Appellant dealt with the litigation and conducted the trial before the former President of the High Court, it is respectfully submitted that the matters raised are matters solely between the Plaintiff and his former Solicitors and could not possibly involve matters of general public importance. At paragraph 59 of her decision in the Court of Appeal, Ms. Justice Whelan described the Appellant's appeal as *unstateable*, for the reasons set out in her considered decision. It is confirmed that the former President of the High Court tried the case and, based on the evidence presented to him on behalf of the parties, found for the Respondent. That finding was upheld on appeal by the Court of Appeal and the Appellant's application for leave to appeal to the Supreme Court was refused. The Appellant then sought to advance a novel and unique argument before Mr. Justice Noonan. This was rejected and Mr. Justice Noonan's decision was upheld by the Court of Appeal. It is submitted that there is nothing whatsoever contained in any of the Appellant's arguments before any of the aforesaid Courts that could possibly involve or constitute matters of general public importance.

The reasons why the Respondent submits that it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court are as follows:

- (a) The Respondent relies upon the decision of the Court of Appeal and, in particular, paragraphs 60 to 62 thereof. As is stated by Ms. Justice Whelan in that decision, the Respondent herein has rights under the European Convention on Human Rights to have finality to litigation. The Respondent is entitled to legal certainty and to have a final determination of issues. As is confirmed at paragraph 62 of the decision of the Court of Appeal, the Respondent herein has successfully defended the Appellant's claim in the High Court, successfully defended an appeal in the Court of Appeal and successfully resisted an application to have the matter re-opened by way of further appeal to the Supreme Court. Thereafter, the Respondent successfully contested the attempts by the Appellant to have the proceedings re-entered, the previous Orders set aside and the matter being re-tried. As is confirmed at paragraph 62 of the said decision of Ms. Justice Whelan "*there is clear jurisprudence emanating from the European Court of Human Rights in Strasbourg for the proposition that where Courts have finally determined an issue it should not generally be called into question.*" It is therefore respectfully submitted that it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court.
- (b) The decisions of both Mr. Justice Noonan and the Court of Appeal make clear that the Appellant failed to advance any evidence of any probative kind to support the allegation of bias. As is stated at paragraph 63 of the decision of the Court of Appeal, no legitimate reason was identified by the Appellant to support a claim that the former President of the High Court lacked impartiality towards him in the conduct of any aspect of the case. It is confirmed at paragraph 64 that the Appellant failed to identify any objective justification for his complaints that the former President of the High Court lacked impartiality or conducted the case otherwise than in accordance with his constitutional rights. In such circumstances, the Appellant has had his complaint considered in great detail by both the High Court and Court of Appeal. Both Courts held against the Appellant and it is respectfully submitted that it is not necessary, in the interests of justice, that there be an appeal to the Supreme Court.
- (c) Further to the aforesaid, the Respondent places reliance upon paragraph 24 of the decision of Mr. Justice Noonan. In that regard, Mr Justice Noonan stated "*further as noted by Denham J. in Talbot, the Court must consider all the circumstances of the case in determining whether the jurisdiction to set aside arises or should be exercised. It is highly material in that respect, as I have noted, that the Defendant is quite blameless in relation to the matters complained of by the Plaintiff. Therefore, even if the jurisdiction could be said to arise, which I am satisfied it does not, the exercise would be highly prejudicial to the Defendant, an entirely innocent party, and the justice of the case would require refusal*". The Respondent herein has been required to defend the underlying claim before three Courts. Thereafter, the Respondent has been required to resist the attempt to re-open the litigation before two Courts and, now, in the within application to the Supreme Court. In all of the circumstances, the Respondent submits that it is not necessary, in the interests of justice, that there be an appeal to the Supreme Court.

*\*delete where inapplicable*

#### 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):**

- (a) The Appellant herein has had two opportunities to advance evidence to support his allegation of bias. He has failed to do so. In that regard, the Respondent relies upon paragraph 63 of the decision of Ms. Justice Whelan which states, *inter alia*, "*what is at*

*stake is the confidence which the Courts in a democratic society must inspire in the public. No evidence of any probative kind was advanced to support the allegation of bias. No legitimate reason was identified by the Appellant to support a claim that the former President of the High Court lacked of impartiality towards him in the conduct of any aspect of the case".* Further, at paragraph 64 of the said decision, it is stated that *"the Appellant has failed to identify any objective justification for his complaints that the former President of the High Court lacked impartiality or conducted the case otherwise than in accordance with his constitutional rights".*

- (b) The Respondent respectfully submits that Mr. Justice Noonan considered and applied the correct legal principles and correctly arrived at the conclusion that there was no legal basis upon which the High Court would be justified in interfering with the final Orders and judgments already pronounced in the proceedings.
- (c) Both the High Court and the Court of Appeal considered the relevant legal authorities and, applying the legal principles set out in the relevant case law to the matters at issue herein, correctly arrived at the decision that the Appellant was not entitled to the reliefs sought.
- (d) The Respondent is entitled to have finality to litigation, as is confirmed by Ms. Justice Whelan in her aforesaid decision. The Appellant herein had the benefit of a full plenary hearing before Mr. Justice Kearns, a full hearing before the Court of Appeal and a full consideration by the Supreme Court of the Appellant's application for leave to appeal. Each of the said Courts decided the issues against the Appellant. Thereafter, the Appellant sought to re-open the proceedings by advancing what was described by Mr. Justice Noonan as a "unique" argument as in "unique" to the Appellant, being counter intuitive to the ordinary understood circumstances in which bias confers an unwarranted benefit from the close relationship rather than a suggested vindictive disadvantage to his case as contended for by the Appellant. The attempts by the Appellant to re-open the proceedings were rejected by both the High Court and the Court of Appeal. The Respondent, as described by the High Court as *"quite blameless in relation to the matters complained of by the Plaintiff"* is entitled to finality and is entitled to take such steps as are appropriate to enforce the decision of Mr. Justice Kearns in the High Court.
- (e) The Respondent further places reliance upon the decision of Mr. Justice Noonan, as upheld on appeal and, in particular, to the application of the test as set out in *Bula Limited ~v~ Tara Mines Limited (No. 6)*. It is respectfully submitted that the mere fact alone that the trial Judge was related by marriage to the Plaintiff's Solicitor could not conceivably give rise to an ordinary reasonable member of the public having a reasonable apprehension that the Plaintiff would not have a fair hearing from an impartial Judge. Further, as is stated at paragraph 50 of the decision of the Court of Appeal, the apprehensions of the Appellant as such, therefore, are not relevant. The matters complained of by the Appellant herein do not meet the test set forth in relation to assertions of objective bias and the Appellant is not entitled to the reliefs sought.

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

Keith O'Grady B.L.  
Kenneth Fogarty S.C.

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:

None

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:

*Rochford Gallagher & Co*  
Rochford Gallagher & Co  
Solicitors for the Respondent  
Tubbercurry  
County Sligo

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.