

O. 58, r. 15

No. 1



**SUPREME COURT**

Record No: SMP: IE: 2019: 000063

**Application for Leave to Appeal**

**Part I**

*The information contained in this part will be published. It is the applicant's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court*

**1. Date of Filing:**

**2. Title of the Proceedings:** *[As in the Court of first instance]*

**ENNIS PROPERTY FINANCE DESIGNATED ACTIVITY  
COMPANY**

**V**

**DOMINIC CARNEY**

**3. Name of Applicant:** DOMINIC CARNEY



*If an application is being made to extend time for the bringing of this application, please set out concisely the grounds upon which it is contended time should be extended.*

**N/A**

**7. Matter of general public importance:**

*If it is contended that an appeal should be permitted on the basis of matter(s) of general public importance please set out precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance justifying appeal to the Supreme Court.*

*This section should contain no more than 500 words and the word count should appear at the end of the text.*

7.1 That the rights of the Appellant under Article 40 and Article 15 of the Bunreacht na hÉireann 1937 were disregarded:

7.2 40.1 All Citizens shall, as human persons, be held equally before Law.....

7.3 Article 40.3.1 The State guarantees in its Laws to respect, and, as far as practicable, by its Laws to defend and vindicate the personal rights of the Citizen.

7.4 Article 40.3.2 the State shall, in particular, by its Laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every Citizen.

7.5 Article 15.2.1 The sole exclusive power of making Laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.

7.6 The Appeal Court denied the Appellant a right to a fair hearing pursuant to Article 6 of the European Convention of Human rights transposed into law through *European Convention on Human Rights Act 2003*.

7.7 The High Court sought to ignore the *Courts (Supplemental Provisions) Act, 1961* section 14 and the Court of Appeal ignored the *Courts (Supplemental*

*Provisions) Act, 1961 (as Amended)* by way of section 23 of the S.I. No 18 of 2014, regarding Jurisdiction in breach of Article 15 and 40.

7.8 The High Court and the Court of Appeal sought to advance authorities of its own volition to reach a decision that they were desirous to reach and the Petitioner did not, at either hearing, seek to provide any authorities to advance his argument. This is a breach of Article 15.

7.9 After Judgment was pronounced from the High Court, counsel for the Petitioner requested the appellant to “*stop appealing and allow the receiver to sell your chattels as his own and we will not proceed with the Petition*”. He then suggested I make an offer to the Petitioner to resolve our issues. This evidence was refused by the Court of Appeal and the Court did not apply Or86A rule 4 RSC to except exceptional evidence which would show the candour of the Petitioner. *This* involves a matter of general public importance.

7.10 It is clear from the evidence that the Appellant sought to introduce, that the Petitioners were merely holding bankruptcy proceedings over the Appellants head in order to stop him from litigating against the Petitioner’s agent and the Petition is a collateral attack, abuse of Court process, frivolous, vexatious and is merely presented to stop the appellant litigating. Again, the Courts turned a blind eye to such matters, severely prejudicing the Appellant. This was a breach of Article 40.3.2. *This* involves a matter of general public importance.

7.11 The High Court and the Court of Appeal failed to consider the implications of such collateral attack and allowed breaches of Article 6 of the ECHR, Article 8 of the ECHR and Article 1 Protocol 1 of the ECHR. breach of Article 15 and 40. *This* involves a matter of general public importance.

## **8. Interests of Justice:**

*If it is contended that an appeal should be permitted on the basis of the interests of justice, please set out precisely and concisely, in numbered paragraphs, the matters relied upon.*

*This section should contain no more than 300 words and the word count should appear at the end of the text.*

- 8.1 The petitioners have sought to use an old remedy of a Bankruptcy Petition to satisfy alleged monies outstanding where the desired effect will not achieve the essence of the application.
- 8.2 The balance of justice was not considered by the judges in either Court, where the only defence the Petitioner had to the issuance of the Summons was “we are entitled to issue the Summons”.
- 8.3 The Petitioner did not place before the courts any evidence that a Bankruptcy Summons would satisfy any alleged debt owed.
- 8.4 The Petitioning Company did not provide any authority for the director nor the Solicitors to issue any Summons or Petition.
- 8.5 The Petition was issued only to stop the litigant pursuing the Receiver, agent of the Petitioner, so the Receiver could sell the applicants chattels without incurring any liability.
- 8.6 The effects of the adjudication would be detrimental to the applicant and whereby the Petitioner has not sought ulterior methods of alleged debt recovery, the balance of justice must favour the applicant.
- 8.7 The Judges are applying their own laws without jurisdiction and considering authorities that were not placed before the Court for consideration within the application listed for determination.
- 8.8 The Courts were established under the Bunreacht na hÉireann 1937 and are subject to ECHR and when the Courts ignore/neglect/refuse to adhere to those principles under law, natural or positive, this is an injustice upon the applicant.

Word count – 170

**9. Exceptional Circumstances: Article 34.5.4:**

~~Where it is sought to apply for leave to appeal direct from a decision of the High Court, please set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.~~

~~This section should contain no more than 300 words and the word count should appear at the end of the text.~~

Word count –

**10. Grounds of Appeal**

Please set out in the Appendix attached hereto the grounds of appeal that would be relied upon if leave to appeal were to be granted.

**11. Priority Hearing:**

Yes

No

If the applicant seeks a priority hearing please set out concisely the grounds upon which such priority is sought.

This section should contain no more than 100 words and the word count should appear at the end of the text.

The application by the Petitioner is a criminal like conviction in a civil case and the courts view such application as penal in nature. The affect`'s of such decisions by both Courts are precluding the applicant access to the Courts inorder to execute a valid subsisting claim, whereby the application will not satisfy the purported desired effect. If the Petitioner is allowed to circumvent the law to achieve an altera motive, this will usurp the applicant`s rights under Bunreacht na hÉireann and ECHR.

Word count -83

## 12. Reference to CJEU:

*If it is contended that it is necessary to refer matters to the Court of Justice of the European Union please identify the matter and set out the question or questions which it is alleged it is necessary to refer.*

12.1 Can an application for Bankruptcy be used for ulterior motives to usurp a litigant's rights within domestic court's under Article 1 Protocol 1? (ref cases below):


12.2 Can domestic courts restrict a litigant in person to a specific timeline which is in contravention with Article 6 of the Human Rights Act? (ref cases below):

12.3 Can the domestic Courts deem that a valid and subsisting claim, which has been endorsed by the Court of Appeal, be ignored when asserting a litigant's right to avail within the domestic Courts and is not in contravention of his Human Rights, under *European Convention on Human Rights Act* 2003. (ref cases below):

- Case Of Devinar V. Slovenia 28621/15)
- Case of DE Haes and Gijssels v. Belgium, 1997.
- Case Of Andrejeva V. Latvia 55707\_00)
- Case Of Gorraiz Lizarraga And Others V. Spain 62543\_00
- Case Of Steel & Morris v. United Kingdom [2005] 41 EHRR
- Case Of Rousk V. Sweden 27183/04
- Case Of Gillow V. The United Kingdom 9063\_80
- Case Of Demades V. Turkey 16219\_90
- Case Of Fåggerskiöld v Sweden [2008] ECHR 37664/04

*"Ireland is a dualist State, Article 29.6 of the Constitution providing that international agreements have the force of law to the extent determined by the Oireachtas". Source <http://www.supremecourt.ie>*

**Signed:**

  
\_\_\_\_\_  
**(Solicitor for) the Applicant**

**Date:**

\_\_\_\_\_

**To be served on:**

LK Shields Solicitors

**(Solicitors for) Respondent(s)**

**Please file your completed form in:**

**The Office of the Registrar of the Supreme Court**

**The Four Courts**

**Inns Quay**

**Dublin 7**

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



## Appendix

### Notice of Appeal

1. **Title of the Proceedings:** *[As in the Court of first instance]*

**ENNIS PROPERTY FINANCE DESIGNATED ACTIVITY COMPANY**

**V**

**DOMINIC CARNEY**

2. **Grounds of Appeal:**

*Please set out in numbered paragraphs the Grounds of Appeal relied upon if leave to appeal were to be granted.*

- i. The Judges erred in fact and in law when relying upon, in both the High Court Hearing and again in the Court of Appeal hearing, authorities/caselaw that were not provided to the Court by any of the parties, providing the Judges with an avenue to reach a decision that they were desirous to reach. Breach of Article 40.1 Bunreacht na hÉireann. Public Importance.
- ii. The Judges erred in fact and in law by not taking into consideration jurisdictional limitations provided by *S.14 Courts (Supplemental Provisions) Act, 1961*. In Breach of Article 15.2.1 Bunreacht na hÉireann. Public importance.
- iii. The eminent Mark Safney SC provides clarification that a Bankruptcy summons “*must be served within 28 days and an extension of time must be sought within that 28 days*” in line with Or76 r14(1) and S.I. 120 of 2012 of which the Court sought to ignore and no application to extend the Summons was issued. Mark Safney SC was the only authority placed before the Court on this issue. Or122 r9 is in contravention with Or76 r14(1) This is a matter of public importance.
- iv. The Judges erred in fact and in law both the High Court and the Court of Appeal and did not examine Statutory Instruments Bill, 1947. *A Report On Statutory Drafting And Interpretation: Plain Language And The Law (LRC 61–2000)* states at no 6 **Delegated Legislation**: “*Allowing for the difference in juridical nature and provenance, delegated*

*legislation is to be construed in the same way as an Act*". Bennion, *Statutory Interpretation – A Code* (3rd ed., Butterworths, 1997) 190. Public importance.

- v. The Court of Appeal granted a stay on the execution of the Bankruptcy Summons on the 14<sup>th</sup> December 2018 but forced the Appellant to present his case on the 30<sup>th</sup> January 2019, even though on the 14<sup>th</sup> December 2018, directions for the appeal had only been dealt with on that day. This is in contravention of Article 6 of the ECHR and prejudiced the appellant in presentation of his case.
- vi. The Appellant sought to have the above issue placed before the Supreme Court as a matter of public importance but was refused by the High Court and this issue was ignored by the Court of Appeal. Public importance.
- vii. The Judges erred in fact and in law when refusing to use its inherent discretion to stay proceedings which have been proven, by way of evidence, to have been brought for improper purposes as any action in Bankruptcy and is "Penal in nature" and nowhere has this fact been rebutted. Public importance.
- viii. The Judges erred in fact and in law when interpreting the word "Shall". The Appellant provided an authority to the word "Shall" having a mandatory effect upon its meaning and no authority was provided to say otherwise. The Court ignored the authority of Murdoch's Dictionary 6<sup>th</sup> ed. and sought to ridicule the interpretation of the word "shall" by insisting it is not magical.
- ix. The Judges erred in fact and in law as nowhere in the Bankruptcy Act 1988 does it state that a Statement of Means must be furnished when issuing a Notice to Dismiss under section 8, although both Courts seem to lay much prevalence on this issue. Public importance.
- x. The Petitioner sought to rely on the appointment, as a Director of the Petitioning Company, of Donal O'Sullivan as having authority to Act on behalf of the Petitioner. This is in contravention of the Companies Act 2014, section 158.
- xi. It is clear that the receiver is agent for the Petitioner, as confirmed by way of oral evidence by Donal O'Sullivan. The Appellant sought to introduce [1982] EWCA Civ J0617-1 *Stand Chart v Johnny Walker* as an authority to confirm the position of the Petitioner and receiver and they were using the application to circumvent the applicant's rights to access to the Courts, and the Petition was issued for collateral purposes only. Public importance

- xii. The Judges erred in fact and in law by not considering new evidence that was *prima facie* evidence of the candour of the Petitioner in bringing the application. The Supreme Court in Tweedwood [2017] IESC 81 stipulates the test upon which to adduce new evidence, but the Court of Appeal failed to apply that test.
- xiii. The Judges erred in fact and in law when seeking to question the applicant directly on issue that were not evidenced before the Court. Gerard Hogan, former Court of Appeal Judge, in *Administrative Law in Ireland*, Forth Ed., Roundhall, 2010, Ch. 8-29, The “no bias” principle states: “*First, a most subversive attack on inquirers would be to claim that it is wrong for the inquiry to ask questions of those persons whose conduct is under investigation*”. Public importance
- xiv. The Judges erred in fact and in law when not considering the Public Policy of Bankruptcy as referred to in the “*Budd Report*” of which was alluded to by Edwards J. at the appeal and where the Bankruptcy process has been allowed to be used frivolously as a means to get the applicant to accede to the Petitioners demands, which is tantamount to legal blackmail. Public importance
- xv. The Judges erred in fact and in law by ignoring that the applicant disposed by way of Affidavit that the alleged Guarantee and Indemnity upon which the alleged Judgment the Petitioner relies upon, had been reported to the Gardai for fraud and misrepresentation and a pulse number, 15091175, had been provided by the Gardai, by Detective Colm Kelly on Friday May 25<sup>th</sup> 2018 and that investigation has still not concluded as of today’s date, 01<sup>st</sup> April 2019.
- xvi. The Judges erred in fact and in law when seeking to question the applicant directly on issue’s that were not evidenced before the Court. Gerard Hogan, former Court of Appeal Judge, in *Administrative Law in Ireland*, Forth Ed., Roundhall, 2010, Ch. 8-29, The “no bias” principle states: “*First, a most subversive attack on inquirers would be to claim that it is wrong for the inquiry to ask questions of those persons whose conduct is under investigation*”.

### **3. Order(s) sought**

**Please set out in numbered paragraphs the order(s) sought if the Appeal were to be successful.**

- i. The service of the Bankruptcy Summons was invalid in law.
- ii. The Bankruptcy Summons had expired prior to such service.

- iii. The Bankruptcy Petition is invalid by virtue of the invalid Bankruptcy Summons.
- iv. The Petition be stayed/struck out or further and other such reliefs the Court deems fit as the Petition has been issued for collateral purposes only and has been done so without the authority in accordance with the Companies Act 2014. The jurisprudence in insolvency matters was succinctly explained by McCracken J. *In Genport*, the High Court held that “*the true motive behind the petition was not to satisfy the petitioner’s own debt, but rather, to prevent further litigation against another company.*” Execution of the Petition would not satisfy any Judgment the Petitioner alleges to hold.
- v. The Petition be stayed/struck out or further and other such reliefs the Court deems fit, as it has been issued to preclude the Applicant from further litigation, removing his rights of access to the Courts under the Bunreacht na hÉireann 1937 and has been brought solely to circumvent an application of an Isaac Wonder Order.
- vi. A Declaration from this Honourable Court that a Bankruptcy Summons, in law, ***must be served within twenty-eight (28) days*** as per Order 76 rule 14(1) Rules of the Superior Courts and S.I. No 120 of 2012.