

No. 1

SUPREME COURT

Application for Leave and Notice of Appeal

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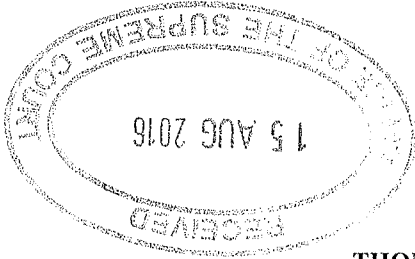
Supreme Court record number of this appeal	S: AP: 1E: 2016: 000109
Subject matter for indexing	

Leave is sought to appeal from

The Court of Appeal The High Court

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2014 No 44 SP (HC)



ALLIED IRISH BANK PLC

PLAINTIFF

AND

THOMAS DARCY AND ANTOINETTE DARCY

DEFENDANTS

ALLIED IRISH BANK PLC		V	THOMAS DARCY AND ANTOINETTE DARCY	
High Court Record Nr	2014 No 44 SP (HC)	Court of Appeal Record Nr	20145-5	2015-340
Date of filing				
Name(s) of Applicant(s)/Appellant(s)		THOMAS DARCY		
Solicitors for Applicant(s)/Appellant(s)				
Name of Respondent(s)	ALLIED IRISH BANK PLC			
Respondent's solicitors				
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?				
Yes		No X		
If yes, give [Supreme Court] record number(s)				

Are you applying for an extension of time to apply for leave to appeal?	Yes	No X
If Yes, please explain why		

1. Decision that it is sought to appeal

Name(s) of Judge(s)	Mr Justice Charlton, Mr Justice Peart, Ms Justice Irvine
Date of order/ Judgment	14 th of July 2016 (perfected on the 18 th of July 2016)

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	THOMAS DARCY
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Original status

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

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

Solicitor			
Name of firm			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	

How would you prefer us to communicate with you?

- Document Exchange E-mail
 Post Other (please specify)

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

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

Current postal address	21 Myra Manor, Kinsealy Dublin, K36YE13
e-mail address	info@tomdarcy.ie
Telephone no.	0858724534

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)

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

Solicitor Gores and Grimes			
Name of firm	Gores and Grimes		
Email	solrs@goregrimes.ie		
Address	Cavendish House, Stable Lane, Dublin 7	Telephone no.	01-8729299
		Document Exchange no.	
		Ref.	
Postcode			

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

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
		Ref.	
Postcode			

Counsel	
Name	
Email	

Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	21 Myra Manor, Kinsealy Co Dublin K36YE13
e-mail address	info@tomdarcy.ie
Telephone no.	0858724534

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 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

The Appellants wish to appeal the entire decision of the Court of Appeal delivered on the 14th day of July 2016.

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

1. The inherent jurisdiction of the court of appeal as so legislated derives its jurisdiction from the Court of Appeal Act of 2014. Under the Act, the Court of Appeal holds no authority or provision in law to determine, interpret or vary a final Order of the Supreme Court, Article 34.4.6 of the Irish Constitution provides the Jurisdiction of the Supreme Court to adjudicate to the exclusion of all other courts. "The decision of the Supreme Court in all cases be final and conclusive".

2. The Court of Appeal failed to have due regard for and/or consideration of the Supreme Court's Order of the 13th of November 2013, and this resulted in a violation of the Appellant's rights under Article 34.4.6 and Article 40.1 of the Constitution of Ireland. Furthermore, it also resulted in a violation of the Appellant's rights under Article 6 of the European Convention on Human Rights. The said violations placed this Appellant at a substantial disadvantage in law, causing him to suffer prejudice and placing him at a substantial inequality and unfairness before the courts of Justice and as a citizen of Ireland and a European citizen.

The Court of Appeal failed to consider and/or have due regard for the Respondent's wilful disobedience of an Order of the Supreme Court of Ireland and the Respondent's abuse and manipulation of the Superior Court Rules, which offend the sense of justice and propriety relied on by the general public of Ireland.

The Court of Appeal erred in law regarding the procedural practice of discontinuance of proceedings when such proceedings originated from a Superior court, contrary to Article 6 § 1 of the European convention on human rights as held that Protects the implementation of final, binding judicial decisions and Article 34.4.6 of the Irish Constitution, where such decisions of the Supreme Court shall in all cases be final and conclusive.

By virtue of its subordinate jurisdiction, the Court of Appeal erred in law and fact by failing to have due regard for, and proceeding to rule in contravention of, the Supreme Court Order of the 13th of November 2013, when it was ordered by the Supreme Court, as follows.

1. "That these proceedings be adjourned to plenary hearing as if these proceedings had been commenced by Plenary Summons."

2." That these proceedings be remitted to the Chancery list in the High court to be further prosecuted there".

The supreme court recognised in its order, that a Plenary summons had been served by the Respondent, and that a defence, had already been lodge by the Appellant, in ordering the case to be remitted to chancery list for a plenary hearing.

The Court of Appeal erred in law and fact when it adjudged that no defence was lodged by this Appellant, when such defence was encapsulated in the Order of the Supreme court, in such circumstances the Court of Appeal erred in its judgement that the Respondent could lawfully discontinue its case by the issue of Form 20 to wholly discontinue its case in accordance with Order 26 rule 1 of the Superior Court Rules, when such jurisdiction to discontinue remained exclusively within the authority of the Supreme court.

The Court of Appeal erred in its judgement and jurisdiction concluding that the Respondent did not wilfully ignore an order of the Supreme Court and that the said order of the Supreme Court was not still in being, the Court of Appeal failed to have due regard for and/or consideration of the

Supreme Court Order when such order was exclusively within the authority of the Supreme Court's Jurisdiction.

The Court of Appeal failed to have due regard for and/or consideration that the Respondent could not wholly discontinue its case without leave of the Supreme court, and that the Respondent in the absence of written consent by all parties and subsequently producing to the proper officer of the Supreme court a consent in writing signed by all parties or by their solicitors, that the Respondent could not discontinue its case, that the proceedings 2014/44SP did begin and continued in violation of this Appellants rights where such violations of Article 34.4.6: and Article 40.1: of the constitution of Ireland and in contravention of Article 6 of the European Convention on Human Rights of this Appellant, placed this Appellant at an substantial disadvantage and inequality in law.

The Court of Appeal erred in law and in fact in finding that the Respondent did not act wrongly or unfairly and such actions by the Respondent where not an abuse or a manipulation of procedural practice.

The Court of Appeal erred in law and in fact in finding these Appellants where not prejudiced by such actions by the Respondent. When such actions promoted injustice by virtue of depriving the Appellants to a full plenary hearing as so Ordered by the Supreme Court, on foot of the Respondent's abuse and unfairness of procedural practice, where the Respondent wilfully ignored the Order of the Supreme Court of the 13th of November 2013, where the Respondent initiated new proceedings by way of a demand letter on the 21st of November 2013, eight days from the Order, followed by a Special summons on the 28th of January 2014, such actions denied this Appellant his right to a Plenary hearing as so Ordered by the Supreme Court.

The Respondent held two identical cases in being, one by Order of the Supreme court by way of Plenary Summons, the other by way of Special summons, On the 28th of March 2014 the Respondent by way of affidavit in the Masters court was informed of the abuse of process and failed to address the abuse, On the 4th of April 2014 the Supreme Court was informed of the said abuse, followed immediately by the discontinuance of the Supreme court ordered Plenary proceedings by the Respondent, some six months from the inception of proceedings.

The court of Appeal erred in law in finding the Respondent in accordance with Order 26 Rule 1 of the Superior court rules discontinued its case lawfully. The Respondent manipulated court procedures and adopted actions that threaten the rule of law, causing unfairness and prejudiced to this Appellant where such actions removed the right to a plenary hearing for this Appellant. Such bad faith and substantial prejudice to this Appellant removed Consideration to irrefutable evidence that may have been adduced, and all relevant factual issues either orally or by way of documents, to establish particular facts, inconsistencies with averments made and evidence produced by the Respondent throughout the former proceedings.

The Court of Appeal erred in law in finding as adjudged "The wisdom of making or of seeking those loans is not part of that review, as there is nothing in this case to indicate any undue influence or any other aspect of contract law which might provide a defence".

The Court of Appeal failed to have due regard for and/or consideration to the appeal document herein and the affidavits exhibited to the court of appeal, it was clearly identified such undue influence caused a repudiatory breach of contract law regarding the forced appointment of William Murray head of Rathdown County Council over the Appellants building Portfolio and the undue influence brought by the Respondent to terminate a judicial review case 2009 No. 425 JR and to terminate an investigation by the Irish planners association, matters now subject to proceedings in

case No 2015/2214P Darcy v AIB Plc. Limited and William Murray.

The Court of Appeal erred in law and fact in its consideration that the Appellants held in being a constitutional challenge Case no 2014/755P to the Land and Conveyancing Law Reform Act of 2013, an act entirely relied on by the Respondent. Constitutionally challenging the retrospective introduction of law and the removal of the right to a plenary hearing. A right already granted to the Appellants by the Supreme Court of Ireland on the 13th of November 2013, prior to the initiation of the special summons proceedings 2014/44SP brought by the respondents to circumvent the order of the Supreme Court.

The Court of Appeal erred in law in its prohibited interpretation of the Supreme Court Order of the 13th of November 2013, when it was so ordered by the Supreme Court.

“That the Appellants do recover costs of the high court proceedings and of this appeal when taxed and ascertained.”

The Respondents actions to date express wilful civil contempt to the Order of the Supreme Court, by the Respondents failure to pay the costs of these Appellants. Causing an inequality in law where these Appellants are prevented by such actions to fund their substantial defence, to identical proceedings already adjudged by the Supreme Court to be a bone fide defence, where such bone fides warranted a Plenary Hearing, according to the honourable panel of Supreme court Judges, the Respondents civil contempt to the Order of the Supreme Court is a violation of the constitutional right to a fair trial of this Appellant, when no such funds have been paid in three years, when such right to a fair trial is enshrined in Article 6 of the European Convention on Human Rights representing one of the most fundamental guarantees for the respect for the rule of Law.

The Court of Appeal erred in law and fact in consideration that the actions of the Respondent were not malicious and deliberate and or a misuse or perversion of a Supreme court Order of the 13th of November 2013 and a manipulation of the Superior Court Rules and procedural process. When such Supreme Court orders and Superior court rules are enshrined in law to promote justice and prevent injustice.

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

Please list

1. The inherent jurisdiction of the court of appeal as so legislated derives its jurisdiction from the Court of Appeal Act of 2014. Under the Act, the Court of Appeal holds no authority or provision in law to determine, interpret or vary a final Order of the Supreme Court, Article 34.4.6 of the Irish Constitution provides the Jurisdiction of the Supreme Court to adjudicate to the exclusion of all other courts. "The decision of the Supreme Court in all cases be final and conclusive".
2. The Court of Appeal failed to have due regard for and/or consideration of the Supreme Court's Order of the 13th of November 2013, and this resulted in a violation of the Appellant's rights under Article 34.4.6 and Article 40.1 of the Constitution of Ireland. Furthermore, it also resulted in a violation of the Appellant's rights under Article 6 of the European Convention on Human Rights. The said violations placed this Appellant at a substantial disadvantage in law, causing him to suffer prejudice and placing him at a substantial inequality and unfairness before the courts of Justice and as a citizen of Ireland and a European citizen.
3. Article 6 § 1 of the European convention on human rights as held that Protects the implementation of final, binding judicial decisions
4. The High Court respects its own decision but departs on occasion. (The High Court is bound by Supreme Court judgments)
 - ****Kearns v Manresa Estates Ltd.* (25 July 1975, unreported), High Court
 - "Although I am not bound by decisions of other judges of the High Court, the usual practice is to follow them unless I am satisfied that they were wrongly decided."

Name of solicitor or (if counsel retained) counsel or applicant/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

2014 No 44 SP (HC)

References to Law Report in which any relevant judgment is reported

Article 15.5.1^o of the constitution of Ireland. Retroactive changes of the civil law have also been found to violate the constitution when they would have resulted in the loss in a right to damages before the courts, the Irish Supreme Court having found that such a right is a constitutionally protected property right.

- *McDonnell v. Byrne Engineering Co Ltd, Irish Times* (4 October 1978) — Here, a retrial was ordered where Murnaghan J. refused to apply Supreme

Court guidelines (*Carroll test*) for the award of damages.

- **State (Harkin) v O'Malley* [1978] I.R. 269
- *O'B v. Patwell*, [1994] 2 I.L.R.M. 465
- ¹ Article 15.2.1° attributes the "sole and exclusive power of making laws" to the *Oireachtas*, which body comprises the President and a bicameral parliament.² The *Oireachtas* is prohibited from enacting any law which is inconsistent with the Constitution; any unconstitutional laws are invalid.³ The High Court and the Supreme Court may determine the validity of any law by reference to the Constitution

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:

Restoration of the Order of the Supreme Court of the 13th of November 2013.

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

Article 34.4.6, Article 40.1 Article 15.5.1°

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

Violation of Article 6 and Article 6 (1) of the Convention on human Rights

Are you asking the Supreme Court to:

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

¹ *Buckley and Others (Sinn Féin) v Attorney General and Another* [1950] IR 67, 81 (IESC); *Boland v An Taoiseach* [1974] IR 338, 370 (IESC); *Maguire v Ardagh* [2002] 1 IR 385, 575 (IESC).

² Article 15.1.2, *Bunreacht na hÉireann 1937* (Ireland); *Wireless Dealers Association v The Minister for Industry & Commerce* (Unreported, Supreme Court, 14th March, 1956) (IESC).

³ Articles 15.4.1° and 15.4.2°, *Bunreacht na hÉireann 1937* (Ireland); *In Re Article 26 of the Constitution and the Regulation of Information (Services outside the State for the Termination of Pregnancies) Bill* [1995] 1 IR 1, 39 (IESC).

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:

Right to a fair trial is enshrined in Article 6 of the European Convention on Human Rights

Will you request a priority hearing?

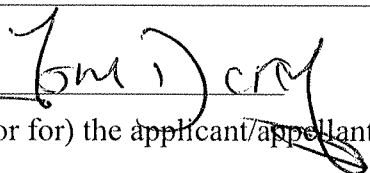
Yes

No

If Yes, please give reasons below:

Family Home now subject to repossession. awaiting ejection

Signed:



(Solicitor for) the applicant/appellant

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.