

Appendix FF

Order 58, rule 15

No. 1

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

The Court of Appeal The High Court

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

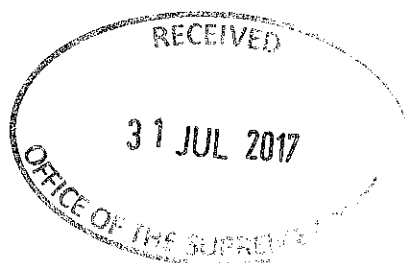
WILLIAM JONES	V	COOLMORE STUD
High Court Record Nr 2016/3211P	Court of Appeal Record Nr	2016/326
Date of filing 13 APRIL 2016	1 JULY 2016	
Name(s) of Applicant(s)/Appellant(s)	WILLIAM JONES	
Solicitors for Applicant(s)/Appellant(s)	LITIGANT IN PERSON	
Name of Respondent(s)	COOLMORE STUD	
Respondent's solicitors	ARTHUR COX	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If yes, give [Supreme Court] record number(s)		

Are you applying for an extension of time to apply for leave to appeal? Yes No

If Yes, please explain why

1. Decision that it is sought to appeal

Name(s) of Judge(s)	THE PRESIDENT MS JUSTICE IRVINE MR JUSTICE BARR
Date of order/ Judgment	JUDGMENT 25 MAY 2017



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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	WILLIAM JONES
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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			
Name of firm	LITIGANT IN PERSON		
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		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 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	1 BEECHMOUNT, ROSCREA, CO. TIPPERARY
e-mail address	WILL. R. JONES @ HOTMAIL. COM
Telephone no.	087 7408933

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

Solicitor			
Name of firm	ARTHUR COX		
Email	GAVIN.WOODS@ARTHURCOX.COM		
Address	10 EARLSFORT TERRACE DUBLIN 2	Telephone no.	01-6180000
		Document Exchange no.	DX 27
		Ref.	
Postcode	D02 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	PAUL GALLAGHER		
Email			
Address	} NOT KNOWN	Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name	JOE JEFFERS		
Email			
Address	} NOT KNOWN	Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

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

of the following means?

	Document Exchange
	Post

	E-mail
	Other (please specify)

4. Information about the decision that is sought to appeal

1. The Appellant is seeking leave to appeal against the entire decision in the Court of Appeal judgment.

2. The grounds for the appeal before the Court of Appeal were:

- (i) bias
- (ii) breach of the right to freedom of speech and expression
- (iii) promoting censorship
- (iv) various errors of law

3. Mr Justice Ryan said in the judgment the decisive question in the case is whether the Respondent was entitled to write to distributors and booksellers pursuant to *Section 27 of the Defamation Act 2009* warning or threatening them with legal action in the event that they proceeded to deal with the Appellant's book.

4. Judge Ryan said his conclusions may be summarised as follows:

- (i) There is no valid objection in law to a person seeking to protect his good name by notifying a distributor or other secondary disseminator of his complaint of defamation with a view to preventing distribution.
- (ii) He concluded by saying he was satisfied the other subsidiary grounds of appeal are unsustainable.

5. While Judge Ryan did not explain his conclusion in 4 (ii) above in his summary, he said earlier in his judgment the Appellant is wholly mistaken on the question of bias. He further stated the Appellant sets out the correct test and notes the distinction between objective and subjective bias, but it is in the application of the tests that the Appellant embarks on a wholly unwarranted, unjust and irrational attack on the trial judge.

6. It is assumed, because the Judge did not refer specifically to freedom of speech in his summary, that he classed the Constitutional right of freedom of speech under subsidiary grounds in 4 (ii) above. He said earlier in his Judgment he did not agree that the Respondent's behaviour "interfered" with the Appellant's fundamental right to freedom of expression. He said the Appellant is free to express his views and to publish them but it is not a restriction on this freedom that he is unable to distribute his book because of the Respondent's actions against booksellers.

7. Judge Ryan made no determination regarding the grounds for the appeal 2 (iii), promoting censorship; or 2 (iv), various errors of law, other than to say without explanation in his summary that he was satisfied other "subsidiary" grounds of appeal are "unsustainable." How can important questions of law be summarily relegated to subsidiary and dismissed in one word - unsustainable? The Appellant may be a litigant in person opposed by elite legal professionals, but it is the same law for everyone. Or is it?

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

The Appellant seeks to appeal from the Court of Appeal.

1. Guarantees protecting freedom of speech and the rule against censorship are fundamental rights enshrined in the Irish Constitution and the European Convention on Human Rights. The judgment violates the right to freedom of speech.

(i) Article 10 of the European Convention on Human Rights, which is incorporated in the Irish Constitution, states: "Everyone has the right to freedom of expression. This shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

2. Article 40 of the Irish Constitution guarantees that everyone is equal before the law. The judgment is not fair or impartial.

(i) Article 46 states a court must treat you fairly. There are two essential rules of fair procedure: a judge should not be biased or appear to be biased and everyone must be given an adequate opportunity to present his/her case.

3. The Appellant strongly believes the Court of Appeal's decision to dismiss his appeal, which was brought under the *Defamation Act 2009*, represents a grave miscarriage of justice. He will provide cogent argument that the judgment handed down has denied him his Constitutional right to a fair and impartial hearing and has perversely and illogically breached his fundamental right to freedom of speech.

4. It is emphasised that freedom of speech is the cornerstone of any self-respecting democracy and it is of utmost importance that the Appellant is afforded a full opportunity to correct a judgment he believes is a travesty of justice. Considering how important freedom of speech is, a fair and impartial final determination of this case is a matter of general public importance for reasons of maintaining confidence in the legal system and it is in the interests of justice being done and being seen to be done that leave to appeal to the Supreme Court be granted.

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

1. The Court of Appeal judgment is contrary to Article 40 of the Constitution of Ireland.

(i) The Appellant reserved the right to refer to an issue in any subsequent court proceedings regarding the requirements for proving bias against a judge. The Appellant's case concerned objective bias, but the Defendant insisted it must also be proved the judge was biased even before the hearing commenced, so-called extraneous bias. This, effectively, makes all bias subjective in nature and the Appellant contends this is manifestly unjust and is against the spirit and letter of the Constitution, which states everyone is equal before the law.

2. The Court of Appeal judgment is contrary to Article 46 of the Constitution of Ireland.

(i) The Appellant contends he was unfairly censored and restricted as to what he could say in the High Court hearing and he was also not afforded his Constitutional right to an adequate opportunity to present his case in the Court of Appeal. He was told at the start of the appeal that he had one and a quarter hours to make his case when he explained he needed longer.

3. The judgment is contrary to Article 10 of the European Convention on Human Rights. The determination regarding freedom of speech is illogical, irrational and perverse.

(i) The Appellant contends the Defendant's actions amounted to a serious violation of his fundamental rights. The sole aim of the Defendant was to stop people reading his book, which constitutes a grave breach of freedom of expression. The book is legally available to be sold.

(ii) It is emphasised the right to freedom of expression includes freedom to seek, receive and impart ideas and information of all kinds. Free speech is not only about those who speak or write, but just as importantly those who listen and read, who have a right to make their own minds about what they are told.

(iii) The Defendant's counsel said they accepted the book was legally for sale but "it does not follow he must be assisted in expressing his view." So they repeatedly threatened and intimidated retailers so stop the Appellant expressing his view – that's a breach of freedom of speech.

4. The Court of Appeal judgment contains various errors of procedure and law.

(i) Defamation is regarded as a special case when injunctive relief is sought. The Appellant supplied relevant case law whereas the Defendant referred to legal principles which were not appropriate to an action relating to defamation. In particular, the Appellant relied on two historical cases of substantial legal importance.

(ii) Judge Ryan's determination is directly opposed to what they stand for. *Bonnard* states that until it is clear an alleged libel is true it is not clear any right at all has been infringed and the *American Cyanamid* case held that it is no part of the court's function at the interlocutory stage to resolve conflicts of evidence on affidavit as to the facts or decide questions of law. Lord Diplock said that should be dealt with at trial, which was the purpose behind the injunction application.

(iii) The Appellant respectfully suggests the above points 4. (i)-(iii) should have been the baseline from which the Court of Appeal determined the appeal. From this understanding of such influential case law, the question of whether there is a serious issue to be tried could be answered.

5. The determination there is not a serious question to be tried is illogical and inconsistent.

(i) The original High Court judgment said the Appellant did not have a serious issue to be tried principally because the trial judge held that truth, in defamation proceedings pursuant to the *Defamation Act 2009*, is a defence and not grounds for legal action. The Appellant appealed against this but Judge Ryan did not appear to give a direct opinion.

(ii) But when it came to the Defendant writing letters threatening retailers selling the Defendant's book, both the High Court and the Court of Appeal determined this was permissible under *Section 27* of the same *Defamation Act 2009*, which is a defence known as the Defence of Innocent Publication and is available to a defendant in a defamation action. This was given as the defining reason the Court of Appeal refused the Appellant's appeal.

(iii) Both courts determined the Defendant could rely on a defence incorporated in the *Defamation Act 2009* to justify their actions against retailers in defamation proceedings, but they denied the Appellant reliance on the Defence of Truth in the same act in exactly the same way. The principle is the same, but the Court of Appeal wrongly discriminated in favour of the Defendant and against the Appellant. This decision represents a grave miscarriage of justice.

(iv) By favouring the Defendant in this way the Court of Appeal has actually sanctioned a de facto restraining order against the Appellant. The Court has granted the Defendant an injunction in all but name allowing it to indefinitely suppress the availability of the Appellant's book.

(v) The Appellant put further arguments forward regarding damages and the balance of convenience which were not addressed correctly by the Court.

6. The core issue on which the judgments were determined changed from the High Court to the Court of Appeal without any explanation, contrary to Article 46 of the Constitution.

(i) Judge Costello said that the Defendant's "primary objection" regarding the Appellant's application for injunctive relief is that the Defendant breached a Right's Commissioners' Agreement. The Appellant at all times argued the Agreement had no place in his action, which was about defamation and nothing else. Two important examples of case law underpinned the argument and further case law was cited regarding duress

(ii) Judge Ryan did not give a decision on this, but instead decided the central issue is now whether or not the Defendant could take pre-emptive measures by "exploiting" *Section 27* of the

Defamation Act 2009 to protect its name before a court of law decides whether the book is defamatory or not, except that the Court of Appeal has wrongly made a final determination in this case at the injunction stage and there will be no trial.

7. Judge Ryan said the Defendant was within its rights to “exploit” Section 27 of the Defamation Act 2009 as a means to suppress the availability of the Appellant’s book. The serious issue here is that the Defendant is guilty of coercion, a criminal offence.

(i) It is not legitimate for Arthur Cox to send these letters, which are riddled with menace, because they break the law. The Appellant provided overwhelming email evidence in both Courts that Arthur Cox repeatedly hounded and harassed retailers into withdrawing the book from sale, which they are still able to do 18 months later.

(ii) The Appellant proved to the Court of Appeal the Defendant is prima facie guilty of coercion, a criminal offence where the retailers have been repeatedly intimidated and threatened into withdrawing the book from sale against their will. The Appellant asked Judge Ryan to decide about this on a point of law, but he did not give an answer.

8. Bias remains one of the grounds for appeal.

(i) The Appellant wishes to appeal the Court’s decision because Judge Ryan gave no explanation other than the Appellant is “wholly mistaken.”

9. The Court wrongly disbarred injunction 3 and breached due process in injunction 4.

(i) The High Court judge gave no reason in the application hearing why she was disbarring injunction 3. The Court of Appeal did not fully explain why this order could not be granted and the Appellant does not accept this decision. The Court of Appeal was told by counsel for the Defendant that they had no intention of suing the Appellant for defamation. Logic, therefore, dictates the book is not defamatory and the Appellant has every right to an order stating this.

(ii) Breach of due process. The Defendant repeatedly refused over many months to provide full details of defamation in the book because it was afraid of the publicity it would attract. Judge Costello also said no useful purpose would be served by the Defendant detailing each and every one of its complaints. However, due process says that the Appellant is entitled to know what the Defendant’s complaints are so that he can answer the serious charges they have levelled against him.

10. The Appellant reserves the right to refer to other matters of law and breaches of procedure previously raised in the Court of Appeal hearing.

Name of applicant/appellant in person: William Jones

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

None

References to Law Report in which any relevant judgment is reported

None

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:

IT IS ORDERED that the appeal be granted
And the matter be adjourned to an agreed date to deal with the issue of costs

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:

This matter concerns an application for an interlocutory injunction and an expedited appeal.

Signed: *M. B. O'Sullivan*

the applicant/appellant