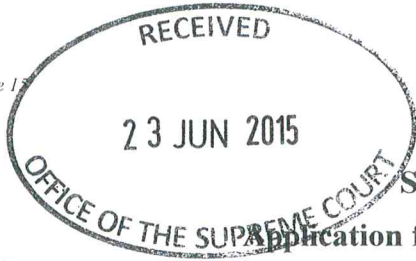


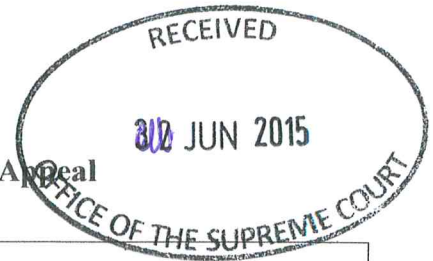
Order 58, rule 17



Appendix FF

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]

TAILLE CUIRTE IONCAIM
STAMP OFFICE

OPEN 250.00
02# 0021 A
9:43 AM 23-06-2015

ACC LOAN MANAGEMENT LIMITED	V	BRENDAN DOWLING
2013 / 1056s & 2014 / 84		
Date of filing	3 rd April 2013	
Name(s) of Applicant(s)/Appellant(s)	Brendan Dowling	
Solicitors for Applicant(s)/Appellant(s)	Litigant in person	
Name of Respondent(s)	Acc Loan Management Limited	
Respondent's solicitors	A&L Goodbody, International Financial Services Centre, North Wall Quay, Dublin 2.	
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, Mr. Justice Kelly, Ms. Justice Irvine
Date of order/ Judgment	27 th day of May 2015

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	N/A
-----------------------	-----

Original status

<input 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			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	

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)

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	Cashla, Athenry, County Galway.
e-mail address	Brendan.dowling11@gmail.com
Telephone no.	087 2435090

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input checked="" 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	N / A
------------------------	-------

Original status

<input 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
<input type="checkbox"/>	

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

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)

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
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	
e-mail address	
Telephone no.	

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)

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

Please set out below:

Whether it is sought to appeal from (a) the entire decision or (b) a part or parts of the decision and if (b) the specific part or parts of the decision concerned

(a) A concise statement of the facts found by the trial court (in chronological sequence) relevant to the issue(s) identified in Section 5 below and on which you rely (include where relevant if certain facts are contested)

(b) In the case where it is sought to appeal in criminal proceedings please provide a concise statement of the facts that are not in dispute

The relevant orders and findings made in the High Court and/or in the Court of Appeal

The entire decision is being appealed.

IT IS ORDERED that the appeal be allowed and that the said judgement and Order of the High Court be set aside and in lieu thereof

IT IS ORDERED AND ADJUDGED that the Plaintiff do recover against the Defendant the sum of €140,245.35 together with the costs of the appeal and of the proceedings in the High Court to be taxed in default of agreement.

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

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)—

Please list (as 1, 2, 3, etc) concisely the reasons in law why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)—

Please list (as 1, 2, 3, etc) concisely the reasons in law:

i. why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court and

ii. why there are exceptional circumstances warranting a direct appeal to the Supreme Court

In the Constitution of Ireland, Article 34.6.1 it states that, “Every person appointed a judge under this Constitution shall make and subscribe the following declaration:

“In the presence of Almighty God I, _____, do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.”

European Convention on Human Rights: Article 6 – Right to a Fair Trial.

Article 63 – Right to an Effective Remedy

The above rights have been breached during the above proceedings.

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

Please list (as 1, 2, 3, etc) concisely:

1. the specific ground(s) of appeal and the error(s) of law related to each numbered ground
2. the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom
3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely
4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

The reasons presented by the President of the Honourable Appeal Court, in summing up, were flawed, biased and were made in error of fact and law.

- (1) The Appellant bank (ACC) had used interest rates that had been fraudulently manipulated by a cabal of banks, one being the appellant's parent bank (Rabobank). The parent bank owns the Appellant bank. The parent bank had also admitted to fraudulently manipulation of interest rates associated with Euribor and that there was an adverse financial loss to its customers and other dealers as a result of the fraudulent activity.
- (2) In summing up, the President acknowledged the fraud carried out by "servants or agents of Rabobank", while erring in his judgement due to the fact that it had been put forward in evidence that there were directors common to both banks at the time of the fraudulent manipulation. It follows that those directors served and acted as agents within the Appellant bank also. This fact appeared not to have been taken into consideration
- (3) During the appeal, interest rates figures from an alleged related period of the contract were presented as evidence to the Honourable Court. These had not been presented as evidence during the High Court hearing (3rd December 2014). The figures presented were taken from the end period of a month. The contract states that the interest rate "will be reset at the beginning" of the month. Mathematical calculations are by their very nature axiomatic, either right or wrong, they cannot be both. This was an error that was pointed out to the Honourable Court, but still appeared to be relied upon. The calculations put forward were reset from the end of a month, an incorrect period in time, while also being based on fraudulently manipulated figures. Mathematical calculations are either true or are false. This was pointed out to the Honourable Judges during the appeal hearing and was not rebutted by the Appellant. A clear bias was displayed by the Honourable Judges acceptance of such evidence.
- (4) While summing up, the President of the Appeal Court stated that the Respondent (Mr. Dowling) had to "have lost this much money" and "have been able to establish a specific loss by referral to the interest rate" and "have a figure of the loss" which recognised that there was a loss but placed the Respondent in the impossible position of somehow presenting a credible figure of the loss. To arrive at a figure or amount of the loss would also appear to be impossible, at a summary hearing, when the rates of

interest charged had already been manipulated. The issue and point of the appeal related there being a defence, or not, so that a plenary hearing might, or might not take place.

- (5) The Respondent has been denied a similar latitude to the tests applied to the admission of evidence put forward by the Appellant bank, as shown, which indicates that there was favour shown to one while the opposite to the other. This displays a breach of the Respondents Constitutional and Human Rights rights.
- (6) I refer to Graiseley Properties Limited & ors v Barclays Bank Plc [2013] EWCA Civ 1372. Lord Justice Longmore. Paragraph 30. "The banks submissions boiled down to saying that they were prepared to accept that they would do nothing dishonest or manipulative during the term of the contract and that should be enough for any counterparty. I can only say that, in my view, it is arguably not enough. If the day after the contracts had been made, the banks had told their counterparties that they had manipulated LIBOR in the past and intended to do so in the future, but would be happy to pay any loss that their borrowers could prove, the borrower would (arguably) be sufficiently horrified so as to think he would be entitled to rescind the deal. The law should strive to uphold the reasonable expectations of honest men and women. If in the end it cannot do so, that should only be after a proper trial."

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

Not yet available.

References to Law Report in which any relevant judgment is reported

Not yet available.

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:

That the Order as Perfected by Ms. Justice O'Malley on the 3rd of December 2014, High Court number: 2013/1056s, be restored.

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

Please refer to section 5.

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

Article 6 – Right to a Fair Trial.

Article 63 – Right to an Effective Remedy.

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 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.