



Appendix FF

No. 2

O. 58, r. 18(1)

SUPREME COURT

Respondent's Notice

Supreme Court record number	S: AP: IE: 2018: 000091
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[Title and record number as per the High Court proceedings]

Ian Bailey v	V	The Commissioner of An Garda Siochana, The Minister for Justice Equality and Law Reform, Ireland and the Attorney-General
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Date of filing	10th July 2018
Name of respondent	The Respondent to the Cross -Appeal is Ian Bailey. See original notice of appeal of Ian Bailey of the same record number (S: AP: IE: 2018:0000082) served on the Commissioner of An Garda Siochana and Ors on the 7th June, 2018 for details of the parties.
Respondent's solicitors	Frank Buttimer & Company
Name of appellant	The Commissioner of An Garda Siochana, The Minister for Justice Equality and Law Reform, Ireland and the Attorney-General
Appellant's solicitors	The Chief State Solicitors Office

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	Ian Bailey
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The respondent was served with the application for leave to appeal and notice of appeal on date	26/06/2018
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The respondent intends :

to oppose the application for an extension of time to apply for leave to appeal

not to oppose the application for an extension of time to apply for leave to appeal

to oppose the application for leave to appeal

not to oppose the application for leave to appeal

to ask the Supreme Court to dismiss the appeal

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

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: X

Respondent's Representation

Solicitor			
Name of firm	Frank Buttimer & Company		
Email	reception@buttimersols.ie		
Address	19 Washington Street, Cork	Telephone no.	021 4277330
		Document Exchange no.	2523
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			
Name	Ronan Munro SC		
Email	rmunro@lawlibrary.ie		
Address	Distillery Building 145/151 Church Street Dublin 7	Telephone no.	01 8172963
		Document Exchange no.	816590
Postcode			

Counsel			
Name	Patrick McCullough BL		
Email	Pmcculloughlawlibrary.ie		
Address	Law Library, Four Courts Dublin 7	Telephone no.	0861726415
		Document Exchange no.	814172
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

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)

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

As is made clear in the Applicants' application for leave and notice of appeal, the Applicants herein freely admit that they had no intention of appealing that part of the judgement of the Court of Appeal now the subject matter of this application within the period prescribed and have only formed such intention now that the Respondent has sought leave to appeal other aspects of that decision. The only explanation offered on behalf of the Applicants for their delay in seeking the leave of this Honourable Court to appeal the decision of the Court of Appeal is that in view of the Respondent's application for leave to appeal separate aspects of the judgement, this appeal is now considered "*warranted*". The Applicants have also plainly stated in their notice for leave to appeal that the issue which they now seek to litigate further before this Honourable Court is effectively moot, in circumstances in which they claim that those matters which survived the non-suit application, resulted in jury verdicts unfavourable to the Respondent. It is clear it is submitted that there having been no *bona fide* intention to seek leave to appeal in respect of this issue within the prescribed time limit and no adequate reason having been advanced for such failure, this application has been brought purely for tactical purposes and an extension of time should not be granted. Furthermore, for the reasons set out below, it is submitted that the Applicants herein have failed to raise arguable grounds on which leave should be granted or if granted, the appeal should be allowed. The Respondent relies on the decisions of this Honourable Court in *Eire Continental Trading Co. Ltd v Clonmel Foods Ltd* [1955] IR 70, *Criminal Assets Bureau v MS* Supreme Court, Unreported, 30th January 2002 and *Goode Concrete v CRH plc* [2013] IESC 39.

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:

The Respondent takes no issue with those facts which the Applicant has set out at part 4 of their Notice. However the Respondent draws the attention of this Honourable Court to the specific reasoning of both the Court of Appeal as regards its decision to dismiss the Applicants/Defendants' cross-appeal and the reasoning of the Learned High Court Judge to leave those issues which he did leave to the jury, which matters the Applicants have omitted to put forth.

At paragraph 48 of its judgement, the Court of Appeal, having considered the principles governing the tort of conspiracy, addressed the specific issue as to whether the alleged suborning of false statements from Marie Farrell was statute barred. In finding that it was not, it concluded that though the acts which comprised the taking of allegedly false statements had occurred in 1997-1998, these statements still lay on the Respondent's garda file, had not been removed by or on behalf of the Applicants and were still capable of being acted upon by the authorities, thus potentially leaving the Respondent in jeopardy. Accordingly the Court was satisfied that this aspect of the Respondent's claim in conspiracy was a continuing one and persisted *die in diem*. This echoed the reasoning of Mr. Justice Hedigan in the High Court who referred to the statements as "*lying heavily on the reputation of the Plaintiff*" such that "*the alleged conspiracy, if it existed [would be] alive and continuing today*".

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

1. It is respectfully submitted that the issue which the Applicants now wish to raise by way of appeal in these proceedings, neither involves a matter of general public importance nor engages the interests of justice within the meaning of Article 34.5.3 of the Constitution. Rather, the Applicants now being dissatisfied with the decision in question, in effect seek to argue before this Honourable Court that the judgement of the Court of Appeal was merely made in error. As has been stated on numerous occasions by this Honourable Court, such a contention will not be sufficient to meet the Constitutional threshold enshrined in Article 34.5.3; *BS v DPP* [2017] IESCDT 134.
2. A careful reading of the judgment of the Court of Appeal makes clear that the Court did no more than apply well established principles to the particular facts of the instant case. The Applicants do not contest that an action in tort, including conspiracy, can subsist *die in diem*. The central thrust of the Respondents claim as regards the statements of Marie Farrell was that the Applicants, their servants or agents, knowingly suborned bogus statements from Ms. Farrell and sought to use them to falsely implicate the Respondent in the murder of Mme Du Plantier. Both the Learned High Court Judge and the Court of Appeal found, that if the jury accepted the evidence advanced on behalf of the Respondent, same could ground a claim in continuing conspiracy, in circumstances in which the impugned conduct was continuing up to the present day. This finding was premised on the basis that the conduct constituting the alleged conspiracy comprised both the taking of the statements themselves by the Applicants and their continuing maintenance of same on the live Garda file in respect of the Respondent. In such circumstances it was more than open for both the High Court and the Court of Appeal to conclude that conduct comprising the alleged conspiracy (as opposed merely to the consequences flowing therefrom) was on-going and if the facts subtending same were proved, could be actionable in respect of such part of that conduct falling within the limitation period.
3. Insofar as the Court of Appeal or the High Court was incorrect as regards such a conclusion, which is vigorously denied, such an error would merely involve the application of well-established principles to the very particular facts of the Respondent's case. As noted by this Honourable Court, questions involving the application of well-established principles to the specific facts of individual cases will not engage the Constitutional principles enshrined in Article 34.5.3 (See *BS v DPP* cited above). Insofar as the Applicants have suggested that the issue will give rise to "*far reaching implications*", same is denied. The decision of the Court of Appeal and the High Court was premised on a finding of fact that the maintenance of the allegedly false statements on the Respondents Garda file by or on behalf of the Applicants, formed part of the conduct comprising the pleaded conspiracy. The facts of the Respondents case were extremely specific and unusual and it is very difficult to countenance further cases arising which would involve the same or similar allegations or factual matrices. As such there are, it is submitted, no far reaching issues or matters capable of transcending the very particular facts of the Respondents case raised on

behalf of the Applicants herein.

4. Whilst the Applicants herein do not appear to have submitted in the alternative that it is in the interests of justice necessary that a further appeal be taken to this Honourable Court in respect of the issue which they have raised, for the avoidance of doubt it is denied that any such necessity arises. The issue in question, concerning as it does the application of established principles to the very specific facts of the Respondents case and involving in essence no more than a complaint that the judgement of the Court of Appeal merely constituted an error, this aspect of the Constitutional threshold has similarly not been met. Furthermore, given that the Applicants have effectively stated that the issue is moot in any event, in light of the fact the jury found against the Respondent in respect of this aspect of his claim in the High Court, it is extremely difficult to see how any further appeal on this issue could be warranted or what could be gained thereby from the point of view of the Applicants.

**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):

1. The Court of Appeal made no error in affirming the ruling of the High court and in dismissing the Applicants/Defendants cross-appeal in respect of the Applicants/Defendants application to dismiss the Respondent/Plaintiff's claim by reason of the operation of the Statute of Limitation, insofar as same related to the claim made in conspiracy by the Plaintiff/Respondent.
2. It was eminently open and proper for the Court of Appeal to affirm the ruling of the High Court to the effect that the Plaintiff/Respondent's claim as regards the alleged suborning of false statements from Marie Farrell was a continuing one, arising *die in diem* on the particular facts of the Respondents case.

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

Patrick McCullough BL
Ronan Munro SC

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:

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: *Frank Buttimer & Co.*
(Solicitor for) the respondent

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.