



SUPREME COURT

Record No:

Application for Leave to Appeal

Part I

1. **Date of Filing:** 1st March 2019

2. **Title of the Proceedings:**

PERMANENT TSB T/A IRISH LIFE

Plaintiff

AND

JAMES WALSH

Defendant

FROM: TULLY COURT, 1001150
SUPREME COURT FILE NUMBER
Transaction: 1001150
Fee Code: 015
Fee: €250.00
Operator: ANITA
Date: 01/03/2019 11:23:24
Payment No:

3. **Name of Applicant:** JAMES WALSH

What was the applicant's role in the original case: DEFENDANT

4. **Decision of Court of Appeal (where applicable):** N/A

5. Decision of the High Court:

Record No: 2018 No 15 CA

Date of Order: 5th February 2019

Perfection Date: 8th February 2019

Date of Judgment: 31st January 2019

Names of Judge(s): Barrett J.

Where this application seeks leave to appeal directly from an Order of the High Court has an appeal also been filed in the Court of Appeal in respect of that Order?

Yes No

6. Extension of Time:

Yes No

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.

Not applicable.

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.

1. On 18th January 2018, the Dublin Circuit Court granted a possession order in favour of the Plaintiff in respect of the Defendant's home at 25 Croswaite Park, Dun Laoghaire, Co. Dublin. Proceedings commenced by way of a Civil Bill for Possession, grounded upon a number of Affidavits sworn by bank officials.
2. It was at all times the Defendant's defence that in March 2012 arising from a meeting with Paul Keenan, Mortgage Manager within Permanent TSB, the lender and borrower had reached an agreement in respect of the Defendant's indebtedness. The Defendant by Replying Affidavit averred to the content of the meeting and exhibited a form provided by Mr Keenan to the Defendant at that meeting indicating the Defendant's indebtedness to the bank.
3. At no time did Mr. Keenan swear an Affidavit contradicting the Defendant's asserting of an agreement or his recollection of the meeting. Bank officials who were not present at the meeting between the Defendant and Paul Keenan, did swear Affidavits which averred, *inter alia*, to their belief that there was never an agreement in place; a final restructuring agreement was not reached; and that the Defendant's asserting that a binding agreement was reached is an 'unfounded, baseless allegation'.
4. Order 5B Rule 6(2) of the Circuit Court Rules provides for an application to be made for leave to cross-examine a deponent. As Paul Keenan had not sworn an Affidavit, no such application could be made.
5. Order 5B Rule 8(2) of the Circuit Court Rules provides that '*The Judge may, where he considers it appropriate, adjourn a Civil Bill listed before him under this Order for plenary hearing...*'
6. The test for seeking leave to defend proceedings commenced by way of a summary summons and having such proceedings transferred to plenary hearing is well establish and set out in the decision of the Supreme Court in *Aer Rianta c.p.t. v. Ryanair Limited* [2001] 4 I.R. 607 and McKechnie J. in *Harrisrange Ltd. v. Duncan* [2003] 4 I.R. 1
7. No judicial guidance have been provided as to the test or threshold that a borrower/defendant must reach before a Court would grant leave to defend Civil Bill for Possession, being summary proceedings, and '*adjourn a civil Bill listed before him under this Order for plenary hearing*'.
8. Given the consequences of the decision for a home owner and the large number of possession proceedings dealt with in the Circuit Courts, certainty as to the factors which a judge ought to take into account in exercising his/her discretion to grant leave to defend and transfer the Civil Bill for Possession to plenary hearing, is a matter of general public interest.

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.

1. The right to fair procedures derives from the Constitution and the European Convention on Human Rights and has been elaborated on by the courts through case-law including in *Re Haughey* [1971] 1 IR 217.
2. Article 38.1 guarantees the Constitutional right to a fair trial. Article 34.1 protects the public administration of justice. In Article 40.3.1 and Article 40.3.2 ‘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’ and ‘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’.
3. In the present case, a clear conflict of fact has arisen which cannot be determined on Affidavit. There is no judicial guidance as to the test to be applied by Circuit Court judges in deciding ‘*where he considers it appropriate, adjourn a Civil Bill listed before him under this Order for plenary hearing...*’
4. It is in the interest of justice that the constitutionally protected property rights of an individual should not be abrogated without the opportunity to test by means of cross examination the conflicting evidence of the party seeking to interfere with those rights.
5. Given the jurisdiction of the Circuit Court to grant orders for possession in respect of principle private residences, and in cases where there is a conflict of fact on the Affidavits, it is in the interest of justice that clarity and certainty should be provided as to the manner in which Order 5B, Rule 8(2) of the Circuit Court Rules should be exercised such that the Civil Bill for Possession would be transferred to plenary hearing.

Word count - 293

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.

It is submitted that a direct appeal from the decision of the High Court is merited for the following exceptional circumstances:

1. The determination of the factors which a Circuit Court judge ought to take into account when exercising his/her discretion in deciding '*where he considers it appropriate, adjourn a Civil Bill listed before him under this Order for plenary hearing*' will have an effect on a large number of possession proceedings currently before the Circuit Courts in this jurisdiction.
2. Given the wide geographical and monetary jurisdiction of the Circuit Court in this jurisdiction, and the number of judges in such circuits, clarity and certainty as to what factors are to be taken into account or the threshold which must be reached before a Circuit Court judge '*considered it appropriate*' to adjourn a civil Bill for possession to plenary hearing, as provided for in Order 5B Rule 8(2) of the Circuit Court Rules, will have an effect on proceedings already in being and in contemplated proceedings. In such circumstances, there is a need for speedy determination of that particular legal issue which has the potential to affect other cases or provide certainty in the law;
3. Given the consequences of an order for possession, there is an urgency in the within proceedings.

Word count - 213

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.

1. Given the wide geographical and monetary jurisdiction of the Circuit Court in this jurisdiction, and the number of judges in such circuits, clarity and certainty as to what factors are to be taken into account or the threshold which must be reached before a Circuit Court judge '*considered it appropriate*' to adjourn a civil Bill for possession to plenary hearing, as provided for in Order 5B Rule 8(2) of the Circuit Court Rules, will have an effect on proceedings already in being and in contemplated proceedings. In such circumstances,

there is a need for speedy determination of that particular legal issue which has the potential to affect other cases or provide certainty in the law.

Word count - 116

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.

No