

Appendix FF

No. 2

**SUPREME COURT
Respondent's Notice**

Supreme Court Record Number	2016:000020
Court of Appeal Record Number	939/2014
	360/2013
High Court Record Number	877/2010

Maryanne Stephens	V	Allianz plc
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Date of filing	7th March 2016
Name of Respondent	Allianz Plc
Respondent's Solicitors	Hegarty & Armstrong, Solicitors, Sligo
Name of Appellant	Maryanne Stephens
Appellant's Solicitors	n/a

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	
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The Respondent was served with the application for leave to appeal and notice of appeal on date
1 st March 2016

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:	<input type="checkbox"/>
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Respondent's Representation

Solicitor			
Name of firm	Hegarty & Armstrong, Solicitors		
Email	AMulderrig@millehouse.com		
Address	Top Floor, Millennium House, Stephen Street, Sligo	Telephone no.	071 9142648
		Document Exchange no.	5022 Sligo
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	John G O'Donnell BL		
Email	jgpod@eircom.net		
Address	27 The Waterfront Bridge Street Galway	Telephone no.	091 472 552
		Document Exchange no.	4516 Mary Street
Postcode			

Counsel			
Name	Edward S Walsh SC		
Email	Edwardwalshsc@eircom.net		
Address	Law Library Four Courts Dublin 7	Telephone no.	01 817 4613
		Document Exchange no.	811102
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 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

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

The information set out in paragraph 4 of the application for leave and notice of appeal herein on behalf of Maryanne Stephens is not fully accurate. The President of the Court of Appeal informed Maryanne Stephens that the Court of Appeal had no jurisdiction to hear or determine the Appeal filed by Maryanne Stephens. This is clear from the Order of the Court of Appeal dated the 25th January 2016 which is attached to Maryanne Stephens' application for leave and notice appeal. The President of the Court of Appeal pointed out to Maryanne Stephens that no Appeal lay from an Order of the High Court made in respect of an Appeal from the Circuit Court, and that the decision of the High Court in respect of a Circuit Court Appeal was final and unappealable. The other two Judges sitting with the President of the Court of Appeal agreed with this decision and the appeal was dismissed with no Order as to costs because again the President held that no Order could have been made in respect of the costs of the appeal because the appeal itself was invalid.

4. Respondent's reasons for opposing leave to appeal

1. It is respectfully submitted on behalf of the Respondent herein that this Court has no jurisdiction to entertain the Appeal lodged for and on behalf of Maryanne Stephens herein because the Court of Appeal has already determined that no appeal lies from a decision of a High Court dealing with a Circuit Court appeal, that the decision of the High Court on hearing a Circuit Court appeal is final and unappealable, and accordingly there is no appeal from the decision of the Court of Appeal herein to this Honourable Court. The submissions made on behalf of the Respondent in respect of Maryanne Stephens' Appeal from the High Court Order herein to the Court of Appeal are annexed hereto.
2. The reasons advanced by Maryanne Stephens in her application for leave and notice of appeal are, in the Respondent's submission, not valid reasons why this Honourable Court should grant leave to appeal.
3. It is respectfully submitted that it is not in the interests of justice necessary that there should be an appeal to the Supreme Court from the decision of the Court of Appeal herein for the reasons outlined in paragraph 3 above and for the following reasons:
 - a. The Court of Appeal did not bar the Appellant from any consideration of the

challenge to the actual existence of a High Court rehearing statutorily required by Section 38(2) Court of Justice Act, 1936. The Court indicated in its decision that it had read the Plaintiff's Notice of Appeal, the Order of the High Court, the Application for Directions issued by the Plaintiff on the 26th August 2015, the Grounds of Opposition to the said Application filed on behalf of the Defendant on the 25th September 2015, the Plaintiff's response to the said Grounds of Oppositions and the submissions lodged on behalf of the Defendant and the Affidavit of the Plaintiff filed on the 21st January 2016, and all the documents contained in the book of appeal. The Court of Appeal had carefully considered all of the arguments outlined by the Plaintiff in the above named documents and those made by the Defendant prior to concluding it had no jurisdiction to hear and determine the appeal.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

1. It is respectfully submitted that in circumstances where the Court of Appeal has determined that no appeal in law lies against a decision of a High Court Judge on hearing a Circuit Court Appeal and that the Court of Appeal had no jurisdiction to hear the appeal of Maryanne Stephens herein that no appeal can lie from the decision of the Court of Appeal to this Honourable Court as such an appeal would be futile, without any merit and bound to fail.
2. It is submitted that fair procedures have been adhered to by the Circuit Court, High Court, and Court of Appeal herein. The Court of Appeal correctly decided that it had no jurisdiction to entertain Maryanne Stephens' appeal, which decision, it is submitted, is a valid and proper decision.
3. It is submitted that the Court of Appeal did not err in its judgement or act contrary to the statutory requirements of Section 38(2) of the Courts of Justice Act 1936. The situation on the 15th July 2013 to which the Plaintiff refers was as follows: the Plaintiff's Appeal came on for hearing before His Honour Herbert J in the High Court on Circuit sitting in Castlebar, Co Mayo. Gerald Stephens told the trial Judge that he was there representing his wife. Mr Stephens is not a Solicitor or a Barrister. Mr Justice Herbert told Mr Stephens he did not have any right of audience in the case, that he could help his wife (the Appellant), talk to her and advise her, but that he could not address the Court on her behalf, whereupon Gerald Stephens started to pick up his papers from the desk and made as if to leave. Mr Justice Herbert then asked the Appellant herein if she wished to proceed with her Appeal and if she had anything to say. She made no answer in response whereupon Mr Justice Herbert stated that it was clear that the Appellant was not proceeding with her Appeal and he dismissed same. Counsel for the Defendant applied for costs and costs were awarded to Allianz plc, to be taxed in default of agreement.
4. It is submitted that there has been no breach of the Plaintiff's constitutional rights and/or natural justice, and there are no exceptional circumstances such that warrant the Supreme Court to rescind or vary the order of the Court of Appeal. The fact is reiterated that both the Plaintiff and the Defendant provided the Court of Appeal with their written arguments which were carefully considered by the Court before a determination was made. Furthermore, there is no countervailing factor present which would obviate the need to rescind the direction made by the Court of Appeal.
5. If leave to appeal is granted I refer the Court to the following:

Section 39 of the Courts of Justice (Ireland) Act 1936, as amended by Section 48 of the Courts (Supplemental Provisions) Act 1961 provides:

'The decision of the High Court or of the High Court on Circuit on an appeal under this Part of this Act shall be final and conclusive and not appealable.'

This very point was considered by the Supreme Court in the case of *Eamonn Andrews Productions Limited v Gaiety Theatre Enterprises Limited* [1973] IR 295, the headnote of which reads:

'A decision of the High Court which determines an appeal from the Circuit Court under Part IV of the Courts of Justice Act 1936, cannot be the subject of an appeal to the Supreme Court since the provisions of S.39 of the Act of 1936 were re-enacted by S.48 sub-ss 1 and 3 of the Courts (Supplemental Provisions) Act 1961 after the Constitution of Ireland 1937 came into force and therefore such provisions constitute a valid exception to the appellate jurisdiction of the Supreme Court in accordance with Article 34, s.4, sub-s.3 of the Constitution.'

Walsh J at page 300 stated:

'One must turn therefore to examine the question of whether the appellate jurisdiction of this Court from all decisions of the High Court has been in any way restricted or qualified by statute. Section 48 sub-s 1 of the Courts (Supplemental Provisions) Act 1961 provides that any enactment contained in the Courts of Justice Acts 1924-1961 shall apply to the Courts established by the Courts (Establishment and Constitution) Act 1961 and to the Judges and Officers thereof 'as if it were enacted in this Act' subject to certain modifications and adaptations which have no application in the present case. Section 48 does not apply to any enactment which has been repealed before the date on which the Courts (Supplemental Provisions) Act 1961 came into operation which was the 29th September 1961. For the reasons I have already stated the provisions of S.39 of the Act of 1936 were not repealed and were not rendered inoperative by the provisions of Article 34 of the Constitution prior to the 29th September 1961.

In my view the phrase 'as if it were enacted in this Act' has the effect of re-enacting all of the statutory provisions which are embraced by S.48 and in particular, for the purpose of this case, the provisions of S.39 of the Act of 1936. In view of the effect of the re-enactment of S.39 of the Act of 1936 by the provisions of S.48 of the Courts (Supplemental Provisions) Act 1961 it follows that S.39 of the Act of 1936 is to be read and construed as if it were a post-Constitution enactment excluding from the appellate jurisdiction of this Court the decisions of the High Court in Appeals from the Circuit Court...'

'For the reasons I have already given I am of the opinion that the decision of Mr Justice Butler in the appeal heard by him from the decision of the Circuit Court has been excluded from the appellate jurisdiction of this Court by the provisions of S.48 of the Courts (Supplemental Provisions) Act 1961 and that therefore the present Motion is misconceived and should be struck-out.'

Binchy J and Griffin J agreed with this decision and the decision of the Supreme Court was unanimous.

6. In *Michael Rowan v Kerry County Council* [2015] IESC 99, Ms Justice Dunne approved and applied the Supreme Court decision in *Eamonn Andrews Productions Limited v Gaiety Theatre Enterprises Limited* [1973] IR 295 as follows:

'15. Section 39 of the Courts of Justice Act 1936 which was re-enacted by s. 48 of the Court (Supplemental Provisions) Act 1961, provided as follows in relation to appeals to the High Court from the Circuit Court:-

'The decision of the High Court or of the High Court on Circuit on an appeal under this Part of this Act shall be final and conclusive and not appealable'

16. Again I have no difficulty in construing these sections as altogether precluding any further appeal, even one confined to costs...'

7. It is respectfully submitted that the Order of the High Court on Circuit dated the 15th July 2013 is final and conclusive and not appealable, and therefore this Honourable Court has no jurisdiction to deal with, entertain or decide upon the Plaintiff's purported Appeal herein because it has no jurisdiction to do so, and the Plaintiff has no right of Appeal to this Honourable Court against the decision of the High Court of the 15th July 2013.
8. The Defendant/Respondent prays this Honourable Court to refuse the Plaintiff/Appellant's application seeking leave to appeal against an Order of the Court of Appeal and to determine that it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court.

Name of Counsel or Solicitor who settled the grounds of opposition (if the Respondent is legally represented), or name of Respondent in person:

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: Hegarty & Hurstling
(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.