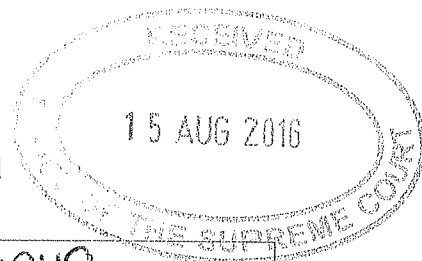


No. 1

SUPREME COURT

Application for Leave and Notice of Appeal



For Office use

Supreme Court record number of this appeal	S-AP:IE:2016:000110
Subject matter for indexing	

Leave is sought to appeal from

The Court of Appeal       The High Court

2014 No 44 SP (HC)

TAILLE COURTE IONCAIM  
 STAMP OFFICE  
 \*\*\*\*\*  
 OPEN 250.00  
 024 049 A  
 PLAINTIFFS-08-2016

ALLIED IRISH BANK PLC

AND

THOMAS DARCY AND ANTOINETTE DARCY

DEFENDANTS

ALLIED IRISH BANK PLC	V	THOMAS DARCY AND ANTOINETTE DARCY
High Court Record Nr	2014 No 44 SP (HC)	Court of Appeal Record Nr
		2015- 340
Date of filing		
Name(s) of Applicant(s)/Appellant(s)	ANTOINETTE DARCY	
Solicitors for Applicant(s)/Appellant(s)	F.H. O'Reilly & Company	
Name of Respondent(s)	ALLIED IRISH BANK PLC	
Respondent's solicitors	Gore Grimes	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
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)	Mr Justice Charlton, Mr Justice Peart, Ms Justice Irvine
Date of order/ Judgment	14 <sup>th</sup> of July 2016 (perfected on the 18 <sup>th</sup> of July 2016)

## 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	ANTOINETTE DARCY
-----------------------	------------------

Original status	<input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	<input type="checkbox"/> Applicant	<input type="checkbox"/> Respondent
	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Notice Party
	<input type="checkbox"/> Petitioner	

<b>Solicitor</b>			
Name of firm	F.H. O'Reilly & Company		
Email	info@fhoreillyandco.com		
Address	The Red Church North Circular Road Phibsborough Dublin 7	Telephone no.	01 830 3122
		Document Exchange no.	149004
Postcode		Ref.	

How would you prefer us to communicate with you?

<input checked="" type="checkbox"/> Document Exchange	<input type="checkbox"/> E-mail
<input type="checkbox"/> Post	<input type="checkbox"/> Other (please specify)

<b>Counsel</b>			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

<b>Counsel</b>			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Applicant / Appellant 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)		

### 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	ALLIED IRISH BANK PLC
------------------------	-----------------------

Original status	<input checked="" type="checkbox"/> Plaintiff	<input 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	<input type="checkbox"/>	No	<input type="checkbox"/>

Solicitor			
Name of firm	Gore Grimes		
Email			
Address	Gore & Grimes Solicitors, Cavendish House, Smithfield, Dublin 7	Telephone no.	
		Document Exchange no.	DX 1080 Four Courts
		Ref.	
Postcode			

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)

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.	

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)

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

Please set out below:

(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)

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

The Appellants wish to appeal the entire decision of the Court of Appeal delivered on the 14<sup>th</sup> day of July 2016.

#### 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 34.5.3° 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.

1. On appeal of 539SP of 2010 the Supreme Court held on the 13<sup>th</sup> November 2013 that there should be a plenary hearing of the case, thus overturning the order of McGovern J. of the 16<sup>th</sup> April 2012. The said orders made by the Supreme Court, paraphrased, were:
  - (i) that these proceedings be adjourned to Plenary hearing as if these proceedings had been commenced by Plenary Summons
  - (ii) that these proceedings be remitted to the Chancery List in the High Court to be further prosecuted there
  - (iii) that the said Defendants recover against the Plaintiff the costs of the High

Court proceedings and of this appeal when taxed and ascertained

- (iv) on application of Counsel for the bank for a stay of execution pending the determination of the proceedings in the High Court on the costs order, it is ordered that the said application for a stay be refused.

All four aforesaid Orders made by the Supreme Court have been breached and/or in the alternative there has not been full, proper, just and appropriate compliance with same. For the avoidance of any doubt the said orders of the Supreme Court have not been vacated. As a matter of general public importance and in the interests of justice in this case, the High Court and the Court of Appeal should not be permitted to ignore and/or override and/or oust the jurisdiction of the Supreme Court. To do so would constitute a breach of Article 34.4.6 of the Constitution of Ireland (Bunreacht na Éireann) which provides that the decision of the Supreme Court shall in all cases be final and conclusive.

2. It is necessary in the interests of justice that leave to appeal be granted in circumstances where there has not been compliance with the said Supreme Orders considering that the central sole concern of Second Named Appellant is her family home, 'Woodview' which is a subject matter of this dispute, albeit her home is currently uninhabitable (resulting from a fire) but in respect of the said family home, a separate Judgment of the Supreme Court has been reserved in an insurance claim type dispute.

In The People (Director of Public Prosecutions) .v. Cunningham (2012) IECCA 64, (2012) 2 ILRM 406, Hardiman J referred to the 'intrinsic importance' of Article 40.5 to a free and democratic society. In The People (Director of Public Prosecutions) .v. O' Brien (2012) IECCA 68, Hardiman J. observed that;

*"Article 40.5 by guaranteeing the 'inviolability of the dwelling reflects long standing constitutional traditions in both common law and civil law jurisdictions, features for which were stressed in both DamarCHE and Cunningham respectively. This constitutional guarantee presupposes that in a free society the dwelling is set apart as a place of repose from the cares of the world. In doing so, Article 40.4 complements and re-inforces other constitutional guarantees and values, such as assuring the dignity of the individual (as per the Preamble to the Constitution), the protection of the person (Article 40.3.2), the protection of family life (Article 41) and the education and protection of children (Article 42)".*

3. The Supreme Court ordered that the said Defendants recover against the Plaintiff the costs of the High Court proceedings and the costs of the Supreme Court appeal when taxed and ascertained. Immediately following the Supreme Court making the said order for costs against the Respondent, on application of Counsel for the bank then seeking a stay of execution pending the determination of the

proceedings in the High Court on the costs order, the Supreme Court ordered that the said application for a stay be refused.

Whilst the Respondent herein (Allied Irish Banks plc) has since agreed to the amount of the Second Named Appellant's bill of costs, the Respondent's agreement in respect of same is predicated on the Respondent setting-off the agreed amount of costs against the sum of monies (liability) which it is alleged and claimed is owed by the Second Named Appellant to the Respondent.

This said response by the Respondent to the said 2 costs orders and/or costs related orders of the Supreme Court breaches and/or runs contrary to the intention of the Supreme Court. It also breaches Order 26 Rule 1 of the Rules of the Superior Courts.

Moreover, as a result of the Respondent's refusal to pay costs to the Second Named Appellant, she has been disadvantaged in these proceedings. The Respondent's decision to offer to off set the costs instead of paying the costs has caused the Second Named Appellant to suffer prejudice and violates her rights guaranteed and protected under the Constitution and under Article 6 of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The said European Convention on Human Rights guarantees and protects the Appellant's access to justice and right to a fair trial.

In Marie O'Donoghue v The Legal Aid Board, The Minister for Justice Equality and Law Reform, Ireland and the Attorney General [2004] IESC 413, [1999 No. 6961P] although this case concerned the provision of Civil Legal Aid, the case did set out that an individual's constitutional right of access to the Courts and right to fair procedure include an entitlement to be provided with legal aid.

## **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

*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.*

1. The learned Judges of the Court of Appeal erred in law and fact by failing to have due regard for and/or recognise appropriately the Orders of the Supreme Court made the 13<sup>th</sup> day of November 2013.
2. The learned Judges erred in law and fact by failing to have due regard for the Respondent's failure to comply and/or comply fully with the said Orders of the Supreme Court.
3. The learned Judges failed to give appropriate and/or any consideration to the prejudice caused to the Appellant due to the Respondent's failure to comply with the said Orders of the Supreme Court and in doing so, inter alia, deprived the Appellant of a plenary hearing in this said dispute which involves the Appellant's family home, 'Woodview'.
4. The learned Judges failed to take account of the distinguishing, if not unique, features of the way that the action (No. 539SP of 2010) was discontinued, namely, that the Supreme Court had made an order that these said proceedings be adjourned to plenary hearing as if these proceedings had been commenced by Plenary Summons and also ordered that these proceedings be remitted to the Chancery List in the High Court to be further prosecuted there. Moreover the instituting of the new proceedings by the Respondent herein (No 44SP of 2014) predated their discontinuance of the other said proceedings. The learned Judges failed to recognise this as an abuse of process in circumstances of being in

flagrant disregard to the said orders of the Supreme Court.

5. In the given circumstances the learned Judges deprived the Appellant of being heard in any application brought by the Respondent herein before the Supreme Court seeking to vacate and/or set aside orders of the Supreme Court.
6. The learned Judges failed to give appropriate and/or any consideration to the Appellant's constitutional rights including, inter alia, her right to fair procedures under Article 40.3 of the Constitution of Ireland which provides:-

*1<sup>o</sup> "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".*

*2<sup>o</sup> "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".*

7. The learned Judges failed to give appropriate and/or any consideration to the Appellant's rights guaranteed and protected by the European Convention on Human Rights as incorporated in Irish law pursuant to the European Convention on Human Rights Act, 2003.
8. The Respondent herein has still not paid the costs to the Second Named Appellant (despite the amount of sum being agreed) which contravenes Order 26 Rule 1 of the Rules of the Superior Courts .
9. The learned Judges failed to have due regard and failed to recognise that the Appellant's dwelling known as 'Woodview' should not lose its protection and recognition as a family home on the basis that it is currently uninhabitable as a result of a fire.

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

2014 5 COA AND 2015 340 [2016] IECA



References to Law Report in which any relevant judgment is reported

### 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:

To reverse the decision of The Court of Appeal

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

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

#### 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: F H O'Reilly & Co

F. H. O'Reilly & Co.,  
The Red Church  
North Circular Road  
Phibsborough  
Dublin 7

**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.**