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SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

Supreme Court record number of this appeal	2017 : 166
Subject matter for indexing	

Leave is sought to appeal from	<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court
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[Title and record number as per the High Court proceedings]

Permanent TSB PLC and Cheldon Property Finance Limited	V	Jerry Beades
High Court Record Nr		Court of Appeal Record Nr 2014-1219
Date of filing		
Name(s) of Applicant(s)/Appellant(s)	Jerry Beades	
Solicitors for Applicant(s)/Appellant(s)	N/A	
Name of Respondent(s)	Permanent TSB PLC and Cheldon Property Finance Limited	
Respondent's solicitors	Donal O'Kelly & Co and Arthur Cox	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
X	Yes	No
If yes, give [Supreme Court] record number(s) 179/14		

Are you applying for an extension of time to apply for leave to appeal?	Yes	<input checked="" type="checkbox"/> No
If Yes, please explain why		

1. Decision that it is sought to appeal

Name(s) of Judge(s)	President Ryan, Judge Irwin and Judge Whelan
Date of order/ Judgment	13 th November 2017



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	Jerry Beades
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Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input checked="" 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	50 Stoneyford, Lisburn, Co Antrim, BT28 3SP
e-mail address	jerrybeades@gmail.com
Telephone no.	0860482374

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	Permanent TSB PLC
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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	<input type="checkbox"/>		
	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	

Solicitor for Permanent TSB PLC			
Name of firm	Donal O'Kelly & Co		
Email			
Address	Grand Canal Wharf, Grand Canal Dock, Dublin	Telephone no.	(01) 665 8540
		Document Exchange no.	
		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	P Kevans BL		
Email			
Address	Grand Canal Wharf, Grand Canal Dock, Dublin	Telephone no.	(01) 665 8540
		Document Exchange no.	
		Ref.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
		Ref.	
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)

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	Cheldon Property Finance Limited
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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	<input type="checkbox"/>		
Yes		<input checked="" type="checkbox"/>	No		<input type="checkbox"/>

Solicitor for Cheldon Property Finance Limited			
Name of firm	Arthur Cox		
Email			
Address	Ten, Earlsfort Terrace, Dublin 2, D02 T380	Telephone no.	(01) 920 1000
		Document Exchange no.	
		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	Mr B O'Donnell SC		
Email			
Address	Ten, Earlsfort Terrace, Dublin 2, D02 T380	Telephone no.	(01) 920 1000
		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:

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
High Court Order made 6th March 2016 and Court of Appeal Order made 13th November 2017

The President:

The core equitable principle which is applicable in this circumstances is that 'statute cannot be used as an engine of fraud' .

What about the case that Mr. Beades seeks to make that the Property is residential. That is not the case he made in his affidavit in the High Court. That is not clear from the documents, in fact, the precise opposite is clear from the documents although it is true, it is true residential"

appears on at least one document, in fact on a number of the documents "residential" does appear, but it was not a residential loan, that much is obvious from the affidavits, from the material before the Court it seems to me, and even from the description by the witness and the report that Mr. Beades wishes to introduce from Mr. Hickey who recognises that it is a commercial loan and it is a commercial property and it is run as a B&B in the manner that he describes.

What of the point about overcharging? Again, not an issue in the High Court and subject as aforesaid. But Mr. Beades' contention does not actually operate to his advantage. Even if he is correct and the Fortis Forensic Accountants are correct, he was still in default in accordance with the terms of the mortgage. His point is, if you assume the correctness of the forensic accountants, if you assume that, and taking that into consideration, you revisit the situation as it would have obtained at the date of the letters of demand that would be that he was ahead of what he should have been paying by some 30,000. But that is retrospective logic and it does not apply because he was in default on the payments under and on foot of the mortgage deed. So in those circumstances, the company was entitled to foreclose, so to speak, it was entitled because an event of default had occurred and the company was entitled to proceed to seek an order for possession in the circumstances. That is not to say that whatever remedies are available for any claim of overcharging if they are available and if it is in time, those are matters that Mr. Beades can ventilate in appropriate circumstances. But it seems to me, therefore, that the appeal cannot succeed even taking into account the extra, the new points that Mr. Beades now seeks to make and which were not previously made.

I think it is desirable because I have a clear view as to the outcome of the case, I think it is desirable that there should be an early disposition of the matter, so rather than put the matter back for a more formal ruling in the form of a written judgment, it seems to me that it is sufficient if I make these remarks and express myself also in agreement with the judgment under appeal that was given by Mr. Justice McGovern.

I should possibly just finally say, that the suggestion canvassed in the Notice of Appeal that because a judge decided another case against a party that means that he or she could be the

subject of a legitimate objection on the basis of bias is unsustainable, so I would accordingly dismiss the appeal.

MS. JUSTICE IRVINE:

For the reasons which the President has outlined in the judgment that he has just given, I would also dismiss the appeal.

MS. JUSTICE WHELAN:

I agree. As the President has pointed out this Court has a very narrow remit in dealing with an appeal such as this. I do note firstly the report of the forensic accountants and clearly, they do appear to raise quite a number of, there may well be significant points.

However, it is not something that can be taken on board at this point and it would be a matter for the Appellant in due course to consider whether there is sufficient to take steps on foot of that report.

I do notice that in paragraph 25 in particular that it appears to be very provisional and that there seems to be a request for further documentation and so on before a final report of that kind could be forthcoming. But, however, on the face of it, it appeared to me to potentially raise issues that may be worthy of further pursuit, it is a matter for the Appellant.

With regard to the description of the properties, as the President has pointed out, the description is captured in the mortgage instruments themselves and it appeared to me, when I was reading this over the weekend that the one property that is very definitively, very clearly described as best I could see in the papers, was No. 2. It had, you know, 80 feet to the front, 200 feet from front to rear and 88 at the back. The others are described in a very generic fashion. There may well be potential problems down the line but that is not something this Court can intermeddle would also dismiss the appeal.

I agree. As the President has pointed out this Court has a very narrow remit in dealing with an appeal such as this. I do note firstly the report of the forensic accountants and clearly, they do appear to raise quite a number of, there may well be significant points. However, it is not something that can be taken on board at this point and it would be a matter for the Appellant in due course to consider whether there is sufficient to take steps on foot of that report.

I do notice that in paragraph 25 in particular that it appears to be very provisional and that there seems to be a request for further documentation and so on before a final report of that kind could be forthcoming. But, however, on the face of it, it appeared to me to potentially raise issues that may be worthy of further pursuit, it is a matter for the Appellant.

With regard to the description of the properties, as the President has pointed out, the description is captured in the mortgage instruments themselves and it appeared to me, when I was reading this over the weekend that the one property that is very definitively, very clearly described as best I could see in the papers, was No. 2. It had, you know, 80 feet to the front, 200 feet from front to rear and 88 at the back. The others are described in a very generic fashion. There may well be potential problems down the line but that is not something this Court can intermeddle with in the sense that, so long as the descriptions in the order made by the judge in the High Court don't go beyond the descriptions in the mortgage instrument, it is not open to this Court to intervene. In my own view I very much agree with the President that the *Stepstone* case law, that that decision don't really avail. In that case, as I recall, all of the parties agreed right from the start that there had been an error and that the mortgage instrument contained an actual mistake. The bank, everybody, the officials, it was all agreed and additional was a folio and there were a number of bundles or parcels of land in the folio and it was never intended that one of those would be included, it was separate from the rest of the property.

So I think that that case doesn't assist. With regard to the affidavit of verification point,

certainly it would be a cause for concern that a document, from my perspective, that there is no signature on what purports to be an affidavit of verification. I would think that is less than acceptable, but I accept as the President has said that by examining all of the other affidavits, the matter is, as counsel said, it is Ord. 37 r.1 has been complied with but not strictly, you know, the affidavit of verification to my mind, I am not satisfied that it is an affidavit at all, but I am satisfied that Ord. 37 r. 1 has been complied with otherwise. Finally the point that was raised, that it is incumbent on this Court to develop the law. Unfortunately, this Court has no function, that is a matter for the legislature and indeed it is true that there is the relevant need in this regard, but it would be wholly inappropriate for this Court to embark on an expedition of making new law and so, accordingly, I agree with the President that the case is not made out.

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

The following reasons are the reasons why an appeal is sought on matters that involve matters for general public importance and execeptional circumstances.

1. It is of public importance to establish the circumstances when a due process application should be granted to an Applicant when that Applicant makes a due process Application prior to the commencement of a trial then that application should be granted in the interest of justice and fair procedure for the Applicant particularly when that Applicant is a lay litigant and is unfamiliar with the Court process.
2. If evidence is introduced to the trial judge that was not available to the applicant created a bias against the Applicant without the Applicant having an opportunity to challenge the averments made in affidavits prior to the trial of the event.
3. If Affidavits relied upon by the Respondents in a case that have not been properly filed in the Central Office can be relied upon in Court and should they be allowed as evidence.
4. Can a party that is joined in proceedings at Appeal stage be allowed to defend the appeal in lieu of the original respondent.
5. If there is overcharging of the Applicant by the Respondents in a case can that that serve to terminate the contract and furthermore can that party rely on that contract to pursue the a party.
6. What criteria should a court apply to a residential business loan that would take it outside of the requirements of the MARPs and consumer code?
7. Can a Judge make a finding of fact when there has been no oral evidence regarding

those facts?

8. Can a loan that is not in arrears be the subject of proceedings before the circumstances that allow recovery to have occurred?
9. Is it permitted to introduce new evidence by way of referring to condition of a contract not previously considered by the high Court into proceedings?
10. Before proceedings commenced does it require that proper notices are served on the borrowers to make those proceedings lawful?
11. If an affidavit of verification of debt is not sworn can that be relied upon to seek judgment against a party?
12. Should the Court take into account rebuttal evidence that the loan was not in default, so as to obviate that proceedings should have been in the first instance?
13. If a court fails to examine an allegation of substantial overcharging established by the forensic accountant's report then is it not acting in the interests of justice and fairness?

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

1. When an Applicant makes a due process Application prior to the commencement of a trial then that application should be granted in the interest of justice and fair procedure for the Applicant particularly when that Applicant is a lay litigant and is unfamiliar with the Court process.
2. Evidence introduced to the trial judge that was not available to the applicant created a bias against the Applicant without the Applicant having an opportunity to challenge the averments made in affidavits
3. Affidavits relied upon by the respondents not properly filed in the Central Office cannot be relied upon in Court and should be not allowed as evidence.
4. Can a party that is joined in proceedings at Appeal stage be allowed to defend the appeal in lieu of the original respondent
5. If there is overcharging of the Applicant that serves to terminate the contract and that party cannot rely on that contract to pursue the applicant
6. What criteria does the court apply to a residential business loan that would take it outside of the requirements of the MARPs and consumer code.
7. Can a Judge make a finding of fact when there has been no oral evidence regarding those facts?
8. Can a loan that is not in arrears be the subject of proceedings before the circumstances that allow recovery to have occurred
9. Is it permitted to introduce new evidence by way of referring to condition of a contract

not previously considered by the high Court

10. Before proceedings commenced does it require that proper notices are served on the borrowers to make those proceedings lawful

11. If an affidavit of verification of debt is not sworn can that be relied upon to seek judgment

12. Should the Court take into account rebuttal evidence that the loan was not in default, so as to obviate that proceedings should have been in the first instance.

13. The Court Of Appeal indicated an Appeal to the Supreme Court on certain issues

14. The Loan was a remortgage and clearing existing loans so in that case maps were required to be furnished for the development of the property which would have illustrated the boundary dispute.

15. The court failed to address the substantial overcharging established by the forensic accountant's report introduced by way of motion and not considered by the court which would have potentially changed the findings of the court.

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:

Jerry Beades

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

Don't have

References to Law Report in which any relevant judgment is reported

Not Applicable

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:

Set aside order 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

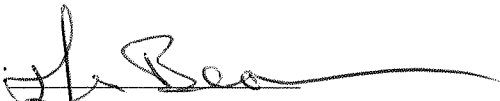
If Yes, please give details below:

If the findings of the Supreme Court are adverse will be Appealing to the necessary to Court of Justice of the European Union

Will you request a priority hearing? Yes No

If Yes, please give reasons below:

Signed:



Jerry Beades 12th December 2017

(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.