

SUPREME COURT**Respondent's Notice**

Supreme Court record number	
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[Title and record number as per the High Court proceedings]

David McLaughlin 2004/5848P	V	Damien McDaid, Michael McDaid, Charles McDaid, McDaid Quarries Limited and The Motor Insurers' Bureau of Ireland
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Date of filing	4th May, 2018
Name of respondent	David McLaughlin
Respondent's solicitors	C. S. Kelly & Co., Solicitors, Market Square, Buncrana, County Donegal
Name of appellant	Charles McDaid
Appellant's solicitors	None

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	
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The respondent intends :

<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
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<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
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<input checked="" type="checkbox"/>	to oppose the application for leave to appeal
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<input type="checkbox"/>	not to oppose the application for leave to appeal
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<input type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
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<input type="checkbox"/>	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
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<input type="checkbox"/>	Other (please specify)
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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:

Respondent's Representation

Solicitor	Anne Marie McCrystal		
Name of firm	C. S. Kelly & Co., Solicitors		
Email	general-info@cskelly.com		
Address	Market House Market Square Buncrana County Donegal	Telephone no.	074-9363111
		Document Exchange no.	DX66 001 Buncrana
Postcode	F93 R277	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)

Counsel			
Name	Richard Lyons, S.C.		
Email	rlyons@lawlibrary.ie		
Address	Suite 1.11.2 Law Library Building 158-159 Church Street Dublin 7	Telephone no.	087-2656202
		Document Exchange no.	DX 815302 C
Postcode	D07 YX89		

Counsel			
Name	Seamus Breen, B.L.		
Email	sbreen@lawlibrary.ie		
Address	Suite 4.06 Ormond Building Ormond Quay Upper Dublin 7	Telephone no.	
		Document Exchange no.	
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

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:

- “1. Proceedings in the High Court and the Court of Appeal were taken against the second, third and fourth Defendants/Appellants)proceedings having earlier been discontinued against the first Defendant and the fifth Defendant having been removed from the proceedings subsequent to a motion brought by it).**
- 2. Neither the second nor third Defendant, nor a director of the fourth Defendant gave evidence at the trial of the action.**
- 3. Subsequent to the Appellants' appeal to the Court of Appeal, they were permitted to take up the digital audio recording (by order of the Court of Appeal on the 8th July, 2016). They did not do so. Nor did they provide the Court of Appeal with a transcript of the evidence given in the High Court.**
- 4. On the 11th November, 2016, the Appellants were directed to file and deliver written submissions supporting their appeal by the 31st December, 2016. No submissions were filed by the Appellants.**
- 5. No books of appeal were lodged by the Appellants and the Court of Appeal noted that the appeal was only able to proceed by reason of the fact that the Solicitors for the Plaintiff/Respondent lodged books of appeal (paragraph 4 of the Judgement of the Court of Appeal dated the 24th January, 2018).**
- 6. This Appellant disputed that he had any overbearing influence on the Plaintiff in his grounds of appeal. The Plaintiff gave evidence that he was under the influence of Charles McDaid, the Appellant (paragraph 24 of High Court Judgement). This was not disputed in evidence by Charles McDaid.**
- 7. The Plaintiff's mother gave evidence that the Plaintiff was vulnerable and for reasons she could not understand, he worshipped Charles McDaid, the Appellant (paragraph 28 of High Court Judgement). This evidence was not challenged by the Appellant.**
- 8. In the High Court the Appellant was represented by Solicitor and Counsel.**

9. Findings of fact were made by the trial Judge which should not be disturbed. The trial Judge held that the Appellant had an emotional hold on the Plaintiff who was a minor, someone suffering from a learning difficulty and a vulnerable person (at paragraph 109 of High Court Judgement)."

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:

- "1. The decision in respect of leave to appeal is sought does not involve a matter of general public importance.**
- 2. It is not in the interest of justice necessary that there be an appeal to the Supreme Court.**
- 3. The High Court made findings of fact which cannot and should not be disturbed. These findings of fact were supported by credible evidence (Hay -v- O'Grady [1992] 1 IR 210). The trial Judge was of the view that the Plaintiff/Respondent did not give any dishonest evidence (at paragraph 118). On the contrary, he found that his evidence was substantially truthful and accepted. Notwithstanding the fact that eight witnesses were called on behalf of the Appellant, he himself chose not to give evidence and subject himself to cross-examination.**
- 4. The constitutional threshold for leave to appeal to the Supreme Court has not been met.**
- 5. Even if this appeal did raise a substantial point of law (which is denied), the case is not and could not be an appropriate vehicle to decide it, in circumstances where no transcript of the evidence is available and where the actual evidence goes to the heart of the appeal. The Supreme Court could not be in a position to fully consider and pronounce upon the issue raised by the Appellant in those circumstances. (Re: Tara Hill National Park Teoranta [2016] IESCDET 104).**
- 6. Even were the issues raised as a matter of general public importance, the points should not be argued in a factual and evidential vacuum.**
- 7. There was no evidence that a verifying Affidavit of the 22nd December, 2014, or an amended statement of claim of the 24th June, 2015, was fraudulent.**
- 8. There was no evidence as to any criminal investigation into matters allegedly touching upon the circumstances of the claim such as would have warranted an adjournment. On the contrary the Appellant was granted every indulgence.**
- 9. The matter was in the directions list in the Court of Appeal on the 3rd June, 2016, 8th July, 2016 and the 14th October, 2016. The Judgement of the High Court was the 10th December, 2015, and the matter came for hearing in the Court of Appeal on the 14th December, 2017. The Appellant had ample time to deal with the appeal.**
- 10. The Appellant had every opportunity to give evidence and to dispute any evidence**

of undue influence.

11. There was no evidence that someone other than the Plaintiff had sworn a verifying Affidavit.”

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

In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)-

- * 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
- there are no exceptional circumstances warranting a direct appeal to the Supreme Court.

**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. There was no evidence of any false signatures appended to Affidavits.**
- 2. There was no issue raised at hearing in relation to any penalty for swearing false Affidavits.**
- 3. The trial Judge made a finding of fact that the Plaintiff was under the undue influence of the third Defendant/Appellant and that he was a vulnerable person. He found that the Plaintiff's evidence was truthful and no attempt was made to mislead the Court (paragraph 95).**
- 4. Findings of fact were made in relation to evidence called on behalf of the Defendant/Appellant to the effect that it was implausible and expressly rejected (paragraphs 98 and 99).**
- 5. Not only did the trial Judge made a finding of fact that the first version of events was as a matter of probability, promulgated by the Appellants for their own benefit, he also found as a fact that the Plaintiff was under the emotional hold of the Appellant when he was a minor, someone suffering from a learning difficulty and a vulnerable person (paragraph 109). The trail Judge stated clearly in his decision why dismissal of the action would result in injustice being done.**
- 6. The Appellant had every opportunity to dispute the Plaintiff's evidence that the original narrative was a concoction devised by the Appellant with a view to securing**

indemnity in his own interests. The trial Judge made a finding of fact that the influence of the Appellant extended beyond the immediate aftermath of the accident and until the Affidavit was sworn. (Paragraph 118).

7. No false evidence was given at the trial and the case proceeded on the basis of the correct facts being verified.

8. Both the High Court and the Court of Appeal ruled on the sanction sought by the Appellant which was to have the claim dismissed.

9. It was open to the Appellant to give evidence to deny the assertion of undue influence.

10. The High Court Judge, in the course of his Judgement, made clear the reasons why he considered it would be perpetrate an injustice upon the Plaintiff if the claim were dismissed. The evidence was that the Plaintiff was young, naïve, and of poor intellectual capacity at the time he delivered and verified the initial false and misleading claim. This was a finding of fact by the trial Judge based on his assessment of the Plaintiff and as such is the type of finding which an appellate court not having heard his evidence and in the absence of objective evidence to the contrary could not interfere.

11. The trial Judge found the Plaintiff's mother to be an impressive witness who had been forthright and truthful.

12. The trial Judge found that the initial false statement of claim had been promulgated and engineered by the Appellant and had found the evidence of Damien McDaid implausible and untruthful. These are findings that an appellate court should not interfere with.

13. The trial Judge was justified in holding that the dismissal of the action would result in an injustice being done for the purposes of Section 26 of the Civil Liability & Courts Act, 2004.

14. Damages in the case were appropriate. Medical reports were agreed. No evidence was called by the Appellant to counter evidence given by the Plaintiff's expert witnesses in relation to aids and appliances and actuarial figures. Nor were the Plaintiff's experts cross-examined. The damages awarded were proportionate.

15. The initial false Affidavit was sworn in circumstances which at the behest of the Appellant and in circumstances where it was for the benefit of the Appellant in that he would have an indemnity.

16. Every opportunity was afforded to the Appellant to take up the audio recording and/or file submissions. As stated, the matter was adjourned on numerous occasions in the Court of Appeal to facilitate this."

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:

“1. It would be a grotesque injustice that the authors of a bogus claim on an insurance company namely the Appellant, should successfully rely on the provisions of Section 26 against a vulnerable Plaintiff who suffered a devastating and life changing injury while employed by the Appellant.”

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: 
(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.