Appendix FF

Order 58, Rule 15

No. 1

SUPREME COURT

Application for Leave and Notice of Appeal

For Office Use

Supreme Court record number of this appeal	
Subject matter for indexing	

Leave is sought to appeal from			
X	The Court of Appeal		The High Court

HIGH COURT RECORD NO: 2013/591 COS

COURT OF APPEAL RECORD NOS: 2015 No. 170
2015 No. 487

IN THE MATTER OF ELST
AND IN THE MATTER OF SECTION 205 OF THE COMPANIES ACT, 1963
AND IN THE MATTER OF SECTION 213(F) OF THE COMPANIES ACT, 1963
AND IN THE MATTER OF THE COMPANIES ACT, 1963 - 2012

Between:

DONEGAL INVESTMENT GROUP PLC.

Petitioner

AND

DANBYWISKE, RONALD WILSON,
THE GENERAL PARTNERS OF THE WILSON LIMITED PARTNERSHIP 1,
MONAGHAN MUSHROOMS IRELAND
AND
ELST

Respondents

Date of filing	21 July 2016
Name(s) of Applicant(s)/Appellant(s)	Danbywiske, Ronald Wilson, The General Partners of the Wilson Limited Partnership 1
Solicitors for Applicant(s)/Appellant(s)	William Fry
Name of Respondent(s)	Donegal Investment Group PLC
Respondent's solicitors	Arthur Cox

Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?

	Yes	X	No

If yes, give [Supreme Court] record number(s)

Are you applying for an extension of time to apply for leave to appeal?		Yes	X	No
If Yes, please explain why				

1. Decision that it is sought to appeal

Name(s) of Judge(s)	Finlay Geoghegan, Hogan and Cregan JJ
Date of order/ Judgment	8 June 2016 (Judgment); 23 June 2016 (Order perfected)

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	Danbywiske, Ronald Wilson, The General Partners of the Wilson Limited Partnership 1

Original status

	Plaintiff
	Applicant
	Prosecutor
	Petitioner

	Defendant
X	Respondent
	Notice Party

Solicitor			
Name of firm	William Fry		
Email	fergus.doorly@williamfry.com		
Address	2 Grand Canal Square Dublin 2	Telephone no.	(01) 6395000
		Document Exchange no.	DX 23
Postcode	D02 A342	Ref.	017238.0002

How would you prefer us to communicate with you?

	Document Exchange	X	E-mail
	Post		Other (please specify)

Counsel			
Name	Michael Cush		
Email	mcush@eircom.net		
Address	2 Arran Square Arran Quay Dublin 7	Telephone no.	(01) 8174541
		Document Exchange no.	DX 813011
Postcode			

Counsel			
Name	Ciaran Lewis		
Email	ciaran@3arransquare.com		
Address	3 Arran Square Arran Quay Dublin 7	Telephone no.	(01) 8172726
		Document Exchange no.	DX 814150
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?			
	Document Exchange		E-mail
	Post		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	Donegal Investment Group PLC

Original status

	Plaintiff
	Applicant
	Prosecutor
X	Petitioner

	Defendant
	Respondent
	Notice Party

Is this party being served with this Notice of Application for leave?			
Yes	X	No	

Solicitor			
Name of firm	Arthur Cox		
Email	david.odonohoe@arthurcox.com		
Address	Earlsfort Centre Earlsfort Terrace Dublin 2	Telephone no.	(01) 6180000
		Document Exchange no.	DX 27
		Ref.	DOD/TCR/DO070/016/
Postcode	D02 CK83		

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

	Document Exchange
	Post

	E-mail
	Other (please specify)

Counsel			
Name	Brian O'Moore		
Email	**bomoore@lawlibrary.ie**		
Address	158/159 Church Street Building Church Street Dublin 7	Telephone no.	(01) 8175089
		Document Exchange no.	DX 815111
Postcode			

Counsel			
Name	John McCarroll		
Email	johnjmccarroll@eircom.net		
Address	58 Lansdowne Road Dublin 4	Telephone no.	(01) 817 5686
		Document Exchange no.	DX 816616
Postcode			

Counsel			
Name	Ronan Lupton		
Email	rlupton@lawlibrary.ie		
Address	Law Library Four Courts Dublin 7	Telephone no.	01 817 7766
		Document Exchange no.	DX 816716
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	N/A
e-mail address	N/A
Telephone no.	N/A

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

	Document Exchange
	Post

	E-mail
	Other (please specify)

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

Please set out below:

1. 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.

The Appellants seek to appeal from part of the Decision only.

These proceedings were brought pursuant to section 205 of the Companies Act 1963 to 2012. The High Court held two separate hearings, one to determine the appropriate remedy (the "**Remedy Hearing**"), and the other to determine the value at which the Appellants might purchase the Petitioner's shares in the Fifth Named Respondent, ELST (the "**Company**").

The High Court determined that the appropriate remedy was that the Appellants purchase the Petitioner's shares in the Company. The Court of Appeal upheld that determination. It is not sought to appeal that part of the Court of Appeal's determination.

The High Court valued the Petitioner's 30% stake in the Company at €26,228,571. The Court of Appeal found that the trial judge had fallen into error in valuing the Petitioner's shares at that price. In particular, and by reference to the particular method of valuation adopted, the Court of Appeal found that there was no evidence before the trial judge which permitted the trial judge to find that 6.1 was an appropriate multiplier to be used in determining the value of the Company.

The Appellants seek to appeal the Court of Appeal's decision to disturb the valuation of the trial judge and, in particular, the Court of Appeal's determination that there was *"no evidence"* before the trial judge to support his finding that a multiplier of 6.1 was appropriate.

2(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 trial judge's determination that 6.1 was an appropriate multiplier to use in determining the value of the Company (contested).

2(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.

N/A.

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

The Order of the High Court (McGovern J.) of 16 January 2015 made pursuant to a Judgment delivered on 5 December 2014 which fixed the price at which the Appellants should purchase the Petitioner's shares (on the basis of a then assumed 35% stake in the Company) for €30.6million (but which was ultimately reduced to a 30% stake thereby giving rise to a value of the Petitioner's stake in the Company of €26,228,571).

The finding of the Court of Appeal that the trial judge's finding of an EBITDA multiplier of 6.1 could not be sustained on the evidence before him (at paragraph 76 of the Court of Appeal Judgment delivered on the 8 June 2016).

With regard to the trial judge's finding that a multiplier of 6.1 was appropriate in valuing the Company and insofar as this was either a finding of fact or an inference drawn, the Court of Appeal's finding that there was no evidence before the trial judge to make such a finding and that therefore the principles identified in *Hay v O'Grady* [1992] 1 IR 210 (which would otherwise prevent the Court of Appeal from interfering with the trial judge's finding of fact) did not preclude the Court of Appeal from so interfering (our emphasis).

The Court of Appeal Order dated 23 June 2016 remitting the valuation of the Petitioner's 30% shareholding in the Company to the High Court.

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 decision of the Court of Appeal represents a radical departure from the traditional understanding of how the principles in *Hay v O'Grady* [1992] 1 IR 210 ought to be applied. The departure represents a very significant expansion of the appellate jurisdiction of the Court of Appeal (and indeed the Supreme Court). If correct, the decision therefore has implications for a great many cases other than the one involving the parties before the court and indeed has implications for the courts themselves and the concept of finality in the administration of justice. Separately, the decision has profound implications for how trial judges are required to engage with expert testimony.

The Hay v O'Grady principles

The means by which the Court of Appeal found that the principles in *Hay v O'Grady* did not preclude its interference with the judgment of the trial judge was to conclude that there was "no evidence" before the High Court to support its finding on what was the appropriate multiplier to apply to a share valuation. The Court of Appeal has taken a remarkably broad view of what may be described as "no evidence" and therefore has greatly expanded the circumstances in which the decisions of courts of first instance might be overturned.

Three experts on share valuation gave evidence in the High Court, one on behalf of the Petitioner and two on behalf of the Respondent. Each one of them gave evidence that when applying the market approach to share valuation and when seeking to identify the appropriate multiplier to be applied within that approach, it was permissible to have regard to either transaction comparables or trading comparables. Not one of them gave evidence to the effect that it was necessary to depart from that general rule when valuing the shares in the company. Not surprisingly each of the experts provided the court with expert testimony on both transaction and trading comparables. To have done otherwise would have run the risk that that the expert's testimony would be regarded as less than comprehensive and/or perhaps even irrelevant.

The Learned Trial Judge fixed upon a multiplier by reference to the evidence in respect of transaction comparables only. The Court of Appeal determined that there was "no evidence to support the finding of the High Court". It appears that it did so from the fact that the experts had proffered testimony on both transaction and trading comparables. This is notwithstanding the experts' explicit evidence that it was permissible to look at either transaction or trading comparables and notwithstanding the absence of any evidence that there was something peculiar about the company under consideration which required regard to both transaction and trading comparables.

The finding of "no evidence" by the Court of Appeal is surprising for two further reasons. First, the Petitioner's expert, Mr Lindsay, performed an analysis of both transaction and trading comparables and having done so, he ultimately chose a multiple consistent with his multiple range for the transaction comparables[1]. Therefore, nothwithstanding his own analysis of the trading comparables, this didn't cause him to adjust his conclusion of the appropriate multiplier to be applied. Furthermore, Mr Lindsay himself accepted that of the transaction comparables, the 'UK and European Fruit and Vegetable' basket was the most relevant basket of comparables[2].

In the context of share valuation, the decision of the Court of Appeal represents a radical departure from the approach approved of by the Supreme Court in *Irish Press Newspapers Limited and Another v Ingersoll Irish Publications Limited and Others* [1995] 2 IR 175.

The Court of Appeal judgment would appear to require that where, as is often the case, experts review and opine on a wide range of potentially relevant material, the trial judge must rule upon all of the material covered by the experts even in circumstances were the experts themselves have identified that it is permissible to have regard to some but not all of the material which was the subject of their opinion. This proposition, if correct, has implications that go far beyond the parameters of this case and affect all cases in which expert testimony is proffered over a range of subject matter. The decision makes the job of the trial judge a great deal harder than it has been understood to be up to this point in time.

The key paragraphs in the judgment are as follows:

> *"61. As noted above, the trial judge, at paragraph 21 of his judgment, set out an explanation of the market approach which appears to permit a multiplier to be selected following an assessment of transaction comparables or trading comparables, as distinct from both. This was the subject of some discussion during the appeal hearing. Nevertheless, the Court considers that the distinction was not relevant to the multiplier decided upon by the trial judge. Insofar as relevant, the Court accepts that the experts did, on a couple of occasions, refer to a theoretical approach of considering one or the other, but insofar as they were applying the market valuation approach to the valuation of shares in the Company, the Court is satisfied that they looked at both transaction comparables and trading comparables."*

---

[1] Page 7 of Mr Lindsay's report dated 2 July 2014, it is stated *"We recommend a conservative current year EBITDA multiple valuation range of 7.0x-7.5x which is aligned with the valuation range indicated by the comparable transactions...."*

[2] Page 75 of Mr Lindsay's report dated 2 July 2014, it is stated that this basket is *"the most directly comparable transactions that will form the base of the valuation"*

This paragraph represents an acknowledgment of the explicit evidence from each of the experts that it was permissible to look at either transaction or trading comparables and, it is submitted, undue emphasis on the mere fact that each of the experts looked at both.

> *"62. ...Both sides agreed that the essence of the market approach in its application to the company is to reach an EBITDA multiplier by selecting:*
>
> *(i) Transaction comparables (i.e. precedent emerging acquisition sale transactions of similar companies possessing similar characteristics and attributes) and*
>
> *(ii) Trading comparables (i.e. publically listed companies possessing similar characteristics and attributes) from which to derive a range of multipliers and then exercise a professional judgment as to whether they were to place the Company in the range."*

This, it is submitted, is a reference to what each of the experts did but ignores completely the evidence from each of them to the effect that the essence of the market approach did not necessitate regard to both transaction and trading comparables.

> *"77. The Court, in reaching this conclusion, has considered carefully the respondents' submission that the decision of the Trial Judge on the multiplier to be used is a finding of fact with which this Court should not interfere in accordance with the principles set out by the Supreme Court in Hay v O'Grady* [1992] 1 IR 210 *and as further explained in Doyle v Banville* [2012] IESC 25. *Insofar as the decision on the multiplier is either a finding of fact or inference drawn, this Court is of the view for the reasons explained it is one for which there was no evidence before the High Court and it therefore cannot be upheld in accordance with those principles."*

Thus, it can be seen, that the Court of Appeal has concluded that there was "no evidence" which entitled the Learned High Court judge to base his finding upon a set of transaction comparables only and without regard to trading comparables. This finding was made notwithstanding the explicit acknowledgement that each of the experts had given evidence to the effect that it was permissible to look at one or the other and notwithstanding the fact that none of them had said anything to the effect that the general approach required to be departed from in the case of the company whose shares were being valued. The decision makes the task of Trial Judges in cases where expert evidence is proffered unnecessarily difficult and the scope for successful appeals far too wide.

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 grounds of appeal on the errors of law related to each numbered ground;

(2) the legal principles related to each numbered ground and confirmation as to how that/those legal principles apply to the facts or to the relevant inferences drawn therefrom;

(3) the specific provisions of the Constitution Acts, of the Oireachtas, Statutory Instruments and any other legal instruments on which you rely;

(4) the issues of law before the Court appeal to the extent that they are relevant to the issues on appeal.

First Ground

The Court of Appeal erred in law in finding that there was no evidence before the trial judge to sustain his finding that an EBITDA multiplier of 6.1 was appropriate.

The detail for this ground of appeal is set out above.

At paragraph 76 of the Court of Appeal Judgment, the Court held:

"In its view [the Court of Appeal's], the trial judge's finding of an EBITDA multiplier of 6.1 cannot be sustained on the evidence."

It went on to state:

"Furthermore, all experts were also agreed that in arriving at the appropriate multiplier to be used in the valuation of shares in the Company using the market approach, it was necessary to consider and assess both transaction and trading comparables. The conclusion of the trial judge is, however, based only upon an assessment of one data set of the transaction comparables and does not make any assessment by reference to the trading comparables at all."

The Court went on to find at paragraph 77:

"The Court, in reaching this conclusion, has considered carefully the Respondents' submission that the decision of the trial judge on the multiplier to be used is a finding of fact which this Court should not interfere with in accordance with the principles set out by the Supreme Court in Hay v O'Grady [1992] 1 IR 210, and as further explained in Doyle v Banville [2020] IESC 25. Insofar as the decision on the multiplier is either a finding of fact or an inference drawn, this Court is of the view for the reasons explained that it is one for which there was no evidence before the High Court and it therefore cannot be upheld in accordance with those principles."

The Court of Appeal has taken a very narrow view of what constituted *"evidence"* before the High Court and on which the trial judge could reach his determination of the appropriate multiple. It is undoubtedly the case that there was evidence before the trial judge that in applying the Market Approach a multiplier could be selected following an assessment of either transaction comparables or trading comparables. It is also the case that all three valuers who gave evidence before the trial judge had regard to both transaction comparables and trading comparables when valuing the shares of the Company.

The Court of Appeal has decided that, given that all of the experts relied on both transaction comparables and trading comparables in reaching their respective determinations on the appropriate multiple, the trial judge was also bound to have regard to both trading comparables and transaction comparables in reaching his determination. The Court of Appeal has done so notwithstanding the fact that all of the valuers found that the Market Approach permitted a valuer to have regard to either market comparables or transaction comparables; and that it was not mandatory to have regard to both.

Therefore, the Court of Appeal has in effect rendered a limited definition of *"evidence"* for the purposes of considering whether or not there was evidence before the trial judge which allowed him to make a finding of fact which on the principles as set out in *Hay v O'Grady* should not be interfered with.

At paragraph 61 of the Judgment, the Court said:

"As noted above, the trial judge, at para. 21 of his judgment, set out an explanation of the market approach which appears to permit a multiplier to be selected following an assessment of transaction comparables or trading comparables, as distinct from both. This was the subject of some discussion during the appeal hearing. Nevertheless, the Court considers that the distinction was not relevant to the multiplier decided upon by the trial judge. Insofar as relevant, the Court accepts that the experts did, on a couple of occasions, refer to a theoretical approach of considering one or the other, but insofar as they were applying the market valuation approach to the valuation of shares in the Company, the Court is satisfied that they looked at both transaction comparables and trading comparables. Mr. Lindsay certainly did so, as is set out in more detail below. Similarly, the approaches or Mr. Tynan and Mr. O'Flanagan, as disclosed both by their written reports/witness statements and oral evidence in relation to the market approach to valuation of shares in the Company, was to consider a range of multiples derived from comparable transactions and from comparable trading companies and then, having considered relevant facts in relation to the Company and its business, to use a professional judgment as to the multiple to be used for valuing the shares in the Company."

The Court of Appeal was clearly aware that there was evidence before the Trial Judge from each of the three valuers that the market method of valuation permitted reliance on either trading comparables or transaction comparables.[3]

[3] Day 2 of the Court of Appeal hearing Transcript page 29 and following.

Mr. Lindsay himself stated in evidence:

"*You would tend to use, the multiple that you would use of the current profits would be based on either comparable companies that are trading in the stock market or comparable transactions that have taken place in the past.*"[4] *[emphasis added]*

Mr. Tynan in his witness statement stated:

"Market approach: based on multiples or prices from comparable stock exchange quoted companies or from market transactions..."[5] [emphasis added]

Mr. O'Flanagan stated:

"The market approach is a technique by which the value of the equity of a business is estimated by comparing it to publicly traded firms in similar lines of business ("guideline public company method") or comparable entities which have been recently acquired in arm's length transactions..."[6] [emphasis added]

In the circumstances there was evidence before the trial judge that it was permissible to look at either transaction comparables or trading comparables in determining a multiplier. It was also the case that each of the experts who gave evidence looked at both in valuing the Company. However, none of the experts said that in determining the value of the shares of the Company or any company that a valuer must look at both. On the contrary, the evidence before the trial judge was that one might chose to look at either.

The decision of the trial judge was criticised on the grounds that it is apparent that he looked only at transaction comparables in determining the appropriate multiple. The Court of Appeal upset the trial judge's judgment on the basis that he looked at only transaction multiples; and justified its interference on the grounds that there was "no evidence" before the Trial Judge to do so. Therefore, the definition of *"evidence"* which the Court of Appeal has adopted is a narrow one which limits the evidence to which the trial judge can have regard to the evidence of how the valuers actually valued the shares of the Company; and excludes their agreed evidence on how it is permissible to value the Company.

Such a definition of *"evidence"* is extremely narrow and gives rise to a severe limiting of the principle in *Hay v O'Grady*, namely that the appellate court should not disturb the findings of primary fact made by a trial judge provided there is credible evidence to support them.
The decision in *Irish Press v Ingersoll* (which was opened to the Court of Appeal) is of particular relevance. There, the Supreme Court refused to interfere with the valuation of shares by the High Court Judge where:

"The Learned Trial Judge analysed in great detail the evidence of the two valuers but did not accept the conclusions of either of them."

Blayney J. held:

"As has been repeatedly stated, in particular since the decision of this Court in Hay v O'Grady, this Court cannot disturb findings of primary fact made by a trial judge provided there is credible evidence to support them. It follows that the findings of the Learned Trial Judge that the shares were worth €10 million in November 1991 and it would take €13.5 million to turn the company around, to buy it back, cannot be disturbed if there was credible evidence to support them and I am satisfied that there was."
Insofar as McGovern J. determined the appropriate multiple by relying on transaction comparables only, there was credible evidence for him to do so. The determination by the Court of Appeal that there was "no evidence" for him to do so is an impermissibly narrow definition of what "evidence" or "credible evidence" is within the meaning of *Hay v O'Grady*.

A narrow interpretation of the evidence required to support primary findings of fact which would prevent an appellate court from interfering with the judgment at first instance is a matter of public importance. If the Court of Appeal Judgment stands, it is a precedent which would allow the broadening of the appellate court's jurisdiction to interfere with High Court judgments which formerly would have been held to be unimpeachable if based on primary findings of fact supported by credible evidence.

---

[4] High Court hearing Transcript Day 7, Question 32 and following.
[5] Page 24.
[6] Page 38 of Mr. O'Flanagan's witness statement.

Second Ground

The Court of Appeal erred in law in finding that the trial judge had determined the EBITDA multiple of 6.1 by reference to a purely mathematical approach.

The Court of Appeal has overturned the trial judge's determination of the multiple also on the grounds that he arrived at it *"by reference to a purely mathematical approach"*. The Court of Appeal held: *"There was no evidence to support the use of an arithmetically derived median of multipliers from a subset of transaction comparables as decided."*[7]

The Court was certainly right to find that there was no evidence to support the determination of a multiple by arithmetic means. All of the experts found ranges of multiples by reference to the mean or median multiples of groups of comparables and then, importantly, exercised their professional judgments in picking what each believed to be an appropriate range of multiples. However, the Court of Appeal's criticism of the trial judge appears to be that having adjusted the multiple in a particular set of transaction comparables (the European fruit and veg basket) by the inclusion of a very relevant comparable (Walkro) which had been excluded by the Petitioner's expert witness, he did not then explicitly state that he was adopting that resulting multiple as an exercise of his judgment. The Court of Appeal then rendered this failure as a situation where there was no evidence to support the multiple as determined by the trial judge.

In so doing, the Court of Appeal once again deployed the "no evidence" criteria in *Hay v. O'Grady* in order to extend its jurisdiction to interfere with the High Court determination. This is not, in truth, a case in which the Learned Trial Judge made a determination of the multiple "by reference to a purely mathematical approach". Instead, he exercised a qualitative judgment to decide that transaction comparables rather than trading comparables were the most relevant comparables. He exercised a further qualitative judgment to decide that the 'UK and European Fruit and Vegetable' basket of transaction comparables was the most relevant basket of comparables and he made a further qualitative judgment to adjust that basket by including an additional transaction comparable (Walkro) and to decline to exclude from the basket one particular transaction comparable (Fyffes) which the Respondents urged that he should exclude from the basket. That series of qualitative judgments did lead to a position where the judge was able to identify a mean and an average and he settled upon the mean as being the appropriate figure to fix as the multiple. Not only was there ample evidence to justify the approach taken, there was ample evidence to justify the particular figure of 6.1 settled upon by the Learned High Court Judge.

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

Court of Appeal [2016] IECA 193

References to Law Report in which any relevant judgment is reported

N/A

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:

1. An Order upholding the Trial Judge's finding that the EBIDTA multiple for the valuation of the Company was 6.1;
2. An Order setting aside the Court of Appeal's determination that there was no evidence before

[7] At paragraph 56.

	the Trial Judge to allow him to find that the appropriate EBIDTA multiple for the Company was 6.1;
3.	An Order setting aside the Court of Appeal's Order remitting the valuation of the Petitioner's shares in the Company to the High Court; and
4.	An Order for the costs of this appeal.

What order are you seeking if successful?

Order being appealed: set aside [X] 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
N/A
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
N/A

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions? [ ] Yes [X] No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union? [ ] Yes [X] No

If Yes, please give details below:

Will you request a priority hearing? [X] Yes [ ] No

If Yes, please give reasons below:

These proceedings have caused very significant damage to the Company's business. The discord between the Petitioner and the Respondents (and their respective board members) has made and continues to make the management of the affairs of the Company very difficult which is of particular concern because the Company now faces significant challenges. Despite the fact that it is now clear that the Appellants will purchase the Petitioner's shares (and that this is the remedy which has been determined in these proceedings) the Petitioner refuses to transfer its shares in the Company and insists on interfering in the management of the Company. The Petitioner insists on remaining as a shareholder until such time as the price of its shareholding has been determined. This appeal will finally determine whether the Trial Judge's determination of the price to be paid for the Petitioner's share should stand or whether a further hearing to determine value must be held by the High Court. Therefore, the earliest determination of this intended appeal is desirable.

Signed: William Fry

WILLIAM FRY
Solicitors for the Appellant
2 Grand Canal Square
Dublin 2

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.

WF-17189642