



SUPREME COURT



Record No:

SAPIE 2019000045

Respondent's Notice

Part I

1. Title of the Proceedings:

BANK OF IRELAND MORTGAGE BANK

Plaintiff

-v-

MICHAEL BUTLER

Defendant

2. Name of Respondent: Bank of Ireland Mortgage Bank

3. Application to extend time: Yes No

If an application is being made to extend time for the filing of this Notice, please set out concisely the grounds upon which it is contended time should be extended.

This application to extend time is being made in the circumstances where it has come to the attention of the Solicitors for the Plaintiff/Respondent that the filing of the Respondent's Notice was not conducted in the appropriate manner and in adherence to 'Practice Direction SC19 – Conduct of proceedings in Supreme Court'.

At all times the Solicitors for the Plaintiff/Respondent sought to ensure that steps in the proceedings before the Court were taken expeditiously and

within the time prescribed by the rules and the statutory practice direction.

The Solicitors for the Plaintiff/Respondent regret any misreading of the statutory practice direction and humbly submit that no prejudice was imposed or intended on the Defendant/Applicant.

The Solicitors for the Plaintiff/Respondent, Keating Connolly Sellors Solicitors of 6/7 Glentworth Street, Limerick received The Defendant's/Applicant's Application for Leave to Appeal by way of hand delivery on the 12th day of March 2019.

Further instructions were taken from the Plaintiff/Respondent and a Respondent's Notice was drafted by Counsel and served on the Defendant/Applicant on the 28th day of March 2019 by way of registered post.

Regrettably, David Whelan, Solicitor for the Plaintiff/Respondent incorrectly understood Section 5 (d) of the Practice Direction SC19 – Conduct of proceedings in Supreme Court to mean that an electronic copy of the Respondent's Notice sent to the following email address: supremecourtapps@courts.ie would constitute sufficient filing. Consequently, the Respondent's Notice dated the 28th day of March 2019 was sent electronically to the Supreme Court Office and no further hard copy was filed.

In or around the 27th day of May 2019, David Whelan Solicitor was contacted by a member of staff of the Supreme Court Office and advised that a hard copy of the Respondents Notice had not been filed to date. When an attempt was made to file the Respondent's Notice dated the 28th day of March 2019, Mr. Whelan was advised that an application to extend time was required to cure any defect.

In light of the foregoing, the Solicitors for the Plaintiff/Respondent humbly beg the panel of the Court to consider the above and allow the Respondents Notice to be filed.

4. Do you oppose the applicant's application to extend time:

Not applicable

5. Do you oppose the applicant's application for leave to appeal:

Yes No

6. Matter of general public importance:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. In order to establish that one or more of the matters at issue in these proceedings are matters of general public importance, it is submitted that the Defendant/Applicant (“**Mr Butler**”) must, in the first instance, identify in his Application for Leave to Appeal the precise issues which he contends are of public importance, and thereafter explain how the potential outcome of his appeal to this Court would be of general relevance.
2. In *Director of Public Prosecutions -v- O’R* [2016] IESC 64, Charleton J stated:

“The most common basis on which it is asserted that the constitutional threshold for leave to appeal is met is a contention that the judgment sought to be appealed against raises an issue of general public importance. The satisfying of that aspect of the constitutional threshold necessarily requires the Court to identify the issue or issues which may be said to meet that requirement. Of course, that issue must have a practical relevance to the potential outcome of the appeal in the case under consideration. Issues are not considered in the abstract but rather with a view to determining whether the resolution of the issue one way or the other may impact on the proper result of the appeal. Issues are, therefore, a means to an end. They are a means of identifying that the constitutional threshold may or may not be met. But the Act of 2014 and the rules quite properly speak of “grounds” rather than “issues” precisely because it is the impact of the issue on the case in question which may provide a ground for appeal. It is important, therefore, to keep in mind the distinction between the issue of law of general public importance which may give rise to a decision that the constitutional threshold has been met and the grounds of appeal which may suggest that the resolution of that issue in a particular way may lead to the appeal being successful.”

3. In his Application for Leave to Appeal, Mr Butler has not identified any issue of law of general public importance, by reference to the constitutional test, or otherwise.
4. The matters at issue in the proceedings before the High Court and the Court of Appeal were as follows:
 - (i) Whether the Plaintiff/Respondent (“**the Bank**”) was entitled to summary judgment against Mr Butler;
 - (ii) Whether fair procedures were adhered to;
 - (iii) Whether Mr Butler had a counterclaim against the Bank;
 - (iv) Whether Mr Butler was entitled to seek discovery from the Bank.
5. The determination of these issues involved the application of well-established principles of law to the facts of the case. In the circumstances, it is difficult to see how the outcome of an appeal to this Court could have relevance to anyone beyond Mr Butler and his family.
6. It is submitted, therefore, that the matters which were at issue in these proceedings do not involve a matter of general public importance.

Word count – 488 words

7. Interests of Justice:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. It is submitted by the Bank that the High Court and the Court of Appeal applied well established legal principles to the facts of the case.
2. It is clear from the Determinations of this Court in *Walshe -v- Ireland* [2015] IESC 37 (paragraphs [18] – [19]) and *Lyons -v- Ireland* [2015] IESC 38 (paragraphs [17] – [18]) that where there is

no ambiguity or uncertainty in the law, or no reason to question the application of legal principles to the facts of the case, the constitutional threshold required to grant leave to appeal is unlikely to be met.

3. In *Rayan Restaurant Ltd -v- Kean* [2016] IESCDET 78, this Court determined that the Applicant's application for leave to appeal was misconceived on the basis that the judgments and orders appealed against involved the application of well-established principles to the facts of the individual case.
4. This law pertaining to matters which were at issue in the instant case is unambiguous and certain. The decision of the Court of Appeal was an unanimous one. There was there no dispute as to what the relevant legal principles were or how they were to be applied to the facts of the case. Therefore, no clarification of the relevant law is required.
5. In the premises, the Bank submits that the interests of justice do not require an appeal.

Word count – 225 words

8. Exceptional Circumstances Article 34.5.4.:

Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

Not applicable

9. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.

10. Cross Application for Leave:

If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.

If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 500 words and the word count should appear at the end of the text.

Not applicable

11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal

Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.

12. Priority Hearing: Yes No

If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.

This section should contain no more than 100 words and the word count should appear at the end of the text.

Not applicable

13. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union, please identify the matter, and set out the question or questions which it is alleged it is necessary to refer.

This section should contain no more than 100 words and the word count should appear at the end of the text.

Not applicable

Part II

The information contained in this part will not be published.

15. Legal Aid:

In the case of an application by the DPP from an order in a criminal trial please confirm that a Legal Aid (Supreme Court) certificate has been granted by the Court below and please provide a copy of same.

Not applicable

Signed: KEATING CONNOLLY SELLORS

Keating Connolly Sellors
Solicitors for the Respondent
6 – 7 Glentworth Street
Limerick

Date: 30 MAY 2019

To be served on: Michael Butler

To: The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin 7

Appendix
Grounds of Opposition (and Cross Appeal)

1. **Title of the Proceedings:** *[As in the Court of first instance]*

BANK OF IRELAND MORTGAGE BANK

Plaintiff

-v-

MICHAEL BUTLER

Defendant

2. **Respondent's grounds for opposing an appeal if leave to appeal is granted:**

Please list concisely in numbered paragraphs, the Respondent's ground(s) of opposition to the grounds of appeal set out in the Appellant's Notice of Appeal.

1. The learned Judges of the Court of Appeal correctly applied the law and were correct in law in allowing the appeal to proceed;
2. The learned Judges of the Court of Appeal did not deny the Defendant/Applicant his fundamental rights, for the reasons contended by him or otherwise;
3. The learned Judges of the Court of Appeal took appropriate account of any and all issues raised by the Defendant/Applicant in his appeal;
4. The learned High Court judge was correct in law in entering judgment against the Defendant/Applicant in circumstances where the Defendant/Applicant was afforded a full opportunity of being heard in court when the Plaintiff/Respondent's application was made and did not request that the High Court decline jurisdiction;
5. The learned Judges of the Court of Appeal took appropriate account of any arguments made by the Defendant/Applicant in respect of "the piercing of the corporate veil" and were correct in law to hold that there was no basis for a counterclaim against the Plaintiff/Applicant;
6. The grounds advanced by the Defendant/Applicant at paragraph 6 *et seq.* are not matters which have any relevance to the matters at issue in these proceedings.
7. The learned Judges of the Court of Appeal were correct in law in dismissing the Defendant/Applicant's appeal;
8. The learned Judges of the Court of Appeal were correct in law in refusing the Defendant/Applicant's motion for discovery.

3. Additional grounds on which the decision should be affirmed:

Please set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court.

Not applicable

4. Cross Appeal

Please set out in numbered paragraphs the Grounds of Cross Appeal relied upon if leave to cross appeal were to be granted.

Not applicable

5. Order(s) sought

Please set out in numbered paragraphs the order(s) sought if the Cross Appeal were to be successful.

Not applicable