



No. 1

SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

Supreme Court record number of this appeal	S: AP: IE: 2018: 000102
Subject matter for indexing	

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

Seniors Money Mortgages (Ireland) DAC	V	Derek Gately
High Court Record Nr	2015/336SP	Court of Appeal Record Nr 2018/147
Date of filing	6 July 2018	
Name(s) of Applicant(s)/Appellant(s)	Jacqueline McGovern	
Solicitors for Applicant(s)/Appellant(s)	Damien Sheridan Solicitors	
Name of Respondent(s)	Seniors Money Mortgages (Ireland) DAC	
Respondent's solicitors	Beauchamps Solicitors	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
If yes, give [Supreme Court] record number(s)		

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If Yes, please explain why			

1. Decision that it is sought to appeal

Name(s) of Judge(s)	Irvine, Hogan, McGovern JJ.
Date of order/ Judgment	25 June 2018

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

Solicitor			
Name of firm	Damien Sheridan Solicitors		
Email	admin@dsheridansolicitors.ie		
Address	Suite 125 The Capel Building St. Mary's Abbey Dublin 7	Telephone no.	01 8775677
		Document Exchange no.	N/A
Postcode	N/A	Ref.	SHE/MCG/001

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)

Counsel			
Name	Patrick F. O'Reilly SC		
Email	patrick@patrickoreillysc.ie		
Address	Law Library, Four Courts, Dublin 7	Telephone no.	01 8174789
		Document Exchange no.	816004
Postcode			

Counsel			
Name	Liam O'Connell BL		
Email	liam.oconnell@lawlibrary.ie		
Address	Law Library, Four Courts, Dublin 7	Telephone no.	01 8177581
		Document Exchange no.	812141
Postcode			

If the Applicant / Appellant is not legally represented please complete the following

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

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	Seniors Money Mortgages (Ireland) DAC
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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 - Ms. Ciara Murphy			
Name of firm	Beauchamps Solicitors		
Email	c.murphy@beauchamps.ie		
Address	Riverside Two Sir John Rogersons Quay Dublin 2	Telephone no.	01 4180600
		Document Exchange no.	63
		Ref.	CM/GS/SENS/391
Postcode	DO2 KV60		

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

Counsel			
Name	Helen O'Connor BL		
Email	Unknown		
Address	Unknown	Telephone no.	
		Document Exchange no.	Unknown
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	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?

<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

The Applicant wishes to appeal the entire decision of the Court of Appeal in refusing to extend the time within which to file an ordinary Notice of Appeal.

(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

1. The within application concerns an intended appeal against an order dismissing the intended appellant's application to the Court of Appeal for an Order extending the time for the intended appellant to lodge an ordinary Notice of Appeal against the Orders of the High Court (Baker J.) made on 26 January 2017 and on 9 March 2017 and perfected on 16 March 2017 and 21 March 2017 respectively.
2. The Order made on 26 January 2017 is an order for possession of certain property comprising unregistered land in Manorhamilton, Co. Leitrim. The order for possession was made on foot of a mortgage granted by the intended appellant's mother to the intended respondent, who specialises in providing equity-release loans to the elderly. The intended appellant now participates in these proceedings in her capacity as executrix of her later mother's estate. The intended appellant also resides with her husband in the property the subject-matter of the Order.
3. The order for possession was made by the High Court exercising its jurisdiction in respect of registered land under Section 62(7) of the Registration of Title Act, 1964. It is an acknowledged fact that the land concerned is unregistered land as a result whereof the aforesaid jurisdiction is not and was never exercisable in relation to it.

4. The intended appellant was a Notice Party to the proceedings in the High Court and the estate was represented by an administrator *ad litem* sued in such capacity. The intended appellant was not legally represented in the High Court.
5. During the course of an application for a stay on the order for possession the intended appellant indicated that a renewed appeal (having previously been refused) for civil legal aid was being made in light of an opinion that had been received by her through the Voluntary Assistance Scheme operated by the Bar of Ireland (“VAS”). The intended appellant also indicated that “*if an Order for Possession has already been made in this case, we do not know whether [the Court] can now change or vacate that Order or whether an appeal is now required*”. Each of the foregoing occurred prior to the perfection of the orders sought to be appeal to the Court of Appeal.
6. The months that followed the perfection of the orders entailed undeniable delay on the part of the intended appellant but that delay occurred in circumstances where the intended appellant was searching for legal representation and also were complicated by the intended appellant’s health difficulties comprising scleroderma and Raynaud syndrome and Sjörgeren’s syndrome secondary to scleroderma.
7. In January 2018 the intended appellant’s solicitors agreed to act on her instructions following which the barristers who had provided their opinion through VAS were approached and agreed to act in the matter.
8. In order for the intended appellant to take a step on behalf of the estate, in whose ownership the property concerned remains, the intended appellant had to regularize her position in relation to the estate and in relation to the proceedings. In this regard the intended appellant had to apply for and extract a Grant of Probate and also apply to the Master of the High Court to be substituted as defendant in the proceedings by reason of the transmission of interest to her as executrix. In the course of the application to extract the Grant of Probate an issue arose concerning the taking out of letters of administration for the purpose of the proceedings which had to be resolved prior to the bringing of an application to extend time to appeal. This issue was resolved and all proved to be in order.

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

An Order dismissing the Applicant’s application by Notice of Motion dated 13 April 2018 for an order extending the time within which to file an ordinary Notice of Appeal in respect of the Orders of the High Court made on 26 January 2017 and 9 March 2017..

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 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)—

Please list (as 1, 2, 3, etc) concisely the reasons in law:

- i. 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 and
- ii. why there are exceptional circumstances warranting a direct appeal to the Supreme Court

General Public Importance

1. This intended appeal concerns the important issue of how the judicial discretion to extend time to deliver an ordinary Notice of Appeal is to be exercised where a party applying wishes to bring an appeal for the purpose of setting aside an order made that is undeniably bad in law and fact and/or was made by the invocation of jurisdiction that self-evidently did not apply to the subject-matter of the order.
2. The Order sought to be set aside by the intended appellant is an order for possession made pursuant to Section 62(7) of the Registration of Title Act, 1964 in respect of unregistered land, to which the said enactment does not apply, and was thus made without jurisdiction and is bad on its face.
3. The intended appellant contends that where a party applies to extend time to appeal and set aside a plainly bad order and/or an order that has been made without jurisdiction and where that order affects the constitutional rights of the party concerned including *inter alia* property rights and the inviolability of the dwelling, the Court's discretion to extend time to appeal must, and can only be exercised in favour of extending the time within which to file an appeal or in the alternative ought be exercised in favour of the applicant save in exceptional circumstances. The intended appellant maintains that the proper administration of justice requires that an Order bad in law and fact ought not to stand consequent solely on a requirement as to time for the lodging of an appeal.
4. It is submitted that the issue of whether the Court's discretion is, in such cases, limited in such a manner is an issue of general public importance insofar as it will impact widely upon the manner in which judicial discretion is to be exercised in such circumstances.

Interests of Justice

1. It is submitted that the interests of justice require that the proposed appeal be heard by the Supreme Court.

2. The intended appellant resides in the property the subject-matter of the order for possession. The property belongs to estate of the intended appellant's mother, in respect of which the intended appellant acts in these proceedings as executor. The estate was represented in the High Court by an administrator *ad litem*. The learned High Court judge (Baker J.) was, as appears from the transcript, acting under the belief that the application related to registered land and accordingly that the Court's jurisdiction pursuant to Section 62(7) of the Registration of Title Act, 1964 was exercisable in relation to the land. At the time of the making of the order for possession the intended appellant was a Notice Party without legal representation. The learned trial judge was not corrected by the parties as to the true nature of the land concerned and accordingly the learned trial judge proceeded to make an order for possession pursuant to Section 62(7) of the 1964 Act. It is this order that is sought to be appealed to the Court of Appeal and in respect of which an extension of time for such purpose is required.
3. By reason of the fact that the order sought to be appealed to the Court of Appeal is bad on its face, the interests of justice require that the Supreme Court determine the issue of whether judicial discretion to extend time to appeal the manifestly bad order is limited to the extent that it must be exercised in favour of an applicant as, if this Honourable Court were to so determine, the bad order should, it is submitted, be overturned *ex debito justitiae*.
4. It is in the interests of justice that this Honourable Court consider the appeal in that the enforcement/execution of the subject Order cannot, it is submitted be valid as it remains a bad Order although due to the decision of the Court of Appeal unappealable.

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

1. The Court of Appeal erred in fact and in law in refusing the intended appellant's motion to extend the time within which to file an ordinary Notice of Appeal in respect of the Orders of Baker J. made on 26 January 2017 and 9 March 2017 by reason of the intended appellant's failure to demonstrate to the satisfaction of the Court of Appeal that the first and second limbs of the *Eire Continental* test were satisfied.
2. The Court of Appeal erred in law in failing to afford due weight to the level of prejudice suffered by the intended appellant occasioned by the refusal to extend time to file an ordinary Notice of Appeal.
3. The judicial discretion vested in the Court of Appeal by virtue of Order 86 rule 3 of the Rules of Superior Courts and/or by the Court's inherent jurisdiction must be exercised judiciously and therefore must be exercised in a manner that vindicates the constitutional rights of the intended appellant where such rights are in play.
4. The Court of Appeal erred in law in failing to exercise its discretion in vindication of the intended appellant's property rights under Article 40.3.2 of the Constitution.
5. The Court of Appeal erred in law in failing to exercise its discretion in vindication of the intended appellant's right to inviolability of the dwelling and protection against the unlawful entry thereof pursuant to Article 40.5 of the Constitution and/or Article 8 of the European Convention on Human Rights.
6. The Court of Appeal erred in law in failing to exercise its discretion so that a patently infirm order of the High Court could be appealed and vacated.
7. The Court of Appeal erred in fact in finding that the intended appellant had not formed a *bona fide* intention to appeal the order of the High Court within the requisite period.
8. The Court of Appeal, in determining whether to exercise its discretion in favour of extending the time within which to file an ordinary Notice of Appeal, failed to attach due weight to the personal circumstances of the intended appellant including her financial, social and medical circumstances.
9. The Court of Appeal erred in treating the first and second limbs of the *Eire Continental* test as binding prerequisites to the exercise of its judicial discretion or, in the alternative, placed disproportionate weight and emphasis on the need to satisfy those limbs in order

to persuade the Honourable Court to exercise its judicial discretion in favour of the intended appellant.

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

Liam O'Connell BL

Patrick F. O'Reilly SC

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

Written judgment is awaited.

References to Law Report in which any relevant judgment is reported

None such

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:

What order are you seeking if successful?

Order being set vary/substitute
appealed: aside

Original set restore vary/substitute
order: aside

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: 
(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.