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**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  
 The Court of Appeal       The High Court

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

PERMANENT TSB PLC FORMERLY IRISH LIFE & PERMANENT PLC	V	GERRY BURNS and ANN BURNS
High Court Record Nr	2015/183 SP	Court of Appeal Record Nr
Date of filing	19/12/2018	
Name(s) of Applicant(s)/Appellant(s)	GERRY BURNS and ANN BURNS	
Solicitors for Applicant(s)/Appellant(s)	APPELLANT IN PERSON	
Name of Respondent(s)	PERMANENT TSB PLC FORMERLY IRISH LIFE & PERMANENT PLC	
Respondent's solicitors	BELGARD 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?      Yes       No

If Yes, please explain why

**1. Decision that it is sought to appeal**

Name(s) of Judge(s)	MS JUSTICE IRVINE, MS JUSTICE WHELAN, MS JUSTICE BAKER.
Date of order/ Judgment	28 NOVEMBER 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	GERRY & ANN BURNS
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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

<b>Solicitor N/A</b>			
Name of firm	APPELLANT IN PERSON		
Email	gaburns14@gmail.com		
Address	Drumcase, Killeshandra, Co. Cavan.	Telephone no.	0862506955
		Document Exchange no.	
Postcode		Ref.	

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)

<b>Counsel</b>			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

<b>Counsel</b>			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

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

Current postal address	Drumcase, Killeshandra, Co. Cavan.
e-mail address	gaburns14@gmail.com
Telephone no.	0862506955

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
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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	PERMANENT TSB PLC FORMERLY IRISH LIFE & PERMANENT 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		
	Yes	<input checked="" type="checkbox"/>	No

Solicitor			
Name of firm	BELGARD SOLICITORS		
Email	info@belgardsolicitors.ie		
Address	Block B, Cookstown Court, Old Belgard Road, Tallaght, Dublin 24.	Telephone no.	014649102
		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 checked="" type="checkbox"/>	E-mail
<input checked="" 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 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 checked="" type="checkbox"/>	E-mail
<input checked="" 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

(a) The entire decision

The Honourable Judges erred in failing and/or neglecting to having regards to European Law and ECHR provisions regarding the right to a fair trial and legal representation. This matter was commenced in summary proceedings when it should have been subject to full plenary proceedings.

The Learned Judges erred in failing and /or neglecting to have regard for the failure of the plaintiff to fully document their purported assignment of the loan & related securities to Fastnet 7. No supporting documentation surrounding the purported sale, namely No Trust Deed, Mortgage sale agreement, Servicing agreement or other ancillary documents to said Securitisation was ever produced by the plaintiff herein.

No supporting documentary evidence of any Alleged “ repurchase “ or de-securitise Notice has been produced by the plaintiff inter alia documents such as Notice to repurchase.

The learned judges erred in failing and /or neglecting to compel the plaintiff to produce the loan offer letter and related supporting documentation the subject matter of these proceedings. In the circumstances where the said facility/loan offer letter contains the plaintiffs alleged contractual right to pursue and proof of alleged debt owe by the defendants.

The learned judges erred in failing and /or neglecting to have regard for the fact the herein mortgage & charge was a tracker mortgage. The fact that the plaintiff have failed/refused and /or neglected to provide fully audited documented evidence in support of their bald assertion the everything was in order with regard to the accounting on the herein mortgage.

## 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

It is the Appellant's position that it is a matter of general public importance that the burden of proof required in possession proceedings be properly enforced, in order that Justice and Equity be done and be seen to be done. It is a matter of general public importance that full compliance with European law as set out in s.3 (1) European Conventions on Human Rights Act 2003, specifically with regard to Article 10 ECHR, and to the supremacy of EU Law as established in *Costa -v- ENEL* (1964) case 6/64. It is the appellants positions that the learned judge in the High Court and the learned Judges in the Appeal Court erred in fact and in law in failing to have proper regard for the above principals

**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) And (2) The learned Judges erred in fact and in law in failing to have regard for the principles as detailed at No 5 of this form and to apply them in the matter at the High Court and the Court of Appeal levels.

(3) The provision of article 41 of Bunreacht na h-Eireann and Article 6 of the ECHR, s3(1) European Conventions on Human Rights Acts 2003.

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

GERRY BURNS Appellant in person

**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

AIREY -V- IRELAND 32EURCT HR SerA [1979] 2EHRR 305  
FREEMAN -V- BANK OF SCOTLAND & ORS [2016] IESC14  
BANK OF SCOTLAND -V= WAUGH [2014] EWHC 2117(CH)  
SHORELINE -V= PELZER &ANOR [2018] 161

References to Law Report in which any relevant judgment is reported

**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:

FULL PLEANERY HEARING OF THE MATTER PLUS COSTS

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

Article 6—failed to follow Due process as proceedings commenced as a special summon.

**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.**