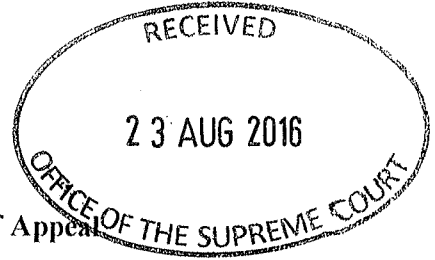


SUPREME COURT

Application for Leave and Notice of Appeal



For Office use

Supreme Court record number of this appeal	2016:000114
Subject matter for indexing	

Leave is sought to appeal from	
<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court

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

		V	
High Court Record Nr	2012/3492P	Court of Appeal Record Nr	2014/01248
Date of filing	27 th MAY 2014		
Name(s) of Applicant(s)/Appellant(s)	GERARD KELLEHER & ANN KELLEHER		
Solicitors for Applicant(s)/Appellant(s)	—		
Name of Respondent(s)	MULLINS LYNCH BYRNE SOLICITORS		
Respondent's solicitors	HEGARTY HORGAN		
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?			
<input checked="" type="checkbox"/> Yes	ARTICLE 64 TRANSFER		<input type="checkbox"/> No
If yes, give [Supreme Court] record number(s) 241/14			

Are you applying for an extension of time to apply for leave to appeal?	Yes	<input checked="" type="checkbox"/> No
If Yes, please explain why		

1. Decision that it is sought to appeal

Name(s) of Judge(s)	THE PRESIDENT, PRES of the HC, J. EDWARDS
Date of order/ Judgment	27 th JULY 2016

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	GERALD KELLEHER & ANN KELLEHER
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Original status	<input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant (BOTH)
	<input type="checkbox"/> Applicant	<input type="checkbox"/> Respondent
	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Notice Party
	<input type="checkbox"/> Petitioner	

Solicitor			
Name of firm			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	

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)

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

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

Current postal address	9, SPRINGMOUNT, WATERFORD RD., KILKENNY
e-mail address	gmkapk@live.ie
Telephone no.	056-776-5992.

How would you prefer us to communicate with you?			
<input type="checkbox"/> Document Exchange	<input type="checkbox"/> E-mail		
<input checked="" 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	PATRICK MULLINS JULIET LYNCH, JOAN BYRNE PIA MULLINS LYNCH BYRNE SOLICITORS		
Original status	<input checked="" type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant	Is this party being served with this Notice of Application for leave? Yes <input type="checkbox"/> No <input type="checkbox"/>
	<input type="checkbox"/> Applicant	<input type="checkbox"/> Respondent	
	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Notice Party	
	<input type="checkbox"/> Petitioner	<input type="checkbox"/>	

Solicitor			
Name of firm	HEGARTY & HORGAN		
Email	INFO@HEGARTYHORGAN.IE		
Address	LAW CHAMBERS	Telephone no.	021-4772557
	KINSALE	Document Exchange no.	
	CO. CORIK	Ref.	
	Postcode		

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

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input 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 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

(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

THE COURT ORDERED THE DEFENDANTS' APPEAL BE STRUCK OUT AND COSTS TO THE PLAINTIFFS. IT DID NOT ACCEDE TO AN APPLICATION FOR AN ADJOURNMENT SUPPORTED BY MEDICAL CERTS ON BEHALF OF THE DEFENDANTS AS THE LATTER AND THEIR MEDICAL PRACTITIONER DID NOT APPEAR IN PERSON. NO FINDINGS WERE MADE ON THE NOTICE OF APPEAL AND THE DOCUMENTS IN THE BOOK OF APPEAL

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

SEE ATTACHMENT HERETO

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

SEE ATTACHMENT HERETO

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

GERARD KELLEHER & ANN KELLEHER (APPELLANTS 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

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:

SEE HEREUNDER

What order are you seeking if successful?

Order being appealed: set aside vary/substitute

Original order: set aside restore vary/substitute

The Court doth order that the Order of the High Court Cork of the 6th May 2014 and the order of the Court of Appeal of the 27th July 2016 be quashed and the order of the Master of the 14th March 2012 be varied to read as follows: it is ordered that the proceedings herein transferred by order of the Circuit Court Cork of the 20th December 2011 be adopted into the High Court Dublin and consolidated with the High Court proceedings 1276P/2006 to proceed as one set of proceedings before the High Court

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:

Ann Kelleher *Gerald McElhinney*
(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.

APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT

Court of Appeal Record No. 2014/01248

(High Court Record No. 2012/3492P)

BETWEEN/

PATRICK MULLINS, JULIET LYNCH AND JOAN BYRNE

PRACTISING UNDER THE STYLE AND TITLE OF

MULLINS LYNCH BYRNE SOLICITORS

PLAINTIFFS/RESPONDENTS

AND

GERALD KELLEHER AND ANN KELLEHER

DEFENDANTS/APPELLANTS

The background to this application is:-

1. By order of the High Court (Cork) of the 6th May 2014 it was ordered and adjudged that the plaintiffs herein recover against the defendants a sum of €38,642 in legal fees together with court interest from 10th June 2009 together with all costs.
2. At the hearing on Tuesday 6th May 2014 in Cork there was no appearance by/on behalf of the defendants. This was not the fault of the defendants. They had instructed their solicitors on record for the hearing but on the morning the solicitors were granted leave to come off record. The defendants had been served with Motion papers by their solicitor seeking to come off record in the matter and in related proceedings but both were returnable for the 12th May 2014 to the Four Courts Dublin. The Court in Cork was informed that the defendants would be objecting to their solicitors coming of record.
3. At the hearing of the case on the 6th May 2014 the defendants were denied their legal representation and thus their voice before the Court and were deprived of having their lawful instructions in respect of the hearing carried out on their behalf.
4. The Court on the 6th May 2014 heard from only one party to the proceedings i.e. the plaintiffs. The pleadings before the Court contained a defence and counterclaim, with a preliminary issue raised on the defence. Through no fault of the defendants they were left unrepresented before the Court and issues of the defence and counterclaim were not dealt with.
5. The defendants appealed the Order of the High Court cited at number 1 above and also the Order of the Court of the same date which declared the defendants solicitors had ceased to act. Arising on a Directions hearing the Court on the 5th November 2015 granted *inter alia* a request by the defendants that both appeals be consolidated and heard together and both appeals were listed for hearing on Wednesday 15th June 2016.
6. Just one week before the hearing date, on Wednesday the 8th June 2016 the father of Mrs Kelleher defendant was buried. Despite the burden on the defendants in the circumstances they attended court on the 15th June for the expected hearing of both appeals. However, only one appeal was heard, the Court deciding when it resumed after lunch to postpone the appeal against the decree for fees to another day and it was subsequently listed for the 27th July 2016. This decision caused considerable extra strain on the defendants who

had naturally expected both matters to be disposed of together on the 15th June.

7. In the aftermath of the impact of the death of Mrs Kelleher's father, and the strain so soon afterwards of the two-hour hearing on the 15th June on the defendants as lay litigants and the devastating effect of the Court's decision (dismissing the defendants appeal with costs to the respondents), the defendants were so distressed and traumatised that they became medically unfit to attend court on the 27th July and sought an adjournment of the hearing. A written application for an adjournment supported by medical certs was handed in to the Court office on behalf of the defendants on Friday 22nd July but the office declined to file the documents stating that the medical certs needed to be "more specific" as to the medical conditions. The required medical certs were obtained and were put in a sealed envelope marked "strictly confidential" and for the President of the Court as the Court office had suggested this be done on Friday. A written application for an adjournment supported by these medical certs and confirmation that the other side had been duly and adequately notified of same was filed before 1:00pm on Monday 25th July 2016 on behalf of the defendants. The Court sent an email at 17:21 that evening to the defendants stating that ".....any application for an adjournment must be made by you in person on (the) date (Wed.27th)". The President has further directed that the doctor who issued the medical certificates attend court on Wednesday to give evidence in support of your application". The Court on the 27th July made an Order striking out the defendant's appeal on the basis of the email to which it had not received a reply and on foot of which the defendant's and their medical practitioner had failed to attend the Court

Reasons in the interests of justice why Supreme Court should grant leave to appeal

1. From the above facts it is seen that **the defendants have been found guilty** (of an alleged debt for substantial legal fees and charges) **without a hearing** (i.e. without been given a voice in the matter). The Order of the Court of Appeal on the 27th July 2016 simply rubber stamped a court decision that condemns the defendants without a hearing. The defendants' appeal against the High Court decision has not been heard on the merits and the defendants stand to be deprived of their property unlawfully. That alone is good reason why the interests of justice warrant an appeal to the Supreme Court.

The injustice to the defendants is all the greater as there are professional negligence proceedings in respect of the services for which there stands a decree to pay full fees, interest and costs. The Supreme Court in a 2011 judgement in related proceedings emphasised to the defendants the importance/relevance of these professional negligence proceedings acknowledging that the defendants had a ground of complaint which they believed was a significant one. The fees claim herein was transferred by Order of the Circuit Court Cork in December 2011 to the High Court Dublin to be consolidated with these professional negligence proceedings. In an obstruction of the claim to professional negligence, the consolidation was not

sought and secondly the counterclaim on the matter herein was scuppered by permitting the solicitor off record.

It is imperative in the interests of justice that appeal to the Supreme Court be granted as that court perceived the defendants had been wronged by the solicitors under the retainer on which the decree for fees has been made.

2. It is necessary in the interests of justice that the Supreme Court ensure that the essentials of justice under natural or constitutional law were not ignored in the decision making process (High Court hearing) which heard only one side.
3. The interests of justice require that the Supreme Court determine whether the Court of Appeal acted unreasonably or irrationally in exercising its discretion with regard to the defendants' application for an adjournment of the hearing on the 27th July 2016 on medical grounds.
4. It is necessary that the Supreme Court determine whether the Court of Appeal in allowing the High Court decision to stand acted contrary to its duty:
 - (a) to uphold the Constitutional rights of the defendants and their rights under Article 6 of the European Convention of Human Rights.
 - (b) by striking out the defendants appeal without a hearing on the merits and without any determination of the grounds of appeal which asserted serious violations of the defendants' rights under Constitutional and European law.
5. In light of the Supreme Court ruling in the *State (Irish Pharmaceutical Union – V – Employment Appeals Tribunal (1987) ILRM 36* that “.....in all judicial or quasi- judicial proceedings, it is a fundamental requirement of justice that a person or property should not be at risk without the party charged being given an adequate opportunity of meeting the claim as identified and pursued.” The interests of justice require an appeal to the Supreme Court as the property of the defendants is now at risk in the absence of this fundamental requirement of justice
6. Appeal to the Supreme Court is necessary in order to vindicate the fundamental personal rights of the defendants under Constitutional and European law (which have been violated) since there is no other remedy available to them. Unless leave to the Supreme Court is granted the judicial process will condemn the defendants without due process, without affording them a reasonable and adequate opportunity to be heard.
7. It is imperative in the interests of justice that an appeal to the Supreme Court be granted in circumstances where the judicial process has ignored grounds of appeal and submissions asserting a cover-up of serious legal malpractice.

Grounds of Appeal in the event of grant of leave

1. **The Court acted unreasonably and irrationally** in striking out the appeal rather than granting the adjournment on medical grounds sought by the defendants given that:-
 - The defendant's application was supported by legitimate medical certification from their medical practitioner. The Court acted outside of its competence and authority in deciding they were insufficient reason for an adjournment
 - This was the first application for an adjournment before the Court.

- The defendants had attended Court for the hearing on the 15th June (though only a week after a close family member's funeral). The defendants expected both appeals to be heard that day because the Court had already agreed to do so. The Court deferred the hearing to another unspecified date putting additional strain on the defendants.
- It was irrational for the Court to expect the defendants as lay litigants to attend Court to move their application for an adjournment since the reason they sought an adjournment was that they were unable to attend the Court because of their medical condition as certified.
- It was unreasonable to expect the defendant's medical practitioner to attend the Court on one day notice.
- It was unreasonable and contrary to common sense to strike out the appeal for want of reply to an email sent barely a day previously without knowing whether or when it had been seen by the defendants and without knowing whether or when the defendants' doctor had notice that he was required to attend.

The Courts decision not to grant an adjournment offends against fundamental reason, common sense and fair treatment. The Court's decision may be said to be *ultra vires*.

2. As a consequence of the Court Order **the defendants appeal has not been heard on the merits and the Order has left in place a decree against the defendants arrived at without due process of law** and hence a decree that is manifestly unsound. Due process is a fundamental constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard (to defend themselves and deal with the evidence put forward by the other side). The Court hearing from which the award derives violated the defendants' fundamental rights under Constitutional and European law as it did not comply with the requirements of procedural fairness. A fundamental requirement of fairness is the principle *audi alteram partem* (hear the other side). The defendants' voice before the Court, i.e. their instructed legal representation was withdrawn immediately prior to the hearing. Another fundamental guarantee of fair procedures that of cross examination was not part of the hearing on which the decree was made.
3. **The Court failed in its duty to protect the fundamental (human) rights of the defendants** to fairness and their right to an effective remedy. The decree that stands against the defendants offends against natural and constitutional justice and breaches their human rights. The essentials of justice have been ignored and the decree against the defendants is unlawful.
4. The appellate court failed in its duty to take due account of the content of the grounds of appeal and the submissions of the appellants to the effect that the defendants claims to professional negligence arising on the retainer for which the fees are claimed has and is being obstructed because of an insurance difficulty and because of serious legal malpractice in respect of the defendants claims at law.

The grounds of appeal fall within human rights/natural justice/constitutional law. The defendants rely on:

- (a) United Nations Declaration of Human Rights(1948) Articles 7&8
- (b) United Nations Covenant on Civil & Political Rights Articles14&26
- (c) Constitutional Rights in Articles 34 & 40:3 &38:1
- (d) The European Convention of Human Rights Articles 6(1) &Article 13 and the European Convention of Human Rights Act (2003) Section 3(1)
- (e) The Charter of Fundamental Rights of the European Community