

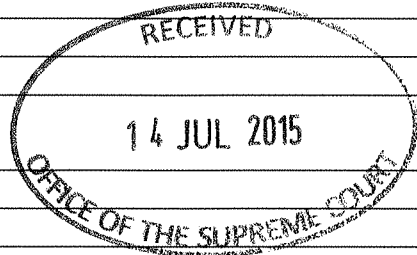
SUPREME COURT
Respondent's Notice

Supreme Court record number	S:AP:IE:2015:000008
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[Title and record number as per the High Court proceedings]

Larurence Flynn	V	Finbarr Desmond
2007/9405P		

Date of filing	13 July 2015
Name of respondent	Finbarr Desmond
Respondent's solicitors	Conways Solicitors
Name of appellant	Laurence Flynn
Appellant's solicitors	Not legally represented



1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name _____

The respondent was served with the application for leave to appeal and notice of appeal on date

25th of March 2015

The respondent intends :

to oppose the application for an extension of time to apply for leave to appeal

not to oppose the application for an extension of time to apply for leave to appeal

to oppose the application for leave to appeal

not to oppose the application for leave to appeal

to ask the Supreme Court to dismiss the appeal

to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:

Respondent's Representation

Solicitor Dermot Conway			
Name of firm	Conways Solicitors		
Email	dermot@conways.ie		
Address	35 South Terrace Cork	Telephone no.	0214901000
		Document Exchange no.	2084 Cork
Postcode	T12 E76x	Ref.	DFC/FH166
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel: Michael McGrath Bl			
Name	Michael McGrath BL		
Email	mmcgrathbl@eircom.net		
Address	27-29 Courthouse Chambers Washington Street, Cork	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
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

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

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

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)-

- * it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court

**delete where inapplicable*

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. This matter was heard, by way of Motion, on the 21.11.2012 in the High Court by Justice Birmingham who held that a litigant in person holds the capacity to compromise a matter. No costs were applied for by the Defendant at the time. A subsequent Appeal was brought to the Court of Appeal in relation to that Decision. The Appellant set out in clear terms the Grounds of his Appeal which are again summarised in the Application for Leave and Notice of Appeal before the Supreme Court.
2. In hearing the matter before the Court of Appeal all of the grounds of his Appeal were well ventilated and argued with the assistance of the report of judgement of

Birmingham J, as provided to us by the Courts Services.

3. It is noted that the Appellant has advanced seven grounds on why the Supreme Court should grant leave to appeal. I would respond as follows:

Ground 1: the Appellant argues that the ruling of the Court of Appeal not take into account that new information came to hand after the settlement. This argument was advanced before board the High Court and the Court of Appeal and both courts were satisfied that the argument did not hold sufficient merit in order to set aside the settlement. In addition, this new evidence, is not in the shape of a consultants report or a medical report, but is rather radiography report with no conclusions or diagnosis. Indeed, the medical evidence which was examined in the High Court led the Court to conclude that the Plaintiff 'faced an uphill battle'.

Ground 2: again this ground was litigated before the Court of Appeal and they did not entertain this argument on the basis that the Plaintiff not only was asked to take up independent legal advice (independent to the office of the respondent) and he chose not to do so, but the plaintiff, having accepted the offer, came back and received an amended and improved offer which he subsequently accepted. At no point or time was the Plaintiff told he could not take time to consider the offer and indeed he ended up considering two separate offers and accepting both.

The rules on Civil Procedure in England and Wales do not apply.

Ground 3: this was not litigated before the Court of Appeal and therefore cannot form part of this appeal.

Ground 4: the issue of the material facts of this case were vented before the High Court and the Court of Appeal. Medical reports and correspondence from medical consultants were furnished to the High Court and Court of Appeal covers the issue of the Plaintiff's/Appellants difficulties in that regard. It is not known what test the Appellant is now referring to but it will be submitted on behalf of the Respondent that this was litigated in both Courts and decided upon in both Courts.

Ground 5: it would appear that the suggestion is that a settlement can only be binding if the notice of discontinuance is filed by a lay litigant in the central office and not before. Clearly, this was not litigated before either the High Court or the Court of Appeal, in the specifics as now outlined, but it was certainly referenced in terms of how the proceedings were not finalised at the time of settlement.

Ground: 6 this was not litigated before either the High Court or the Court of Appeal. The Appellant Plaintiff initially signed a settlement agreement and then assented to the terms of that agreement to be amended to increase the offer of settlement. The Plaintiff/Appellant is now attempting to assert that the lack of complete compliance with practice and procedure should in some way circumvent the settled law that a litigant in person is more than capable of possessing the capacity to settle his or her litigation.

Ground 7: respectfully, it is not a question of whether or not the claimant attaches importance, but for the purposes of litigation, the question is does a medical practitioner attach any importance to the findings from the medical exam. The evidence as presented to the High Court included correspondence from the Plaintiff/Appellant's Consultant to his General Practitioner, that the consultant had assured the Plaintiff/Appellant that his complaints were in no way consistent the medical evidence. The plaintiff has not objectively been able to advance a personal injury claim with the assistance of any independent medical report other than his own personal views on the import of radiography report.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Dermot Conway, Solicitor

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

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

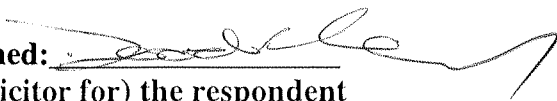
If Yes, please give details below:

Will you request a priority hearing?

Yes

No

If Yes, please give reasons below:

Signed: 
(Solicitor for) the respondent

Please submit your completed form to:

The Office of the Registrar to the Supreme Court

**The Four Courts
Inns Quay
Dublin**

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.