

Handwritten notes at top left

23/15

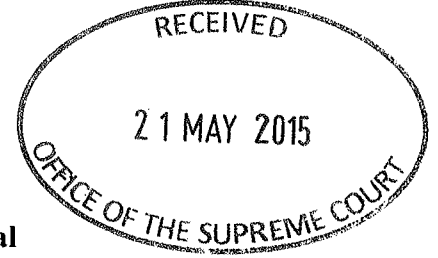
Appendix FF

Order 58, rule 15

No. 1

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]

<i>Patrick Hoekan</i>	<i>v</i>	<i>MIGJEN (T5426VC1)</i>
Date of filing		
Name(s) of Applicant(s)/Appellant(s)	<i>MIGJEN</i>	<i>GJY 26VC1</i>
Solicitors for Applicant(s)/Appellant(s)		
Name of Respondent(s)	<i>Patrick Hoekan</i>	
Respondent's solicitors	<i>KILFEA TIER AND CO</i>	
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)		

TAILLE CURTE TONCAIN
 STAMP OFFICE
 024 0084
 2:45 PM
 31-05-2015

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)	<i>COURT OF APPEAL</i> <i>BINCHY Judge</i>
Date of order/ Judgment	<i>17 DECEMBER 2014</i>

20 APRIL 2015

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 *MIGJEN GJY 26VC1*

Original status

<input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
<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 checked="" 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	MAIN STREET MANOR HAMILTON, CO LETHBRIDGE		
e-mail address	MICHAEL@JYREVELL.COM		
Telephone no.	087-9820302		

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)		

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 MORRIS
------------------------	----------------

Original status

<input checked="" type="checkbox"/> Plaintiff
<input type="checkbox"/> Applicant
<input type="checkbox"/> Prosecutor
<input type="checkbox"/> Petitioner

<input type="checkbox"/> Defendant
<input type="checkbox"/> Respondent
<input type="checkbox"/> Notice Party
<input type="checkbox"/>

Solicitor <i>TREVOR COLLINS</i>			
Name of firm <i>KILFEATHER AND CO</i>			
Email <i>LOW@KILFEATHER.IE.</i>			
Address	<i>THE HALLS</i>	Telephone no.	<i>091-5620037</i>
		Document Exchange no.	
		Ref.	
		<i>QUAY STREET</i>	
<i>10 CALWAY</i>			
Postcode			

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			
Name <i>STEPH WALSH</i>			
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.	

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)

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

THESE PROCEEDINGS RELATE TO INJUNCTIVE RELIEF SOUGHT BY A RECEIVER. THE ISSUES ARE FULLY IDENTIFIED IN THE AFFIDAVITS. THE LEARNED HIGH COURT JUDGE HELD IN FAVOUR OF THE PLAINTIFF RECEIVER. THIS WAS AFFIRMED BY COURT OF APPEAL, EFFECTIVELY MAKING INTERLOCUTORY ORDERS MANDATORY AND RENDERING THE PROCEEDINGS moot.

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

THIS APPEAL DEMANDS IN THE INTEREST OF JUSTICE THAT AN APPEAL BE GRANTED BY THE SUPREME COURT AS INTERLOCUTORY ORDERS WERE MADE MANDATORY. FURTHER SUBMISSIONS WILL BE MADE AT THE HEARING OF THE APPEAL. SEE PAGE ATTACHED

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 JUDGES HIGH COURT AND COURT OF APPEAL ERRED IN LAW AND IN FACT IN MAKING INTERIM ORDER MANDATORY

2. THIS RAISES ISSUES OF IMPORTANCE AND MATTER OF PUBLIC IMPORTANCE IN THE CONTEXT OF RECEIVERSHIP CASES.

3. A BOOK OF AUTHORITIES WILL BE FILED IN ONE CASE. SEE PAGE ATTACHED SETTING OUT CASE LAW RELIED ON.

Name of solicitor or (if counsel retained) counsel or applicant/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

NO FORMAL JUDGMENTS GIVEN

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:

To allow the appeal in the Court of Appeal and to go back into the properties.

What order are you seeking if successful?

Order being appealed: set aside vary/substitute

Original order: set aside restore vary/substitute

Grounds of Appeal continued.

- a) Kavanagh versus McLoughlin, Ms. Justice Laffoy raised an issue surrounding the fact that Bank of Scotland (Ireland) remained the registered owner of charges over mortgaged properties even though it ceased to exist in 2010.
- b) In her comments, Ms. Justice Laffoy said " I am satisfied that, absent any specific statutory provision relieving Bank of Scotland [the new owner] from the mandatory obligation of becoming registered as owner of a charge in respect of which it wishes to exercise any of the powers conferred..... it must become registered as the owner of the relevant charge on the relevant folio, if it wishes to exercise the statutory powers conferred."
- c) The Judgment in the Belohn Limited –v- Bank of Scotland PLC, Mr. Justice Gilligan ruled that a Receiver can only be appointed in line with the terms of the loan agreement since a Receiver's authority is derived from the instrument under which he is appointed. An appointment is not valid unless it is made in accordance with the terms of the instrument. This principle has been recognized by the leading commentators in this area and accepted and applied by the courts throughout the common law world.
- d) Take notice deed of mortgage dated the 23rd day of May 2008 between Miqjen ^{STJREVIC} Gijrevli and IIB Bank the said IIB Bank remained the registered owner of charges over the mortgaged properties even though it ceased to exist herein KBC Bank Ireland PLC (the new owner). As in Kavanagh –v- McLoughlin in similar cases (quote) I am satisfied that, absent any statutory provision relieving KBC Bank Ireland Limited (the new owner from the mandatory obligation if becoming registered as owner of charge in respect of which it wishes to exercise any power conferred, it must become registered as the owner of the relevant charge on the relevant folios if it wishes to exercise the statutory powers conferred.
- e) Under the law the transfer to new owner of the mortgage KBC Bank of Ireland PLC require the application to be made the owner of Mortgage as (IIB Bank) no longer exist and must become registered over the relevant charge on the folios, if it wishes to exercise the statutory powers conferred.
- f) I say it was always my intention to appeal the Order of the High Court, but due to my lack of knowledge of High Court Rules. I was too late to file my appeal to the High Court of Civil Appeal.
- g) The Receiver is deemed in law to be an agent of the Mortgagor (Borrower) and the Mortgagor shall be solely responsible for the Receiver acts or defaults, unless the Mortgage (Bank) deed otherwise provides.
- h) Article 40 of the Irish Constitution says the courts and the State will make right any wrong decision against the person inter alia.
- i) I say and believe K.B.C. Bank Ireland PLC had not the right in law to appoint a Receiver under Ms. Justice Laffoy's Supreme Court Judgment and it would be a miscarriage of justice to

Grounds of Appeal continued

allow the Orders of the High Court to stand herein without giving the Applicant the right to present his case in full before the Supreme Court as a matter of general public importance.

j)

Grounds of Appeal continued

1. I was abroad last year, September 2014, until November when I was notified by phone by Kilfeather Solicitors that I must return for court and leave my sick mother. After I notified Kilfeather Solicitors during the phone call that I would be unable to attend court on the specified date Mr. Kenny was present in court on my behalf to notify Judge Gilligan that I was abroad on the 24th day of October 2014 on family matters and the court was adjourned until the 13th day of November.
2. I returned for court on the 13th day of November and it was again adjourned until December 12th. On the 12th day of December I got a solicitor and barrister and Judge Gilligan gave him two hours to read the case and continue. It was again adjourned. That day I showed my solicitor and barrister the summons I had against KPMG Patrick Horgan and KBC Bank, which was never shown in court or told to Judge Gilligan.
3. It was passed on to Judge Binchy and, again, my summons was never shown by my representation. This is where I feel I was misrepresented. Also the barrister and solicitor after court on the 17th day of December never told me to protect my Order which was ordered by Judge Binchy.
4. On the 12th day of February I met the barrister briefly and he notified me that today was the final day to submit my appeal but I was again leaving to return home on that date to my mother and he could not submit the appeal due to not having the original document/Order of Judge Binchy which the barrister or myself was not aware of. The solicitor then made a request in the High Court Registry Office for the Order of Judge Binchy on the final day of the appeal.
5. This is why I am looking for an extension of time. At present I do not had a barrister or solicitor representing me as I was firstly misrepresented and secondly the KPMG entered my properties due to being misrepresented.

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: *M. McE*

(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.