

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	
<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court

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

Allied Irish Banks plc -and Dan Morrissey Ireland Limited	V	Philip Morrissey Junior -and- All Persons Concerned
High Court Record Nr 2015/323SP	Court of Appeal Record Nr	2015/626 2015/650
Date of filing	02 May 2017	
Name(s) of Applicant(s)/Appellant(s)	Philip Morrissey Junior	
Solicitors for Applicant(s)/Appellant(s)	Farrell McElwee	
Name of Respondent(s)	Allied Irish Banks plc Dan Morrissey (IRL) Limited	
Respondent's solicitors	McCann Fitzgerald	
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 type="checkbox"/> No	<input checked="" type="checkbox"/> X
If yes, give [Supreme Court] record number(s)		

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)	Ryan P., Irvine J. Stewart J.
Date of order/ Judgment	3 rd April 2017



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	Philip Morrissey Junior
-----------------------	-------------------------

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	Farrell McElwee		
Email	simon@fmce.ie		
Address	1 Maryborough Street Graiguecullen Carlow	Telephone no.	059 9173267
		Document Exchange no.	18035
Postcode		Ref.	SMC

How would you prefer us to communicate with you?

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

Counsel			
Name	R. David Kennedy SC		
Email	Kennedyscl@gmail.com		
Address	Law Library Four Courts Dublin 7	Telephone no.	086- 259 1057
		Document Exchange no.	81 2079
Postcode			

Counsel			
Name	Richard Downey		
Email	mail@richarddowney.ie		
Address	Law Library Four Courts Dublin 7	Telephone no.	087 6476976
		Document Exchange no.	81 6639
Postcode			

If the Applicant / Appellant 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 checked="" 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	Allied Irish Banks Plc Dan Morrissey Ireland Limited
------------------------	---

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	<input type="checkbox"/>	

Solicitor			
Name of firm	McCann Fitzgerald		
Email	Kevin.Connolly@mccannfitzgerald.com		
Address	Riverside One	Telephone no.	01 829000
	37-42 Sir John Rogerson's Quay	Document	31
	Dublin 2	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 type="checkbox"/> E-mail
<input type="checkbox"/> Post	<input type="checkbox"/> Other (please specify)

Counsel			
Name	Neil Steen SC		
Email	office@neilsteen.ie		
Address	Law Library	Telephone no.	
	Four Courts	Document	81 6595
	Dublin 7	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"/>	Post

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

High Court –

McGovern J. 23rd day of November 2015

1. The learned Judge admitted the proceedings into the Commercial Court
2. The learned Judge adjourned the matter, fixing a hearing date three weeks later on the 17th December 2015.
3. The learned Judge refused to adjourn the matter to allow the Appellant sufficient time to obtain legal representation from the Legal Aid Board. (At this time the Appellant had applied to the Legal Aid Board and was approved as eligible to be afforded legal aid.)

Hedigan J. – 17th day of December 2015

1. The learned Judge refused to adjourn the matter to allow the Appellant sufficient time to obtain legal representation from the Legal Aid Board.
2. The learned Judge having refused to adjourn the proceedings for a longer period, further refused to adjourn the proceedings for a shorter period (on any period) to allow the Appellant to obtain alternative legal representation.
3. The learned Judge, having refused to adjourn the proceedings for a longer period, refused to adjourn the proceedings for a shorter period (on any period) to allow the Appellant to file a Replying Affidavit;
4. The learned Judge made an Order for Possession of the Appellant's Family Home in favour of the Respondent.

Court of Appeal

3rd April 2017 – Ryan P, Irvine J, Stewart J.

1. The Court of Appeal held that McGovern J. had a discretion to admit proceedings to the Commercial Court.
2. The Court of Appeal held that the new evidence now sought to be adduced by the Appellant was available at the hearing of the substantive proceedings before the High Court.

3. The Court of Appeal held that the new evidence sought to be adduced by the Appellant was important/material to the proceedings.
4. The Court of Appeal held that the new evidence sought to be adduced by the Appellant was not credible.
5. The Court of Appeal held that the Appellant demonstrated capacity to negotiate his way through an application to the Private Residential Tenancies Board and applied for legal aid.
6. The Court of Appeal held that the Courts indulgence to a litigant in person cannot be used against the other party
7. The Court of Appeal held that Hedigan J. did not act erroneously and based his Judgment on the materials available to him – of which there was only the Respondent's claim.
8. The Court of Appeal held that, following **Magee v Farrell** (Finnegan J.) that a party to civil litigation was not entitled to legal aid nor special treatment but chose legal aid in the face of putting evidence before the Court.

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

Article 34.5.3 Appeal

1. The Court of Appeal did not correctly apply the law as set out in **Magee v Farrell** [2009] 4 I.R. 703. The Supreme Court has not to-date been required to decide a matter concerning the combined constitutional rights of a citizen to defend his Family Home

whilst taking into account the State's constitutional duty to administer the civil legal aid scheme fairly and in a manner that fulfils its purpose.

2. The learned High Court by refusing an adjournment of the hearing of the substantive matter, erred in law and in fact, and in breach of the Appellant's constitutional rights, denying the Appellant of his right to legal representation in the defence of his property rights and in particular his Family Home.
3. The Appellant was not desirous of being a litigant in person nor did he waive his right to legal representation.
4. The Respondent's application was for possession of the Appellant's Family Home. The Appellant was desirous of defending the proceedings with the benefit of legal representation. The Appellant had applied for the civil legal aid scheme and was approved as being eligible. When the Appellant returned before the High Court on the 17th December 2015 that Court held that he was not entitled to a lengthy adjournment for the purpose of availing of the civil legal aid scheme which had a considerable waiting period.
5. Furthermore, having refused the Appellant's lengthy adjournment, the High Court denied the Appellant the opportunity to file a replying affidavit himself by proceeding to hear the substantive issues.
6. Whilst the jurisprudence of the Supreme Court currently limits the constitutional right to legal representation to criminal cases involving deprivation of liberty, there is a further constitutional obligation on the State, to ensure that the Legal Aid Scheme is administered fairly and fulfilled its purpose.
7. Further there is a constitutional duty on the State, the State organs, including the Courts, to protect the property rights of every citizen, and in particular, the Family Home.
8. In addition there is a constitutional duty on the State to administer the Legal Aid Scheme fairly and to fulfil its purpose.
9. The aforementioned constitutional rights and duties were breached by the High Court.
10. Article 40.3.2 provides that the State shall, in particular, by its laws protect as best it may from unjust attack and in the case of injustice done, vindicate the life, person, good name and property rights of every citizen.
11. Whereas the Appellant had qualified for the Legal Aid scheme the Trial Court failed to take into account the limitations placed on the Appellant vis-à-vis the availability of an appointment/interview with a Solicitor, the retaining of a legal representative to appear on his behalf at the hearing of the Court proceedings. The Appellant was compelled to make oral submissions on his behalf against the rigours of the mechanism provided by the Rules governing proceedings in the Commercial Division of the High Court. This must be contrasted with the retainer by the Respondent of a large firm of solicitors, and Counsel, who are experienced in the field of commercial litigation.
12. Once a legal aid scheme was in place, there is a constitutional duty on the State to ensure that it is administered fairly and fulfilled its purpose (*C. Legal Aid Board [1991] 2 I.R. 43; Stevenson v Laney, Lardner J. [Unreported, High Court, Lardner J 10 February 1993;*
13. The nature of the proceedings, being an application to take possession of a Family Home, for which the Appellant was entitled to the benefit of the Legal Aid scheme places the appellant in a different category from conventional disputes between litigating parties which have to be resolved by the courts.

14. That the plaintiff's constitutional right of access to the courts and right to fair procedures included an entitlement to be provided with legal aid. The delay in providing legal representation and the failure by the High Court to adjourn the proceedings for any (or any adequate) period of time to facilitate the Appellant obtaining legal representation constituted a breach of that constitutional right.
15. The Appellant's case can be distinguished from that of *Magee v Farrell [2009] 4 I.R. 703 Finnegan J.* by applying the reasoning of Finnegan J. to the Appellant's case.
16. Having held that the Appellant's application for an adjournment of the proceedings until such time as the Legal Aid Board could facilitate representation the High Court deprived the Appellant of any opportunity to obtain alternative representation or to prepare the defence of his own matter (which it should be added he was not desirous of doing as he had not waived his right to legal representation).
17. The hearing of the matter was permitted to proceed in circumstances where there was not equality of arms further denying the Appellant of right to legal representation, due process and his constitutional right to fairness of procedure in the pursuit of defending his property rights and in defending his Family Home.
18. The refusal by the Court of Appeal to admit "new evidence" on the grounds that it was available at the hearing of the substantive issue before the High Court further compounds the deprivation of the Appellant's predicament and his denial of constitutional justice. The motion to admit evidence at the hearing of the Appeal related to evidence which was available at the time of the High Court hearing but as a result of the breach of the Appellant's Constitutional rights he was prevented from adducing the said evidence.

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

GROUPS OF APPEAL

1. The Court of Appeal erred in law and in fact by upholding the refusal of the High Court to adjourn the proceedings for an additional period of time to allow the Appellant to obtain legal representation pursuant to the Legal Aid scheme.
2. The Court of Appeal erred in law and in fact by upholding the refusal of the High Court to adjourn the proceedings for an additional period of time to allow the Appellant to file a Replying Affidavit;

3. The Court of Appeal failed to correctly apply the law concerning the Appellant's constitutional right to legal aid.
4. The Court of Appeal failed to correctly apply the law concerning the Appellant's constitutional right to legal representation
5. The Court of Appeal failed to correctly apply the law as set out in **Magee v Farrell** [2009] 4 I.R. 703.
6. The Court of Appeal erred in law by ranking the rights of a Plaintiff Bank ahead of the constitutional right of the Appellant to legal representation and/or to defend his Family Home.
7. The Court of Appeal erred in law and/or in fact by refusing to admit the "new evidence" sought to be adduced by the Appellant;
8. The Court of Appeal erred in law and/or in fact by finding that the new evidence sought to be adduced by the Appellant was not credible.
9. The Court of Appeal erred in law and in fact by upholding the Order for Possession made by Hedigan J. on the 17th day of December 2015
10. The Court of Appeal erred in law by failing to set-aside the Orders for Possession made by Hedigan J. on the 17th day of December 2015;

PRINCIPLES OF LAW

1. Once a legal aid scheme was in place, there is a constitutional duty on the State to ensure that it is administered fairly and fulfilled its purpose (*C. Legal Aid Board [1991] 2 I.R. 43; Stevenson v Laney, Lardner J. [Unreported, High Court, Lardner J 10 February 1993;*
2. The nature of the proceedings, being an application to take possession of a Family Home, for which the Appellant was entitled to the benefit of the Legal Aid scheme places the appellant in a different category from conventional disputes between litigating parties which have to be resolved by the courts. This is similar to the dicta of O'Hanlon J. in **Forrest v Legal Aid Board (Unreported, High Court, O'Hanlon J., 4th December, 1992).**
3. That the Appellant's constitutional right of access to the courts and right to fair procedures included an entitlement to be provided with legal aid. The delay in providing legal representation and the failure by the High Court to adjourn the proceedings for any (or any adequate) period of time to facilitate the Appellant obtaining legal representation constituted a breach of that constitutional right and is analogous to the plaintiff's situation in **O'Donoghue v Legal Aid Board, [2006] 4 I.R. 204 Kelly J.**
4. The foregoing were all referred to with approval by Finnegan J, in **Magee v Farrell [2009] 4 I.R. 703 Finnegan J.** The Appellant's case can be distinguished from that of Magee v Farrell on each of the above grounds which Finnegan J. held did not apply to the plaintiff in **Magee.**
5. The Appellant was denied constitutional justice and fair procedures and he was wrongfully limited in the conduct of his defence and the exercise of his Constitutional rights by not being afforded adequate to time to obtain legal representation in preparing his defence and in particular his Replying Affidavit.
6. The application of the criteria set out in, **Murphy v Minister for Defence [1991] 2 I.R. 161,** to this appeal was erroneous, in particular, as the Appellant could never meet the

first limb of the test i.e. that the evidence was not available at the hearing of the trial. The Appellant's main argument and the primary aspect of the appeal was that the Appellant had been prevented from adducing the evidence and the High Court proceeded to hear his case in the absence of him adducing any evidence. The Appellant was then forced to attempt to adduce evidence retrospectively and must meet a higher threshold for his evidence to be admissible that he would have had to meet if the matter was to proceed under the Special Summons procedure.

PROVISIONS OF THE CONSTITUTION, ACT(S) OF THE OIREACHTAS,
STATUTORY INSTRUMENT(S) AND ANY OTHER LEGAL INSTRUMENTS

1. Article 40.3 Bunreacht na hEireann
2. Legal Aid Act 1995

ISSUES OF LAW

1. Whether there has been a breach of the Appellant's constitutional right to legal aid and legal representation
2. Whether the State has ensured that the Legal Aid Scheme was administered fairly and fulfilled its purpose, in particular whether the Courts have denied the Appellant his constitutional right to avail of the Legal Aid Scheme in light of his eligibility under the Scheme.
3. Whether the Appellant's constitutional right to legal aid/legal representation and or to defend his Family Home is superseded by the rights of a Plaintiff Bank in the Commercial Court.

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

R. David Kennedy SC

Richard Downey BL

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:

1. An Order setting aside the Order for Possession made by Hedigan J. on the 17 th day of December 2015
2. An Order remitting the proceedings to the High Court;

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

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions? Yes No

If Yes, please give details below:

Magee v Farrell [2009] 4 I.R. 703 – the Appellant’s case can be distinguished from the facts and circumstances of the Magee case. Finnegan J. reviewed the caselaw concerning a citizen’s right to legal aid etc. Whilst finding against the Plaintiff in Magee many of the authorities cited (which that Plaintiff could not rely upon) support the arguments now made by the Appellant.

make a reference to the Court of Justice of the European Union? Yes No

If Yes, please give details below:

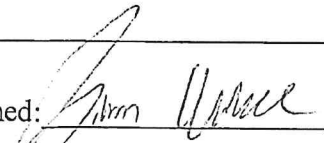
Will you request a priority hearing?

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.