



77916600  
46500



**SUPREME COURT**

**Application for Leave and Notice of Appeal**

**For Office use**

Supreme Court record number of this appeal	2018: 00007
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]

ACC Bank plc	V	Aidan Cunniffe, Rita Cunniffe, John Lawless, Brian Cunniffe, James Cunniffe and all persons concerned.	
John Lawless, Aidan Cunniffe and Geraldine Cunniffe	V	ACC Bank plc, Kieran Wallace, KPMG, Michael Regan, Michael Regan Auctioneering Limited, Jarlath Mannion, Catherine Mannion, Enda Cusack, Stephen Grehan, Brian Kennedy and John Joe Kennedy	
ACC Bank plc and Kieran Wallace	V	John Lawless, Aidan Cunniffe and Rita Cunniffe	
High Court Record Nr	2011 753 SP, 2013 6018 P & 2009 10169 P.	Court of Appeal Record Nr	2016 479, 2016 1416, 2014 1421 & 2016 51.
Date of filing	8 January 2018		
Name(s) of Applicant(s)/Appellant(s)	John Lawless, Aidan Cunniffe & Rita Cunniffe		
Solicitors for Applicant(s)/Appellant(s)	Litigants in person		
Name of Respondent(s)	ACC Bank plc and Kieran Wallace		
Respondent's solicitors	A& L Goodbody Solicitors		
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	<input type="checkbox"/> No		
If yes, give [Supreme Court] record number(s) 130/2012			

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> 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, Mr Justice Barr
Date of order/ Judgment	25 October 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	(1)John Lawless (2), (3) Aidan Cunniffe and Rita Cunniffe
-----------------------	---

Original status	<input checked="" type="checkbox"/> Plaintiff 2013 6018 P	<input checked="" type="checkbox"/> Defendant 2009 10169P, 2011 753SP
	<input type="checkbox"/> Applicant	<input type="checkbox"/> Respondent
	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Notice Party
	<input type="checkbox"/> Petitioner	

<b>Solicitor Not applicable, litigant in person</b>			
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)

<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	(1)(2)(3)Curry Brideswell Athlone County Roscommon
e-mail address	(1) <a href="mailto:jlawlessdysart@gmail.com">jlawlessdysart@gmail.com</a> (2)(3) <a href="mailto:ritaguidmc@gmail.com">ritaguidmc@gmail.com</a>
Telephone no.	085-8372057, 089-4832671

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	ACC Bank plc, Kieran Wallace
------------------------	------------------------------

Original status	<input checked="" type="checkbox"/>	Plaintiff 2009 10169P, 2011 753 SP	<input checked="" type="checkbox"/>	Defendant 2013 6018P	Is this party being served with this Notice of Application for leave?			
		Applicant		Respondent				
		Prosecutor		Notice Party				
		Petitioner						
					Yes	<input checked="" type="checkbox"/>	No	

Solicitor			
Name of firm	A&L Goodbody, Solicitors		
Email	info@algoodbody.com		
Address	IFSC North Wall Quay Dublin 1	Telephone no.	01-6492000
		Document Exchange no.	29 Dublin
		Ref.	JHM1 01363147
		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 type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Stephen Fennelly BL		
Email	stephen.fennelly@lawlibrary.ie		
Address	Law Library Four Courts Dublin 7	Telephone no.	01-8172943
		Document Exchange no.	818078
		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 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)

There are four appeals against the judgment of the Court of Appeal delivered by Judge Whelan on 13 October 2017. The background facts to all appeals are set out at paragraphs 1 to 3 of the judgment

The first appeal [2016 479] is a slip rule appeal from the High Court decision of Judge McGovern where he is asked to amend the original Order of the High Court of Judge Finlay Geoghegan made on 7 February 2012, in circumstances where the Supreme Court hearing an appeal from that Order and delivering judgment on 7 February 2014 remitted to the High Court the question of the paragraph which says 'and it appearing that there is due to the plaintiff on foot of the said judgment the sum of €3,793,872.13' for reconsideration of that paragraph. The appellant has issued a Motion to the Supreme Court regarding the above issue and will seek for that Motion to be determined in order to prosecute this appeal, as both the High Court and Court of Appeal have failed to adjudicate the issue remitted by the Supreme Court. The motion was not issued as a further Affidavit has to be filed by the Appellants. The Appellants will file a supplemental Affidavit to facilitate the hearing of the said Motion. The Appellant also appeals the slip rule Order of the Court of Appeal to facilitate the hearing of the aforementioned Motion which arises from the determination of the Court of Appeal in this regard.

The second appeal is a VAT receipt appeal [2014 1421]. The facts are set out in paragraphs 36 to 38 of the judgment. The appellants intend to appeal the determination of the Court of Appeal regarding the failure to furnish a VAT receipt.

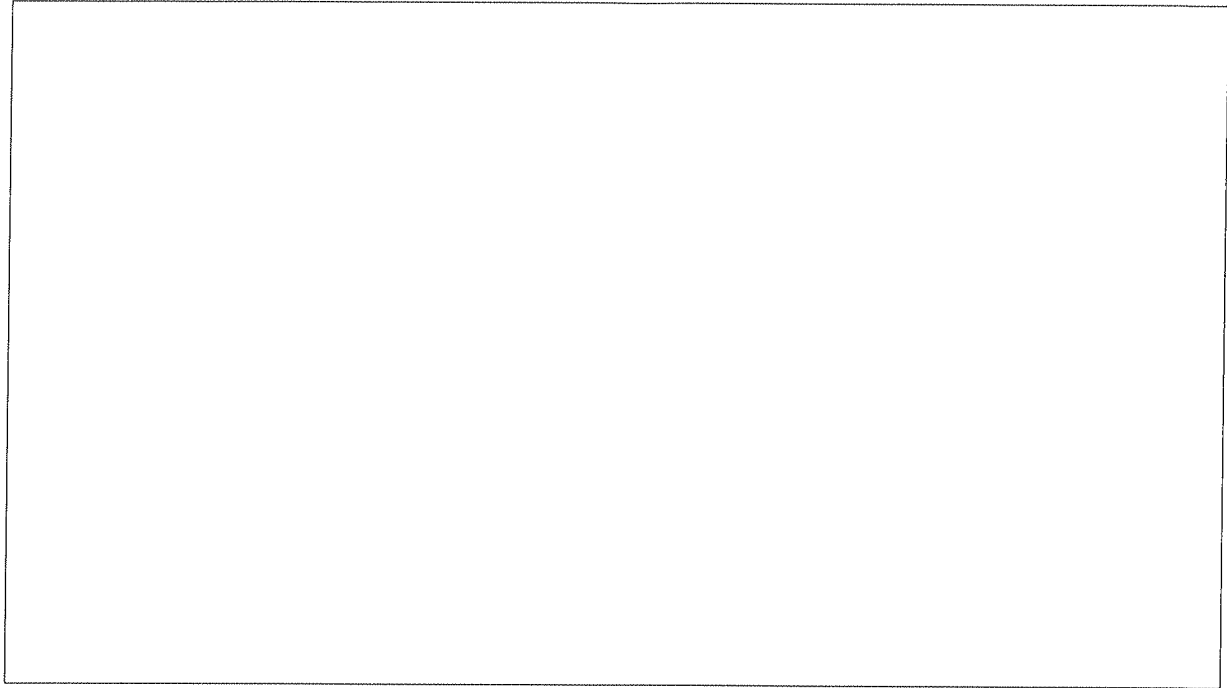
The third appeal relates to striking out the Appellants High Court proceedings 2013 6018P as disclosing no cause of action. For completeness the Appellants appeal this Order as the VAT receipt order was made in these proceedings.

The third appeal [2014 1421] concerns an Order dismissing High Court proceedings [2013 6018P] under Order 19, Rule 28. The appellants are not appealing this portion of the judgment.

The fourth appeal concerns the making of an Isaac Wunder order [2016 51]. The appellants are appealing this Order.

The relevant orders and findings made in the High Court and/or in the Court of Appeal

See orders attached.



**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

1. The second appeal concerning the VAT receipt issue involves a matter of general public importance in the following circumstances:

The decision relied on by the Court of Appeal is the Supreme Court decision in *Bula v Crowley* [2003 1 IR 396] concerning the uniqueness of the position of the Receiver. The appellants contend that the position of a Receiver exercising a power of sale is now a matter of more pressing public importance, where the role of the Receiver has become far more prevalent. Furthermore the Court of Appeal failed in its decision to consider one of the grounds of appeal the impact of the decision in the UK case of *Secret Hotels No. 2* and in those circumstances failed to properly apply the decision made in *Redrow* and it is a matter of considerable public importance as to whether the law in this area was fully and properly applied by the Court of Appeal.

2. As outlined above the first appeal will be dealt with by way of Motion filed on 15 June 2017 and the appellants intend to file a further affidavit as directed by the Supreme Court office and taking into account the decision of the Court of Appeal in that regard.

3. The fourth appeal concerning the making of an Isaac Wunder order raises issues of the most fundamental issues of pressing public importance as the Order made denies the appellants their constitutionally guaranteed right of access to the Courts. The decision of the Court of Appeal failed to consider the fundamental basis of the Appellant’s submissions the interaction between the making of an Isaac Wunder order and Article 6 of the European Convention of Human Rights in circumstances where the High Court had previously refused to make such an Order. The issue of this interaction raises issues of fundamental public importance and the Appellants contend this issue must be determined by the Supreme Court prior to the Appellants seeking the view of the European Court of Human Rights.

*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

**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. In respect of the VAT receipt appeal the Court of Appeal failed to apply the decision made in the Secret Hotels No. 2 case to the facts of this case and therefore misapplied the legal principles identified in *Redrow*. The Court of Appeal also failed to have regard to the increasing prevalence of receivership actions in considering whether the decision in *Bula v Crowley* was a modern representation of the law in this area. These legal issues are pertinent to the facts in this case which concern the provision of a VAT Receipt to an agent in a receiver sale.
2. With regard to the making of the Isaac Wunder order the Appellants appeal and the issues

in that regard are identified at paragraph 5.3 above.

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

[2017] IECA 261

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:

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

The making of an Isaac Wunder order.

**Are you asking the Supreme Court to:**

depart from (or distinguish) one of its own decisions?

Yes

No

If Yes, please give details below:

Bula v Crowley

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: *Seán Lawless*

(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.**