

THE SUPREME COURT

SUPREME COURT RECORD NUMBER: 097 / 2017

RESPONDENT'S NOTICE

BETWEEN/

VINCENT O'DONOGHUE

PLAINTIFF/APPELLANT

AND

**ALLIED IRISH BANKS PLC,
THE MINISTER FOR FINANCE OF IRELAND,
IRELAND**

AND

THE ATTORNEY GENERAL

DEFENDANTS/RESPONDENTS

HIGH COURT RECORD NUMBER 2017 / 2583 P

AND COURT OF APPEAL NUMBER: 2017 / 242

DATE OF FILING: the 26th day of June 2017.

NAME OF RESPONDENT: ALLIED IRISH BANKS PLC

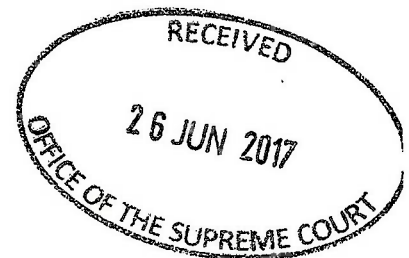
RESPONDENT'S SOLICITORS: Helen Dooley

NAME OF APPELLANT: Vincent O'Donoghue

APPELLANT'S SOLICITORS: Litigant in person

RESPONDENT'S DETAILS:

RESPONDENT'S FULL NAME: Allied Irish Banks Plc



The Respondent was served with the application for leave to appeal and notice to appeal on the 19th day of June 2017.

The Respondent intends: -

To oppose the application for leave to appeal and any other consequential Orders. In the event of the Supreme Court granting leave to appeal, the Respondent will oppose the appeal itself and seek its dismissal.

Details of Respondent's representation are correct and complete in Notice of Appeal:

Confirmed.

How would you prefer us to communicate with you?

By Email

Document Exchange: N/a

Email: litigation.team@aib.ie

Post: Litigation Team, Legal Department, Block K4, AIB Bankcentre, Ballsbridge, Dublin 4.

Other: N/a

Counsel: (Senior)

Name: Denis McDonald S.C.

Email: drudge@denismcdonald.ie;

Address: 158/159 Church Street,
Dublin 7.

Telephone No: (01) 8175069

DX No: DX 815 206.

Counsel: (Junior):

Name: Paul Fogarty B.L.

Email: pfogarty@lawlibrary.ie

Address: Law Library,
Four Courts,
Dublin 7.

Telephone No: 8174705

DX No: DX 813 095

2. Information About the Decision that it is sought to appeal:

The appeal appears to relate to three matters: -

- (1) An Order refusing the interlocutory injunction sought by the Plaintiff/Appellant seeking to prevent the sale of shares held on behalf of the Minister for Finance in Allied Irish Banks plc ("AIB").
- (2) An Order made in favour of AIB dismissing the Plaintiff/Appellant's claim against AIB as disclosing no cause of action.
- (3) The Order made in favour of the remaining Respondents dismissing the claim against those Respondents as disclosing no cause of action against those Respondents.

It is not entirely clear from the application for leave to appeal whether it extends to all three of these Orders.

3. Matter set out in the information provided by the Applicant/Appellant about the decision sought to be appealed which the First Named Respondent disputes: -

AIB disputes the assertion that the Court of Appeal failed to engage in any meaningful way with the arguments put forward by the Plaintiff/Appellant in relation to the requirements of the common good. It should be noted that the Plaintiff/Appellant did not comply with the directions given by the Court of Appeal in relation to the timetable for the furnishing of written submissions.

Furthermore, having disregarded the timetable set by the Court of Appeal in furnishing written submissions, the Plaintiff/Appellant, at the hearing of the appeal, offered no further oral submissions which addressed any of the legal issues in question. It should also be noted that, after the Respondents had made their submissions to the Court of Appeal, the Plaintiff/Appellant declined the opportunity to respond to any of the points made on behalf of the Respondents although he was expressly invited by the Court of Appeal to do so.

4. The First Named Respondent's Reasons for Opposing leave to Appeal:

AIB opposes the application for leave to appeal on the following grounds:

- (a) No issue of general public importance has been identified by the Plaintiff/Appellant in the application for leave to appeal.
- (b) Furthermore, insofar as AIB is concerned, no issue of any kind has been identified by the Plaintiff/Appellant in his application for leave to appeal. The entire of the application for leave to appeal is concerned with issues which are asserted only as against the remaining Respondents. The application for leave does not address the Plaintiff/Appellant's case against AIB at all. This is consistent with the approach which the Plaintiff/Appellant took in the course of the proceedings before the High Court (the learned Gilligan J.) and in the course of the proceedings before the Court of Appeal. As the judgment of Hogan J. in the Court of Appeal records (in paragraph 9), *"no basis for any legal wrongdoing – whether general or particular – has been alleged against the Bank by Mr. O'Donoghue in his pleadings"*.
- (c) It is not, in the interests of justice, necessary that there be an appeal to the Supreme Court in circumstances where:-
 - (i) the Plaintiff/Appellant has failed to identify any loss or risk of loss to himself personally;

- (ii) as noted above, he has failed to identify or plead any case whatsoever against AIB;
- (iii) the only point he seeks to raise as against the remaining Respondents is one which, it is submitted, is not justiciable;
- (iv) the Plaintiff/Appellant has already had the opportunity to present his arguments, in the High Court at first instance, and on appeal in the Court of Appeal.

(d) Furthermore, insofar as the claim against the remaining Respondents is concerned, the claim asserted by the Plaintiff/Appellant does not disclose any unlawful conduct on the part of the Executive but seeks to intrude on matters of public policy to be determined by the Legislative or Executive branches of Government – all by reference to his own subjective view of the common good. The claim asserted by him as against the State Respondents does not give rise to any justiciable issue.

(e) The decision of the Court of Appeal does not involve any novel issue of law which requires to be considered by the Supreme Court. The decision of the Court of Appeal is consistent with the views previously expressed by the Supreme Court in **TD v. Minister for Education** [2001] 4 IR 259, in particular at p 335 and p 338. See also **Collins v. Minister for Finance** [2016] IESC 73, in particular at paragraph 86. See also **Roche v. Roche** [2010] 2 IR 321 at p 352.

(f) The Plaintiff/Appellant is, in effect, asking the Supreme Court to disregard the division of powers enshrined in the Constitution by permitting the Plaintiff/Appellant to substitute his views in respect of public policy or the common good for that of the Legislative and Executive branches of Government.

5. First Named Respondent's Reason for Opposing Appeal if Leave to Appeal is Granted:

- (a) The Plaintiff's/Appellant's claim as pleaded discloses no cause of action against AIB.
- (b) To the extent that any claim is made in the proceedings, it is directed against the State Respondents to the action.

- (c) The Court of Appeal (and the High Court) were correct in concluding that there was no claim apparent on the face of the Statement of Claim against AIB.
- (d) The disposal of shares was not on behalf of AIB but rather a disposal by the Minister for Finance in that capacity and accordingly, is a decision on a matter of public policy which, while supported by AIB, is not controlled by AIB.
- (e) Any analysis of the Statement of Claim shows that any of the allegations which mention AIB are all made with one object in mind, i.e. not for the purposes of obtaining the relief as against AIB, but for the purpose of suggesting that no part of the State's shareholding in AIB should be sold by the State.
- (f) The Learned Trial Judge and the Court of Appeal correctly concluded that there was therefore no claim put forward by the Plaintiff/Appellant either in the Statement of Claim or in the submissions offered.
- (g) Insofar as the Plaintiff/Appellant seeks an Order restraining the taking of any steps in furtherance of the sale by the Minister for Finance of any of the shares held on his behalf in AIB, the relevant test for the grant of an interlocutory injunction has not been satisfied, and the Plaintiff/Appellant has failed to identify any grounds on which it would be appropriate to grant an interlocutory injunction in this case. Not only has he failed to establish any serious issue to be tried, but he has not suggested that he has suffered any damage himself. Moreover, in the IPO, the Minister only sought to dispose of part of the shareholding held on his behalf. The State will retain a controlling stake in AIB. Thus, even if a justiciable cause of action had been made out in the Statement of Claim as against any of the Respondents, the sale of this minority stake could not give rise to any of the undesirable consequences relied upon by the Plaintiff/Appellant in the Statement of Claim. Furthermore, the affidavit evidence in the High Court clearly established that the Respondents would be exposed to irreparable harm if an injunction were granted. The Plaintiff/Appellant would not be in a position to honour any undertaking as to damages by him. He also failed to take timely steps to seek interlocutory relief. Thus, to the extent that it might be necessary to consider the balance of convenience, the balance is strongly tilted against the grant of interlocutory relief in this case. It should also be noted, however, that the disposal has proceeded in the intervening period in accordance with the timetable set out in the IPO, and therefore, it is difficult to identify the scope of any relief which the Plaintiff/Appellant might now seek.

Name of Counsel who Settled the Grounds of Opposition:

Denis McDonald S.C.

Paul Fogarty B.L.

6. Additional Grounds on which Decision should be affirmed:

The decision of the Court of Appeal is consistent with the previous decisions of the Supreme Court in **TD v. Minister for Education, Collins v. Minister for Finance and Roche v. Roche** (as noted in paragraph 4(e) above).

Are you asking the Supreme Court to:

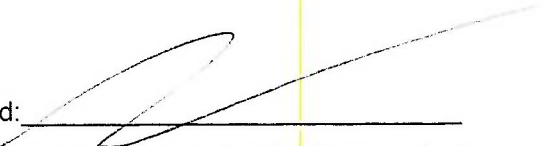
Depart from (or distinguish) one of its own decisions? No.

Make a reference to the Court of Justice of the European Union? No.

Will you request a priority hearing? In circumstances where the IPO has proceeded in the intervening period, AIB does not seek a priority hearing, but will, of course, cooperate in any directions given by the Court in the event that the Court decides to give leave to appeal and to give the matter a priority hearing.

If Yes, please give reasons below: -

N/a

Signed: 
Solicitor on behalf of the Respondent

To:

The Office of the Registrar of the Supreme Court,
The Four Courts,
Inns Quay,
Dublin.

This Notice is to be lodged and served on the Appellant and each of the Respondents within 14 days of the service of the Notice of Appeal.