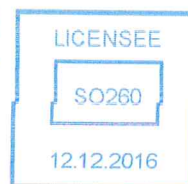


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SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

Supreme Court record number of this appeal	S:AP:IE:2016:000144
Subject matter for indexing	

Leave is sought to appeal from	
<input type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court

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

Kiernan Milling	V	Finbar Tolan
High Court Record Nr	2013 No 2827/S	Court of Appeal Record Nr 2015/000352
Date of filing	4 th September 2013	Date of Filing: 8 th July 2015
Name(s) of Applicant(s)/Appellant(s)	Finbar Tolan	
Solicitors for Applicant(s)/Appellant(s)		
Name of Respondent(s)	Kiernan Milling	
Respondent's solicitors	John J. Quinn	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
Yes	X	No
If yes, give [Supreme Court] record number(s)		

Are you applying for an extension of time to apply for leave to appeal?	Yes	X	No
If Yes, please explain why			

1. Decision that it is sought to appeal

Name(s) of Judge(s)	Judge Ryan Judge Hogan Judge O Regan
Date of order/Judgment	14 th November 2016

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	Finbar Tolan
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Original status

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

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

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	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Exchange	<input type="checkbox"/>	
<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	Mace Middle, Claremorris, Co. Mayo
e-mail address	
Telephone no.	087 9045767

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Exchange	<input type="checkbox"/>	
<input checked="" 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	Kiernan Milling
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Original status

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

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

	Petitioner

	Party

Solicitor			
Name of firm	John J. Quinn Company		
Email			
Address	Earls Street Longford Co. Longford	Telephone no.	043 3341541
		Document Exchange no.	
		Ref.	
Postcode			

How would you prefer us to communicate with you?

	Document Exchange
	Post

	E-mail
	Other (please specify)

Counsel			
Name	Neil Flynn BL		
Email			
Address	Law Library Four Courts Dublin 7	Telephone no.	
		Document Exchange no.	
Postcode	Dublin 7		

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?

	Document Exchange
	Post

	E-mail
	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

It is intended to appeal the entire decision

(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

This is an application for leave to appeal the Order of the Court of Appeal where the Appellant had cleared his account in full with the Plaintiff on the 21st of December 2012 and where the Plaintiff alleged that there was still monies due and owing for deliveries, that they produced no documentary evidence at the trial that the said goods were ordered as they should have been able to do with ease if such orders were placed, or they could produce no documentary evidence that the said goods were accepted by the Appellant by way of his signature on the said delivery dockets excepting the said deliveries. This would have been a vital ingredient in proving that this contract between the two parties actually occurred in relation to the disputed deliveries. The trial Judge relied on inconsistent untrue evidence of Kevin McHale and Noeleen Kiernan and also untrue evidence and conflicting evidence and hearsay evidence of Lorry drivers and the Appellant would be able to prove this when he had position of the DAR of the High Court Hearing of the 25th of June 2015 to file his supplementary submissions. However the Court of Appeal Judge Ryan refused to allow these very helpful supplementary submissions be filed prior to the Hearing of the Appeal which was detrimental to the Appellant. However worryingly for the Appellant that same Judge was the Chief Judge on the Appeal Panel at the Appeal (President Ryan) and had presided over this case at a time when it was in the High Court and when he was a High Court Judge and he seemed to be somewhat bias towards the Appellant explaining how familiar he was with the case and in that regard should not have been involved in this appeal at all. In fact he even made reference to it at the end of the Hearing of the Appeal how he remembered it being in front of him in the High Court. It was only when he was dismissing the Appeal that he reminded us of this but at this stage it was too late to complain.

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
1. (a) This appeal is of public importance because if any person be it in business or otherwise receives a request for payment of goods, whatever them goods might be the person needs the protection of being able to defend themselves if they did not order/receive the said goods. In this case the Appellant was requested to pay for goods he did not order or receive, but still the Courts found against him without the Plaintiff having produced any documentary evidence at the trial to prove any Orders for the disputed deliveries were placed or signed by the Appellant accepting delivery of the alleged goods, i.e. the Plaintiff failed to prove their contract with the Appellant in this regard.
 - (b) This appeal is of public importance because if any Company who has access to telephone records/computer/fax/email etc. cannot prove a contract took place by way of a customer placing an order and receiving that said order, then if the Courts takes their side without such a contract being formally proved, then it sets a precedent for other Companies to do something similar and get paid for goods they did not contract/sell, and this could send out the wrong message and set a wrong precedent to future traders/suppliers doing something similar, the public and in this case the Appellant

needs to be protected from this type of activity.

(c) It is of public importance that this appeal is heard and or remitted back to the High Court to be reheard because the Court of Appeal should not have accepted a precedent case law of Hay V Grady in circumstances where the Plaintiff had not proved their contract with regards the disputed goods being ordered or accepted on delivery and the fact that this case is in the Public domain from being on the Public Record through the Courts it could set a precedent going forward in forth coming similar disputes between parties as it has being already relayed back to the Appellant about business people having heard of these proceedings.

2. The Appellant did not get Justice in this case because if he had been allowed to lodge his supplementary submissions, the Judges would have been able to see that he raised some very alarming points with regards to a conflict of interest with the Solicitor for the Plaintiff and how the Solicitor for the Plaintiff interfered with a Law Society investigation going ahead and convinced the Law Society not to investigate any further until after the trial was complete. However when the Appellant tried to raise the conflict issues during the trial the trial Judge ignored them compromising the Appellant from getting a fair and just hearing.
3. The Appellant did not get Justice in this case because it is accepted practice in the Court of Appeal that an appeal will not be heard until the Judges are satisfied that both parties have had the benefit of having position of the DAR of the High Court Hearing prior to finalising submissions. There was submissions lodged by the Appellant on the 19th of November 2015 by direction of Judge Kelly without the benefit of the DAR on the understanding that he would be allowed to lodge further supplementary submissions prior to the hearing of the Appeal when the DAR was to hand. When the Appellant was going about drafting these said supplementary submissions prior to the Appeal and lodging the Appeal Booklets his Solicitor contacted the Plaintiffs Solicitors to request of them to forward a copy of the DAR which they had possession of however they refused. Council for the Appellant then made an application to the Court of Appeal on the 4th of November 2016 and explained this to Judge Ryan. The Judge directed the Plaintiff to forward a copy of the DAR to the Appellants Solicitor. Council for the Appellant then requested an adjournment of the Hearing of the 14th of November in order to study the DAR when it would be received and also needed time to lodge supplementary submissions based on the DAR. The Judge asked Council for the Plaintiff how long was the High Court Hearings and he mislead the Judge by saying a half day. The Judge then refused the adjournment and said the Appellant had plenty of time over the next week to have supplementary submissions lodged before the 14th of November as with a half a day in the High Court the DAR would be short. Council for the Appellant obtained the DAR and it emerged that it was a very long DAR as it had been in fact 2 days in the High Court which made the preparing of the supplementary submissions much more difficult in such a short time. However supplementary submissions were prepared and on the 10th of November the Court of Appeal Office refused to accept them despite the Appellants Council being told they could be lodged when they were prepared. Council for the Appellant again made an application to the Judge on the 11th of November to inform him of this development and Judge Ryan refused to allow the submissions to be lodged leaving the Appellant compromised as the Plaintiffs submissions were filed with having the benefit of the DAR which left the Appellant in a perilous situation as he had raised very important points in his supplementary submissions that the Judges had not the benefit of having and basically seemed to have their decision reached prior to the hearing of the Appeal by virtue of the fact that they didn't want to address any of the Appellants contribution and only seemed to be on the Plaintiffs side all through and cut it short by accepting a case law of Haley V Grady as a precedent case, without taking into account the fact that the Plaintiff had not proved their contract with the Appellant. This is by virtue of the fact that they had

not formally any documentation that proved orders were placed or accepted for the disputed deliveries during the trial and also the fact that when a formal data protection request application was requested by the Appellant in January 2014 no such documentation was provided in the reply as it obviously did not exist and also when this reply was received it was accompanied by a sworn Affidavit from the Plaintiffs Solicitor stating that all documentation requested was enclosed in the reply.

4. The Appellant did not get justice as when the main Judge sitting on the Court of Appeal namely Justice Ryan (President) had already had this case before him when he was sitting in the High Court and therefore was not impartial to the Hearing of the Appeal and should not have had any involvement in the Appeal whatsoever.

6. Ground(s) of appeal which will be relied on if leave to appeal is granted

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:

- ii. 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
1. It is in the interest of Justice that the Supreme Court hear this appeal because any person regardless of what type of business they operate pays an outstanding bill in full, they need to have the peace of mind to know that somebody cannot just decide to come back again and say that they had no such agreement in place to clear the said account and therefore if it goes to court that the Court will accept the untrue inconsistent evidence of the bigger person, i.e. in this case The Plaintiff, and especially when in the DAR the inconsistencies in the evidence of the Plaintiff exist but still was accepted, and this case could set a precedence going forward for other people in the Appellants position in this case.

2. The Appellant did not get justice because he feels that when he lodged an appeal he deserved to get treated equal in the Court of Law and feels he should have been heard by Judges that was completely impartial. However in this instance this did not happen because the Main Judge on the Panel was privy to the case long before the hearing of the appeal as it had been before him in the High Court while he was a High Court Judge, and it was evident in his attitude while presiding over the appeal. In this regard it is a matter of public importance that not only should justice be done but seen to be done by an impartial Judge, and also the fact that there were serious issues raised at the trial with regards the Solicitor for the Plaintiff and was included in the Appellants supplementary submissions which were not allowed to be lodged by Judge Ryan.
3. The Appellant feels that he did not get Justice and it's in the interest of Justice that this appeal should be reheard and that the Supreme Court should hear this appeal and or refer it back to be reheard as the Appellant did not get Justice by virtue of the fact that he had serious issues raised and included in his supplementary submissions however the Judges were not able to take these into account as they were not allowed to be lodged.
4. The Appellant did not get Justice in this case when he had raised serious worries at the trial over the solicitor that had been dealing with the case on behalf of the Plaintiff and where the Law Society were investigating those said complaints, however the Solicitor in question Mr. John Quinn blocked the Law Society from further investigating the complaints until the outcome of the trial hearing and was assured by the High Court Judge that if he raised any matter of worry in this regard that the High Court Judge would stop the case immediately. However when the Appellant did raise serious concerns during the course of the Hearing the Trial Judge refused to take heed of them and proceeded with the case and subsequently ruled against him. These matters were all to be put before the Court of Appeal through the supplementary submissions however those submissions have not been lodged because Judge Ryan wouldn't allow them to be lodged but in the event that this court either hears this appeal themselves or reverts it back to the Lower Court the contents of the said supplementary submissions can be lodged with permission and will prove without
5. The fact that the trial Judge relied on the untrue inconsistent evidence of Noeleen Kiernan and Kevin McHale and the conflicting evidence of two lorry drivers and refused to take the consistent evidence of the Appellant into account amounted to an injustice to the appellant and the fact that the Court of Appeal accepted the precedent case law of Haley V Grady without taking the submissions that was to be filed by the Appellant but was refused to be accepted into account was a further injustice to the Appellant.

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

[2016] IECA 131

References to Law Reports in which any relevant judgment is reported

1. Central London Property Trust Limited –v- High Trees House Limited [1947] KB 130
2. Jones –v- Vernon Pools Limited [1938] 2 All ER 626
3. Hay –v- O’Grady [1992] 1 IR 210

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:

An Order setting aside the whole Order of the Court of Appeal

What order are you seeking if successful?

Order being
appealed:

set ☒ X
aside ☐

vary/substitute ☐

Original order:

set ☒ X
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 ☒ X No

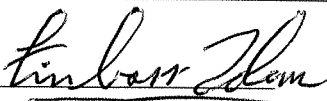
If Yes, please give details below:

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

If Yes, please give details below:

Will you request a priority hearing? ☐ Yes ☒ X 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.