

THE SUPREME COURT

Respondent's Notice

Supreme Court Record Number: S:AP:IE:2017:000065

Court of Appeal Number: 239 / 2015

High Court Number 618 Sp / 2012

Between

ALLIED IRISH BANKS, p.l.c.

Plaintiff/Respondent

AND

AQUA FRESH FISH LIMITED

Defendant/Appellant

Date of filing: 3rd May 2017

Name of Respondent: Allied Irish Banks, p.l.c.

Respondent's Solicitors: Joynt & Crawford, 8 Anglesea Street, Dublin 2

Name of Appellant: Adrian Flynn, Director and Sole Shareholder of Aqua Fresh Fish Limited

Appellant's Solicitors: None

1. RESPONDENT DETAILS

Respondent's full name: Allied Irish Banks, p.l.c.

The respondent was served with the application for leave to appeal and notice of appeal on 20th April 2017

The respondent intends to:

- (i) oppose the application for leave to appeal, and/or in the alternative
- (ii) ask the Supreme Court to dismiss the appeal, and/or in the alternative
- (iii) ask the Supreme Court to affirm the decision of the Court of Appeal

Details of the Respondent's representation are correct and complete on notice of appeal save in that the Document Exchange number of the Respondent's solicitors has changed to DX 253013 Dame Street.

2. RESPONDENT'S REASONS FOR OPPOSING EXTENSION OF TIME

Not Applicable

3. INFORMATION ABOUT THE DECISION THAT IT IS SOUGHT TO APPEAL

Mr. Flynn had the benefit of an unusually long Notice of Appeal (some 95 pages) in the Court of Appeal together with extensive Submissions and, with the Respondent's agreement, he was permitted to admit additional evidence on Appeal.

The decision not to allow Mr. Flynn to represent Aqua Fresh Fish Limited in court proceedings followed well established and consistent principles.

The Respondent disputes the Appellant's submissions set out at paragraph 4 of his Application for Leave and Notice of Appeal.

4. RESPONDENT'S REASONS FOR OPPOSING LEAVE TO APPEAL

- 4.1 The Respondent disputes the Appellant's submissions set out at paragraph 4 of his Application for Leave and Notice of Appeal.
- 4.2 In Battle v Irish Art Promotion [1968] 1 IR 252 the Supreme Court refused to allow an individual who was the managing director and a major shareholder to represent his company in legal proceedings despite the fact that he said that the company had a good defence but was unable to engage legal representation due to lack of funds. The Battle case has been followed consistently in this jurisdiction for the last 49 years. It has most recently been approved and applied by the Supreme Court in Coffey v Environmental Protection Agency [2014] 2 IR 125.
- 4.3 It is accepted that the court has an inherent jurisdiction, as a matter of discretion, to allow a lay individual to represent a litigant, whether that litigant be an individual or a body corporate. This discretion was exercised in Re Coffey v Tara Mines Limited [2008] 1 IR 436 where the court was presented with "*a combination of circumstances that are so rare as to be probably be unique*". In that case, the plaintiff's wife was allowed represent him as to do otherwise would have been "*destructive to justice*" in the particular circumstances of the case.
- 4.4 A body corporate is an abstraction and is purely a creature of statute and the scope of constitutional rights enjoyed by it may be more limited than those enjoyed by a natural person.
- 4.5 Companies are creatures of statute. Their existence is dependent on the provisions of legislation, their rights and duties are circumscribed by statute.
- 4.6 The legislature could have conferred on companies the entitlement to be represented in legal proceedings by directors and/or shareholders but has chosen not to do so (except in very limited circumstances addressed hereunder).
- 4.7 Restricting the right of audience before the courts is not aimed at protecting any monopoly of lawyers but to facilitate the administration of justice.
- 4.8 The court has a discretion to hear submissions from anyone but this is a matter of pure discretion for the court.

- 4.9 Company subscribers discard their own personae for the persona of the company. They gain advantages by so doing but lose the right of audience they would have as individuals.
- 4.10 Article 19 of the Statute of the Court of Justice regulates representation of parties in proceedings before the Court of Justice of the European Union. Member States and the Institutions must be represented by an agent appointed, that agent may be assisted by an adviser or by a lawyer “other parties must be represented by a lawyer”.
- 4.11 Rule 36 of the Rules of Court of the European Court of Human Rights provides that an applicant must be represented by an advocate authorised to practise in any of the Contracting Parties “or other such person approved by the President of the Chamber”.
- 4.12 There is no warrant for the claim that, in the application of EU law or the European Convention on Human Rights, there is any obligation on the court of a Member State to permit a litigant to be represented by a person other than a duly qualified lawyer.
- 4.13 The only right a company has, in terms of appearing before the courts, is a right to appear through a solicitor or counsel. The limitation on the right of representation flows from the infirmities of being an abstract legal entity. It is a distinction, which has a constitution justification in Article 40.1
- 4.14 The reasoning in the Battle case has been considered, approved and applied in other common law jurisdictions. In the UK the rules in relation to representation of a company by an individual were altered by way of the 1999 Civil Procedure Rules. If the law were to be changed in this jurisdiction, it should properly be by way of legislation, whether primary or secondary legislation. However, there has been no such legislative development. Rather, the legislature has continued to endorse (at least implicitly) the status quo.
- 4.15 Section 868 of the Companies Act, 2014 (replicating section 382 of the Companies Act, 1963) specifically provides that a company may be represented by an employee or duly appointed representative where the company is charged with an indictable offence. The fact that the statute provides for lay representation in this instance clearly points to the fact that companies have no right to lay representation in civil proceedings.
- 4.16 At no point in the 49 years since the Battle case was decided has the Oireachtas taken the opportunity to legislate to the contrary, notwithstanding the fact that in 16 separate Companies Acts it has had the opportunity to do so.

- 4.17 Section 250 of the Courts (Consolidation and Reform) Bill based on the recommendations of the Law Reform Report on Consolidation and Reform of the Courts Acts 2010 proposes codifying the current law. The Law Reform Commission did not recommend altering the current position.
- 4.18 In the present case there is no evidence before the court of “*exceptional circumstances*” which could be used in asking the court to exercise its inherent jurisdiction to permit Mr Flynn to represent the Defendant company.
- 4.19 As already noted, the Supreme Court considered the matter recently in Coffey v Environmental Protection Agency [2014] 2 IR 125 and reaffirmed the Battle decision. That being so, the Respondent opposes the Appellant’s application for leave on the basis that the proposed appeal does not involve a matter of general public importance nor does it identify, in the interests of justice, it is necessary that there should be an appeal to the Supreme Court.
- 4.20 The Supreme Court recently refused leave to appeal in Re Tara Hill National Park Teo IESCDT 104 in circumstances where the appellant was similarly seeking to challenge the Battle decision. One of the reasons given for refusing leave was that the matter had already been recently considered by the Supreme Court in Coffey v Environmental Protection Agency. It is submitted that a similar approach should be adopted in this case.

5. RESPONDENT’S REASONS FOR OPPOSING APPEAL IF LEAVE TO APPEAL IS GRANTED

- 5.1 The reasons for opposing the appeal, if leave is granted, are the same as those set out in Section 4.1 to 4.19 above and may be treated as being repeated seriatim.

Name of counsel who settled the grounds of opposition: Lyndon MacCann SC and Pauline McRandal BL

6. ADDITIONAL GROUNDS ON WHICH DECISION SHOULD BE AFFIRMED

The Appellant has failed to disclose any legal basis by which the decision of the Court of Appeal was arrived at incorrectly.

Are you asking the Supreme Court to depart from (or distinguish) one of its own decisions?

No. If Leave to Appeal is granted to the Applicant the Respondent is asking the Court to reaffirm its own decisions.

Are you asking the Supreme Court to make a reference to the Court of Justice of the European Union?

No.

Will you request a priority hearing?

No.

Signed: _____

Joynt & Crawford

Solicitors for the Respondent

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