

**SUPREME COURT****Respondent's Notice**

Supreme Court record number	S:AP:IE:2016:000137
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[Title and record number as per the High Court proceedings]

Connacht Gold Co-Operative Society Limited (now Aurivo Co-Operative Society Limited)	V	Finbarr Tolan Record No. 2012/3525S
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Date of filing	28/11/2016
Name of respondent	Aurivo Co-Operative Society Limited
Respondent's solicitors	Rochford Gallagher & Co, Solicitors Tubbercurry, County Sligo
Name of appellant	Finbarr Tolan
Appellant's solicitors	In Person

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	Connacht Gold Co-Operative Society Limited (now Aurivo Co-Operative Society Limited)
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The respondent was served with the application for leave to appeal and notice of appeal on date
5 th December, 2016

The respondent intends :	
<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
<input checked="" type="checkbox"/>	to oppose the application for leave to appeal
<input type="checkbox"/>	not to oppose the application for leave to appeal
<input type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
<input type="checkbox"/>	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court
<input type="checkbox"/>	Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal: ☐

Respondent's Representation

Solicitor			
Name of firm	Rochford Gallagher & Co		
Email	tubbercurry@rochford-gallagher.com		
Address	Tubbercurry County Sligo	Telephone no.	071 91 85011
		Document Exchange no.	236001 Tubbercurry
Postcode	F91 AHE9	Ref.	TC2061
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	Kenneth C Fogarty S.C.		
Email	fogartyken@gmail.com		
Address	Law Library Four Courts	Telephone no.	01 817 4495
		Document Exchange no.	816572
Postcode	Dublin 7		

Counsel			
Name	Keith O'Grady B.L.		
Email	keithogradey@gmail.com		
Address	Chapel Street Sligo	Telephone no.	071 91 32475
		Document Exchange no.	5015 Sligo
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

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)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

N/A

3. Information about the decision that it is sought to appeal

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

NONE

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

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)-

- * the decision in respect of which leave to appeal is sought does not involve a matter of general public importance
- * it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court

4. Respondents' reasons for opposing leave to appeal

The reasons why the Respondent respectfully submits that the decision in respect of which leave to appeal is sought does not involve a matter of general public importance are as follows:

- (a) The proceedings between the parties herein arise out of a claim by the Plaintiff / Respondent (hereinafter referred to as "the Respondent") for summary judgment against the Defendant / Appellant (hereinafter referred to as "the Appellant") wherein the Respondent sought and obtained judgment in the sum of €154,830.66, being the sum of money lawfully due and owing to the Respondent by the Appellant in respect of cattle purchased by the Appellant from the Respondent at cattle marts owned and operated by the Respondent herein. The proceedings relate solely to a private debt between the parties and do not involve any matter of general public importance whatsoever.
- (b) The substantive proceedings received a full hearing before Mr. Justice Ryan in the High Court who, having heard submissions by both sides, entered summary judgment against the Appellant in the sum of €154,830.66. On the 6th day of December 2013, the Supreme Court considered the Appellant's Motion for a Stay on entry, registration and execution of the aforesaid Order of Mr. Justice Ryan. Having considered the Appellant's application, his Affidavit filed on the 22nd day of November 2013 and the Affidavit of Eamonn M. Gallagher filed on behalf of the Respondent on the 5th day of December 2013 and upon hearing the Appellant in person and Counsel for the Respondent herein, the Supreme Court ordered that the stay of execution on the judgment of the High Court (Mr. Justice Ryan) except in respect of the registration of a Judgment Mortgage continue and further noted the undertaking on the part of the Respondent herein through its Solicitor that apart from registering the Judgment as a Judgment Mortgage no further steps would be taken in the execution process until the determination of separate High Court proceedings listed for hearing on the 18th day of February 2014. The Appellant herein was ordered to pay the Respondent the costs of the Motion when taxed and ascertained.

- (c) The separate High Court proceedings referred to in the aforesaid Supreme Court Order were determined in the High Court by Mr. Justice Nicholas Kearns (then President Kearns) on the 15th day of May 2015, following four days of hearing. The Appellant's case was dismissed in all respects and the costs of the hearing were awarded to the Respondent, to be taxed in default of agreement. Thereafter, the Appellant herein appealed the decision of Mr. Justice Kearns to the Court of Appeal. The appeal was heard by the Court of Appeal on the 19th day of December 2015 with judgment subsequently delivered by the Court (Peart, Irvine and Hogan J.J.) on the 5th day of May 2016. The Court of Appeal dismissed the Appellant's appeal and adjourned the matter for final Orders. The matter in respect of which the Appellant seeks leave to appeal was adjourned to the 28th day of October 2016 whereupon the Court of Appeal made an Order dismissing the Appellant's appeal with an Order for costs in favour of the Respondent. It is respectfully submitted therefore that the Appellant herein has had the benefit of a hearing in the High Court and, thereafter, had the benefit of an appeal to the Court of Appeal which, having considered all relevant matters, dismissed the said appeal.
- (d) On the 28th day of October 2016 when the matter was listed for the purpose of finalisation before the Court of Appeal, the Appellant herein was represented by Counsel. In circumstances where the Court of Appeal had determined the separate proceedings between the parties against the Appellant herein, Mr. Justice Hogan enquired from the Appellant's Counsel whether the decision in the aforesaid proceedings which had resulted in a dismissal of the Appellant's appeal had in fact decided the issue in respect of the appeal against the decision of Mr. Justice Ryan and in respect of which the Appellant seeks leave to appeal to the Supreme Court in the within application. In reply Counsel on behalf of the Appellant confirmed that "*that would appear to be the case*". On that basis, the Court of Appeal dismissed the Appellant's appeal and awarded the costs of the appeal to the Respondent herein.
- (e) Insofar as the Appellant now asserts that the matters at issue herein involve a matter of general public importance, the Respondent respectfully submits that this is patently not the case. Firstly, the matter involves a private dispute between the parties herein. Secondly, the matter has been determined against the Appellant, both in the High Court and in the Court of Appeal. Thirdly, the Appellant, through his Counsel, accepted in the Court of Appeal that the determination by the Court in separate proceedings between the parties had determined the issue in the within proceedings against the Appellant herein. It is respectfully submitted that, without prejudice to the position that the matters at issue do not involve matters of general public importance, the Appellant herein is estopped from seeking to pursue the matter further, in light of the representations made and the position adopted in the Court below.

**delete where inapplicable*

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

5. The reasons why the Respondent submits that it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court are as follows:

- (a) The proceedings herein involved a claim for summary judgment by the Respondent against the Appellant herein as stated above. In the High Court, Mr. Justice Ryan gave a full consideration to matters before entering summary judgment in favour of

the Respondent against the Appellant herein. The Appellant appealed that decision to the Court of Appeal and, as stated, the appeal has been determined against the Appellant.

- (b) Further and without prejudice to the foregoing, the Appellant herein at all material times accepted that the sum of money claimed by the Respondent in the summary proceedings was in fact due and owing by the Appellant to the Respondent herein. This is in fact noted in the decision of Mr. Justice Ryan in the High Court upon which the Respondent herein relies. The Appellant at all times accepted that he purchased cattle at the Respondent's marts and did not pay for same. The reasons advanced for non-payment related to an alleged breach of contract by the Respondent herein. That alleged breach of contract formed the basis of the Appellant's claim against the Respondent herein in the separate proceedings which were determined as aforesaid against the Appellant by President Kearns and, thereafter, the Court of Appeal with leave to appeal to the Supreme Court ultimately being refused by the Supreme Court.
- (c) The Appellant now asserts at paragraph 4 of the Notice of Appeal herein that whilst it was accepted that there was a sum of money owed to the Respondent, the amount was being disputed. For the avoidance of doubt, the Respondent confirms that the amount of money involved was never disputed by the Appellant herein. In this regard, the Respondent shall rely upon the pleadings and proceedings already had herein, the position adopted by the Appellant in the High Court and the submissions by the Appellant in the Court of Appeal.
- (d) The Appellant herein has at all times adopted the position (as he does in the within application) that the actions of the Respondent put the Appellant out of business and prevented the Appellant from repaying the monies lawfully due and owing to the Respondent herein. That allegation was maintained before President Kearns, the Court of Appeal and during the course of the Appellant's application for leave to appeal to the Supreme Court. The Appellant's claim has been rejected and the dispute has been determined in favour of the Respondent herein. In the premise, it is respectfully submitted that the excuse or explanation upon which the Appellant has relied to date for non-payment of the said debt cannot and does not arise and, on that basis, the aforesaid sum due and owing to the Respondent remains lawfully due and owing by the Appellant herein.
- (e) Further and insofar as the Appellant asserts that it is in the interests of justice that the Supreme Court hears the appeal and/or refers it back to the Court of Appeal, it is respectfully submitted that there is no basis to do so. The Court of Appeal did not finalise the Appellant's appeal in relation to the summary judgment matter until the 28th day of October 2016. This approach was taken by the Court of Appeal in ease of and for the benefit of the Appellant herein and so that the Appellant's application for leave to appeal the decision of the Court of Appeal in the separate proceedings between the parties could be determined, either for or against the Appellant herein. The Appellant was refused leave to appeal to the Supreme Court in the separate proceedings and, on that basis, the Court of Appeal finalised matters in the summary proceedings against the Appellant herein, as stated. Further, the Appellant was at all times represented by Counsel who did not at any stage disagree with the views expressed by the Court of Appeal that the determination against the Appellant in the separate plenary proceedings between the parties meant that the appeal by the Appellant against the decision of Mr. Justice Ryan was at an end.
- (f) Further and without prejudice to the foregoing, insofar as the Appellant refers at paragraph 6 (2) of the Notice of Appeal to the plenary proceedings having "*since re-opened in the High Court due to new information coming to light*", the Respondent

herein respectfully submits that the Court cannot and should not take this into consideration. The Appellant, having been refused leave to appeal to the Supreme Court as aforesaid, has embarked upon a course of action which the Respondent submits is vexatious and an abuse of process. It is incorrect for the Appellant to state, as he has done, that the said proceedings have been “*re-opened*”. The position is that the Appellant has decided to attempt to re-open the said proceedings based on allegations which include, *inter alia*, that the former President of the High Court had discussed the Appellant’s case with the Appellant’s then Solicitors, that there had been some type of agreement between them as to how the case was to proceed and that the then President is related in law to a Solicitor that had advised the Appellant during the course of those proceedings. The allegations are scandalous, vexatious and, in the view of the Respondent, the attempt by the Appellant to re-litigate matters amounts to an abuse of process. The Respondent herein is resisting the Appellant’s application to “re-open” the proceedings on that basis.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Kenneth C Fogarty S.C.
Keith O’Grady B.L.

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

Are you asking the Supreme Court to:

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

☐ Yes

☒ No

If Yes, please give details below:

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: *Rochford Gallagher & Co*
Rochford Gallagher & Co
Solicitors for the Respondent
Tubbercurry
County Sligo

Please submit your completed form to:

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

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.