

Order 58, rule 15



43667700
20400



SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

Supreme Court record number of this appeal	5-AP-IE-2016-000137
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]

Aurivo Co-Operative Society Limited		V	Finbar Tolan
High Court Record Nr	2012 No. 3525/S	Court of Appeal Record Nr	2014/1022
Date of filing	14 th September 2012	Date of Filing:	24 th July 2015
Name(s) of Applicant(s)/Appellant(s)		Finbar Tolan	
Solicitors for Applicant(s)/Appellant(s)			
Name of Respondent(s)		Aurivo Co-Operative Society Limited	
Respondent's solicitors		Rochford Gallagher & Co	
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) 2013/474			

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)	Judge Peart, Judge Irvine and Judge Hogan
Date of order/ Judgment	28 th October 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 type="checkbox"/>	Petitioner

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

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 Exchange	<input checked="" type="checkbox"/> E-mail
<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, County Mayo
e-mail address	
Telephone no.	0879045767

How would you prefer us to communicate with you?			
<input type="checkbox"/> Document Exchange	<input type="checkbox"/> E-mail		
<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	Aurivo Co-Operative Society Limited
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Original status

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

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

Solicitor	
Name of firm	Rochford Gallagher & Co.
Email	tubbercurry@rochford-gallagher.com

Address	Tubbercurry County Sligo	Telephone no.	071 9185011
		Document Exchange no.	
		Ref.	
Postcode			

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)

Counsel			
Name	Kenneth Fogarty S.C.		
Email			
Address	Law Library Four Courts Dublin 7	Telephone no.	01 8174495
		Document Exchange no.	816572
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?

<input type="checkbox"/>	Document Exchange	<input 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

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 an Order dismissing the Defendant/Appellant's appeal where the appellant believed he had a valid appeal to the judgement made on 4th of November 2013. It was accepted at all times that there was a sum of money owed to the Respondent; however the amount was being disputed. It was further averred that it is as a result of the actions of the plaintiff that the appellant was put out of business. The appellant at all times averred that the learned trial judge erred in law and in fact in not sending the proceeding here-in forward for plenary hearing to be heard conjointly with the proceedings brought by the Respondent under High Court Record No. 2012/12005P, which said proceedings relate to similar matters to those at issue in the proceedings herein.

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 as a result of the court of appeal dismissing the appeal here-in when the matter was only in for mention to receive a hearing date, with-out the matter receiving a hearing the appellant's constitutional right was breached. The appellant feels that in order to receive justice the matter should have received a hearing date.

(b) The appellant's solicitor had engaged counsel on his behalf to attend court on that day the 28th of October only for the purpose of receiving a hearing date for the appeal. Once a hearing date was secured counsel for the appellant had fully intended to lodge further submission with the court prior to the hearing of the appeal, which would have been beneficial to the appellant. However, as a result of the appeal being struck out on the day his counsel did not get a chance to do so. Therefore, as a result of this it is a matter of public importance that any person who lodges an appeal in any court should have the right to have their appeal heard and adjudicated upon in the correct fashion.
 2. It is in the interests of justice that the Supreme Court hear this appeal and/or revert it back to the court of appeal to hear the matter because as a consequence of the Respondent dishonouring the credit agreement reached with the appellant on 16th July 2012 the Appellant has been financially destroyed with the Respondent having withdrawn his credit, preventing him from purchasing livestock at its marts, leading to reputational damage, the withdrawal of credit at other marts and ultimately the loss of his business. This has led to the proceedings here-in having to be issued in the first instance.
 3. It is in the interest of justice that the precedent be set that matters of this nature are dealt with in the appropriate manner, as the Honourable Justice Ryan having erred in law and in fact in not sending the proceeding here-in forward for plenary hearing to be heard conjointly with the proceedings brought by the ~~Respondent~~ ^{Appellant} under High Court Record No. 2012/12005P, which said proceedings relate to similar matters to those at issue in the proceedings herein, this matter has since re-opened in the high-court due to new ~~information~~ ^{information} coming to light (High Court Record No. 2012/12005P).
 4. It is in the interest of justice that the appellant be afforded a fair and proper hearing without prejudice being asserted prior to any hearing being granted and afforded the opportunity to put forward whatever submissions he or his counsel wish to put forward either written or orally.

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:

- 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. It is in the interests of justice that the Supreme Court hear this appeal and/or revert it back to the court of appeal to hear the matter because as a consequence of the Respondent dishonouring the credit agreement reached with the appellant on 16th July 2012 the Appellant has been financially destroyed with the Respondent having withdrawn his credit, preventing him from purchasing livestock at its marts, leading to reputational damage, the withdrawal of credit at other marts and ultimately the loss of his business. This has led to the proceedings here-in having to be issued in the first instance, as there never was any problem between the parties prior to this agreement being dishonoured.
 2. It is in the interest of justice that a precedent must be set that matters of this nature are dealt with in the appropriate manner, as the Honourable Justice Ryan having erred in law and in fact in not sending the proceeding here-in forward for plenary hearing to be heard conjointly with the proceedings brought by the ~~Respondent~~ ^{Appellant} under High Court Record No. 2012/12005P, which said proceedings relate to similar matters to those at issue in the proceedings herein, this matter has since re-opened in the high-court due to new ~~evidence~~ ^{information} coming to light (High Court Record No. 2012/12005P).
 3. It is in the interest of justice that the appellant be afforded a fair and proper hearing without prejudice being asserted prior to any hearing being granted and afforded the opportunity to put forward whatever submissions he or his counsel wish to put forward either written or orally.
 4. In coming to the conclusion that the appellants appeal should be dismissed on the grounds that the appellant had no chance of success, without a full hearing being heard and the appellants objections put forward, on the basis that the appellant albeit admitted that there were monies due and owing, he never said what amount he accepted was owed because he assumed that would be determined at the hearing of the appeal, amongst all the other issues that were to be addressed and would have been addressed at the appeal hearing. Therefore the appellant in this case has not received justice.

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

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 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

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?

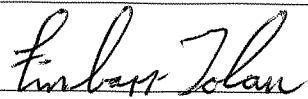
☐ Yes

☒ No

☐

If Yes, please give reasons below:

Signed:



(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.