

SUPREME COURT
Respondent's Notice

Supreme Court record number 2017/53
Court of Appeal Record Number: 2015/134
High Court Commercial Court Record Number: 2014/147
High Court Record Number: 2014/6004P



BETWEEN/

**SUPERWOOD HOLDINGS PLC, SUPERWOOD LIMITED, SUPERWOOD
EXPORTS LIMITED, SUPERCHIP LIMITED, SUPERWOOD INTERNATIONAL
LIMITED AND SUPERWOOD (UK) LIMITED**

PLAINTIFFS/APPELLANTS

-and-

**SUN ALLIANCE AND LONDON INSURANCE PLC T/A SUN ALLIANCE
INSURANCE GROUP, PRUDENTIAL ASSURANCE COMPANY LIMITED,
CHURCH & GENERAL INSURANCE COMPANY LIMITED AND RAYMOND P.
McGOVERN AS LLOYDS UNDERWRITERS SOLE REPRESENTATIVE
REPUBLIC OF IRELAND**

DEFENDANTS/RESPONDENTS

Date of filing 20th April 2017

Name of respondents. SUN ALLIANCE AND LONDON INSURANCE PLC T/A SUN
ALLIANCE INSURANCE GROUP, PRUDENTIAL
ASSURANCE COMPANY LIMITED, CHURCH &
GENERAL INSURANCE COMPANY LIMITED AND
RAYMOND P. McGOVERN AS LLOYDS UNDERWRITERS
SOLE REPRESENTATIVE REPUBLIC OF IRELAND

Respondents' solicitors Good & Murray Smith

Name of appellants SUPERWOOD HOLDINGS PLC, SUPERWOOD LIMITED,
SUPERWOOD EXPORTS LIMITED, SUPERCHIP LIMITED,
SUPERWOOD INTERNATIONAL LIMITED AND
SUPERWOOD (UK) LIMITED

Appellants' solicitors A.Derek E. Burke

1. Respondents' 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)

Respondents' full name SUN ALLIANCE AND LONDON INSURANCE PLC T/A
SUN ALLIANCE INSURANCE GROUP, PRUDENTIAL
ASSURANCE COMPANY LIMITED, CHURCH &
GENERAL INSURANCE COMPANY LIMITED AND
RAYMOND P. McGOVERN AS LLOYDS

UNDERWRITERS SOLE REPRESENTATIVE REPUBLIC
OF IRELAND

The respondents were served with the application for leave to appeal and
notice of appeal on 6th April 2017

The respondents intend:

to oppose the application for leave to appeal

If the details of the respondents' 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 respondents' representation are correct and complete on notice of
appeal: Yes**

Respondents' Representation

Solicitor

Name of firm

Email

Address

Telephone no.

Document

Exchange no.

Postcode

Ref.

How would you prefer us to communicate with you?

Document Exchange

E-mail**Yes..... idurcan@goodmurraysmith.ie**

Post

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 Respondents are not legally represented please complete the following

Current postal address

Telephone no.

e-mail address

How would you prefer us to communicate with you?

Document Exchange

E-mail

Post

Other (please specify)

2. Respondents' reasons for opposing extension of time

If applicable, set out concisely here the respondents' reasons why an extension of time to the applicants/appellants to apply for leave to appeal to the Supreme Court should be refused

.....

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

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

- 1) The Respondents dispute the contention of the Appellants at paragraph 4(2) of the application for leave to appeal that the Court of Appeal did not deal with the Appellants' application for the recusal of the trial Judge. On the contrary, the Court of Appeal specifically indicated (at paragraph 21 of its decision) that having considered the transcript of the hearing before the High Court that there was no basis for an application for recusal on grounds of bias.
- 2) The Respondents dispute the contention of the Appellants at paragraph 4(4) of the application for leave that the Court of Appeal rejected the law on fraud set out in ***Re Greendale Developments Limited (in liquidation) v. McQuaid [2000] 2 I.R. 514***. The Court of Appeal specifically referred to the Decision in Greendale and at no stage indicated a rejection of the principles set out therein.
- 3) The Respondents dispute the contention of the Appellants at paragraphs 4(7) and 4(8) of the Application for Leave, that the Court of Appeal did not deal with the allegation of unfairness in respect of the correction of the transcript of the judgment of Mr. Justice Smyth by the Respondents' legal representatives. The Court of Appeal expressly dealt with this issue at paragraph 29 of its judgment, wherein it was held that Smyth J. requested assistance from

solicitors and counsel on both sides in relation to minor errors in the judgment and that it was open to the Appellants' solicitor to submit corrections, but that the Appellants' solicitor indicated in writing to the Assistant Chief Registrar that he was unable to assist in the manner requested.

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4. Respondents' reasons for opposing leave to appeal

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

In the case of an application for leave to appeal to which Article 34.5.3^o 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

- 1) The Respondents contest the Appellants' entitlement to leave to appeal both on the ground that the decision of the Court of Appeal does not involve any matter of general public importance and on the ground that it is not necessary in the interests of justice that there be an appeal to the Supreme Court.
- 2) Critically, the Appellants have entirely failed to identify, in the application for leave, any issue of public importance arising from the judgment of the Court of Appeal or any basis upon which the interests of justice require an appeal to the Supreme Court.
- 3) Indeed the Appellants have failed to make any reference whatsoever in their application for leave, to the threshold prescribed by Article 34.5.3 of the Constitution in respect of the grant of leave to appeal to the Supreme Court.
- 4) The Appellants' failure to identify or refer to either any issue of public importance or any matter which in the interests of justice is required to be determined by appeal to the Supreme Court must, by necessity, preclude the grant of leave in this case.
- 5) The Appellants have instead approached the requirement to identify reasons why leave to appeal should be granted by treating the present application simply as an ordinary appeal and have cited a number of alleged errors in the judgment of the Court of Appeal. However as is clear from the wording of Article 34.5.3 and from the jurisprudence of this Court in cases such as *M v M [2016] IESC DET 28*, the Constitutional function of the Supreme Court is no longer that of an appeal court designed to correct alleged errors by the trial court.
- 6) While the Respondents expressly refute the Appellants' claim that the decision of the Court of Appeal discloses any errors and contends that such decision was in all respects, well-reasoned and correct, it is clear from the aforementioned jurisprudence that it will rarely be necessary in the interests of justice to permit an appeal to the Supreme Court simply because of an allegation that the lower court was in error.
- 7) The decision of the Court of Appeal in these proceedings is confined to the application of well established principles of law to the particular facts of the case. It is clear from the determination of the Supreme Court in *Rayan*

Restaurant Ltd v Keane [2016] IESC DET 78 that in those circumstances, no grounds upon which to grant leave to appeal exist.

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

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

- 1) None of the grounds of appeal advanced support a reversal of the judgment of the Court of Appeal. There is no evidence whatsoever to sustain the scandalous allegations of fraud made by the Plaintiffs/Appellants and the Court of Appeal correctly found that the proceedings are a clear abuse of process
- 2) The importance of finality in litigation as a matter of Public Policy is a matter which has been recognised by the Courts in many significant decisions such as *Amptill Peerage* [1843] 3 Hare 100 and re:Greendale Developments Ltd (No.3) [2000] 2 IR 514. The grounds set out in the application for leave to appeal, (which amount to a second and impermissible attempt to correct alleged errors of fact and which do not meet the threshold required by Article 34.5.3) reflect the Appellants' refusal to accept that they have exhausted their right to appeal in these proceedings.

Without prejudice to the foregoing and subject to the entitlement of the Respondents to elaborate their opposition in written submissions in the event that the Supreme Court were to grant leave, the Respondents now address briefly the grounds invoked by the Appellants:

- 3) With reference to the first ground of appeal relied on by the Appellants, the Court of Appeal was entirely correct to find (at paragraph 19 of the judgment) that complaints about the manner in which the trial judge delivered his judgment, the plaintiffs' alleged lack of notice thereof and suggestions of prejudice arising from an alleged lack of access to the transcript of the judgment were matters which were without any substance and were frivolous and vexatious.
- 4) With reference to the second ground of appeal relied on by the Appellants, there was no error of fact by the Court of Appeal in holding that the case was admitted to the list by consent on 30 July 2014. This finding was entirely correct.
- 5) With reference to the third ground of appeal, there was no error on the part of the Court of Appeal in respect of the findings which were reached concerning the thirty-eight pages of transcript which formed Exhibit "ID2". The Court was entirely correct in finding that those thirty-eight pages were not a continuation of the judgment of Mr. Justice Smyth and that no prejudice arose from the non-availability of the thirty-eight pages or the appendices.
- 6) With reference to the fourth ground of appeal, the finding of the Court of Appeal that minor variations between the transcripts which appeared to be no more than a few words missing here or there, which were not of any significance to the issue in dispute between the parties, was entirely correct and does not disclose any error of law.
- 7) With reference to the fifth ground of appeal, the Court of Appeal's finding that Appendix F dealt with a review of correspondence concerning the Respondents' application for life assurance in respect of Mr. Justice Smyth was perfectly accurate and disclosed no error of fact.

- 8) With reference to the sixth ground of appeal, the omission of reference to two letters exchanged between the Appellants' solicitors and Dr Crown which formed part of the correspondence concerning life assurance in respect of the life of Mr. Justice Smyth, in the judgment of the Court of Appeal, does not disclose any error of fact. The Court of Appeal was entirely correct in holding (at paragraph 28) that the Appellants had failed to establish that they had suffered any prejudice due to the non-availability of this correspondence during the course of their various appeals to the Supreme Court.
- 9) With reference to the seventh and eighth grounds of appeal the judgment of the Court of Appeal does not disclose any error of fact or law in respect of the findings reached concerning the issue of the corrections of the transcript. The Court of Appeal specifically dealt with the allegation of what is described by the Appellants as "unfair unilateral correction of the judgment" and correctly found (at paragraph 29) that it was open to the Appellants to provide such corrections but that they failed to do so.

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

Ellen Gleeson BL

John Gleeson SC

Ciaran Foley SC

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 Respondents claim 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:

.....

Please submit your completed form 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 other respondent within 14 days after service of the notice of appeal.

-----O. 58, r. 18(1)

Signed: Good + Murray Smith
Nassau House
40-43 Nassau St
Dublin 2