

**An Chúirt Uachtarach  
The Supreme Court**



**DETERMINATION**

**BETWEEN**

**HAVBELL DAC**

**PLAINTIFF**

**AND**

**BRENDAN O'SULLIVAN**

**DEFENDANT**

**Neutral Citation:** [2021] IESCDET 24

**Supreme Court record no:** S:AP:IE:2020:000135

**Court of Appeal record no:** A:AP:IE:2020:000073

**High Court record no:** 2017 No. 145 S

**Date of Determination:** Monday, 22<sup>nd</sup> February 2021

**Composition of Court:** O'Donnell J., Charleton J., Woulfe J.

**Status:** Approved

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.3° OF THE  
CONSTITUTION APPLIES**

**RESULT:** The Court does not grant leave to the Defendant / Applicant to appeal to this Court from the Court of Appeal

**REASONS GIVEN:**

**ORDER SOUGHT TO BE APPEALED**

<b>COURT:</b> Court of Appeal
<b>DATE OF JUDGMENT OR RULING:</b> 23 October 2020
<b>DATE OF ORDER:</b> 23 October 2020
<b>DATE OF PERFECTION OF ORDER:</b> 23 November 2020
<b>THE APPLICATION FOR LEAVE TO APPEAL MADE ON: 10 December 2020 AND WAS IN TIME</b>

**REASONS GIVEN:**

1. This determination related to an application for leave to appeal from a decision of the Court of Appeal on 23 October 2020 to refuse to grant an extension of time to permit the applicant, Mr O'Sullivan, to bring an appeal.
2. Mr O'Sullivan, the applicant, obtained a loan from Permanent TSB of €1,245,000 in August 2004. Together with many others, this transaction was sold by Permanent TSB to the respondent company Havbell DAC. By Order of the High Court, O'Regan J, dated 7 March 2018, Havbell DAC were adjudged to be able to recover €1,199,018.53 from Mr O'Sullivan in relation to that loan. An order that the balance of the claim being pursued by Havbell DAC, €484,022.73, and all other issues arising within the proceedings were remitted to plenary hearing that has not taken place yet.
3. There are other proceedings before the High Court to restrain the receiver from selling all properties related to the subject matter of the loan agreement. Pursuing these other matters form part of Mr O'Sullivan's reasoning for delay in filing notice of appeal of the High Court Order.
4. The general principles applied by this Court in determining whether to grant or refuse leave to appeal having regard to the criteria incorporated into the Constitution as a result of the 33<sup>rd</sup> Amendment have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this Court in *BS v Director of Public Prosecutions* [2017] IESCDET 134 and in a unanimous judgment of a full Court in *Price Waterhouse Coopers (A Firm) v Quinn Insurance Ltd. (Under Administration)* [2017] IESC 73. Accordingly it is unnecessary to revisit the new constitutional architecture for the purpose of this determination.
5. The application for leave filed, and the respondent's notice thereto, are both published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the parties in further detail.
6. The court is not one for the correction of error. No aspect of this ruling has precedential value as a matter of law.
7. Mr O'Sullivan has applied for an extension of time to appeal the Order of the High Court and seeks an Order for the Court of Appeal to allow the application for time

extension. He sets out twelve grounds of appeal. None of these grounds relate to the matter before this Court which is deciding whether to grant an application for leave to appeal to deal with a matter of extension of time.

8. The respondent submits that no reasoning was given for the delay in to bring the application for time extension to be able to appeal the Order of the High Court.
9. The Court of Appeal set out their reasoning for dismissing the request to extend time, Whelan J,

It is clear that, based on what he has stated, that he did form an intention to appeal- or indicated an intention, certainly - and, for my part, I am willing to accept that he had an intention. There is no question of him being under any misapprehension, and certainly there is no evidence to suggest that there was a mistake of the kind that is sometimes referred to in the guidelines, or in what one might call the *Éire Continental* jurisprudence, which is of assistance to this Court in the exercise of discretion. The Supreme Court has made it clear that the greater the delay - the greater the period of delay - the more this Court should be vigilant and interrogate the reasoning for that delay, and the strength of the grounds identified. I am satisfied that there is an absence of evidence of any real mistake. There is no evidence that steps were taken to obtain the type of report that is referred to from Mr O'Reilly in a timely manner, or in a way that might inform the terms of the notice of appeal. With regard to the grounds identified in the draft notice, they do appear to be in large measure a somewhat scattergun approach to matters and appear to overlap to a very significant extent with issues that are of course for hearing separately, and I understand are being set down for plenary hearing. However, in my view, the fact of the matter is that, in light of the jurisprudence, Mr O'Sullivan has not identified any basis on which this Court in operation of the guidelines could accede to his application to grant an extension of time. I am doubtful that many of these grounds of appeal are arguable, but quite apart from that he has failed to identify the second limb, and that is the issue of a mistake having occurred which in and of itself identifies a reason, a suitably convincing reason, at this effluxion of time, for his failure to lodge the appeal and, in the circumstances, in my view its appropriate, in light of the rights of litigants to finality, that the application would be refused.

10. Mr O'Sullivan has failed to set out reasons for the two-year delay to bring the appeal. None of the grounds put forward by Mr O'Sullivan reach the threshold of general public importance nor is it necessary to grant leave in the interests of justice.
11. On that basis, leave to appeal to this Court is not granted.

**And it is hereby so ordered accordingly**