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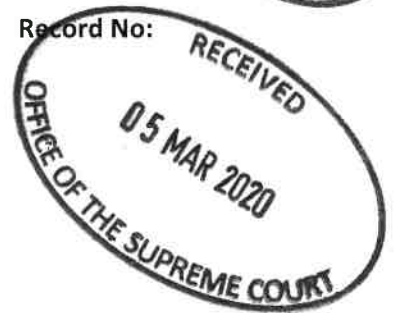
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O. 58, r. 15



SUPREME COURT



Application for Leave to Appeal

Part I

The information contained in this part will be published. It is the applicant's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

- Date of Filing:** 5 March 2020
- Title of the Proceedings:** *[As in the Court of first instance]*

MUNSTER WIRELESS LIMITED

Applicant

-v-

JUDGE TERENCE FINN

Respondent

and

TIPPERARY COUNTY COUNCIL AND IRELAND AND THE ATTORNEY GENERAL

Notice Parties

3. Name of Applicant:

Munster Wireless Limited

What was the applicant's role in the original case: [Plaintiff, Defendant, Applicant, respondent etc]

Applicant

4. Decision of Court of Appeal (where applicable):

Record No: [2019] IECA 286 – 2019 / 328

Date of Order: 28 November 2019 *Perfection Date:* 13 February 2020

Date of Judgment: 14 November 2019

Names of Judges: Whelan J., Costello J., Murray J.

5. Decision of the High Court:

Record No: [2018] IEHC 412 – 2016 / 543

Date of Order: 26 July 2018 *Perfection Date:* 14 August 2018

Date of Judgment: 28 June 2018

Names of Judge(s): Ms. Justice Faherty

Where this application seeks leave to appeal directly from an Order of the High Court has an appeal also been filed in the Court of Appeal in respect of that Order?

Yes

No

6. Extension of Time:

Yes

No

X

If an application is being made to extend time for the bringing of this application, please set out concisely the grounds upon which it is contended time should be extended.

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7. Matter of general public importance:

If it is contended that an appeal should be permitted on the basis of matter(s) of general public importance please set out precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance justifying appeal to the Supreme Court.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. As the Battle rule is applied generally, the right of a company to be represented by someone other than a legal professional is a matter of general public importance. This was recognised and expressed by Mr Justice Humphries when seeking a legitimus contradictor to refer the question of the applicant's right to be represented by William Fitzgerald for hearing as a preliminary issue.
2. The judgment of the Court of Appeal which is being appealed against has misinterpreted section 41 of the Companies Act 2014 by imposing restrictions, which are not prescribed, on the powers of attorney granted in that section. As such it creates a legal uncertainty which endangers the correct literal and purposive interpretation of that section in any and all future proceedings.

Word count - 126

8. Interests of Justice:

If it is contended that an appeal should be permitted on the basis of the interests of justice, please set out precisely and concisely, in numbered paragraphs, the matters relied upon.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. The applicant's right to appeal the decision of the High Court is being denied.
2. The Supreme Court, in refusing the "leap frog" application in this matter, wrongly claimed that there was no matter of general public importance and that there was no new question of law. This forced the applicant to apply to the Court of Appeal, which according to Mr. Justice Peart had no jurisdiction to rule contrary to the Supreme Court's rulings in Battle and Aqua Fresh Fish, leaving the applicant without access to judicial remedy.

Word count - 90

9. Exceptional Circumstances: Article 34.5.4:

Where it is sought to apply for leave to appeal direct from a decision of the High Court, please set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 300 words and the word count should appear at the end of the text.

Word count -

10. Grounds of Appeal

Please set out in the Appendix attached hereto the grounds of appeal that would be relied upon if leave to appeal were to be granted.

11. Priority Hearing: **Yes** **No** **X**

If the applicant seeks a priority hearing please set out concisely the grounds upon which such priority is sought.

This section should contain no more than 100 words and the word count should appear at the end of the text.

Word count -

12. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union please identify the matter and set out the question or questions which it is alleged it is necessary to refer.

Article 54 of the TFEU provides that a company is to be treated as a natural person. Are there restrictions on a company being treated as a natural person? If so what are those restrictions?

Appendix

Notice of Appeal

1. Title of the Proceedings: [As in the Court of first instance]

MUNSTER WIRELESS LIMITED

Applicant

-v-

JUDGE TERENCE FINN

Respondent

and

TIPPERARY COUNTY COUNCIL AND IRELAND AND THE ATTORNEY GENERAL

Notice Parties

2. Grounds of Appeal:

Please set out in numbered paragraphs the Grounds of Appeal relied upon if leave to appeal were to be granted.

Power of Attorney:

1. In it's judgment the Court of Appeal cites the determination of the Supreme Court in the leap frog application which in turn cites Justice Faherty where she correctly states that section 41 of the Companies Act 2014 "*merely permits a person to stand* in the shoes of the company and to act as the company it does not divest the company of it's incorporated status

2. It is not claimed that section 41 divests the company of it's incorporated status. It is claimed that section 41 granting power of attorney, in conjunction with section 38 granting the same full legal capacity as a natural person, does permit the company to attend and argue personally and as such is the statutory exception referred to by Ó Dálaigh C.J. at p254 in the Battle Judgment which did not exist until the commencement of the Companies Act 2014.

3. The Court of Appeal cites the conclusions of McKechnie J. in his judgment in AIB Plc v. Aqua Fresh Fish [2017] I.E.C.A. and claims that section 868 of the Companies Act 2014 prohibits a company from appointing a representative to represent the company in court for any reason other than those prescribed in that section. This is a misinterpretation of the literal and purposive intent of that section.

4 Subsection 6 of section 868 of the Companies Act 2014 states that: “A representative of a company shall not, by virtue only of being appointed for the purpose referred to in subsection (5), be qualified to act on behalf of the company before any court for any other purpose.” (emphasis added) It does not preclude representatives appointed for any other purpose.

5. Section 868 of the Companies Act 2014 is found in the chapter Provisions relating to offences generally” whereas section 41 is found in the chapter “Corporate capacity and authority”. The clear wording of section 41 is: “Notwithstanding anything in its constitution, a company may empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds or do any other matter on its behalf in any place whether inside or outside the State.

6. The Court of Appeal by its judgment is claiming that the phrase “any other matter” in section 41 does not include the right to represent the company in court. If it were the intention of the Oireachtas to exclude that right it would have specifically catered for it.

7. The Courts by their misinterpretation of the literal and purposive meaning of the statutes are legislating from the bench and as such infringing on the separation of powers. Enshrined in the Constitution. In the absence of a statutory prohibition on the right of a company to be represented in court by someone vested with power of attorney to do so it is incumbent on the courts and Judiciary, in order to comply with their oaths of office, to adhere to the clear wording and intention of the law and permit someone so vested to represent the company.

Article 54 TFEU:

8. Article 54 of the TFEU states that companies are to be treated in the same way as natural persons. This is reinforced by section 38 of the Companies Act 2014. Requests have been made to several courts multiple times for a referral to the ECJ under article 267 TFEU to clarify what limitations if any exist regarding such treatment. No such request has been acquiesced to. It appears that the reason for this is that it is Acte Clair that no such limitations exist. That being the case an Acte Clair should be declared.

CFREU:

9. The claim that no issue of European law exists in the underlying matter is untrue as it has been put before each court that the applicant has been refused information under Data Protection legislation as it was not a natural person. Also Article 54 of the TFEU was raised before each Court. As such the CFREU can be invoked. The Court's desire to dismiss fundamental rights is in itself cause for concern and a matter of general public importance.

10. The observation that the CJEU requires individuals to be represented by a lawyer is irrelevant.

Precedent:

11. In the underlying issue in the District Court, Judge Finn allowed the applicant be represented by William Fitzgerald claiming “exceptional circumstance.gave him an out”. He did not say what those exceptional circumstances were.

12. In a subsequent application brought by William Fitzgerald in his own name, seeking legal certainty on the companies position. He was assured by Mr. Justice Peter Kelly in the Court of Appeal that the company would not be prohibited from being represented by Mr. Fitzgerald in any related proceedings.

Arma v France

13. The Arma v France ruling of the ECHR relates to access to court and in particular the injustice done to the primary shareholder by the company not being represented due to the restrictive rules applied. The situation is very similar to that in Battle and to suggest that it is irrelevant is misleading.

Exceptional Circumstances

14. There is no claim for exceptional circumstances in this matter except that it challenges the Supreme Courts ruling in Battle. The position that there must be exceptional circumstances for a company to be represented by a non legal professional creates an inequality before the law contrary to Article 40.1 of the Constitution.

15. In Re Haughey [1971]IR 217 : *“In proceedings before any tribunal where a party to the proceedings is on risk of having his good name, or his personal property, or any of his personal rights jeopardised, the proceedings may be correctly classed as proceedings which may affect his rights and in compliance with the Constitution the State either by it's enactments or through the Courts must outlaw any procedures which will restrict or prevent the party concerned from vindicating those rights.”*

16. The Courts have strayed far from the literal and purposive interpretation of the law in their dealings with this matter and have introduced obfuscation and misdirection with the apparent intention to maintain an unjust and unlawful rule in direct contravention of the Constitutional rights of those adversely affected by it.

17. As Ms. Justice Whelan held the office of Attorney General during the passing of the Companies Act 2014 it should be expected that she at least be aware of the purposive meanings of sections 38 to 41 and of section 868 and as such should not be misinterpreting them as has been done in this case.

3. Order(s) sought

Please set out in numbered paragraphs the order(s) sought if the Appeal were to be successful.

1. Set aside the Orders and Judgment of the Court of Appeal. [2019] IECA 286
2. An Order granting leave to appeal the decision of the High Court. [2018] IEHC 412
3. Costs.