

O.86A, r. 12(1)

COURT OF APPEAL

CIVIL

Notice of appeal (Ordinary Appeal)

For Office use

Court of Appeal record number of this appeal ... 2019

Subject matter for indexing

MUNSTER WIRELESS LIMITED

APPLICANT

AND

JUDGE TERENCE FINN

RESPONDENT

AND

TIPPERARY COUNTY COUNCIL AND IRELAND AND THE ATTORNEY GENERAL

NOTICE PARTIES

Date of filing

Name of Appellant: Munster Wireless Ltd.

Appellant's solicitors: N/A

Name of respondent: ~~Judge Terence Finn~~ IRELAND & THE ATTORNEY GENERAL

Respondent's solicitors: ~~Unknown~~ CHIEF STATE SOLICITOR

Has any appeal (or application for leave to appeal) previously been lodged in the Court of Appeal in respect of the proceedings?

Yes

If yes, give Court of Appeal record number: 2014/59

Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?

Yes

If yes, give Supreme Court record number: 139/2018

1. Return date fro directions hearing

TAKE NOTICE that this appeal is listed before the Court of Appeal for directions at the following date and time:

Date

Time

2. Decision that it is sought to appeal

Name of Judge: Ms. Justice Faherty

Date of Judgment: 28-6-18

Neutral citation of the judgment appealed against if known

[2018] IEHC 412

The relevant orders made in the High Court

Is it sought to appeal from (a) the entire decision or (b) a part or parts of the decision

.....

and if (b) set out below the specific part or parts of the decision concerned.

.....

3. Grounds of appeal

Please set out below the grounds of appeal listing (as 1, 2, 3 etc) concisely:

(a) the specific ground(s) of appeal and the error(s) of law related to each numbered ground

(b) the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom

(c) the specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely

(d) the issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

1. Precedent

(a) Precedent has been set.

(b) Throughout these proceedings the Courts have acquiesced to my right to represent the company. I have acted as the company in these proceedings

having been duly authorised by resolution of the Board.

(c) There is no statutory prohibition on a company being represented by a non legal professional.

(d) The prohibition by the Battle decision of companies being represented by a non legal professional.

2. Power of Attorney

(a) Section 41 of the Companies Act 2014 does entitle a duly authorised attorney for the company to file pleadings or represent the company in court or do any other matter on its behalf in any place whether inside or outside the State.

(b) As stated by Ms Justice Faherty in her Judgment, Section 41 of the Companies Act permits someone to stand in the shoes of the company and act as the company.

This 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 and it allows the company to attend and argue personally addressing the Judgment of Viscount Simon L.C. in the Tritonia case.

The claimed restriction on the right of audience being limited to Solicitors and Barristers by Section 17 of the Courts Act 1971 has been clarified by Ms. Justice Baker in *Re Meeley & the Personal Insolvency Acts* ([2018] IEHC 38) at p95 where she states:

"That section does no more than give a solicitor a right of audience in the superior courts. It does not exclude the PIP, who seems at least prima facie to be vested with the power to address the court in his or her own right on behalf of a debtor."

(c) Companies Act 2014

Section 41. (1) 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.

(d) The prohibition by the Battle decision of companies being represented by a non legal professional.

3. Article 54 TFEU

(a) The Court exceeded it's jurisdiction by interpreting EU law with regard to the Article 54 TFEU.

(b) It is not clear to what extent or in what context companies are to be treated as natural persons. It can not be that a company from another member state be treated differently to a domestic company The Court claims that there are restrictions on companies being treated as natural persons but does not and can not specify what these restrictions are. In dealing with the original matter before

the District Court, the company has been denied information under the Data Protection Acts (Directive 95/46/EC) as it is not a natural person.

(c) Article 54 TFEU & Directive 95/46/EC

(d) The correct interpretation of Article 54 TFEU and the contradiction between it and Irish Law regarding the treatment of a company as a natural person.

4. CFREU

(a) The Court has claimed that as there is no issue of EU law in the matter the CFREU can not be invoked.

(b) The TFEU is primary EU law. The correct interpretation of Article 54 of the TFEU and its restrictions, if any, has not been established to the requirements of legal certainty. Also in the underlying matter the company has been denied information under the Data Protection Acts (Directive 95/46/EC) as it is not a natural person.

(c) Article 54 TFEU, Articles 20,47 & 52 CFREU.

(d) Equality before the law (Article 20). Right to an effective remedy and to a fair trial (Article 48). Any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. (Article 52)

5.ECHR

(a) The prohibition on natural persons, with the approval of the shareholders and/or the board, representing companies in which they have an interest is an excessive restriction on their right of access to a court in matters that concern them as natural persons and denies them the right to a fair hearing.

(b) The ruling in *Arma v. France* [2007] ECHR 5568 found that the applicant had a particular interest in the continuity and in the protection of the capital she had invested in the company and that her intervention in proceedings would have been to the company's benefit. and that the prohibition of her from representing the company was an excessive restriction on her right of access to a court. The Battle ruling would have failed this test for the same reasons.

(c) Article 6 ECHR.

(d) Right to a fair trial and effective remedy.

4. Order(s) sought

Set out the precise form of order(s) that will be sought from the Court of Appeal if the appeal is successful:

- An Order that the prohibition on companies being represented by someone other than a legal professional be abolished.
- An Order for Costs.

What order are you seeking if successful?

Order being appealed

set aside

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

The ruling in *Battle v. Irish Art Promotion Centre Limited* [1968] I.R. 252 is incompatible with Article 6. of the Convention.

Are you asking the Court of Appeal to:

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

No

If Yes, please give details below:

.....

make a reference to the Court of Justice of the European Union?

Yes

If Yes, please give details below:

In the context of Article 54 TFEU, *“What, if any, are the restrictions on a company being treated as a natural person?”*

Will you request a priority hearing?

No

If Yes, please give reasons below:

.....

5. Documents relied on

Please set out below a list of all of the documents on which the appellant intends to rely at the hearing of the appeal:

Treaty on the Functioning of the EU

European Convention on Human Rights

All documents which were before the High Court.

Judgments in the following cases:

Battle v. Irish Art Promotion Centre Ltd. [1968] I.R. 252

Re Meeley & the Personal Insolvency Acts [2018] IEHC 38

Amministrazione delle Finanze v Simmenthal SpA (1978) Case 106/77 [1978] ECR
1978-00629

Walt Wilhelm and others v Bundeskartellamt Case 14-68 ECLI:EU:C:1969:4

Arma v. France [2007] ECHR 5568

6. Appellant Details

Where there are two or more appellants by or on whose behalf this notice is being filed please provide relevant details for each of the appellants

Appellant's full name Munster Wireless Ltd.

Original status

Applicant

Solicitor

Name of firm NA

Name of solicitor responsible for this appeal

Email

Address

Telephone no.

Document Exchange no.

Postcode

Ref.

If the Appellant is not legally represented please complete the following

Current postal address 1 Bridge Street, Cahir, Co. Tipperary.

e-mail address info@munsterwireless.com

Telephone no. 0876110187

7. 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 Judge Terence Finn~~

~~Original status~~

Solicitor

Respondent

Name of firm Unknown

Name of solicitor responsible for this appeal

Email

Address

Telephone no.

Document Exchange no.

Postcode

Ref.

If the Respondent is not legally represented please complete the following

Current postal address

e-mail address

Telephone no.

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: Ireland & The Attorney General

Original status

Notice Party

Solicitor

Name of firm Chief State Solicitors

Name of solicitor responsible for this appeal Barry Ryan

Email BARRY_RYAN@csso.gov.ie

Address Osmond House,
Ship Street Little,
Dublin 8

Telephone no. 01 417 5131

Document Exchange no.

Postcode

Ref.

Please submit your completed form to:

Office of the Registrar of the Court of Appeal (Civil)
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.

Save in the case of a notice of appeal from a decision made otherwise than *inter partes*, this notice is to be served, within seven days after it has been issued, on all parties directly affected by the appeal. A respondent may consent in writing to late service of a notice of appeal.

Note: The appellant must not later than four days before the date fixed for the directions hearing, lodge with the Registrar and serve on each respondent affected by the expedited appeal an indexed and paginated directions booklet.

William Fitzgerald