

O. 58, r. 18(1)

No. 2



**SUPREME COURT**

Record No:

29/20

**Respondent's Notice**

**Part I**

*The information contained in this part will be published. It is the respondent'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*

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

**MUNSTER WIRELESS LIMITED**

**Applicant/Appellant**

**AND**

**JUDGE TERENCE FINN**

**Respondent**

**AND**

**TIPPERARY COUNTY COUNCIL**

**Notice Party/Respondent**

**AND**

**IRELAND AND THE ATTORNEY GENERAL**

**Notice Party/Respondent**

2. **Name of Respondent:** IRELAND AND THE ATTORNEY GENERAL

3. **Application to extend time:** Yes  No

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

The Appellant's Application for leave to appeal was filed on the 5<sup>th</sup> March 2020. In advance of submitting the Respondents' Notice, consent to late filing had been sought from the Appellant. The Appellant did not refuse to consent to the extension of time for the filing of the Respondent's notice but did not formally consent. The Respondents' Notice submitted for filing on the 27<sup>th</sup> April 2020 used headings, which were not in compliance with the precedent form. (Form 2 O. 58, r. 18(1)). The substantive content of the Respondent's Notice maintained opposition to the Appellant's application for leave to appeal. By letter dated the 27<sup>th</sup> April 2020 Rochford Brady group wrote to the Respondent stating the Supreme Court Office rejected the submitted Notice as it was not in compliance with the precedent. This letter was not received by the Respondents until the 19<sup>th</sup> May 2020 by email as it had gone missing in the post. In circumstances, where the Appellant was aware that the Respondent intended to oppose the application for leave to appeal, and consent to an extension was sought, the Appellant will not suffer any prejudice or injustice if an extension of time to file the Respondent's Notice is granted.

4. **Do you oppose the applicant's application to extend time:**

Yes  No

*If an application by the applicant to extend time is being opposed please set out concisely the grounds on which it is being opposed.*

5. **Do you oppose the applicant's application for leave to appeal:**

Yes

No

**6. Matter of general public importance:**

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.

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

1. The Second and Third Named Respondent/Notice Party dispute the Appellant's submissions set out at Section 7(1) and 7(2) of the Application for Leave and Notice of Appeal. The within appeal against the decision of the Court of Appeal to refuse the Appellant an extension of time does not involve a matter of general public importance.
2. The Appellant seeks to appeal the order of the Court of Appeal (Whelan J, Costello J. Murray J.) dated the 28th November 2019 (perfected 13th February 2020) refusing the Applicant's application for an extension of time to appeal the order of Ms. Justice Faherty made 26th July, 2018 (perfected 14th August, 2018).
3. The central issue in the substantive proceedings was whether, contrary to the well-established rule in *Battle v Irish Art Promotion* [1968] 1 IR 252, it was legally permissible for the company, Munster Wireless Limited, to be represented by the Appellant, one of its directors, rather than a professional legal representative.
4. The Supreme Court has considered the same legal issue in the decision of *Allied Irish Bank plc -v- Aqua Fresh Fish Limited* [2018] IESC 49 and more recently in *Gaultier -v- Registrar of Companies & Ors, In the Matter of Arnaud D. Gaultier and The Companies Acts, 1963-2009, Gaultier -v- Allied Irish Banks Public Limited Company* [2019] IESC 89 and held that the so-called rule in *Battle v Irish Art Promotion* [1968] 1 IR 252, when complemented by the inherent jurisdiction and discretion of the Court to permit, in exceptional circumstances, the representation of a company by a person who is not a lawyer with a right of audience, continues to be the law in this jurisdiction and is consistent with the Constitution.
5. In *Munster Wireless Limited -v- Finn & ors* [2019] IESCDET 97) the Supreme Court, having considered the points now being raised, refused the 'leap frog' application brought by the Appellant on the basis that the Appellant had failed to raise any matter of general public importance and had not established that it would be in the interests of justice for a further appeal to this Court to be granted.
6. The present application for leave to appeal the decision of the Court of Appeal

refusing the Applicants application for an extension of time to appeal to the Court of Appeal does not raise any matter of general public importance. The Court of Appeal did not misinterpret Section 41 of the Companies Act 2014 and/or impose respeticions which are not prescribed on the powers of attorney granted by the section.

7. In such circumstances, the legal points raised by the Applicant as being 'arguable grounds for appeal' have been considered and determined by the Supreme Court, the within application for leave to appeal to the Supreme Court does not involve a matter of general public importance.

Word count - 470

#### **7. Interests of Justice:**

*Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.*

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

1. The Appellant was not denied his right of appeal of the decision of the High Court. The Appellant appealed the decision of the High Court to the Supreme Court (*Munster Wireless Limited -v- Finn & ors* [2019] IESCDET 97) who, having considered the points now being raised, refused the 'leap frog' application on the basis that the Appellant had failed to raise any matter of general public importance and had not established that it would be in the interests of justice for a further appeal to this Court to be granted. It is denied that the Appellant was left without access to judicial remedy, as alleged.

Word count -107

#### **8. Exceptional Circumstances Article 34.5.4.:**

*Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.*

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

N/A  
Word count -

**9. Respondent's grounds for opposing an appeal if leave to appeal is granted:**

*Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.*

**10. Cross Application for Leave:**

*If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.*

*If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also 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 500 words and the word count should appear at the end of the text.*

N/A  
Word count -

**11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal**

*Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.*

**12. Priority Hearing:**

Yes

No

*If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.*

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

Word count:

**13. 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.*

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

It is not necessary to refer any of the matters raised by the Appellant to the Court of Justice of the European Union

Word count: 23

**Part II**

*The information contained in this part will not be published.*

**14. Respondent's Representatives:**

*If not provided in the application for leave to appeal please identify the solicitor and counsel for the respondent, with contact details for the solicitor dealing with the matter including an email address for the solicitor and lead counsel or in the case of a respondent in person please provide contact details including telephone and email.*

Barry Ryan, Solicitor

barry\_ryan@csso.gov.ie

Alan Dodd, B.L

adodd@lawlibrary.ie

**15. Legal Aid:**

*In the case of an application by the DPP from an order in a criminal trial please confirm that a Legal Aid (Supreme Court) certificate has been granted by the Court below and please provide a copy of same.*

Signed:

Maria Browne

(Solicitor for) the Respondent

Chief State Solicitor

Chief State Solicitors Office

Solicitors for the Second and Third Named Respondent/Notice Party

Osmond House

Little Ship Street

Dublin 8

Date:

27 May 2020

To be served on:

Mr. William Fitzgerald - Litigant in Person  
(Solicitor for) the Applicant / Other Respondent(s)

Please file your completed Notice in:

The Office of the Registrar of the Supreme Court  
The Four Courts  
Inns Quay  
Dublin 7

**Appendix**  
**Grounds of Opposition (and Cross Appeal)**

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

**MUNSTER WIRELESS LIMITED**

**Applicant/Appellant**

**AND**

**JUDGE TERENCE FINN**

**Respondent**

**AND**

**TIPPERARY COUNTY COUNCIL**

**Notice Party/Respondent**

**AND**

**IRELAND AND THE ATTORNEY GENERAL**

**Notice Party/Respondent**

**2. Respondent's grounds for opposing an appeal if leave to appeal is granted:**

*Please list concisely in numbered paragraphs, the Respondent's ground(s) of opposition to the grounds of appeal set out in the Appellant's Notice of Appeal.*

1. The Appellant seeks to appeal the order of the Court of Appeal (Whelan J, Costello J. Murray J.) dated the 28th November 2019 (perfected 13th February 2020) refusing the Applicant's application for an extension of time to appeal the order of Ms. Justice Faherty made 26th July, 2018 (perfected 14th August, 2018).
2. The central issue in the proceedings was whether, contrary to the well-established rule in *Battle v Irish Art Promotion* [1968] 1 IR, it was legally permissible for the company, Munster Wireless Limited, to be represented by the Appellant, one of its directors, rather than a professional legal representative.
3. It is clear from the decision of Whelan J. in the Court of Appeal at para 8 that the well-established three-pronged test in *Éire Continental Trading v. Clonmel Foods Limited* [1955] I.R. 170 was set out. The Court of Appeal noted at para



10 that the Respondents did not take issue with the first two limbs of the test and that therefore, the third limb- whether the applicant has demonstrated that an arguable ground of appeal exists- was the central issue to be considered.

4. In *Battle v Irish Art Promotion* [1968] 1 IR 252 the Supreme Court refused to allow an individual who was the managing director and a major shareholder to represent his company in legal proceedings despite the fact that he said that the company had a good defence but was unable to engage legal representation due to lack of funds. The *Battle* case has been followed consistently in this jurisdiction for the last 50 years.
5. The Supreme Court in *Allied Irish Bank plc -v- Aqua Fresh Fish Limited* [2018] IESC 49 re-affirmed the general rule that a company has no right to lay representation. The Court held that the circumstances which lead a court to conclude that it is necessary in the interests of justice to permit representation of a company by a person who is not a qualified lawyer must be exceptional in order that the decision to permit is not one which will warrant common repetition such that the general rule is undermined.
6. It has most recently been approved and applied by the Supreme Court in *Gaultier -v- Registrar of Companies & Ors, In the Matter of Arnaud D. Gaultier and The Companies Acts, 1963-2009, Gaultier -v- Allied Irish Banks Public Limited Company* [2019] IESC 89.
7. The issues raised by the Appellant in the grounds of appeal were comprehensively and correctly dealt with by the Court of Appeal:

**Power of Attorney:**

8. The Appellant submits that the Court of Appeal misinterpreted Section 41 of the Companies Act 2014 by imposing restrictions, which are not prescribed on the powers of attorney. It is denied that the provisions of Section 41 of the companies Act 2014 entitles a duly authorised attorney for the company, who is not a solicitor or barrister, to represent the company in Court.
9. A power of Attorney in Section 41 of the Companies Act does not divest the company, or the attorney acting in its place, of the company's incorporated status.
10. A litigant in person has authority to bind himself or herself. A solicitor is an officer of the court; the solicitor has an overarching duty to the court to ensure the effective administration of justice. A director is an officer of the company, even if acting under power of attorney, the ultimate allegiance of a director and a solicitor are markedly different.
11. If a director acting under a power of attorney were to represent a company by filing of pleadings, this would require that the Court Services conduct an investigation to determine whether the director had been vested with the appropriate authority to bind the company. The Court Services, by accepting and filing the initiating documents, does not confer any jurisdiction on behalf

of the individual to represent the company.

12. It is denied that Section 41 of the Companies Act is a statutory exception that allows a director to attend and argue personally, as pleaded in Section 2 of the Applicant's Grounds of Appeal. The power of attorney permitted in this section does not analogise or transform the power of a director vested with same, into one which would allow him/her to represent the company in court. It is denied that the Court of Appeal misinterpreted the literal or purposive intent of Section 41.
13. Section 868 of the Companies Act, 2014 (replicating section 382 of the Companies Act, 1963) specifically provides that a duly appointed representative may represent a company where the company is charged with an indictable offence. The fact that the statute provides for lay representation in this instance points to the fact that companies have no right to lay representation in civil proceedings. Section 868 (6) 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. The Court of Appeal referred in para 33 to the decision of McKechnie J. in *AIB Plc v. Aqua Fresh Fish* [2017] I.E.C.A who determined that the Companies Act 2014 Act, involving the legislature's most major reassessment, review and consolidation of company law, in all its aspects, in more than 50 years, did not broaden its scope of the Act so as to permit company representation by non-lawyers in other circumstances outside of Section 868 of the Companies Act, 2014 (replicating section 382 of the Companies Act, 1963).
14. Section 11, 128 and 196 of the Companies Act 2014 provides for the possibility that a company have a single member and/or only one director but without providing any special rules in relation to representation even of such companies in court.

**Precedent:**

15. It is accepted that the Court has an inherent jurisdiction, as a matter of discretion, to allow a lay individual to represent a litigant, whether that litigant be an individual or a body corporate. This discretion was recognised in *Allied Irish Bank plc -v- Aqua Fresh Fish Limited* [2018] IESC 49 and subsequently in *Gaultier -v- Registrar of Companies & Ors, In the Matter of Arnaud D. Gaultier and The Companies Acts, 1963-2009, Gaultier -v- Allied Irish Banks Public Limited Company* [2019] IESC 89

**Article 54 TFEU, CFREU, ECHR**

16. It is denied that the Court exceeded its jurisdiction as pleaded or at all.
17. Chapter II of TFEU, in particular Article 49 provides content for the applicability of Article 54. Article 54 is not an article of general applicability.

Article 54 is not an authority for the proposition that companies are to be treated the same as natural persons regardless of context.

18. The rule in *Battle*, which requires a company to be represented by a lawyer, does not contravene Article 54 of the Treaty for the Functioning of the European Union.
19. Article 19 of the Statute of the Court of Justice of the European Union regulates the representation of parties in proceedings before the court.
20. Rule 36 of the Rules of Court of the European Court of Human Rights provides that an applicant must be represented by an advocate authorised to practise in any of the Contracting Parties "or other such person approved by the President of the Chamber".
21. Mr Fitzgerald has failed to point to any EU element in the matter of the dispute between Munster Wireless Limited and the Respondent such as would entitle him to invoke the provisions of the Charter.
22. The Respondent is a stranger to the references in para 11 and para 12 of the Grounds of Appeal. The legal issue of the entitlement of a director of a company to represent that company in legal proceedings has been determined by the Supreme Court. The alleged assurances by Kelly P. in the Court of Appeal do not establish a precedent.
23. *Arma v France* [2007] ECGR 5568 does not address the issue of a director or shareholder of a company appearing on behalf of that company in court. Rather, that decision concerns the issue of locus standi.

**3. Additional grounds on which the decision should be affirmed:**

*Please set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court.*

None.

**4. Cross Appeal**

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

N/A

**5. Order(s) sought**

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