

Appendix FF  
No. 2  
O. 58, r. 18(1)



**SUPREME COURT**

85 / 19  
Record No: 2014/12-SC

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**Respondent's Notice**

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**Part I**

**1. Title of the Proceedings:**

1996/2017 SP
<b>Irish Bank Resolution Corporation Limited</b>
<b>Plaintiff</b>
-v-
<b>Patrick Raftery and Patricia Raftery</b>
<b>Defendants</b>
and
<b>Mars Capital Ireland dac</b>
<b>Notice Party</b>

**2. Name of Respondent:**

Irish Bank Resolution Corporation Limited
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**3. Application to extend time:**                      Yes            No     

The solicitor now dealing with the proceedings became aware on the 19 July 2019 that no Respondent's Notice was filed. As soon as she became aware
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of this, she liaised with counsel to have same drafted and informed the solicitor for the Appellant. The Respondent's solicitor has sought consent to the late filing of the Notice from the solicitor for the Applicant.

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

Yes

No

N/A

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

Yes

No

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

1. The within appeal concerns a dispute regarding a private and commercial transaction whereby monies were advanced by a financial institution to the Appellants who offered certain properties as security realisable by the lender in the event of default. There has never been any dispute that the monies were borrowed / advanced; there has never been any dispute that the Appellants intended to give the subject property as security for the borrowing; there has never been any dispute that the Appellants defaulted in respect of their obligation to repay the facility; and there has never been any dispute that the lender was entitled to accordingly call in the borrowing and / or enforce its security in default of payment.

2. The proposed appeal does not canvass a matter of general public importance but only a matter of individual personal importance to the Appellants which should not sustain the within application or a further delay to the conclusion of these already very protracted proceedings.

3. The within proceedings concern a lender's right to enforce its security on the occurrence of an admitted default in the lending relationship which does not engage a Constitutional issue meritorious of acceding to the within application.

Word count: 200

**7. Interests of Justice:**

1. It is not in the interests of justice to ignore the principle of finality in litigation by permitting litigants, particularly represented litigants, from attempting to introduce evidence on appeal which was readily available and / or indeed in the Appellant's possession at the time of trial in the Court below. The interests of justice and principle of finality are particularly offended by the fact that the application for leave to admit evidence the subject of this application was made many years post the filing of the substantive appeal on the eve of the precious hearing date for the substantive appeal.
2. It is patently clear that were the Court of Appeal to allow the proposed evidence to be introduced on appeal it would have rendered any appeal hearing before the Court of Appeal a hearing of first instance which is wholly improper.

Word count: 141

**8. Exceptional circumstances – Article 34.5.4.:**

N/A

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

Please see Appendix

**10. Cross Application for Leave:**

N/A

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

N/A

**12. Priority Hearing:**


N/A

**13. Reference to CJEU:**

N/A

**15. Legal Aid:**

N/A

**Signed:** Mairéad Ní Ghabháin  P.P. Mairéad Ní Ghabháin  
Mairéad Ní Ghabháin  
AB Wolfe & Company  
Solicitors for the Respondent and Notice Party

**Date:** 8 August 2019

**To:** Donal Keigher and Company  
Solicitors for the Appellant  
Northgate Street  
Athlone  
County Westmeath

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:**

<b>1996/2017 SP</b>	
<b>Irish Bank Resolution Corporation Limited</b>	<b>Plaintiff</b>
-v-	
<b>Patrick Raftery and Patricia Raftery</b>	<b>Defendants</b>
and	
<b>Mars Capital Ireland dac</b>	<b>Notice Party</b>

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

1. It is clear that the evidence sought to be introduced on appeal was either in the possession of the Defendants at the time of trial or easily procurable by them at that time confirming the appropriateness of the conclusions reached by the learned Court of Appeal Justice.
2. No proper reason or explanation is offered which might justify the admission of the proposed new evidence on appeal in circumstances where the evidence was capable of being introduced before the trial Judge.
3. No proper reason is given to explain the Appellant's failure or omission to introduce the subject evidence at the appropriate or at any time prior to the conclusion of the proceedings before the Court below.

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

N/A

**4. Cross Appeal**

N/A

**5. Order(s) sought**

N/A