



**THE SUPREME COURT
DETERMINATION**

BETWEEN/

JOHN O'CONNELL

Applicant/Appellant

AND

FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Respondent

Neutral Citation: [2022] IESCDT 2

Supreme Court Record No.: S:AP:IE:2021:000119

Court of Appeal Record No.: A:AP:IE:2021:000106

High Court Record No.: 2019 No. 289 MCA

Date of Determination: Wednesday, 12th January 2022

Composition of Court: MacMenamin J, Dunne J., Hogan 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 Applicant to appeal to this Court from the Court of Appeal.

ORDER SOUGHT TO BE APPEALED

REASONS GIVEN:

COURT: COURT OF APPEAL
DATE OF JUDGMENT OR RULING: 8th October 2021
DATE OF ORDER: 8th October 2021
DATE OF PERFECTION OF ORDER: 13th October 2021
THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 8th NOVEMBER 2021 AND WAS NOT MADE IN TIME

General Considerations

1. 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 Thirty-third 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 *B.S. v. Director of Public Prosecutions* [2017] IESCDT 134, (Unreported, Supreme Court, 6 December 2017) and in a unanimous judgment of a full court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 I.R. 812. Accordingly, it is unnecessary to revisit the new constitutional architecture for the purpose of this determination.

2. Furthermore, the application for leave filed and the respondent's notice are 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 any detail. No aspect of this determination has precedential value as a matter of law.

Background

3. This is an application for leave in respect of a decision of the Court of Appeal delivered *ex tempore* by Barniville J on 8th October 2021. By that decision the Court affirmed a decision of O'Connor J in the High Court delivered on 5th November 2020: [2020] IEHC 559. In that reserved judgment O'Connor J had dismissed the applicant's appeal from a decision of the Financial Services and Pensions Ombudsman ("FSPO") dated the 14th August 2019 bearing record number 16/91486.
4. This application is, strictly speaking, out of time since Ord. 58, r. 16(1) RSC prescribes that an applicant has 21 days from the date of perfection of the order of the Court of Appeal to make an application for leave to this Court. Given, however, that the delay was very short (in the order of at most four days) and that no prejudice would accrue to the respondent, the Court is disposed to extending time in favour of the applicant.
5. The case itself concerns a decision of the Financial Services and Pensions Ombudsman ("FSO"). The applicant had originally contacted his life insurance provider in February 2016 regarding the potential encashment of two life insurance policies. The provider duly sent two cheques and these were subsequently encashed. The applicant then made a complaint to the FSPO.
6. The complaint to the FSPO was partially successful. In essence the provider was directed to make available to the applicants five options already offered by the provider along with a sixth option of returning the full encashed option and effectively re-instating the policy. The decision also directed the payment of €300 plus interest by way of compensation. The applicant then appealed that decision to the High Court pursuant to s. 64(1) of the Financial Services and Pensions Ombudsman Act 2017.
7. Like O'Connor J in the High Court and Barniville J in the Court of Appeal, this Court has not found it easy to discern what precisely the applicant's legal grounds of appeal actually are. Much of the grounds set forth in the Application for Leave to Appeal consist of generalised complaints relating to alleged unfairness of the procedures or unsubstantiated

allegations that his complaint was not adjudicated with sufficient care or thoroughness or in an expeditious manner. Other grounds seem obscure and are not easy to comprehend.

8. So far as can be ascertained one of the applicant's principal complaints appears that the FSPO held no oral hearing and there was no opportunity for cross-examination. The short answer is that the established authorities demonstrate that the oral hearing is necessary only where there is a clear conflict of fact which goes to the heart of the complaint: see, *e.g.*, *Hyde v. Financial Services Ombudsman* [2011] IEHC 422; *Lyons v. Financial Services Ombudsman* [2011] IEHC 454. Nothing has been identified here which would suggest a similar conflict of fact in the present case.
9. Another complaint appears to be that the applicant was left without insurance "because of the reckless behaviour of the provider breaking a contract." This complaint is difficult to understand because the FSPO did in fact direct that the provider should offer the applicant (and his wife) a range of six options, one of which was to re-encash the life insurance policies should they wish to do so. While the applicant has also included grounds of appeal directed to the decision of the Court of Appeal, it is difficult to discern or identify a particular ground (beyond purely generalised complaints) on which it can be said that the decision of the Court of Appeal was actually wrong. Many of these complaints seem to relate to allegations of misselling and lack of value for money in respect of the product. But none of these complaints formed the basis for his original complaint to the FSPO and cannot now be agitated by way of appeal to the High Court, the Court of Appeal or to this Court.
10. The final complaint is that O'Connor J should have recused himself by reason of his prior involvement as judge in other proceedings involving this applicant. This matter was dealt with comprehensively by O'Connor J in a separate judgment delivered on 20th October 2020 who, applying well-established principles, refused to recuse himself.

Conclusions

11. Since the present application for leave appears to present matters which are wholly personal to the applicant's complaints relating to this life insurer and the FSPO, no grounds of general public importance for the purposes of Article 34.5.3 of the Constitution have been identified. Nor has the applicant identified any sustainable grounds pertinent to the interests of justice requirement.
12. In these circumstances, the applicant cannot satisfy the separate constitutional threshold specified by Article 34.5.3 governing the grant of leave from the Court of Appeal to this Court.
13. The Court accordingly REFUSES leave to appeal.

AND SO IT IS HEREBY ORDERED ACCORDINGLY.